

# In the Privy Council.

No. 26 of 1930.

## ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA.

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BETWEEN

J. F. LANGER - - - - - (Defendant) Appellant

AND

McTAVISH BROTHERS LIMITED - - (Plaintiff) Respondent.

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## RECORD OF PROCEEDINGS.

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In the Privy Council.

No. 26 of 1930.

ON APPEAL FROM THE COURT OF APPEAL  
OF BRITISH COLUMBIA.

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BETWEEN

J. F. LANGER . . . . . (Defendant) Appellant

AND

McTAVISH BROTHERS LIMITED . . . . . (Plaintiff) Respondent.

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RECORD OF PROCEEDINGS.

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No. 1.

Endorsement on Writ.

No. Mc. 306/1928.

IN THE SUPREME COURT OF BRITISH COLUMBIA.

Between

McTAVISH BROTHERS LIMITED . . . . . Plaintiff

and

J. F. LANGER . . . . . Defendant.

*In the  
Supreme  
Court of  
British  
Columbia.*

No. 1.  
Endorse-  
ment on  
Writ,  
8th March  
1928.

Writ issued the 8th day of March, 1928.

10

ENDORSEMENT ON WRIT.

The plaintiff's claim is for \$78,750.00 for the price of shares of Alamo Gold Mines Limited, (Non-Personal Liability) sold by the plaintiff to the defendant.

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*In the  
Supreme  
Court of  
British  
Columbia.*

No. 2.

**Statement of Claim.**

No. Mc. 306/1928.

IN THE SUPREME COURT OF BRITISH COLUMBIA.

Between

No. 2.  
Statement  
of Claim,  
21st March  
1928.

MCTAVISH BROTHERS LIMITED - - - - - *Plaintiff*

and

J. F. LANGER - - - - - *Defendant.*

Writ issued the 8th day of March, 1928.

1. The plaintiff is a joint-stock company incorporated under the laws 10  
of the Province of British Columbia, having its head office at No. 503 London  
Building, 626 West Pender Street in the City of Vancouver in the Province  
of British Columbia. The defendant is a builder and resides at No. 3290  
Granville Street in the Municipality of Point Grey in the Province of British  
Columbia.

2. By contract in writing made between the parties hereto and contained  
in a certain letter dated the 17th day of November, 1927, from the plaintiff  
to the defendant and a memorandum written thereon and signed by the  
defendant, the plaintiff agreed to sell to the defendant, 750,000 shares of 20  
the capital stock of Alamo Gold Mines Limited, (Non-Personal Liability),  
for the sum of \$93,750.00, payable as follows :—

- \$5,000.00 at the time of execution of the said agreement ;
- \$21,000.00 by transferring to the plaintiff, free from all  
encumbrance, 2 lots belonging to the Defendant on Granville Street,  
between 9th and 10th Avenues, in the said City of Vancouver ;
- \$10,000.00 on the 1st day of March, 1928 ;
- \$10,000.00 on the 1st day of June, 1928 ;
- \$23,875.00 on the 1st day of September, 1928 ;
- \$23,875.00 on the 1st day of December, 1928.

3. The lands referred to in the last preceding paragraph hereof, 30  
comprise those parcels being in the City of Vancouver aforesaid and being  
lots Three (3) and Four (4) in Block Three hundred and fifty-one (351) in  
District Lot Five hundred and twenty-six (526) in the City of Vancouver  
aforesaid, according to the registered plan of subdivision deposited in the  
Land Registry Office in the said City of Vancouver as No. 590.

4. The said contract provided :—

(a) That the said land should be transferred to the Plaintiff upon  
request by the Plaintiff.

(b) That as each quarterly payment fell due under the provisions 40  
of the said agreement, the Plaintiff was to receive from the Defendant  
his promissory note at three months, without interest, covering the  
quarterly payment next thereafter falling due.

5. In pursuance to the said contract, share certificates in the name of the Defendant covering the said 750,000 shares were delivered to the Defendant on or about the 17th day of November, 1927, and the Defendant at that time paid to the Plaintiff the said sum of \$5,000.00 and delivered to the Defendant his promissory note for \$10,000.00, dated the 1st day of December, 1927, payable to the Plaintiff three months after date. The said promissory note has been duly paid.

6. On the 23rd day of January, 1928, by a letter bearing that date, the plaintiff requested the defendant to deliver to it a conveyance of said two  
10 lots on Granville Street, but the defendant has neglected and refused to deliver to the Plaintiff a conveyance of said lands and has sold and conveyed the said lands to other persons and therefore cannot convey, or cause to be conveyed, said lands to the plaintiff.

7. The defendant has failed and refused to deliver to the plaintiff his promissory note covering the said payment of \$10,000.00 falling due on the 1st day of June, 1928.

8. On the 6th day of March, 1928, the defendant by his solicitors, Messrs. Burns & Walkem, repudiated all liability under said contract in writing and refused to make any further payments thereunder.

20 Wherefore the plaintiff claims :—

- (1) Payment of the said sum of \$78,750.00.
- (2) The costs of this action.
- (3) Such further and other relief as the nature of the case may require.

Place of trial Vancouver, B.C.

Dated the 21st day of March, 1928.

“ST. JOHN, DIXON & TURNER.”  
Plaintiff's solicitors.

30 The place of business and address for service of Messrs. St. John, Dixon & Turner, is 302 Pacific Building, 744 West Hastings Street, Vancouver, B.C.

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**No. 3.**

**Statement of Defence and Counter-claim (as finally amended).**

Amended the 26th day of June 1928, pursuant to the order of the Honourable Mr. Justice W. A. Macdonald dated the 26th day of June, 1928, and further amended at the trial of this action.

1. The defendant admits the statements contained in paragraph 1 of the statement of claim.

2. The defendant denies each and every allegation contained in paragraph 2 of the statement of claim.

*In the  
Supreme  
Court of  
British  
Columbia.*

No. 3.  
Statement  
of Defence  
and Counter-  
claim (as  
finally  
amended),  
26th June  
1928—con-  
tinued.

3. The defendant denies each and every allegation contained in paragraph 3 of the statement of claim.

4. The defendant denies each and every allegation contained in paragraph 4 of the statement of claim.

5. The defendant denies each and every allegation contained in paragraph 5 of the statement of claim.

6. The defendant denies each and every allegation contained in paragraph 6 of the statement of claim.

7. The defendant denies each and every allegation contained in paragraph 7 of the statement of claim.

8. The defendant denies each and every allegation contained in paragraph 8 of the statement of claim.

9. At all times material to the matters in question in this action D. N. McTavish was president of the plaintiff company and president of the Alamo Gold Mines Limited, and P. D. McTavish was secretary of the plaintiff company and secretary of the Alamo Gold Mines Limited.

10. In or about the month of September 1926 the plaintiff by the said P. D. McTavish and D. N. McTavish and its agent P. J. Howard approached the defendant for the purpose of inducing the defendant to invest certain monies in Alamo Gold Mines Limited, and to purchase shares in Alamo Gold Mines Limited owned by the plaintiff.

11. During the course of negotiations between the plaintiff and the defendant the plaintiff by the said P. D. McTavish and D. N. McTavish and the said P. J. Howard represented to the defendant :—

(a) That the mining properties in the State of Oregon belonging to the Alamo Gold Mines Limited (which properties constituted the sole asset of the Alamo Gold Mines Limited), were exceedingly valuable mining properties, and the shares in the Alamo Gold Mines Limited were very valuable and worth at that time at least .25c. per share and were selling at that price.

(b) That the Alamo Gold Mines Limited were operating that part of its properties known as the "Evans Group," and that a shaft had been sunk on the Evans Group and the assays showed an average value of \$14.00 per ton, and that ore was being milled from an open cut on the Evans Group known as the "Glory Hole," and that the mixture of ore from the Evans shaft and the Glory Hole gave the Alamo Gold Mines Limited a net recovery of \$10.00 per ton.

(c) That the Alamo mine, being one of the properties of the Alamo Gold Mines Limited, had been opened up and operated about twenty years prior thereto, and that a vertical shaft had been driven a distance of 730 feet, which had been cross-cut by three tunnels known as Number 1, Number 2 and Number 3 tunnel. That the vein at the outcrop was 20 feet wide, and assays showed average values of \$8.00 to \$10.00 per ton. That the vein at the intersection of Number 1 tunnel showed average assay values of \$8.00 to \$12.00 per

ton. That the vein at the intersection of Number 2 tunnel was 30 feet wide and assays showed average values of \$10.00 to \$18.00 per ton. That the up-raise from tunnel number 3 to tunnel number 2, a distance of 380 feet, was in ore which assayed average values of \$10.00 to \$18.00 per ton. That three blind veins were encountered in number 3 tunnel assaying average values of \$7.00 to \$10.00 per ton. That before the tunnels cross-cut the main vein they passed through 10 feet of mineralized porphyry, which assayed an average of \$8.00 to \$12.00 per ton, and that the values in the said Alamo mine when previously operated had actually averaged from \$8.00 to \$10.00 per ton, and would show an average of \$10.00 per ton when the tunnels were cleaned out.

10

(d) That the ore in the properties belonging to the Alamo Gold Mines Limited ran much higher in value than the ore in the properties of the Alaska-Juneau Gold Mining Company.

12. The said representations were untrue, and the said properties of the Alamo Gold Mines Limited are worthless, and have no ore bodies of any commercial value.

20

13. The plaintiff in substantiation of the said representations at the time thereof gave to the defendant a blue print showing a cross section of the Alamo vein and workings, and certain reports purporting to have been made by mining engineers, and represented to the defendant that the statements contained in the said blue print and the said mining reports were true, when as a matter of fact the statements contained therein are untrue.

30

14. The defendant, relying upon the representations of the plaintiff, was induced thereby to enter into a contract in writing dated the 7th day of February 1927, to which contract the defendant craves leave to refer at the trial of this action, made between the Alamo Gold Mines Limited of the first part, the defendant of the second part, the plaintiff of the third part and D. N. McTavish and P. D. McTavish of the fourth part, under which contract the defendant agreed to subscribe for shares in the Alamo Gold Mines Limited for the purpose of financing the mining operations thereof, and in pursuance of the said agreement the defendant subscribed to the Alamo Gold Mines Limited the sum of \$28,660.00.

15. The defendant, relying upon the said representations, was induced thereby from time to time to purchase from the plaintiff 250,000 shares in Alamo Gold Mines Limited, for which the defendant paid the sum of \$35,937.50, which shares were and are worthless.

40

16. In or about the beginning of November 1927 and prior to the alleged agreement referred to in the statement of claim of the 17th day of November 1927 the plaintiff repeated the representations hereinbefore set forth, and further represented to the defendant that 194,050 tons of ore had been actually blocked out in the Alamo mine, and that average samplings thereof assayed an average of \$10.00 per ton, and that the value of the blocked ore was at least \$8.00 per ton, making a total value of

*In the  
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No. 3.  
Statement  
of Defence  
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finally  
amended),  
26th June  
1928—*con-  
tinued.*

*In the  
Supreme  
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26th June  
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tinued.

\$1,552,400.00, and in substantiation of said representations the plaintiff gave to the defendant a blue print containing the said representations, and alleged that the statements contained therein were true.

17. The said representations and the statements contained in the said blue print were untrue, and no such values exist in the Alamo mine, nor was any such tonnage blocked out.

18. The defendant, relying upon the previous representations and the representations contained in the preceding paragraph 16 hereof, and upon the blue prints and mining reports hereinbefore referred to, was induced to enter into a contract in writing of the 17th day of November 1927 to purchase from the plaintiff 750,000 shares in the Alamo Gold Mines Limited at a price of  $.12\frac{1}{2}\%$  per share, making a total purchase price of \$93,750.00, and the defendant has paid on account thereof the sum of \$15,000.00. 10

19. Prior to entering into the said contract of the 17th day of November 1927 the plaintiff had been informed by the manager of the Alamo Gold Mines Limited, David Barnes, that the mining properties of the Alamo Gold Mines Limited were worthless, and that there were no ore bodies of commercial value, and that there was no use in proceeding with any further development. The plaintiff, although in a fiduciary position to the defendant, fraudulently concealed the said information from the defendant, and had the said information been given to the defendant he would not have entered into the contract of the 17th day of November 1927. 20

20. During the period prior to the 17th day of November 1927 the Alamo Gold Mines Limited had been proceeding with the development of the Evans Group, and with the cleaning out of the tunnels of the Alamo mine, and this work was completed before the 17th day of November 1927, and the plaintiff prior to that date was aware that the development of the Evans Group showed that there was no value in the said Evans Group, and that the ore bodies and values represented to be in the Alamo mine did not exist, and the plaintiff, although in a fiduciary position to the defendant, fraudulently concealed the said information from the defendant, and had the said information been given to the defendant he would not have entered into the contract of the 17th day of November 1927. 30

21. Some days subsequent to the 17th day of November 1927 and on or about the 20th day of November 1927 the plaintiff informed the defendant of the results of the development work upon the Evans Group and of the opening up of the Alamo mine, and advised the defendant that assays showed that there was no ore in either mine of any commercial value, and thereupon the defendant entered into an oral agreement with the plaintiff whereby the said contract of the 17th day of November 1927 was totally abandoned and rescinded. 40

22. In answer to the whole of the statement of claim the defendant repeats the allegations hereinbefore set forth and says that in view of the misrepresentations and fraud of the plaintiff he is not bound by the said contract of the 17th day of November 1927, and further that under the

terms of the said oral agreement with the plaintiff the said contract has been totally abandoned and rescinded.

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tinued.

23. In further answer to the whole of the statement of claim herein the defendant says that the plaintiff prior to the 17th day of November 1927 represented to the defendant that it owned and could deliver to the defendant 750,000 fully paid non-assessable shares of Alamo Gold Mines Limited, which representation was untrue, and under the terms of the said agreement of the 17th day of November 1927 purported to sell to the defendant 750,000 fully paid non-assessable shares of the Alamo Gold  
10 Mines Limited. The defendant says that the said Alamo Gold Mines Limited was promoted by the said P. D. McTavish, D. N. McTavish, William B. Code, David Barnes and George Thomas, and was incorporated on the 17th day of March 1925, and that the said five promoters immediately thereafter became the directors of the said company. It was thereupon agreed between the said five directors that certain mining properties should be acquired from the said William B. Code in consideration of 2,999,995 fully paid non-assessable shares of the capital stock of the Alamo Gold Mines Limited, which said shares were to be divided equally between the said five directors, and it was further agreed between the said five directors  
20 that they would each surrender to the company 300,000 of the said shares. The said 2,999,995 shares were by resolution of the said directors allotted to the said William B. Code on the 13th day of March 1925, and the said 1,500,000 shares were thereupon surrendered to the company, and the defendant says that the true consideration for the acquisition of the said property from the said William B. Code was 1,500,000 shares, and that the allotment of the said 2,999,995 shares constituted the issuance of shares by the company at a discount, which the company had no power to do, and such allotment was therefore ultra vires, and void, and the said shares are in consequence only partly paid, and the 750,000 shares delivered to  
30 the defendant are not fully paid and non-assessable, as represented by the plaintiff, nor did the plaintiff under the terms of the said agreement deliver to the defendant 750,000 fully paid and non-assessable shares of the said Alamo Gold Mines Limited, nor did the plaintiff have title to the said shares. The defendant says that he was induced to enter into the said agreement of the 17th day of November 1927 by the said representation, and that the said agreement is void on account of the misrepresentation of the plaintiff and for failure of consideration.

24. In further answer to the whole of the statement of claim herein the defendant says that the plaintiff prior to the said agreement of the  
40 7th day of February 1927, and prior to the hereinbefore recited agreements, including the agreement of the 17th day of November 1927, whereby the defendant agreed to purchase shares in the Alamo Gold Mines Limited from the plaintiff, and in order to induce the defendant to enter into the said agreements, represented to the defendant that 3,000,000 shares of the capital stock of the said Alamo Gold Mines Limited had been properly and legally issued, and were fully paid and non-assessable, and in carrying out

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tinued.

the said agreements attempted to deliver to the defendant fully paid and non-assessable shares of the said Alamo Gold Mines Limited. The defendant repeats the allegations contained in the preceding paragraph 23 hereof, and says that the said representation was untrue, inasmuch as the said five directors of the Alamo Gold Mines Limited were interested in the agreement between that company and William B. Code, whereby 2,999,995 fully paid and non-assessable shares were to be issued to the said William B. Code in consideration for certain mining properties, and being so interested the said five directors had no authority to vote for the said resolution of the 13th day of March 1925, whereby the said shares were allotted to the said William B. Code, and the said resolution is consequently null and void, and the said 2,999,995 shares have never been issued, and are not fully paid and non-assessable, and neither the Alamo Gold Mines Limited nor the plaintiff had power or authority to sell the same to the defendant, nor had they title to the same, and the defendant says that the said agreement of the 7th day of February, 1927 and all subsequent agreements between himself and the plaintiff are void on account of the said misrepresentation, and for failure of consideration. 10

#### COUNTER-CLAIM.

25. The defendant repeats the allegations contained in paragraphs 20 25  
9 to 24 inclusive of the statement of defence.

25.—(a) The defendant says that the plaintiff, in making the representations hereinbefore set forth, warranted to the defendant that the facts as set forth in the said representations were true, and the defendant, relying upon the said warranties, was induced to enter into the said agreement of the 7th day of February 1927 and to purchase all of the shares hereinbefore referred to from the plaintiff. The said facts as so warranted to the defendant were and are not true, and the defendant has consequently suffered damages from breach of the said warranties.

26. The defendant further says that the plaintiff, prior to the said agreement of the 7th day of February, 1927, represented to the defendant 30  
that the Alamo Gold Mines Limited had treasury stock which it could sell to the defendant, which representation was untrue, inasmuch as the whole of the capital stock of the Alamo Gold Mines Limited had been issued, and the said surrender of the said 1,500,000 shares of the Alamo Gold Mines Limited was void, first, because it constituted a trafficking by the Alamo Gold Mines Limited in its shares not within the objects of the said company, as defined by its memorandum of association, secondly, because the acceptance of such a surrender was not a lawful object for which the company could have been incorporated under the "Companies Act," and thirdly, 40  
because the acceptance of such surrender was a mode of reducing capital impliedly prohibited by the "Companies Act," and the defendant, relying upon the said representation, was induced to enter into the said contract of the 7th day of February 1927, and the said Alamo Gold Mines Limited, in pursuance of the said contract, attempted to issue and deliver to the

defendant 417,500 shares of the capital stock of the Alamo Gold Mines Limited, which shares the Alamo Gold Mines Limited did not own, and had no power to issue, and the defendant has consequently no title to the said shares and has lost through the misrepresentation of the plaintiff the monies invested in the said Alamo Gold Mines Limited under the terms of the said agreement of the 7th day of February 1927.

*In the  
Supreme  
Court of  
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No. 3.

Statement  
of Defence  
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claim (as  
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26th June  
1928—con-  
tinued.

The defendant by way of counter-claim therefore claims :—

10 (a) Damages in the sum of \$28,660.00, being the amount which the defendant was induced to invest in Alamo Gold Mines Limited through the misrepresentations of the plaintiff.

(b) Repayment of the sum of \$35,937.50, being the amount paid by the defendant to the plaintiff as aforesaid through the misrepresentations of the plaintiff for shares in the Alamo Gold Mines Limited.

(c) Rescission of the said contract of the 17th day of November, 1927.

20 (d) The sum of \$15,000.00, being a \$5,000.00 cash payment made by the defendant to the plaintiff under the said contract of the 17th day of November 1927 and a subsequent payment of a promissory note of \$10,000.00 given by the defendant to the plaintiff under the terms of the said contract.

(e) Damages for breach of the said warranties.

COUNTER-CLAIM AGAINST THE DEFENDANT ALAMO GOLD MINES LIMITED.

27. The defendant repeats the allegations contained in paragraphs 9 to 24 inclusive and paragraph 26 of the statement of defence and counter-claim, and says that all acts done or representations or warranties made by the plaintiff or the said P. D. and/or D. N. McTavish and/or the said P. J. Howard as alleged therein on behalf of the plaintiff, insofar 30 as the same relate to the said agreement of the 7th day of February 1927 were also done and made by the defendant Alamo Gold Mines Limited or the said P. D. and D. N. McTavish as officers of the Alamo Gold Mines Limited.

The defendant J. F. Langer therefore claims against the defendant Alamo Gold Mines Limited as follows :

40 (a) Rescission of the said agreement of the 7th day of February 1927, and repayment of the sum of \$28,660.00 being the amount which the defendant was induced to invest in Alamo Gold Mines Limited through the misrepresentations of the defendant Alamo Gold Mines Limited.

(b) Damages for breach of the said warranties.

Dated at Vancouver, B.C. this 26th day of June, 1928.

“ KNOX WALKEM,”  
Solicitor for defendant.



*In the  
Supreme  
Court of  
British  
Columbia.*  
No. 3—con-  
tinued.

Delivered by Knox Walkem, of the firm of Burns & Walkem, whose place of business and address for service is 1104 Standard Bank Building, Vancouver, B.C.

To Messrs. St. John, Dixon & Turner,  
Solicitors for plaintiff.

And to The defendant Alamo Gold Mines Limited.

No. 4.  
Demand for  
particulars  
by Plaintiff,  
20th April  
1928.

**No. 4.**

**Demand for particulars by Plaintiff.**

TAKE NOTICE that the plaintiff demands particulars of the following matters referred to in the statement of defence and counterclaim herein. 10

1. As to paragraph 11 thereof.
  - (a) Were any of the alleged representations made in writing? If so, identify the writing or writings.
  - (b) Specify which of said representations were made by P. D. McTavish and which by D. N. McTavish respectively.
  - (c) Give the dates upon which said representations respectively were made.
2. As to paragraph 13 thereof.
  - (a) Give particulars identifying the blue print therein referred to.
  - (b) Give particulars identifying the various reports of mining 20 engineers therein mentioned.
3. As to paragraph 14 thereof.
 

Give particulars of each subscription for stock of Alamo Gold Mines Limited therein referred to, mentioning in each case,

  - (a) Date of subscription.
  - (b) Number of shares subscribed.
  - (c) Consideration.
  - (d) Terms of payment.
  - (e) Particulars of payments made on account.
4. As to paragraph 15 thereof. 30
 

Give particulars of all purchases therein mentioned, stating in each case,

  - (a) Date of purchase.
  - (b) Number of shares purchased.
  - (c) Consideration.
  - (d) Terms of payment.
  - (e) Particulars of payments made on account, by cash or otherwise.

- 5. As to paragraph 16 thereof.
  - (a) Were any of the alleged representations in writing? If so, identify writings.
  - (b) Identify the blue print therein mentioned.
- 6. As to paragraph 19 thereof.
  - (a) In what respects was the plaintiff in a fiduciary relation to the defendant at the time mentioned? Give particulars of the facts relied upon as constituting such relationship.
  - (b) Was the information alleged to have been given to the plaintiff by the said David Barnes in writing? If so, identify writing.
  - (c) Give the date upon which it is alleged the said information was given to the plaintiff by the said David Barnes.
- 7. As to paragraph 21 thereof.
  - (a) Give all terms of the alleged agreement, whereby the contract dated the 17th day of November 1927 between the parties hereto was abandoned and rescinded.

*In the Supreme Court of British Columbia.*

No. 4. Demand for particulars by Plaintiff 20th April 1928—continued.

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AND TAKE NOTICE that if said particulars be not furnished within 5 days from the date of service of this demand, an application will be made to the Court to compel delivery of same.

Dated at Vancouver, B.C. this 20th day of April, 1928.

“ST. JOHN, DIXON & TURNER,”  
Plaintiff’s Solicitors.

To Knox Walkem, Esq.,  
Defendant’s Solicitor.

**No. 5.**

**Particulars pursuant to demand.**

No. 5. Particulars pursuant to demand, 25th April 1928.

1. In answer to paragraph 1 of the demand for particulars the defendant says:—

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(a) The alleged representations were made verbally and in writing. The writing consisted of a blue print in writing and figures, undated, and of the mining reports and letters from alleged mining engineers set out in the defendant’s affidavit on production herein, and of a letter of the 27th day of December, 1926, with enclosures from the plaintiff to the defendant.

(b) All of the representations were repeatedly made by both P. D. McTavish and D. N. McTavish.

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(c) It is impossible for the defendant to give the exact date of such representations, but the same were repeatedly made at the interviews from the first meeting between the defendant and P. D. McTavish and D. N. McTavish of the plaintiff company until on or about the 20th day of November, 1927.

*In the  
Supreme  
Court of  
British  
Columbia.*

No. 5.

Particulars  
pursuant to  
demand,  
25th April  
1928—con-  
tinued.

2. In answer to paragraph 2 of the demand for particulars the defendant says :

(a) The blue print referred to in paragraph 13 will be produced at any time for the plaintiff's inspection.

(b) The reports referred to in said paragraph 13 will be produced at any time for the plaintiff's inspection.

3. In answer to paragraph 3 of the demand for particulars the defendant says that the particulars as to subscription, consideration and terms of payment are contained in the said agreement of the 7th day of February, 1927, it being agreed thereby that the defendant was to have 10 shares issued to him for monies advanced at the rate of .05c. per share. The advances made by the defendant are as follows :

Sept. 25, 1926	-	-	-	-	-	\$2500.00
Oct. 27, 1926	-	-	-	-	-	2500.00
Nov. 15, 1926	-	-	-	-	-	1200.00
Nov. 30, 1926	-	-	-	-	-	1600.00
Jany. 3, 1927	-	-	-	-	-	1500.00
Jany. 12, 1927	-	-	-	-	-	200.00
Jany. 31, 1927	-	-	-	-	-	1650.00
March 1, 1927	-	-	-	-	-	2000.00
March 23, 1927	-	-	-	-	-	500.00
March 25, 1927	-	-	-	-	-	2000.00
April 27, 1927	-	-	-	-	-	2500.00
May 28, 1927	-	-	-	-	-	2000.00
June 29, 1927	-	-	-	-	-	1700.00
July 29, 1927	-	-	-	-	-	500.00
Aug. 8, 1927	-	-	-	-	-	1000.00
Aug. 30, 1927	-	-	-	-	-	500.00
Sept. 2, 1927	-	-	-	-	-	1250.00
Sept. 27, 1927	-	-	-	-	-	750.00
Oct. 10, 1927	-	-	-	-	-	2100.00
Nov. 15, 1927	-	-	-	-	-	710.00

Total - \$28,660.00

The shares received by the defendant for such advances amount to 412,800 shares.

4. In answer to paragraph 4 of the demand for particulars the defendant says that he purchased from the plaintiff on or about the 14th day of January 1927 62,500 shares at .12½c. per share, for which he paid \$5000.00 on or about the 14th day of January 1927 and \$2812.50 on or about the 26th day of January 1927. The defendant further says that on or about the 17th day of June 1927 he purchased 125,000 shares from the plaintiff at .15c. per share, for which he paid \$10,250.00 by delivery of Lot 5, Block 351, District Lot 526 to the plaintiff; \$5000.00 cash on the 17th day of June; \$1000.00 on the 8th day of July and \$2500.00 on the 30th day of July 1927. 40

The defendant further says that on or about the 12th day of July 1927 he purchased 62,500 shares at  $.12\frac{1}{2}$ c. per share, in payment of which he paid \$4000.00 by delivery to the plaintiff of Lot 12, Block 49, District Lot 540; \$500.00 on the 12th day of July; \$2437.50 on the 19th day of September and \$2437.50 on the 11th day of October, 1927.

*In the  
Supreme  
Court of  
British  
Columbia.*

5. In answer to paragraph 5 of the demand for particulars the defendant repeats the answer contained in paragraph 1 hereof, and in addition thereto says that the plaintiff gave to the defendant a blue print in figures and writing, which blue print the defendant will produce for the inspection of the plaintiff at any time. Certain of the said representations were also contained in a letter of the 24th day of February 1927 from the plaintiff to the defendant, and in the clipping enclosed therewith.

No. 5.  
Particulars  
pursuant to  
demand,  
25th April  
1928—*con-  
tinued.*

6. In answer to paragraph 6 of the demand for particulars the defendant says:—

(a) That the question in what respects the plaintiff was in a fiduciary relation to the defendant is a question of law. The facts relied on constituting such relationship are the whole of the facts surrounding the entire relationship between the plaintiff and the defendant from the first meeting between the plaintiff and defendant, and subsequently during all times material to the matters in question in this action.

(b) The information given by the said David Barnes to the plaintiff was verbal and might also have been in writing. The defendant has not particulars of such writing at the present time.

(c) The date upon which the said information was given to the plaintiff by the said David Barnes was at different periods for some months previously to the time the said David Barnes left the employ of the Alamo Gold Mines Limited, and particulars of such dates are known to the plaintiff.

7. In answer to paragraph 7 of the demand for particulars the defendant says that the terms of the agreement therein referred to were that the said contract of the 17th day of November 1927 was totally abandoned and rescinded, and the plaintiff was to return to the defendant the letter of agreement of the 17th day of November 1927 and the promissory note for \$10,000.00 given by the defendant to the plaintiff. It was an implied term of the said agreement that upon the said contract of the 17th day of November 1927 being surrendered to the defendant he would deliver to the plaintiff the shares which had been handed to him under the terms of the said contract.

Dated at Vancouver, B.C. this 25th day of April, 1928.

“KNOX WALKEM,”  
Solicitor for defendant.

To Messrs. St. John, Dixon & Turner,  
Solicitors for plaintiff.

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*In the  
Supreme  
Court of  
British  
Columbia.*

**No. 6.****Further and better particulars pursuant to Plaintiff's demand for particulars.**

No. 6.  
Further and  
better  
particulars  
pursuant to  
Plaintiff's  
demand for  
particulars,  
30th Nov-  
ember 1928.

In further answer to the plaintiff's demand for particulars made herein and dated the 20th day of April 1928, the defendant says that the representations referred to in paragraph (b) of the particulars furnished pursuant to the said demand were also made by P. J. Howard, agent of the plaintiff, and were repeatedly made at interviews from the first meeting between the defendant and P. D. McTavish and D. N. McTavish of the plaintiff company and/or P. J. Howard, agent of the plaintiff company, until on or about the 20th day of November 1927. 10

Dated at Vancouver, B.C. this 30th day of November, 1928.

"KNOX WALKEM,"  
Solicitor for defendant.

J. F. LANGER.

To Messrs. St. John, Dixon & Turner,  
Solicitors for plaintiff and for defendant Alamo Gold Mines Limited.

**No. 7.****Demand for particulars by Plaintiff.**

No. 7.  
Demand for  
particulars  
by Plaintiff,  
21st May  
1928.

The plaintiff demands further and better particulars of the following matters mentioned in the amended statement of defence and counterclaim 20 herein.

1. As to paragraph 23.

(1) As to representations referred to in the third, fourth and fifth lines thereof.

(a) Were the same in writing?

(b) If in writing, identify the writing or writings.

(c) Give date when representations were made.

(d) By whom, on behalf of the plaintiff, were said representations made?

(2) As to agreement referred to in lines 14 to 20 thereof. 30

(a) Was the same in writing?

(b) If so, identify the writing or writings.

(c) Give date when said agreement was made.

(3) As to agreement referred to in lines 20 to 22 thereof.

(a) Was the said agreement in writing?

(b) If so, identify the writing or writings.

(c) Give the date when said agreement was made.

(4) As to the surrender of shares referred to in lines 24 and 25 thereof.

(a) Was the same in writing? 40

(b) If so, identify the writing or writings.

2. As to paragraph 26 thereof.

(1) As to the representations referred to in the third and fourth lines thereof.

(a) Were the said representations in writing?

(b) If so, identify the writing or writings.

(c) Give date on which said representations were made.

(d) By whom, on behalf of the plaintiff, were said representations made?

Dated at Vancouver, B.C. this 21st day of May, 1928.

“ST. JOHN, DIXON & TURNER,”

Plaintiff's Solicitors.

To Mr. Knox Walkem,  
Defendant's solicitor.

*In the  
Supreme  
Court of  
British  
Columbia.*

No. 7.  
Demand for  
particulars  
by Plaintiff,  
21st May  
1928—*con-  
tinued.*

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**No. 8.**

**Reply to demand for particulars.**

1. In answer to paragraph 1 (1) of the demand for particulars the defendant says that the representations referred to in the third, fourth and fifth lines of paragraph 23 of the amended statement of defence were made verbally by the plaintiff through P. D. McTavish and D. N. McTavish, its officers, and are also contained or implied in the contract of the 17th day of November 1927 referred to in the statement of claim. The said representations were made immediately prior to the entering into of the said contract.

2. In answer to paragraph 1 (2) of the demand for particulars the defendant says that the said agreement, so far as he is aware, was verbal, and was made prior to the incorporation of the Alamo Gold Mines Limited.

3. In answer to paragraph 1 (3) of the demand for particulars the defendant says that the said agreement was made verbally prior to the incorporation of Alamo Gold Mines Limited, and was subsequently reduced to writing in the form of the agreement dated the blank day of March 1925 produced by the plaintiff herein.

4. In answer to paragraph 1 (4) of the demand for particulars the defendant says that the surrender of the said 1,500,000 shares was in writing, such writing consisting of the assignment of the said shares to Alamo Gold Mines Limited, which writings are in the possession of the plaintiff.

No. 8.  
Reply to  
demand for  
particulars,  
1st June  
1928.

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*In the  
Supreme  
Court of  
British  
Columbia.*

No. 8.  
Reply to  
demand for  
particulars,  
1st June  
1928—*con-  
tinued.*

5. In answer to paragraph 2 (1) of the demand for particulars the defendant says that the representations referred to in the third and fourth lines of paragraph 26 of the amended counter-claim were made verbally by the plaintiff through P. D. McTavish and D. N. McTavish prior to the entering into of the contract of the 7th day of February 1927.

Dated at Vancouver, B.C. this 1st day of June, 1928.

“KNOX WALKEM,”  
Solicitor for Defendant.

Messrs. St. John, Dixon & Turner,  
Plaintiff's Solicitors.

10

No. 9.  
Further and  
better  
particulars  
of De-  
fendant  
Langer  
pursuant to  
Order of  
Trial Judge,  
3rd Dec-  
ember 1928.

No. 9.

**Further and better particulars of Defendant Langer pursuant to Order of Trial Judge.**

The defendant says that P. J. Howard, agent of the plaintiff, made the representations set forth in paragraph 11 of the statement of defence herein verbally in or about the month of September, 1926.

Dated at Vancouver, B.C. this 3rd day of December, 1928.

“KNOX WALKEM,”  
Solicitor for defendant.

J. F. LANGER.

Messrs. St. John, Dixon & Turner,  
Solicitors for plaintiff and for defendant Alamo Gold Mines Limited.

20

No. 10.  
Reply to  
amended  
Statement  
of Defence  
and Defence  
to Counter-  
claim,  
22nd May  
1928.

No. 10.

**Reply to amended Statement of Defence and Defence to Counter-claim.**

1. The plaintiff joins issue with the defendant on his amended statement of defence.

2. At all times material to the matters in question in this action, P. D. McTavish was president of the plaintiff company and secretary of Alamo Gold Mines Limited (Non-Personal Liability) and D. N. McTavish was secretary of the plaintiff company and president of Alamo Gold Mines Limited (Non-Personal Liability). 30

3. The plaintiff denies each and every allegation of fact set out in paragraph 10 of the amended statement of defence herein.

4. The plaintiff denies each and every allegation of fact set out in paragraph 11 of the amended statement of defence herein.

5. The plaintiff denies each and every allegation of fact set out in paragraph 12 of the amended statement of defence herein.
6. The plaintiff denies each and every allegation of fact set out in paragraph 13 of the amended statement of defence herein.
7. The plaintiff denies each and every allegation of fact set out in paragraph 14 of the amended statement of defence herein.
8. The plaintiff denies each and every allegation of fact set out in paragraph 15 of the amended statement of defence herein.
- 10 9. The plaintiff denies each and every allegation of fact set out in paragraph 16 of the amended statement of defence herein.
- 10 10. The plaintiff denies each and every allegation of fact set out in paragraph 17 of the amended statement of defence herein.
11. The plaintiff denies each and every allegation of fact set out in paragraph 18 of the amended statement of defence herein.
12. The plaintiff denies each and every allegation of fact set out in paragraph 19 of the amended statement of defence herein.
13. The plaintiff denies each and every allegation of fact set out in paragraph 20 of the amended statement of defence herein.
- 20 14. The plaintiff denies each and every allegation of fact set out in paragraph 21 of the amended statement of defence herein.
15. The plaintiff denies each and every allegation of fact set out in paragraph 22 of the amended statement of defence herein.
16. The plaintiff denies each and every allegation of fact set out in paragraph 23 of the amended statement of defence herein.
17. The plaintiff denies each and every allegation of fact set out in paragraph 24 of the amended statement of defence herein.
18. The plaintiff did not make any of the representations complained of.
19. The plaintiff did not make the alleged representations, if at all, with the intent to induce the defendant to make the purchase of the  
30 shares mentioned in paragraph 2 of the statement of claim herein.
20. The defendant was not induced by the alleged representations, or any of them, to buy the shares mentioned in paragraph 2 of the statement of claim herein.
21. The plaintiff, before entering into the contract mentioned in paragraph 2 of the statement of claim herein, had examined the mines in question in or about the month of September, 1926, in or about the month of November 1926, and on or about the 1st of November 1927. On each of said occasions the defendant, who is a man of extensive mining experience, with a considerable knowledge of ores and methods of assaying  
40 same, took samples of ores from each of the said mines and thereafter assayed them or caused them to be assayed. The defendant at the time of his said visits of inspection and at other times, held conferences with

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Statement  
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and Defence  
to Counter-  
claim,  
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tinued.*

the manager and engineers of the said Alamo Gold Mines, Limited (Non-Personal Liability), with respect to the mines in question. The plaintiff, prior to the completion of any of the contracts in question, furnished the defendant with copies of all engineers' reports and other data in their possession relating to the mines in question and delivered to the defendant from time to time, when the same were received by them, copies of all reports and other data received by them relating to the mines in question from and after the 7th day of February, 1927, in pursuance to the articles of agreement bearing that date, mentioned in paragraph 14 of the statement of defence herein, all work on said mines was done under the direction of and according to the instructions of the defendant. The defendant made the purchase mentioned in paragraph 2 of the statement of claim herein in reliance upon his own judgment and not upon any statement or representation made by the plaintiff. 10

22. The blue print referred to in paragraphs 13 and 16 of the statement of defence herein, was copied by the plaintiff from a certain written memorandum found by the plaintiff among the papers of the said Alamo Gold Mines, Limited (Non-Personal Liability). The said memorandum and blue print did not purport to be signed by any person and when the said documents were shown to the defendant by the plaintiff, he was expressly informed that the plaintiff was ignorant as to the authorship of said memorandum and that the plaintiff would not vouch for the truth of any of the matters therein contained. 20

23. The defendant had, prior to the making of any of the contracts mentioned in the statement of defence herein, full knowledge of the following matters:—

(a) That 2,999,995 fully paid non-assessable shares of the capital stock of Alamo Gold Mines, Limited, (Non-Personal Liability) had been issued to the said William B. Code, mentioned in paragraph 23 of the amended statement of defence herein, in consideration of the conveyance by the said Code to the said Alamo Gold Mines, Limited (Non-Personal Liability), of the mining claims known as the Alamo Group. 30

(b) That of the shares issued to the said Code as aforesaid 1,500,000 thereof had been set apart by the holders thereof to be sold and the proceeds thereof donated to the said Company.

(c) That the shares, which in pursuance to the contract dated the 7th day of February, 1927, mentioned in the pleadings, were transferred to the defendant, were a portion of the 1,500,000 shares mentioned in sub-paragraph (b) of this paragraph. 40

24. The defendant, having a full knowledge of the various matters set out in the last preceding paragraph hereof and of all matters which he sets up in paragraphs 23 and 24 of his amended statement of defence agreed to purchase the shares in question, subject to all defects in title or otherwise to which said shares were or might be subject.

25. In the alternative, the plaintiff says that the said Company is estopped as against the defendant from saying that any of the shares in question are not fully paid, the grounds of said estoppel being as follows :—

(a) The said Alamo Gold Mines, Limited (Non-Personal Liability), issued under its corporate seal, attested by the hands of its proper officers in that behalf, certificates of said shares setting out that the same were non-assessable.

10 (b) The defendant and his predecessors in title were, to the knowledge of the defendant, entered on the records of the said Company as holders of the shares in question, fully paid and non-assessable.

26. Article 105 of the articles of association of the said Alamo Gold Mines, Limited (Non-Personal Liability), provides inter alia that no contract entered into by or on behalf of the Company, in which any director is personally interested, shall be void, provided that the identity of the director and the nature of his interest be fully disclosed to the Company before the meeting at which such contract is authorised.

27. The nature and the extent of the interest of each of the directors of the said Company in the contract between the said Company and Code, in pursuance to which 2,999,995 shares were issued to said Code, was fully disclosed to the Company prior to the said allotment to Code.

#### DEFENCE TO COUNTER-CLAIM.

1. The plaintiff repeats the allegations contained in paragraphs 3 to 27 inclusive, of the reply to the amended statement of defence herein.

2. The plaintiff denies each and every allegation of fact set out in paragraph 26 of the amended counterclaim herein.

30 3. The plaintiff did not make the alleged representations, if at all, with the intent to induce the defendant to subscribe for shares in the said Alamo Gold Mines, Limited (Non-Personal Liability), as set out in paragraph 14 of the amended statement of defence herein.

4. The defendant was not induced by the alleged representations, or any of them, to subscribe for the shares mentioned in paragraph 14 of the amended statement of defence herein. The defendant subscribed for said shares in reliance upon his own judgment and investigations and not upon the statement or representations made by the plaintiff.

5. The plaintiff did not make the alleged representations, if at all, with the intent to induce the defendant to make the purchases of shares mentioned in paragraph 15 of the amended statement of defence herein.

40 6. The defendant was not induced by the alleged representations, or any of them, to purchase the shares mentioned in paragraph 15 of the amended statement of defence herein. The defendant made the said purchases of shares mentioned in paragraph 15 of the amended statement of defence herein in reliance upon his own judgment and investigations and not upon any statement or representations made by the plaintiff.

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No. 10.  
Reply to  
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and Defence  
to Counter-  
claim,  
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7. On the 17th day of June, 1927, the defendant agreed to purchase from the plaintiff 125,000 shares of the stock of the said Alamo Gold Mines, Limited (Non-Personal Liability), in consideration of payment of the sum of \$8,500.00 to the Plaintiff and the transfer to the plaintiff of Lot 5, Block 351, District Lot 526 in the City of Vancouver aforesaid, according to plan deposited in the Land Registry Office in the aforesaid City of Vancouver and numbered 590. In pursuance to said agreement the defendant paid to the plaintiff the sum of \$8,500.00 on or about the 17th day of June, 1927, and on or about the 20th day of February, 1928, the defendant delivered to the plaintiff a conveyance of said Lot 5, Block 351, District Lot 526. By delivery of the said conveyance the defendant elected to affirm the said contract mentioned in this paragraph, he then having a full knowledge of all material facts in regard to the said mines. 10

Dated at the City of Vancouver, B.C., this 22nd day of May, A.D. 1928.

“ST. JOHN, DIXON & TURNER,”  
Solicitors for the Plaintiff.

To the Defendant,  
and to KNOX WALKEM, Esq., his Solicitor.

No. 11.  
Demand for  
particulars  
of Reply  
and Defence  
to Counter-  
claim,  
23rd April  
1928.

No. 11.

**Demand for particulars of Reply and Defence to Counter-claim.** 20

TAKE NOTICE that the defendant hereby demands further and better particulars of the reply and defence to counter-claim as follows:—

1. Particulars of the “other times” referred to in line 10 of paragraph 19 of the reply and defence to counter-claim.

2. Particulars of the manager and engineers of the Alamo Gold Mines, Limited, referred to in line 11 of paragraph 19 of the reply and defence to counter-claim, giving the names of the same.

3. Particulars of the engineers’ reports and other data referred to in said paragraph 19.

4. Particulars of all reports and other data referred to in said 30 paragraph 19.

Dated at Vancouver, B.C., this 23rd day of April, 1928.

“KNOX WALKEM,”  
Solicitor for defendant.

To the above-named plaintiff,  
and to Messrs. ST. JOHN, DIXON & TURNER, its Solicitor.

## No. 12.

**Particulars of Reply and Defence to Counter-claim.**

In reply to the defendant's demand for particulars herein, the plaintiff makes answer as follows :—

1. The plaintiff has not particulars of the "other times" referred to and says that in any event the defendant is not entitled to particulars thereof.

2. The persons referred to are David Barnes and Walter C. Fellows. The reports and other data referred to in paragraph 19 of the reply are set out in the affidavit as to documents of the defendant filed herein and the affidavit as to documents of the plaintiff filed herein.

Dated at Vancouver, B.C., this 8th day of May, 1928.

"ST. JOHN, DIXON & TURNER,"

Plaintiff's Solicitors.

To Mr. KNOX WALKEM,  
Defendant's Solicitor.

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No. 12.  
Particulars  
of Reply  
and Defence  
to Counter-  
claim,  
8th May  
1928.

## No. 13.

**Reply to Defence to amended Counter-claim.**

The defendant says that :—

1. As to paragraphs 1, 2, 3, 4, 5, 6, and 7 of the defence to the amended counter-claim he joins issue.

Dated at Vancouver, B.C., this 1st day of June, 1928.

"KNOX WALKEM,"

Solicitor for defendant.

To Messrs. St. John, Dixon and Turner,  
Solicitors for plaintiff.

No. 13.  
Reply to  
Defence to  
amended  
Counter-  
claim,  
1st June  
1928.

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No. 14.  
Statement  
of Defence  
of Alamo  
Gold Mines,  
Limited,  
29th June  
1928.

**No. 14.**

**Statement of Defence of Alamo Gold Mines, Limited.**

1. This defendant denies each and every allegation of fact set out in paragraph 9 of the amended statement of defence and counter-claim of the defendant, J. F. Langer, dated the 26th day of June, 1928 (hereinafter called the "amended statement").

2. This defendant denies each and every allegation of fact set out in paragraph 10 of the "amended statement."

3. This defendant denies each and every allegation of fact set out in paragraph 11 of the "amended statement." 10

4. This defendant denies each and every allegation of fact set out in paragraph 12 of the "amended statement."

5. This defendant denies each and every allegation of fact set out in paragraph 13 of the "amended statement."

6. This defendant denies each and every allegation of fact set out in paragraph 14 of the "amended statement."

7. This defendant denies each and every allegation of fact set out in paragraph 15 of the "amended statement."

8. This defendant denies each and every allegation of fact set out in paragraph 16 of the "amended statement." 20

9. This defendant denies each and every allegation of fact set out in paragraph 17 of the "amended statement."

10. This defendant denies each and every allegation of fact set out in paragraph 18 of the "amended statement."

11. This defendant denies each and every allegation of fact set out in paragraph 19 of the "amended statement."

12. This defendant denies each and every allegation of fact set out in paragraph 20 of the "amended statement."

13. This defendant denies each and every allegation of fact set out in paragraph 21 of the "amended statement." 30

14. This defendant denies each and every allegation of fact set out in paragraph 22 of the "amended statement."

15. This defendant denies each and every allegation of fact set out in paragraph 23 of the "amended statement."

16. This defendant denies each and every allegation of fact set out in paragraph 24 of the "amended statement."

17. This defendant denies each and every allegation of fact set out in paragraph 26 of the "amended statement."

18. This defendant denies each and every allegation of fact set out in paragraph 27 of the "amended statement." 40

19. This defendant did not make any of the representations complained of.

20. This defendant did not make the alleged representations, if at all, with the intent to induce the defendant Langer to subscribe for shares in the said Alamo Gold Mines Limited (Non-Personal Liability), as set out in paragraph 14 of said "amended statement."

21. The defendant Langer subscribed for said shares in reliance upon his own judgment and investigations and not upon any statement or representation made by this defendant.

22. The defendant Langer, before entering into the contract mentioned in paragraph 2 of the statement of claim herein, had examined the mines in question in or about the month of September, 1926, in or about the month of November, 1926, and on or about the 1st of November 1927. On each of said occasions the defendant Langer, who is a man of extensive mining experience, with a considerable knowledge of ores and methods of assaying same, took samples of ores from each of the said mines and thereafter assayed them or caused them to be assayed. The defendant Langer at the time of his said visits of inspection and at other times, held conferences with the manager and engineers of the said Alamo Gold Mines Limited (Non-Personal Liability) with respect to the mines in question. The plaintiff, prior to the completion of any of the contracts in question, furnished the defendant Langer with copies of all Engineers' reports and other data in their possession relating to the mines in question and delivered to the defendant Langer from time to time, when the same were received by them, copies of all reports and other data received by them relating to the mines in question. From and after the 7th day of February 1927, in pursuance of the articles of agreement bearing that date, mentioned in paragraph 14 of the statement of defence herein, all work on said mines was done under the direction of and according to the instruction of the defendant Langer. The defendant Langer made the purchase mentioned in paragraph 2 of the statement of claim herein in reliance upon his own judgment and not upon any statement or representation made by the plaintiff.

23. The blue print referred to in paragraphs 13 and 16 of the statement of defence herein, was copied by the plaintiff from a certain written memorandum found by the plaintiff among the papers of the said Alamo Gold Mines Limited (Non-Personal Liability). The said memorandum and blue print did not purport to be signed by any person and when the said documents were shown to the defendant Langer by the plaintiff, he was expressly informed that the plaintiff was ignorant as to the authorship of said memorandum and that the plaintiff would not vouch for the truth of any of the matters therein contained.

24. The defendant Langer had, prior to the making of any of the contracts mentioned in the statement of defence herein, full knowledge of the following matters :—

(a) That 2,999,995 fully paid non-assessable shares of the capital stock of Alamo Gold Mines Limited (Non-Personal Liability)

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No. 14.  
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No. 14.  
Statement  
of Defence  
of Alamo  
Gold Mines,  
Limited,  
29th June  
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tinued.*

had been issued to the said William B. Code, mentioned in paragraph 23 of the amended statement of defence herein, in consideration of the conveyance by the said Code to the said Alamo Gold Mines Limited (Non-Personal Liability) of the mining claims known as the Alamo Group.

(b) That of the shares issued to the said Code as aforesaid, 1,500,000 thereof had been set apart by the holders thereof to be sold and the proceeds thereon donated to the said Company.

(c) That the shares, which in pursuance to the contract dated the 7th day of February 1927, mentioned in the pleadings, were transferred to the defendant Langer, were a portion of the 1,500,000 shares mentioned in sub-paragraph (b) of this paragraph. 10

25. The defendant Langer, having a full knowledge of the various matters set out in the last preceding paragraph hereof and of all matters which he sets up in paragraphs 23 and 24 of his amended statement of defence agreed to purchase the shares in question, subject to all defects in title or otherwise to which said shares were or might be subject.

26. Article 105 of the articles of association of the said Alamo Gold Mines Limited (Non-Personal Liability), provides inter alia that no contract entered into by or on behalf of the company, in which any director is personally interested, shall be void, provided that the identity of the director and the nature of his interest be fully disclosed to the Company before the meeting at which such contract is authorised. 20

27. The nature and the extent of the interest of each of the directors of the said Company in the contract between the said Company and Code, in pursuance to which 2,999,995 shares were issued to said Code, was fully disclosed to the Company prior to the said allotment to Code.

Dated at Vancouver, B.C., this 29th day of June, 1928.

“ST. JOHN, DIXON & TURNER,”

Solicitors for defendant Alamo  
Gold Mines Limited. 30

No. 15.  
Opening—  
Case for  
Plaintiff by  
Mr. Davis,  
3rd Dec-  
ember 1928.

No. 15.

**Opening—Case for Plaintiff by Mr. Davis.**

(Before the Honourable Mr. Justice W. A. MACDONALD and Jury.)

Vancouver, B.C., December 3rd, 1928.

E. P. DAVIS, Esq., K.C., and C. W. ST. JOHN, Esq., appearing for the plaintiffs.

J. W. DE B. FARRIS, Esq., K.C., and KNOX WALKEM, Esq., appearing for the defendant Langer.

Mr. DAVIS : I appear for the plaintiff with Mr. St. John. 40

Mr. FARRIS : I appear with Mr. Walkem.

THE COURT : Are you ready ?

Mr. WALKEM : I have given my learned friend notice of some amendments, the usual odds and ends that it is necessary to clear up in the last minute of pleadings. Copies of the amendments are filed.

THE COURT : Let me have them.

Mr. WALKEM : I presume my learned friend has no objection to these amendments ?

Mr. DAVIS : Considering that I told my learned friend a few minutes ago I had, I am afraid the presumption is wrong.

Mr. WALKEM : You did not tell me you had any objection. You said you were going to ask for an adjournment.

Mr. DAVIS : I said if you insisted upon your amendments we would have to have an adjournment.

Mr. WALKEM : We are insisting upon the amendments. The only amendment my learned friend can possibly ask an adjournment in connection with is the amendment relating to certain representations made by P. J. Howard, an agent of the plaintiff, as well as by the plaintiff's other officers, and this came out in the examination for discovery, as far as I know. My learned friend knows all about it. This man Howard was their agent. I do not see why there is any necessity for any adjournment with regard to that. Possibly my learned friend will tell the Court himself why he wants an adjournment.

THE COURT : You will have to segregate your applications in some shape if it is contested so I can form a conclusion as to whether the application for an adjournment is warranted or not. I cannot take it from haphazard remarks. In other words, I see that twice you refer to that.

Mr. WALKEM : Yes, there are two amendments that are required, one in which we allege those representations were made by P. J. Howard, agent for the plaintiff.

THE COURT : Do you already state somebody else made it ?

Mr. WALKEM : Yes.

THE COURT : Then you are changing your ground, are you not ?

Mr. WALKEM : We had already alleged that the representations were made by D. N. and P. D. McTavish.

THE COURT : Go slowly, now.

Mr. WALKEM : If your lordship will look at the amended statement of defence and counter-claim.

THE COURT : " In or about the month of September " does it start ?

Mr. WALKEM : Yes, 10 and 11. I say that the plaintiff by the said P. D. and D. N. McTavish, and then I add, its agent, P. J. Howard. The fact of the agency cannot be disputed, because it is admitted on discovery, and there were documents bearing it out. The point was raised by one of the McTavishes on discovery.

THE COURT : Were there any further particulars sought of your allegations in 11 ?

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Opening—  
Case for  
Plaintiff by  
Mr. Davis,  
3rd Dec-  
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—continued.



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Court of  
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No. 15.  
Opening—  
Case for  
Plaintiff by  
Mr. Davis,  
3rd Dec-  
ember 1928  
—continued.

Mr. WALKEM : No, we have not been asked for any further particulars.

THE COURT : Yes, but for example, take 11 as it stood and reading this way : “ During the course of negotiations between the plaintiff and the defendant the plaintiff by the said P. D. McTavish and D. N. McTavish represented——” Were any particulars sought or obtained, showing which representation was made by P. D. and which by D. N. McTavish ?

Mr. WALKEM : No.

THE COURT : So that stands as against both of them ?

Mr. WALKEM : Yes.

THE COURT : Now, you want to add another man ?

10

Mr. WALKEM : Yes.

THE COURT : Namely, P. J. Howard ?

Mr. WALKEM : Yes, and I amended certain particulars which I had given by including P. J. Howard’s name, and that is in line with the amendments to 10 and 11.

THE COURT : Without hearing Mr. Davis at all, how would the defendants—they are the defendants in that part ?

Mr. WALKEM : Yes.

THE COURT : How would they know what they were to meet ?

Mr. WALKEM : Well, they know what they are going to meet because we set out in 11 what the representations were exactly. The particulars are all given in section 11 of the defence, so that there is nothing——

THE COURT : Then at the trial you seek to have another person added who made the representations ?

Mr. WALKEM : Who made some representations on their behalf.

THE COURT : No particulars as to place or time already given are there ?

Mr. WALKEM : There would be no particulars as to place or time as to Howard.

THE COURT : Well, are there as to the other two ?

30

Mr. WALKEM : Yes, they have been given.

THE COURT : Are they in the record ?

Mr. WALKEM : I did not file the record. They should be there. There are certain particulars asked, which we gave. I see they do ask as to which of the representations were made by P. D. and D. N. McTavish, respectively. I was under a misapprehension with regard to that, and they ask the dates.

THE COURT : Your record is not paged the same as mine. I have got a heading here. Particulars pursuant to demand.

Mr. WALKEM : If your lordship will look at the demand for particulars you will find out what they are asking for. That is dated the 20th April, 1928.

40

THE COURT : Yes.

Mr. WALKEM : Now, as to paragraph 11, has your lordship got that ?

THE COURT : Yes.

Mr. WALKEM : They ask there then whether they were in writing, what representations were made by P. D. and D. N. and the dates.

THE COURT: Yes. Now let me see what you want to add.

Mr. WALKEM: We allege that the representations made repeatedly by both of them.

THE COURT: Now, supposing that the best you can do would be to say, "Well, if I am called upon to give particulars, if this amendment is allowed, I will say the same particulars I have already given."

Mr. WALKEM: We have not been asked for any particulars since the amendment was delivered.

THE COURT: It has not been allowed yet.

10 Mr. WALKEM: No, it has not been allowed yet.

THE COURT: I am just trying to look ahead, to save an adjournment. Supposing, for example, this morning you said, "Well, I am prepared now to give particulars, and I will give the same as those already given with respect to P. D. and D. N. McTavish." Is that a fair way? Your action is founded on misrepresentation.

Mr. WALKEM: If any particulars are required, we can give them immediately.

THE COURT: Is it fair for the defendant to be in the position of thus determining what their line of action will be?

20 Mr. WALKEM: Of course, we are not raising any new representations.

THE COURT: But you are raising a new person, putting a new man in the record?

Mr. WALKEM: They know about him because he is their agent, and they brought out this on discovery; that he took part in these conversations.

THE COURT: Yes, I see what you mean. It is not like an outside party. Have you any further argument to present?

Mr. WALKEM: No, I don't think so, my lord.

THE COURT: What do you say, Mr. Davis?

30 Mr. DAVIS: Instead of this being one of the usual odds and ends, the amendments which are made here make, as to one amendment, an entirely new case, a different action altogether, an entirely new cause of action.

THE COURT: I am dealing with the Howard matter first.

40 Mr. DAVIS: Yes, as far as the Howard matter is concerned we have got this to consider. This case was set down for trial first on the 20th June. My learned friends obtained an adjournment. It was then set down for trial on the 17th September. My learned friends again obtained an adjournment. They have amended their statement of defence twice already. Now, on the Friday afternoon before the trial, which was fixed for today, Monday, they served a notice to amend, first by alleging that misrepresentations were made by Howard, who was an agent. My learned friend, Mr. St. John, may have known about Howard and his position, and that sort of thing. I certainly did not as counsel, and there is no mention of Howard anywhere in the pleadings. There is no suggestion that Howard made any representations. It is quite true that Langer, when examined for discovery, stated that some documents—I am not sure what it was—that some document was handed to him by Howard, or something of that kind, but as to any action being based upon statements made by Howard.

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No. 15.  
Opening—  
Case for  
Plaintiff by  
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No. 15.  
Opening—  
Case for  
Plaintiff by  
Mr. Davis,  
3rd Dec-  
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We never had any idea. Naturally, we cannot go on to trial, never having seen this man Howard, knowing nothing about what statement he may have made. It is quite true he was an agent for the plaintiffs, but that does not give us any information as to what he may or may not have said. So far as that is concerned, it is an entirely new case and we certainly cannot go on without an opportunity of going into that branch, seeing Howard, finding out how the matter stands, examining Langer again for discovery. We have never examined him with regard to any representations made by Howard. My learned friend says now the representations are the same; I don't know about that, but that is his statement. We don't know, or did not know; if that were what he meant in his amendment, it should have been shown. As it stands now, he is free to give any representations by Howard, that Howard chooses to give, because we have had no opportunity of asking for particulars or getting them. But that is a secondary matter. Naturally, when a new party is brought in so as to make a different action—for instance, he might have struck out all the allegations about the misrepresentations made by the two McTavishes, and introduced Howard, and still it would be a perfectly good action, based on the same misrepresentations. But surely we have to have the opportunity of preparing for the trial in that case. We certainly are not in a position to go on if the amendment with reference to Howard is made.

Then, as far as the other amendment is concerned, it raises a new cause of action altogether. The second amendment is that there was a guarantee, a warranty. My learned friends suggest that is only a technical thing. It is just this technical; it changes the action altogether from one based on misrepresentation to one based on a warranty, and the two are entirely different actions. My learned friend would not be bound to rely upon the same evidence. Indeed, you would have to have different evidence for the one than the other.

Now, in view of the fact that my learned friends have had months and months to make these amendments, I submit that it is a case where your lordship in your discretion might refuse the amendments entirely, but undoubtedly the rule is that where the other side are not going to be in any way injured, and where they can be indemnified by costs, if they show that they are not injured by the amendment, the Court even at a late stage, no matter what neglect there may have been on the part of the person applying for the amendment in not having made it sooner, can allow the amendment; no question about that. But if the amendment is allowed—we have, for instance, witnesses from outside, we have one from the United States. As your lordship is aware, there is no way of forcing a witness of that kind to come, and taking evidence on commission is very different from having the witness present in the box; but if the amendment were allowed, I submit that it is a case where we must be put in the same position. Now, the mere payments of costs, as set out in the tariff today, is no compensation, full compensation, at all, in this block tariff. If your lordship allows the amendment, then I ask that it be on these terms, that the costs be allowed—the costs of the day be allowed, to be taxed on the solicitor

and client's scale, because it is only on the solicitor and client's tariff that we can possibly be reimbursed. Secondly, that the taxation take place at once and the costs be paid immediately. Our people are not wealthy men. They have brought witnesses from a distance. They have to expend money for them. They are not fully compensated if an order is simply made for the costs to be paid at the end of a litigation. Then, as to the date of the trial, we ask to have that fixed for the 13th of this month. That will allow us sufficient time to properly prepare for the trial with the new amendments, and at the same time insure the completion of the trial before the 21st, which is the last day the Court can sit before the vacation. Friday, the 21st, is the last day. If it were taken on the 13th, although it probably will be a long trial, it will undoubtedly finish before the Christmas vacation.

10 Mr. WALKEM: My lord, the only real point is that he might want to examine Mr. Langer again for discovery or see Mr. Howard. Now, Mr. Howard is downstairs, and he can see him right away, and Mr. Langer is here and we will produce him for examination, and the whole matter can be finished with this morning, and we can proceed with this trial this afternoon. It will not take 15 minutes to examine Mr. Langer upon this point. At the very worst, the whole matter would be ready for tomorrow morning. We have witnesses here from the United States. If the matter were one of complete surprise to my learned friend it might be different. They knew all about Howard.

20 Mr. DAVIS: Well, that is not correct. This is an absolute complete surprise to me. I never dreamed that anything that Howard did or said was mixed up in this at all.

Mr. WALKEM: That may be true. They did know that we were going to allege that certain of these representations were made by Howard.

THE COURT: If you knew it, why not allege it before; why wait until the last week?

30 Mr. WALKEM: Well, the reason it was not brought up before was that we took it for granted we were able to prove that the representations were made by the agent; that when we allege the representations were made by a principal, they were made by an agent; that if we proved they were made by an agent that would be sufficient.

THE COURT: If that is all you had to do is allege one person—

Mr. WALKEM: I admit this amendment should have been made before, but nevertheless it was overlooked, and we only decided to make it last week. It is an absolutely necessary amendment, and if my learned friend is taken by surprise and wants to examine Mr. Langer I am perfectly willing that the trial should adjourn until this afternoon, which would give him plenty of time, or until tomorrow morning. It won't take ten minutes to examine Mr. Langer, and that is all there is to it.

40 THE COURT: What about the second portion of your application?

Mr. WALKEM: It is purely a technicality. We have alleged misrepresentation and are asking for rescission on the ground of misrepresentation. Now, we simply say that those statements amount to warranties.

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THE COURT : On the same state of facts you say they are warranties ?

Mr. WALKEM : That is all. It is just a question of law, that is all. My learned friend does not have to go back to his office to look up the law as to warranty. He knows that off by heart.

Mr. DAVIS : I am glad to hear that.

THE COURT : He is quite a lawyer if he does. It all depends upon the question of fact.

Mr. WALKEM : It is just a question of fact.

THE COURT : In order to enable the Court to arrive at a reasonable conclusion, tell me something about the witnesses and where they come from. 10

Mr. WALKEM : We have one witness from the United States, and my learned friend I understand has one.

Mr. ST. JOHN : We have two; one is from Oregon and the other from Spokane.

THE COURT : Well, Mr. Davis, why adjourn to the 13th? Why not until Wednesday morning?

Mr. DAVIS : Because we cannot get ready. It is all very well for my learned friend to say that we can interview this other man and examine Langer immediately. Because he can do it we cannot. We cannot properly prepare for that trial without an adjournment of a week. We can do it all right then; a week. But to go on today or tomorrow, we could not do it, that is all. 20

THE COURT : I am not suggesting either today or tomorrow. I am going to put a penalty upon them.

Mr. DAVIS : We want to go on just as much as they do.

THE COURT : I see no advantage in having these witnesses brought here again ten days from now.

Mr. DAVIS : We certainly want to avoid that.

THE COURT : I am going to penalize them, order them to pay the costs of the day. 30

Mr. DAVIS : If my learned friend tells me they will expedite everything—that is, produce Mr. Langer for examination just as soon as we can examine him, and in every other respect, well, Thursday will do.

THE COURT : It is a jury case.

Mr. DAVIS : It is a jury case.

THE COURT : You cannot get through on Thursday and Friday?

Mr. DAVIS : Oh no, no. From the looks of things, it is quite a long case, a number of witnesses, and the evidence is going to be long.

THE COURT : Well, a jury is called and expected to pass upon representation— 40

Mr. DAVIS : There are several defences. That apparently is the main one.

THE COURT : What do you say, Mr. Walkem?

Mr. WALKEM : I cannot for the life of me imagine how on earth my learned friend can occupy the time from now until Thursday. The representations are alleged in the defence. There is no change in them.

The only thing they have to do is to ask Mr. Langer, "Why did you meet Mr. Howard and what did he say to you?" That is all they can do.

THE COURT: They will go further than that. The order will be for particulars to be given by two o'clock this afternoon. That is the first thing, before they examine at all.

Mr. WALKEM: The only particulars they can ask for are when and where.

THE COURT: They do not have to depend upon a verbal statement. They will have to have something in black and white.

10 Mr. WALKEM: They will not ask for the particulars of representations because those are set out in the statement of defence, and we stand on those. We are not going to change them.

THE COURT: They will try and tie you down to where and when?

Mr. WALKEM: We will tell them that. It will take five minutes for me to tell them that.

THE COURT: Much as in private life they take your word for it, they will ask you to write it down.

Mr. WALKEM: That can be delivered in a very few minutes.

20 THE COURT: How about Thursday morning? I was not going to ask them to go on tomorrow morning; I would not ask them.

Mr. WALKEM: I do not see why my learned friend cannot consent to Wednesday?

Mr. DAVIS: Surely it is patent to my learned friend and your lordship we do not want to keep witnesses here and pay for them. If there is any trouble it is my learned friend's fault. Why in the world did he not let us know about this a little sooner and there would be no trouble. Now he seems to think this is a question of interviewing one witness and examining one other man. The case has been changed a very great deal and requires consideration from every point of view. It may require  
30 further witnesses. It may turn out on these alleged representations that certain persons were present. It may possibly lead to a further adjournment, but we can get further particulars on examination. It may lead to a commission, but to rush right on because he chose to leave his amendment to the last minute.

THE COURT: This application for an amendment on the part of the defendant with respect to his statement of defence and counter-claim, particularly by inserting in a certain paragraph the name of P. J. Howard in addition to D. N. McTavish and P. D. McTavish, is opposed by the  
40 plaintiff. Their position, as I understand it, is that it would be unfair for the Court to allow this amendment at the trial through the fact that it might have been applied for and probably put in before, and that there would be a lack of preparation that the plaintiff would be entitled to, and further than that, there may be examination for discovery of the defendant should such an amendment be allowed.

The desirability of having all amendments made by the Court prior to the trial is beyond question and also the desirability of the trial being fairly conducted by both sides. Chief Justice Pollack said once, "Other

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considerations must give way to that of granting a fair trial." The defendant in support of his counter-claim, which is really an attack upon the plaintiff, is asking for a privilege which he might have obtained, as I mentioned before, and is pressing for the amendment even with conditions attached.

I will now say that I will allow the amendment, provided that the defendant complies with the following conditions. The trial to be adjourned until Thursday morning, 10:30. The defendant to submit himself for examination for discovery this afternoon at 2:30; in the meantime, the defendant to deliver such particulars as may be reasonably demanded and which would apply to all the paragraphs in which the name P. J. Howard will be inserted by the amendment. 10

As to the costs, the defendant to pay as a condition of such amendment the costs of and incidental to the day; in other words, the costs of the day, these costs to be taxed upon the tariff as far as counsel fees are concerned and, as to witnesses from a distance, to be based upon the judgment I am about to deliver to determine such; that in the taxation of costs witnesses from a distance are entitled not only to the allowance but to the hotel expenses attendant upon such adjournment. I may say that matter has come up by review of taxation, and besides that a judgment I have given this week will apply to this particular matter. The out-of-pocket expenses, the disbursements, should be paid by two o'clock this afternoon, in other words, forthwith. 20

Mr. FARRIS: Do they not have to be taxed first?

Mr. WALKEM: I do not think my learned friend will raise any point as to payment.

Mr. ST. JOHN: No, we will agree to them being paid on taxation.

THE COURT: On the undertaking of counsel as given that as soon as the amount is arrived at they will be paid. While I have made those terms, I am quite willing to hear any question that may arise under them to see they work out properly. 30

Mr. DAVIS: Solicitor and client tariff—

THE COURT: Oh, I think that is absolutely new practice; I never heard of it.

Mr. DAVIS: If it is compensation—

THE COURT: That will be establishing a practice that will be new. If you get the costs, I may as well say you hand over to the other side so many hundred dollars, besides getting the amendment.

Mr. DAVIS: Well, outside the disbursements, your lordship can fix the costs right here, for that matter. It is patent under the new block tariff you are not fully compensated. 40

THE COURT: If the profession will not get busy and make some changes in the tariff or submit them to the judges for approval, the judges are not going to get busy to increase the cost of litigation.

Mr. DAVIS: With reference to these particulars, will they be delivered by 12 o'clock or by 12:30?

Mr. WALKEM: Yes.

Mr. DAVIS : Our demand for particulars will be the same as the demand—what misrepresentations were made, when they were made, to whom, and so on.

THE COURT : The same as with respect to the other two ?

Mr. DAVIS : So that we will not have to make a demand and give it to them.

THE COURT : The same demand as before.

Mr. WALKEM : I can answer it in five minutes with a stenographer.

Mr. DAVIS : Well, get them over to us.

10 THE COURT : I assume, then, Mr. Walkem, you are accepting the conditions.

Mr. WALKEM : Yes, my lord.

THE COURT : Who summoned the jury ?

Mr. WALKEM : We asked for the jury.

THE COURT : You are answerable for them.

Mr. WALKEM : They had better be told to be back here.

THE COURT : There is no question from what Mr. Walkem said that the conditions I imposed are going to be complied with ?

Mr. WALKEM : Oh, yes.

20 THE COURT : Then the trial will proceed at 10.30 Thursday morning. (Court thereupon adjourned to 10.30 a.m. December 6th, 1928.)

December 6th, 1928.

(Court resumed pursuant to adjournment.)

(Jury sworn. A. E. JUKES chosen as foreman.)

(Mr. DAVIS addressed the jury in opening.)

30 Mr. DAVIS : Now, I put in first a portion of the examination of the defendant Langer for discovery, beginning at 488. The plaintiffs, I may say, are an incorporated company, of whom two brothers are principal officers, the McTavishes, 489, rather. (*Reading.*) I may say this is the examination for discovery of the defendant Langer. Then that document was produced as exhibit 20.

Mr. FARRIS : Exhibit 1 now.

40 Mr. DAVIS : There is no dispute, I think, about the contract as I stated in opening, so it is immaterial whether we put in a copy or the original. I will read it from my copy and put it in as exhibit 1. It is a letter from McTavish Brothers, Limited, the plaintiff, to J. F. Langer, the defendant. (*Reading.*) The company in which the shares were which were sold then, the certificate numbers are set out, and the date of the letter is November 17th, 1927, and although it was only an agreement for sale at that time you will notice that the certificates of stock are turned over which may be useful to remember later on. That was done for the purpose, I presume, of giving a voting power. The certificates which are set out amount in all to 250,000 shares. Then the endorsement on that letter by the defendant. (*Reading.*)



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THE COURT : The letter is going in as an exhibit.

Mr. DAVIS : Yes, my lord. (*Letter marked Exhibit Number 1.*)

Mr. DAVIS : Then question 490. (*Reading*), and there is some discus-  
sion between counsel which I will not read, and going on to 491 to 501.  
(*Reading.*) Then I go to 516 to 519 (*reading*) and I will put in that letter.  
The letter is a letter from Messrs. Burns & Walkem to McTavish Bros.,  
Limited, dated the 6th of March, 1928. It reads as follows : (*Letter read  
and marked Exhibit No. 2.*)

Mr. DAVIS : That is the case for the plaintiff, my lord.

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**Opening—Case for Defendant by Mr. Farris.**

(Mr. FARRIS addressed the jury in opening.)

Mr. FARRIS : Perhaps I should state to your lordship to be of assistance  
in following the issues that are pleaded. We set up three things which  
your lordship will have to consider as questions of law as well as fact, that  
the real consideration in this deal was a million and a half shares, and not  
three million shares; Secondly, that the directors who made that deal  
with the company by which the directors were each to get 600,000 shares  
were the directors who passed the resolution, and therefore the whole basis  
of the thing was illegal. They had no power. There were no other directors  
except these five directors who passed the resolution thereby passing that  
resolution and making this deal with Code whereby it was understood  
600,000 of these shares would come to each director was not only illegal but  
was void. 20

THE COURT : It is not necessary at this stage to make your argument.

Mr. FARRIS : No, I am just outlining.

THE COURT : It will be before the jury.

Mr. FARRIS : Now, my friend Mr. Walkem will put in some of the  
discovery of the plaintiff and McTavish Brothers, Limited, being the  
examination of one of the McTavish brothers, an officer of that company,  
and then I will call Mr. Langer and then you will find we are beginning to  
get into the thing pretty fast. 30

Mr. WALKEM : I wish to put in some of the examination for discovery  
of D. N. McTavish, an officer of the plaintiff company, certain questions  
and answers. 1 to 64 inclusive. I would like the minute book of the  
Alamo Gold Mines, Limited. (*Book referred to marked Exhibit No. 3.*)  
The minute book contains the certificate of incorporation and contains  
the memorandum and articles of association of the company and shows  
that the company was incorporated on the 17th of March, 1925. (*Continues  
reading discovery.*) I might say the Alamo Gold Mines was the British  
Columbia company in case you have any confusion, although the mine is 40

in the United States the company was a British Columbia company. (*Continues reading.*) Mr. St. John referred to is Mr. McTavish's solicitor. (*Continues reading.*) (*Statement in lieu of Prospectus marked Exhibit 4.*) You gentlemen are no doubt familiar with the statement in lieu of prospectus. It is filed at the beginning of the incorporation of a company setting out certain facts which are put on file for the benefit of the public. It sets out in this statement that the property is being taken over from Code for the three million shares or 2,999,995 and that they are being divided up 600,000 shares to each of these promotors.

10 Mr. DAVIS : There is more than that in it, is there not ?

Mr. WALKEM : There is, yes. Is there anything else you wish referred to ?

Mr. DAVIS : Well, never mind at the present time.

Mr. WALKEM : Then question 34. (*Continues reading.*) The minute that I am referring to is in the minute book of the company and that minute was registered in Victoria with the Registrar of Companies. (*Continues reading.*) A significant fact is this \$25,000.00 which was paid to Code in addition to the shares never appeared in the books of the company and was never divulged to anyone. (*Continues reading.*)

20 Mr. DAVIS : Would you mind reading the resolution with reference to the \$25,000.00, because I think it is to be paid out of production which is a different thing.

Mr. WALKEM : It goes apparently to Code. You do not dispute the liability, do you ?

Mr. DAVIS : I just want to get that fact out. We can discuss it afterward.

Mr. WALKEM : Very well, I will read it. It is the 13th of May, is it not ? (*Reading.*) (*Continues reading discovery.*) Then there was some discussion there between the solicitors, and I begin again at 45.

30 Mr. ST. JOHN : Mr Walkem, are you putting it all in.

THE COURT : To 65.

Mr. WALKEM : To 64. Just one second. Have you got that agreement ?

Mr. ST. JOHN : Which is that ?

Mr. WALKEM : The agreement which is referred to here, agreement of the blank day of March ?

Mr. ST. JOHN : Oh, yes, I have that.

Mr. DAVIS : Which question is that ?

Mr. WALKEM : 64. (*Agreement marked Exhibit 5.*)

40 later. (*Continues later.*) The reason for that is immediately these shares were issued they held the 600,000 or rather the 1,200,000 which were to go to the two McTavishes were immediately put in the name of McTavish Brothers, Limited, that is why they appear throughout the proceedings as McTavish Brothers, Limited. (*Continues reading.*) Then, my lord, 67 to 150. I will put in that document which was marked No. 4 and will now be exhibit 6. These are particulars which were filed in an action brought by Barnes against McTavish Brothers, Limited, and it shows what the

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McTavish Brothers did with the shares of the Alamo Gold Mines, Limited. I will not read that exhibit at the present time.

Mr. DAVIS: I think my learned friend had better read it. I would like to have it read.

Mr. WALKEM: Very well.

Mr. DAVIS: It will have to be read to the jury some time.

Mr. WALKEM: Yes. This is in an action brought by Mr. Barnes, Barnes, plaintiff, and Alamo Gold Mines, Limited, defendant. (*Reading.*) Those are the 1,500,000 shares which we allege were turned back to the company. (*Continues reading.*) So that you will understand that and as it will appear from the evidence McTavish Brothers, Limited, were acting as brokers for the sale of shares of the Alamo Gold Mines, Limited. It is just the first part I am putting in, the disposition of the shares. Now, 69. (*Reading.*) That is a very significant fact that McTavish Brothers in selling these hundreds of thousands of shares in the Alamo Company absolutely no record—

Mr. DAVIS: I would rather my learned friend did not argue this matter in reading the evidence to the jury. There is an absolute answer to that.

THE COURT: Mr. Davis is quite right.

Mr. WALKEM: This is set forth in the examination for discovery. 20

Mr. DAVIS: I have no objection to your reading the discovery.

THE COURT: The better way is to raise your voice and emphasize it.

Mr. FARRIS: Or read it twice. I often do that.

Mr. WALKEM: (*Continues reading.*) Will you put the ledger in?

Mr. ST. JOHN: Which ledger is that?

Mr. WALKEM: The big one. (*Ledger marked Exhibit No. 7.*)

Mr. WALKEM: And the stock register. (*Stock Register marked Exhibit No. 8.*)

Mr. WALKEM: And the cash book. (*Cash Book marked Exhibit No. 9.*)

Mr. WALKEM: Then there are a number of share certificates, 92, 93, 94, 95, 96, but I do not think I will put those in at the present time.

Mr. DAVIS: Just a moment until we see if we want those in.

Mr. WALKEM: The reason I do not put them in is because the particulars are all in the share register.

Mr. DAVIS: I think as they are in here as part of the examination they ought to go in.

Mr. WALKEM: Very well.

Mr. DAVIS: I don't suggest you have to read them or anything of that sort.

Mr. WALKEM: No. 40

Mr. ST. JOHN: There are four. (*Stub Books of Share Certificates marked Exhibits 10, 11, 12 and 13 respectively.*)

Mr. WALKEM: There are five of them mentioned.

Mr. ST. JOHN: We will see at noon if there is another one.

Mr. WALKEM: There were five marked on the discovery.

Mr. ST. JOHN: The other one might be the current one in the office. I will bring it up after lunch.

Mr. WALKEM : Better reserve an exhibit number for that.

THE COURT : Yes. (*Stub Book of Share Certificates to be marked Exhibit No. 14.*)

Mr. WALKEM : (*Continues reading*). I would like to have the auditor's reports.

Mr. ST. JOHN : Have you not got them ?

Mr. WALKEM : No, I think I have one here. I have one for the 30th of June, 1927.

THE COURT : They were marked Nos. 13 and 14, Mr. St. John.

10 Mr. ST. JOHN : Yes, I have them, my lord.

Mr. WALKEM : I file those next. (*Two Auditor's Reports marked Exhibits Nos. 15 and 16 respectively.*)

Mr. WALKEM : (*Continues reading*). Now, the agreement of the 7th of February, 1927.

Mr. DAVIS : That agreement will be read, I suppose, will it not ?

Mr. WALKEM : I have a copy of it. This is a signed copy. (*Agreement of the 7th of February, 1927, marked Exhibit No. 17.*)

20 Mr. WALKEM : That is an agreement of the 7th of February, 1927, between the Alamo Gold Mines Limited of the first part, Langer of the second part, McTavish Brother Limited of the third part and the two McTavishes of the fourth part. (*Reading.*) Then there are a lot of options, first, second, third and so on.

Mr. DAVIS : Well now, I want all that read.

Mr. WALKEM : You want all this read ?

Mr. DAVIS : Yes.

Mr. WALKEM : (*Continues reading*). Then 166 to 179 inclusive. (*Reading.*) (*Blue Print marked Exhibit No. 18.*) (*Blue Print marked Exhibit No. 19.*) (*Letter of the 4th of May, 1925, Alamo Gold Mines Limited to Barnes, marked Exhibit No. 20.*) (*Continues reading.*)

30 Mr. DAVIS : By the way, you did not read the other letter, did you ?

Mr. WALKEM : No, you were reading it.

Mr. DAVIS : Oh, I beg your pardon. Will you read it ?

Mr. WALKEM : Yes. This letter of the 4th of May 1925, exhibit 20, is a letter from the Alamo Gold Mines Limited to Barnes. (*Reading.*) Then the letter of the 27th of December 1926, from McTavish Brothers Limited to Langer is as follows. (*Reading.*) And this little clipping referred to reads as follows. (*Letter and Clipping marked Exhibit No. 21.*) (*Continues reading.*) (*Letter dated February 24th, 1927, from McTavish Brothers Limited to J. F. Langer, with Enclosures marked Exhibit No. 22.*)

40 The only important part in that is the postscript.

Mr. DAVIS : If you are going to read it all, would you mind letting me see it. I have not seen it at all.

Mr. WALKEM : It is just the postscript and the enclosures which are of any interest.

Mr. DAVIS : Oh, I think perhaps you had better read it all.

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Mr. WALKEM: Very well. (*Letter read.*) 188 to 191 inclusive. (*Letter referred to of August the 6th, 1927, Alamo Gold Mines Limited to Kerr Read and Marked Exhibit No. 23.*) (*Continues reading.*) Now, the letter of the 13th of August 1927, the original was written to Mr. Langer in the Old Country and seems to have been lost. This is the one, however, which was identified. (*Copy of Letter read and marked Exhibit No. 24.*) 200 to 220. I ask for a letter of the 8th of December, 1927, from Mr. Langer to the plaintiff.

Mr. ST. JOHN: Yes, I have that. (*Letter read and marked Exhibit No. 25.*)

Mr. WALKEM: I produce a letter of the 12th of December 1927, McTavish Brothers to Langer.

THE COURT: Just a moment. Is there a reply to that other letter?

Mr. WALKEM: This is a reply. This is the 12th of December, 1927, from McTavish Brothers to Langer. (*Letter read and marked Exhibit No. 26.*) The next is a letter of the 12th of January, 1928, Alamo Gold Mines Limited to Langer. (*Letter read and marked Exhibit No. 27.*) (*Continues reading.*) I hope my learned friend does not wish me to read these engineers' reports.

Mr. DAVIS: What question are you at?

Mr. WALKEM: 204. Dealing with the report of W. S. Bacon.

Mr. DAVIS: Most decidedly we wish these reports read. I would think my friend would insist upon it. These are the reports they say were shown by us to Langer. If there is anything important in the case I presume they are.

Mr. WALKEM: Very well. They have to be read sometime and I presume they might as well be read now. This first one is December 7th 1925. (*Reading.*)

THE COURT: Is there much more of that, Mr. Walkem?

Mr. WALKEM: Oh, there are several pages of this.

Mr. ST. JOHN: Begin at the properties.

Mr. WALKEM: I do not think we need to read about the climate, unless my learned friend wants to hear it read. I think he wants to learn his case when he asked me to read all this.

Mr. DAVIS: I might say in the copy I have there is a lot of that cut out. Get down to the mine.

THE COURT: Go down to the properties.

Mr. WALKEM: All right. (*Reading.*) Now, this part about the Black Jack, the Black Jack does not enter into it.

Mr. DAVIS: Leave it out. It belonged originally—

Mr. WALKEM: Then the evidence.

Mr. ST. JOHN: Did you read about the Alamo?

Mr. WALKEM: There doesn't seem to be anything about the Alamo.

Mr. DAVIS: Have you the word "geology" immediately preceding?

Mr. WALKEM: This is the one which was given to us.

Mr. DAVIS: Well, this is the original report.

Mr. WALKEM: But we did not get that. We never got page 3. It is not in the copy we got.

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Mr. DAVIS : When did you get that copy ? These originals were shown to you.

Mr. WALKEM : This is the one given by Mr. Langer as admitted on the examination for discovery and page 3 is not in the copy given to us. At least, I don't see it.

Mr. FARRIS : What page is the page previous ?

Mr. WALKEM : 2. The pages in this copy we have run 1, 2, 4, 5, and page 3 we never got apparently.

10 Mr. DAVIS : You say you never got it ? When was it produced, on the examination ?

Mr. FARRIS : No, he means it was never given to Mr. Langer.

Mr. WALKEM : This is the one which was given to Mr. Langer at the time of his negotiations.

Mr. DAVIS : Where were you reading last, about the Black Jack ?

Mr. WALKEM : On page 2.

THE COURT : Does the next page read on, page 4 as a separate subject ?

Mr. WALKEM : Yes. Page 3 has been left out by mistake apparently.

Mr. DAVIS : 3 is the one which has the remarks about the Alamo Mines.

Mr. WALKEM : We have not got it.

20 THE COURT : That is the one I would think you would want.

Mr. WALKEM : There are some remarks on page 5 about the Evans group.

Mr. DAVIS : I know.

Mr. WALKEM : (*Continues reading*). (*Report above referred to marked Exhibit No. 28.*) If you would give me exhibit 18 which I put in I would like to read these observations on that to the jury. In reading these, of course, I might as well read everything. (*Document shown and read to the jury.*)

(*Court adjourned at 1 p.m. until 2.30 p.m.*)

30 (2.30 p.m. Court resumed pursuant to adjournment.)

Mr. WALKEM : The last exhibit I filed was the engineer's report, Mr. Bacon's report. I will continue on from there. Question 204. (*Reading.*) The report of Jackson dated the 26th of January, 1921, and the further report—

Mr. DAVIS : 1901, not 1921.

Mr. WALKEM : This document says 1921, and the original date is 1921, but you say that should be 1901.

Mr. DAVIS : It must have been, because the second report was just a few days later.

40 Mr. WALKEM : It must have been because the work was done 20 years ago.

Mr. DAVIS : Jackson is dead a long time.

Mr. FARRIS : Is that the original ?

Mr. WALKEM : This is the document Langer got.

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THE COURT: That is still exhibit 29 you are reading?

Mr. WALKEM: This will be exhibit 29, my lord. (*Report read and marked Exhibit No. 29.*)

Mr. FARRIS: That all should be 1901.

Mr. DAVIS: Apparently.

Mr. WALKEM: Then the examination continues. The report of J. P. McGuigan dated the 29th of October 1923. Should this date be 1903?

Mr. ST. JOHN: No, 1923 is right. (*Document read and marked Exhibit No. 30.*) (*Continues reading.*) (*Report of McGuigan to Code dated December 22nd, 1923, read and marked Exhibit No. 31.*)

(*Report of C. A. Smith to Code dated the 29th of January, 1925, read and marked Exhibit No. 32.*)

On the same sheet is an extract from the report of Lingren. (*Continues reading examination down to 220.*) Now, questions 229 and 230. I would ask for the wire from Fellows to Alamo Gold Mines of the 21st of November, 1927. Will you produce that, please?

Mr. DAVIS: There is a telegram and a letter.

Mr. ST. JOHN: I can't find that.

Mr. WALKEM: I can read that from this.

Mr. DAVIS: I think I have a copy in the brief and we can check it. (*Telegram above referred to read and marked Exhibit No. 33.*)

Mr. WALKEM: 232 to 234 inclusive. A letter of December the 6th 1927 Fellows to McTavish Brothers.

Mr. DAVIS: You asked for a letter of the 21st of November. Have you forgotten that, or have you got it?

Mr. WALKEM: I can only put in now what is referred to in this examination for discovery.

Mr. DAVIS: Question 231.

Mr. WALKEM: No, I didn't ask for that.

Mr. DAVIS: You mentioned a telegram and a letter.

Mr. WALKEM: No, Mr. St. John said I have a telegram and a letter.

Mr. ST. JOHN: No, I didn't.

Mr. WALKEM: Have you got the last one I asked for?

Mr. ST. JOHN: Yes.

Mr. WALKEM: This is a letter from Fellows to McTavish Brothers, December the 6th, 1927. (*Letter read and marked Exhibit No. 34.*)

Mr. DAVIS: In connection with the wire from Fellows I would ask my friend to put in a copy of the letter he identified at question 231.

Mr. WALKEM: That is the letter of November 22nd, 1927. At the request of Mr. Davis I am putting this in. It is from McTavish Brothers to Fellows—if you will give me a copy of it.

Mr. DAVIS: Yes.

Mr. WALKEM: I will read my copy in the meantime. (*Copy of letter read and marked Exhibit No. 35.*)

(*Continues reading examination.*) Will you let us have those two assay certificates which came from Fellows?

Mr. ST. JOHN : You had better mention we have agreed the certificates be taken without proof.

Mr. WALKEM : Yes, my lord. We have agreed that the assay certificates which are being put in by both sides shall be taken without the formality of proving them by calling the assayer.

THE COURT : All right.

Mr. WALKEM : If any of the assayers are in court they will not be required.

Mr. ST. JOHN : Which ones do you want, Mr. Walkem.

10 Mr. WALKEM : They were marked 44 and 45 by the stenographer.

(Assay made by W. W. Gibbs marked Exhibit No. 36.)

Mr. WALKEM : Those practically yield nothing. One is no return, one is 5/1000, one 1/100, another 2/100; silver values ran 11 cents to the ton, 21 cents, 1 cent, 40 cents. The next one will be exhibit 37.

THE COURT : The same date ?

Mr. WALKEM : Yes, my lord, from the same assayer, Mr. Gibbs, from Baker, Oregon, November 17, 1927, it is ore from the Alamo continued. It is just a continuation of the number of samples, seven samples on the first sheet and 8, 9, 10, 11, 12 on the second. This shows 1/100, 2/100, 1/100,  
20 15/1000 and 5/1000. The silver value 21 cents, 41 cents, 21 cents, 30 cents and 10 cents. On the last exhibit there are two of those samples from the Ruby Creek tunnel, I presume that is.

Mr. ST. JOHN : Evans.

Mr. WALKEM : The Ruby Creek is the same as the Evans, sometimes referred to as the Evans and sometimes as the Ruby Creek. (Assay certificate marked Exhibit No. 37.)

Mr. FARRIS : The effect of those is——

Mr. WALKEM : The effect speaks for itself, I presume. No values at all. Now, questions 237 to 241 inclusive. (Reading.) 317 to 321.  
30 (Reading.)

Mr. DAVIS : In connection with that I would ask you to read on.

Mr. WALKEM : No, I don't think——

Mr. DAVIS : 321 to 325.

Mr. WALKEM : He is dealing with an entirely different situation.

Mr. DAVIS : No, the last you read was 320. "These mines had been opened up and it was a simple matter, the mines having been opened up to ascertain the values——"

Mr. WALKEM : No, my question was when your mines are opened up it is a simple matter to ascertain the values.

40 THE COURT : There is no responsive answer to that question, so it doesn't amount to anything.

Mr. WALKEM : But he says yes.

THE COURT : He doesn't answer the question.

Mr. DAVIS : But further on. These mines had been opened up before and filled up and caved in and everything of that sort which is a different

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proposition. If my learned friend does not want to put it in it will come out in the evidence.

Mr. WALKEM : Yes.

Mr. DAVIS : Only it seems to me fairer to put it in now.

Mr. FARRIS : I had these marked to go in.

Mr. DAVIS : My learned friend is fairer.

Mr. FARRIS : No, not fairer, but—

Mr. DAVIS : Oh, I don't want to reflect on my friend's fairness, but I think it is fairer they should go in down to 325.

Mr. WALKEM : I will read right on, my lord, just to connect it up. In 10  
321 I asked him : (*Reading down to 339.*) Will you let me have that tracing.  
I didn't read that.

Mr. DAVIS : Which one is that ?

Mr. WALKEM : The cross-section.

Mr. DAVIS : That is the one which you read to them.

Mr. WALKEM : No, I read the other blue print. (*Reading Exhibit 19  
to the jury.*) Now, I am reading on from 339. (*Continues reading.*) I had  
better mark the tracing. This is the same as I showed you. This is the  
pencil sketch and the other was the blue print. (*Continues reading to 342.*)  
(*Pencil sketch marked Exhibit No. 38.*) 20

Mr. WALKEM : Question 365.

Mr. DAVIS : Would you mind reading 343 and 344 in connection with  
the pencil sketch.

Mr. WALKEM : You can do that yourself. I don't want it.

Mr. DAVIS : All right.

Mr. WALKEM : 365. (*Reading.*)

THE COURT : Where are you now ?

Mr. WALKEM : The last questions I read were 365 to 369 inclusive. That  
is all the examination for discovery.

Mr. DAVIS : I would ask in connection with that that questions 343 and 30  
344 go in as connected with the showing of the pencil sketch to Mr. Langer, the  
conversation which took place at the time it was shown which I submit—

Mr. WALKEM : We do not admit that was the conversation. If my  
friend wants to prove that he can, but he cannot prove it in that way.

Mr. DAVIS : My friend does not admit the truth of any—

THE COURT : The idea being it might conceivably taken as an admission  
against you.

Mr. WALKEM : Yes.

THE COURT : If the other side does not wish to put it in, Mr. Davis.

Mr. DAVIS : I am only asking to put it in now. 40

Mr. WALKEM : It is not explanatory. All I am asking if he gave him  
this sketch.

THE COURT : Supposing a blue print contains an admission of some  
kind which militated against the plaintiff he is entitled to show it was  
qualified.

Mr. WALKEM: I did not go into details of the conversation, I didn't ask the witness anything about his conversation.

THE COURT: That is what Mr. Davis objects to. He says standing by itself it might be more effective than if qualified.

Mr. WALKEM: He can call his client and qualify it then.

THE COURT: Then I suppose you can check him. This is not going to be fought out on the examination. You will have an opportunity later on. It really doesn't make any difference whether it goes in now or not. I will allow it in. (*Questions 343 and 344 read by Mr. Davis.*)

10 Mr. FARRIS: I call Mr. Howard.

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No. 17.

Extracts from examination for discovery of J. F. Langer (put in by Mr. Davis).

489. Q. Now, on November 17th, 1927, you received a letter from the plaintiffs, on which there is a memorandum endorsed by yourself.

Mr. ST. JOHN: Have you a copy of that here? (*Document produced by Mr. Walkem.*)

Mr. ST. JOHN: That will be Exhibit 20. (*Document marked No. 20 for identification.*)

20 490. Q. Now, Mr. Langer, you executed a duplicate of this, I understand?—A. Yes.

Mr. ST. JOHN: And, Mr. Walkem, as I have mentioned, you have got that, because my clients are out of town and they have it laid by somewhere and I don't want to delay this examination just for that purpose.

Mr. WALKEM: That is all right.

Mr. ST. JOHN: I mean, we need not enquire about the execution of this thing.

Mr. WALKEM: Well, if Mr. Langer's signature is on it, you can produce it, that is all. I don't know whether it is or not.

30 Mr. ST. JOHN: But you will admit the signature to it when I produce it to you?

Mr. WALKEM: Yes, if it is there I will certainly admit it.

Mr. ST. JOHN: I mean, as part of my case, of course I will have to produce this document, you see?

Mr. WALKEM: Yes.

Mr. ST. JOHN: And prove it as signed by him, and that is my defence, if you will admit this, provided I have got it, you know, it will just save us a lot of trouble.

Mr. WALKEM: Yes, I will do that, if his signature is there I certainly will admit it.

40 Mr. ST. JOHN: Yes, you have seen it, and it is just the same as Exhibit 20 except that ours has the signature at the bottom, and this one hasn't, you see.

No. 17.

Extracts  
from exa-  
mination for  
discovery of  
J. F. Langer  
(put in by  
Mr. Davis).

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from exa-  
mination for  
discovery of  
J. F. Langer  
(put in by  
Mr. Davis)  
—continued.

491. Q. Now, in pursuance of this agreement, Exhibit 20, what was done, Mr. Langer?—A. Well, I purchased this block of stock, 750,000.

492. Q. Shares, yes?—A. At 12½ cents.

493. Q. Yes, well the agreement of course—you don't need to speak of the terms of the agreement because that is set out in writing, but just tell what you did in consequence of it?—A. Yes.

494. Q. You see, it provides for the payment of money. Did you pay anything on it?—A. Yes, \$5,000 cash.

495. Q. When was that paid?—A. On that date, I believe, the 17th of November, they took a cheque at this meeting—\$5,000.

496. Q. Yes, I see?—A. And the note for \$10,000 at ninety days, I think.

497. Q. That is the first note that is mentioned in the agreement?—A. Yes.

498. Q. You gave them that?—A. Yes.

499. Q. And that, by the way, has since been paid, I believe?—A. Yes.

500. Q. Now, the two lots that are referred to on Granville Street, did you convey them to them?—A. No.

501. Q. In fact you did convey them to some person else, didn't you?—A. Yes.

516. Q. The east side, yes. Now, you refused to complete this agreement of November 17th, 1927, didn't you?—A. That is right.

517. Q. And notified the plaintiffs accordingly?—A. Yes.

518. Q. Through your solicitors, that you would not——?—A. Yes.

519. Q. You see, we received a letter dated March 6th, 1928, that was written under your instructions, was it? (*Handing document to witness*)—A. Yes.

#### No. 18.

No. 18.  
Extracts  
from exa-  
mination for  
discovery of  
D. N.  
McTavish  
(put in by  
Mr. Farris).

**Extracts from examination for discovery of D. N. McTavish (put in by Mr. Farris).**

1. Q. You are Mr. D. N. McTavish?—A. Yes.

2. Q. And what is your position with the plaintiff company?—A. President.

3. Q. And your brother P. D. McTavish is secretary?—A. Is secretary.

4. Q. And he is president of the Alamo Gold Mines Limited, and you are the secretary?—A. No. You say the plaintiff company.

5. Q. The plaintiff in this action is McTavish Brothers Limited?—A. Well, then I was wrong. He is the president of McTavish Brothers Limited and I am a director.

6. Q. Are you secretary too?—A. No.

7. Q. Were you secretary at the time the events occurred in connection with this action?—A. I am not sure of that. I may have been. I can't say just now.

8. Q. What are your positions in the Alamo Gold Mines Limited?—  
 A. I am president and he is secretary.
9. Q. And have been since the company was incorporated?—A. Yes.
10. Q. This is the minute book of the Alamo Gold Mines Limited?—  
 A. Yes. (*Minute book marked No. 1 for identification.*)
11. Q. And the certificate of incorporation is contained in the minute book showing the company was incorporated on the 17th of March, 1925, for \$3,000,000 divided into 3,000,000 shares of \$1.00 each?—A. Yes.
12. Q. And also contained in Exhibit 1 are copies of the Memorandum and Articles of Association of the Alamo Gold Mines Limited?—A. Yes.
13. Q. Also contained in the minute book are the annual reports of Alamo Gold Mines Limited for 1926 and 1927?—A. Yes.
14. Q. Now, the Alamo Mines Limited was promoted by yourself, your brother P. D., George Thomas, a mining engineer, David Barnes, another mining engineer and W. B. Code?—A. They brought the proposition to us, yes. We promoted it.
15. Q. You say they brought the proposition to you, who is they?—  
 A. Barnes and Thomas first brought it to us.
16. Q. Barnes and Thomas?—A. Yes.
17. Q. And it was then arranged that the Alamo properties which are near Baker, Oregon, would be taken over and the Alamo Gold Mines Limited was incorporated for that purpose?—A. Yes.
18. Q. These properties were acquired from W. B. Code of Seattle?—  
 A. Yes.
19. Q. For the whole of the capital stock of Alamo Gold Mines Limited less the five subscribers shares?—A. Yes.
20. Q. And the five subscribers consisted of Mr. St. John and members of his office?—A. Yes.
21. Q. At that time it was arranged between you five men that the 3,000,000 shares would be divided equally between the five of you?—  
 A. Yes.
22. Q. Each one to receive 600,000 shares?—A. Yes.
23. Q. And that was done?—A. Yes.
24. Q. You and your brother then became president and secretary of Alamo Gold Mines Limited?—A. Yes.
25. Q. According to the minute book you still occupy those positions, do you not?—A. Yes.
26. Q. At that time where did you have your office, that is, McTavish Brothers Limited?—A. In the London Building.
26. Q. And the same office was used as the office of Alamo Gold Mines Limited?—A. Yes.
27. Q. And the business of both companies was carried on from that office?—A. Yes.
28. Q. The management of the Alamo Gold Mines Limited was handled by yourself and your brother?—A. Until Mr. Langer came in.
29. Q. What do you mean by until Mr. Langer came in?—A. It was arranged after he came in that he would direct all the operations.

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 (put in by  
 Mr. Farris)  
 —continued.

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Extracts  
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mination for  
discovery of  
D. N.  
McTavish  
(put in by  
Mr. Farris)  
—continued.

30. Q. You mean that he would direct the mining operations?—  
A. Yes.

31. Q. But he never at any time had anything to do with the financial operations of the company outside of putting up certain money?—A. No.

32. Q. Those were handled by yourself and your brother here entirely?—A. Yes.

33. Q. That is a copy of the statement in lieu of prospectus by the Alamo Gold Mines Limited?—A. Yes. (*Document marked No. 2 for identification.*)

34. Q. As shown by the minute book, on the 13th of May, 1925, a resolution was passed by the directors allotting the 3,000,000 shares to Code less the five subscriber shares in consideration of the conveyance by him to him to the Company of this mining property?—A. Yes.

35. Q. I observe there were only three directors at that meeting, yourself, your brother and Mr. Code. That is so, is it?—A. The record speaks for itself. I don't remember the meeting.

36. Q. And the resolution was also passed at that meeting to pay Mr. Code \$25,000 for services and expenditures in connection with the promotion of the Company?—A. If it is there, it was.

37. Q. Yes? I am just leading these questions to save time?—A. Yes.

38. Q. And the agreement with Code whereby he was to get these shares in consideration of the mining property was subsequently carried out and the property was conveyed to the Company?—A. Yes.

39. Q. The Company was then registered to do business in Oregon?—A. Oregon.

40. Q. I think your certificate of registration is in the minute book?—A. Yes.

41. Q. The directors of the company—

Mr. ST. JOHN: Which company, Mr. Walkem?

Mr. WALKEM: 42. Q. The directors of the Alamo Company were yourself, your brother, Code, Barnes and Thomas?—A. Yes.

43. Q. And they were appointed on the 4th of May, 1925, as appears by the minute book?—A. Yes.

44. Q. Was that agreement with Code reduced to writing?

Mr. ST. JOHN: The agreement about the \$25,000 was, but not the other.

Mr. WALKEM: Have you got it here?

Mr. ST. JOHN: We will get it up here.

Mr. WALKEM: In the meantime I will go on.

45. Q. Now, an agreement was subsequently entered into whereby a million and a half shares were surrendered to be used for the purposes of the Company?—A. Yes.

46. Q. That is the agreement, is it not?—A. Yes. (*Agreement marked No. 3 for identification.*)

47. Q. The million and a half shares were made up by each of the five directors surrendering 300,000 shares?—A. Yes.

Mr. ST. JOHN : The agreement, of course, speaks for itself. That is not strictly correct, Mr. Walkem.

Mr. WALKEM : The agreement shows 600,000 shares.

Mr. ST. JOHN : No, twelve hundred thousand, McTavish.

Mr. WALKEM : But 600,000 surrendered.

Mr. ST. JOHN : Yes, but not by the directors.

Mr. WALKEM : 48. Q. But the agreement shows 600,000 were surrendered by McTavish Brothers Limited and that consisted of 300,000 from your brother and 300,000 from yourself?—A. Yes, in  
10 effect.

49. Q. Now, this agreement is dated——?—A. Wait now.

50. Q. I beg your pardon?—A. It could not have been that. It must be just exactly as stated there.

51. Q. That is what it says here. McTavish Brothers Limited 600,000?—A. Yes, but not the two individuals.

52. Q. But McTavish Brothers Limited got those 600,000 shares from you and your brother?—A. I don't remember that.

53. Q. How else could they get them? They were half of the 1,200 thousand shares which you and your brother were to get under the  
20 original agreement?—A. I don't remember that we got them or McTavish Brothers Limited, the original shares.

54. Q. Probably this will refresh your memory. This is the statement in lieu of prospectus?—A. Yes.

55. Q. In which it says each of the said directors, naming those five, is to receive 600,000 of the shares?—A. That must be right.

56. Q. So that McTavish Brothers Limited, those shares came from you and your brother?—A. Yes, they must have.

57. Q. When was this agreement made?—A. I couldn't tell you that.

58. Q. Have you any idea?—A. I have no way of fixing it.

30 59. Q. It was not made in March apparently according to your brother?—A. No.

60. Q. But you have no recollection when it was made?—A. No, I can't recall the time.

61. Q. Now, what was done with these shares in pursuance of that agreement?—A. Turned over to the directors of the company.

62. Q. No trustee was ever appointed as provided in the agreement?—A. No.

63. Q. And the actual share certificates were held in your office?—A. Yes.

40 64. Q. And the actual physical possession of them was in yourself and your brother?—A. Yes.

67. Q. I see : and what were those shares used for?—A. They were used for carrying on the operations of the company.

68. Q. In order to save time, I am producing particulars of the disposition of these shares as filed in the action of *Barnes vs. Alamo Gold*

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mination for  
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McTavish  
(put in by  
Mr. Farris)  
—continued.

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mination for  
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McTavish  
(put in by  
Mr. Farris)  
—continued.

*Mines Limited.* Are those the proper particulars of the disposition of those shares?—A. Yes. (*Document marked No. 4 for identification.*)

69. Q. Apart from the shares allocated to the Langer agreement and stock on hand, the balance were sold by McTavish Brothers Limited, or through them?—A. Yes.

70. Q. And I think that your brother said the agreement covering that was contained in the minutes of the 14th of July, 1925, of the Alamo Company?—A. The minutes speak for themselves. I don't know.

71. Q. Was there any other agreement outside of that agreement, that you know of?—A. For selling that stock? No, that is the only 10 minute. There were discussions from time to time but there was no resolution passed.

72. Q. And the plaintiff company, that is, your company?—A. Yes.

73. Q. Received a commission on all stock which it sold in its own office, received the commission on all stock sold in its own office. That is right, is it not?—A. Received commission on all stock they sold?

74. Q. That is what I mean, and in addition to the commission they received a further commission in the shape of shares?—A. Yes.

75. Q. In the case of stock sold by outside agents the commission was paid to them?—A. Yes. 20

76. Q. To the outside agents?—A. Yes.

77. Q. But in some cases, as your brother stated, the outside agents did not receive all the shares as commission?—A. That is correct.

78. Q. Some of those shares went to the plaintiff company?—A. Yes.

79. Q. Is it correct, as stated by your brother, that no record was kept of the sales of the shares?—A. As far as I know.

80. Q. Well, as far as you know, who kept the books in your office?—A. The bookkeeper.

81. Q. Under whose instructions, your brother's?—A. Generally under my brother's. 30

82. Q. You were there all the time, I presume?—A. No.

83. Q. In and out?—A. Yes.

84. Q. So there was no detailed record kept of the 50,000 shares sold at ten cents, of the 203,360 sold at 12½ cents or the 28,772 sold at 25 cents?—A. The details were just as stated by my brother the other day. We had not applications for them all.

85. Q. But you have no record at the present time showing to whom those shares were sold or the amount of money received, or anything of that description?—A. Not that I know of.

86. Q. Your brother said that you had none?—A. Yes, well, I don't 40 know anything beyond that.

87. Q. Nor have you a record of the disposition of the 165,368 shares issued in payment of commission?—A. No.

88. Q. I would just like to mark some of these books.

Mr. ST. JOHN: Yes.

Mr. WALKEM: 89. Q. This is the ledger of the Alamo Gold Mines Limited?—A. Yes. (*Ledger marked No. 5 for identification.*)

90. Q. And the stock register. That is correct, Mr. McTavish?  
—A. Yes. (*Stock Register marked No. 6 for identification.*)

91. Q. Is this the cash book?—A. Yes. (*Cash Book marked No. 7 for identification.*)

92. Q. Share certificate book, 1 to 125?—A. Yes. (*Share certificate Book as stated marked No. 8 for identification.*)

93. Q. Share certificate book 126 to 250?—A. Yes. (*Book as stated marked No. 9 for identification.*)

10 94. Q. Share certificate book 251 to 375?—A. Yes. (*Book as stated marked No. 10 for identification.*)

95. Q. Share certificate book 376 to 496?—A. Yes. (*Book as stated marked No. 11 for identification.*)

96. Q. And share certificate book 497 to 609 inclusive, being the last certificate issued?—A. Yes. (*Book as stated marked No. 12 for identification.*)

97. Q. Who did you say kept the books of the Alamo Gold Mines Limited?—A. The bookkeeper Mr. Gizell.

98. Q. Is he with you at the present time?—A. Yes.

20 99. Q. And he kept the books of McTavish Brothers Limited, too?  
—A. Yes.

100. Q. Charles McTavish who lives in California, is a brother is he?—A. Yes.

101. Q. Have you any explanation of why large blocks of stock were placed in his name?—A. No.

102. Q. You don't know why that was done?—A. No explanation.

103. Q. At the time the 600,000 shares were delivered to yourself and your brother you paid nothing for them?—A. Except services.

104. Q. Well you had not rendered any service at that time?—A. Yes, we had.

30 105. Q. The company was just incorporated?—A. There was a lot of services rendered up to that time.

106. Q. What had you done?—A. All the preliminary work of getting the thing lined up.

107. Q. That is the preliminary work of incorporation?—A. No, there is a lot of work besides the incorporation. That is the lawyer's job.

108. Q. What else had you to do?—A. Negotiations, investigations between the five parties concerned.

109. Q. What investigating did you do?—A. Made several trips to Seattle and had several conferences.

40 110. Q. With Mr. Code?—A. And Barnes and Thomas.

111. Q. Arranging details?—A. Yes.

112. Q. But did you do any investigating?—A. Yes.

113. Q. What investigating did you do?—A. We had the reports on the property.

114. Q. And you read through those?—A. We did, and we had Barnes and Thomas sent down and looked the property over.

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McTavish  
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—continued.



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Mr. Farris)  
—continued.

115. Q. You had them go down and look the property over?—A. Yes.

116. Q. That was not work by you?—A. It was. It was part of the preliminary work.

117. Q. You sent them down, but you did not go down yourself?—A. The first time?

118. Q. No, not until after the Company was incorporated?—A. No.

119. Q. Is there any other preliminary work up to the time the Company was incorporated?—A. That is enough.

120. Q. I want you to tell me it all?—A. It is all included in our conferences and investigations. 10

121. Q. Well, you did, however, get 600,000 shares each and you did not pay any cash?—A. We did not get them for what we had done up to that time.

122. Q. But you didn't pay any cash for them?—A. No, of course, we did not.

123. Q. That is all I want. Now, in connection with the sale of the million and a half shares which were turned back, the total amount which you turned over to the Company shown in the balance sheet, in the auditor's report?—A. Yes.

124. Q. I will mark these auditor's reports, the one of the 30th of June, 1926?—A. Yes. (*Auditor's Report marked No. 13 for identification.*) 20

125. Q. And the 30th of June, 1927?—A. Yes. (*Auditor's Report marked No. 14 for identification.*)

126. Q. That amount is \$28,209.80?—A. I believe so.

127. Q. As at the 30th of June, 1927?—A. The report speaks for itself.

128. Q. And practically all the sales were completed at that time?—A. All the sales up to that time were completed.

129. Q. Can you show me where any further moneys were paid over?—A. I don't know anything about the books. 30

130. Q. They will speak for themselves?—A. They will speak for themselves.

131. Q. They are written up to date, I presume?—A. Yes.

132. Q. Yes, well, that is all right. Now, these shares were being sold at prices ranging from 10 cents to 25 cents?—A. Yes.

133. Q. Were any sold over 25 cents?—A. No.

134. Q. And none under 10 cents?—A. None under 10 cents except to Langer.

135. Q. Except to Langer under his agreement?—A. Yes.

136. Q. Is that a copy of the agreement which you made with Mr. Langer of the 7th of February, 1927, or rather an original?—A. Yes. (*Agreement marked No. 15 for identification.*) 40

137. Q. The amount paid under that agreement by Mr. Langer was \$28,660?—A. Whatever is in the books.

138. Q. It is in the ledger, \$28,660?—A. Yes.

139. Q. McTavish Brothers then made three sales to Mr. Langer?—A. Yes.

Mr. ST. JOHN : Well, there would be five sales in all.

Mr. WALKEM : No, three sales.

Mr. ST. JOHN : There are the two large sales.

Mr. WALKEM : 140. Q. You first sold 62,500 to Mr. Langer at 12½ cents?—A. No, we sold him 250,000 shares.

141. Q. You sold him 250,000 shares in addition to the 750,000 which you sold him on the 17th of November, 1927?—A. Yes, that is right.

Mr. ST. JOHN : You are speaking now of the sales of McTavish Brothers who owned shares.

10 Mr. WALKEM : Yes.

Mr. ST. JOHN : Then according to your own particulars, Mr. Walkem, there were three sales of shares besides the one of the 17th of November.

Mr. WALKEM : 142. Q. Our records show that sometime in January, 1927, you sold Mr. Langer 62,500 shares at 12½ cents?—A. No, we sold him 250,000 shares, and there was a contract for it.

143. Q. That was subsequently cancelled was it not?—A. He cancelled that. He made false statements to us and persuaded us to cancel the contract.

144. Q. And it was reduced to 62,500 shares at 12½ cents?—A. No. We gave him stock for what he had paid up to that time.

145. Q. And that was 62,500 shares at 12½ cents?—A. Yes.

146. Q. And about the 7th of June, 1927, you sold him 125,000 of your shares at 15 cents?—A. 15 cents, yes.

147. Q. And on the 12th of July he got another 62,500 shares at 12½ cents?—A. Yes.

148. Q. And then on the 17th of November, 1927, you sold him the block of 750,000 shares at 12½ cents?—A. Yes.

149. Q. Those constitute all transactions in shares owned by McTavish Brothers Limited?—A. Yes.

30 150. Q. And he paid for the 250,000 shares in full and \$15,000 on the last transaction?—A. Yes.

166. Q. Now, I would like to mark some further documents. I produce a blue print. Is that a blue print that you gave to Mr. Langer?—A. I presume so. (*Blue Print marked No. 16 for identification.*)

167. Q. And that is another one you gave him?—A. We gave him this one after the contract was signed. He never saw this for nearly a year after.

168. Q. After the contract of the 7th of February?—A. Yes.

169. Q. But before the contract of the 17th of November was signed?—A. Yes. We had this made at his request. (*Blue Print marked No. 17 for identification.*)

170. Q. That is a letter which you wrote David Barnes in connection with the surrender of those shares?—A. I wouldn't say. I didn't see it. My brother sent it.

171. Q. But you recognize your brother's signature?—A. Yes. (*Letter of the 4th of May, 1925, from Alamo Gold Mines to David Barnes marked No. 18 for identification.*)

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172. Q. I produce a letter of the 27th of December, 1926, from McTavish Brothers Limited to J. F. Langer with enclosures. That was written?—A. There is something cut out.

173. Q. That is up in the corner here.

Mr. ST. JOHN : It is pasted up in the corner.

Mr. WALKEM : 174. Q. It is pinned up in the corner right there. Apparently pasted on and then cut out?—A. Yes, we sent that.

175. Q. That letter was sent?—A. Yes.

176. Q. With the enclosure?—A. Some other enclosures were there?

177. Q. Yes, these enclosures?—A. Yes.

178. Q. Which are attached to the letter?—A. Yes, we showed him that in the office. (*Letter marked No. 19 for identification.*)

179. Q. I produce a letter of the 24th of February, 1927, with enclosures from McTavish Brothers Limited to Mr. Langer. That was sent by the Plaintiff Company with that enclosure. I don't think you need bother reading the letter through. I just want to identify it?—A. Yes. (*Letter marked No. 20 for identification.*)

188. Q. I produce a letter of the 6th of August, 1927, from Alamo Gold Mines to Mr. Kerr. That was sent by Alamo Company?—A. Yes. (*Letter marked No. 24 for identification.*)

189. Q. I produce copy of letter of the 13th of August, 1927, written by the Plaintiff to Mr. Langer. Do you recognize that as a copy. We don't seem to have the original. It has got your initials on it?—A. I couldn't recognize it, Mr. Walkem, without checking it up.

190. Q. Glance through the letter and see if you remember writing it?—A. This was written to him where, in the Old Country?

191. Q. That is the date?—A. Yes, I remember the letter. (*Copy of Letter marked No. 25 for identification.*)

200. Q. I see. I would ask you to produce a letter of the 8th of December, 1927, from Mr. Langer to the Plaintiff.

Mr. ST. JOHN : That would be in that same file.

Mr. WALKEM : 201. Q. I have a copy, possibly Mr. McTavish can identify it?—A. No, I could not from this.

Mr. ST. JOHN : I will have the whole bunch in a short time.

Mr. WALKEM : Would you mark that for identification, that copy without it being proved, that will keep the number. (*Copy of Letter marked No. 27 for identification.*)

Mr. WALKEM : You have telephoned down for that file?

Mr. ST. JOHN : Yes.

Mr. WALKEM : 202. Q. I produce a letter of the 12th of December, 1927, McTavish Brothers Limited to Langer? That was written by the Plaintiff, Mr. McTavish?—A. Yes. (*Letter marked No. 28 for identification.*)

203. Q. I produce letter of the 12th of January, 1928, the Alamo Company to Langer. That was written by Alamo and signed by your brother?—A. Yes. (*Letter marked No. 29 for identification.*)

204. Q. I produce engineer's report signed by W. S. Bacon, addressed to Alamo Gold Mines Limited dated the 7th of December, 1925. That was given by you to Mr. Langer?—A. I presume it was. I don't remember giving it to him, but I presume it was. (*Report marked No. 30 for identification.*)

THE WITNESS: It may have been given to him by Mr. Howard.

205. Q. You say you are not sure whether you gave it to him or Mr. Howard gave it to him?—A. No.

206. Q. You did give him a number of engineer's reports yourself?—  
10 A. No.

207. Q. Did you never give him any?—A. I don't remember giving him a single report.

208. Q. However, if Mr. Howard gave it to him it was with your authority?—A. We didn't do anything to stop him.

209. Q. Well, he was acting as agent for you?—A. Yes.

210. Q. And he introduced Mr. Langer and got a commission on the original agreement of the 7th of February, 1927?—A. Yes.

211. Q. Of 95,000 shares?—A. No.

212. Q. Well, some amount like that. That is shown in the minute  
20 book?—A. No, he got some of them, he didn't get them all.

213. Q. I produce a copy of report of W. H. Jackson dated the 26th of January, 1921, with an addition of the same date. Was that given to you by Mr. Langer?—A. You mean given by me to Mr. Langer?

214. Q. Yes?—A. I said I don't remember ever giving him any report; but I know we had such a report.

215. Q. You had such a report and Mr. Howard may have given it to him?—A. He may have. (*Report marked No. 31 for identification.*)

216. Q. I produce a copy of report of the 29th of October, 1923, from J. P. McGuigan?—A. Yes.

30 217. Q. The same remarks apply to that one?—A. The same remarks. (*Report marked No. 32 for identification.*)

218. Q. I produce a copy of report of the 22nd of December, 1923, from J. P. McGuigan to W. B. Code. The same remarks apply to that?—A. Yes. (*Report marked No. 33 for identification.*)

219. Q. And a letter from C. A. Smith to W. B. Code of the 27th of January, 1925. On the same sheet is an excerpt from a report by W. Lindgren. The same remarks apply to that?—A. Yes, the same remarks. (*Letter marked No. 34 for identification.*)

40 220. Q. It was customary for you to send out bulletins from time to time to the shareholders of Alamo Gold Mines Limited?—A. Yes.

229. Q. A wire November the 21st, 1927, Barnes to yourself?—A. Fellows to us.

230. Q. Fellows to you, I am sorry?—A. Yes. (*Telegram marked No. 40 for identification.*)

232. Q. Letter December the 6th, 1927, Fellows to McTavish Brothers?—A. Yes. (*Letter marked No. 42 for identification.*)

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233. Q. Letter November 19th, 1927, Fellows to McTavish Brothers?  
—A. Yes. (*Letter marked No. 43 for identification.*)

234. Q. And those are the assay certificates?—A. I presume so.  
It says assays. (*Two certificates marked Nos. 44 and 45 respectively for  
identification.*)

237. Q. Now, Mr. McTavish, when did you first meet Mr. Langer?  
—A. It was very shortly before he went down to the mine the first time.

238. Q. That would be when, in the fall of 1926?—A. 1926, yes.

239. Q. About September, 1926, I believe?—A. Just before that,  
yes.

240. Q. And where did you meet him?—A. Met him in some building  
upstairs down here on Granville Street about the Spencer Building, in  
or around there some place.

241. Q. And he was introduced to you by your agent, Howard, was  
he?—A. Howard, yes.

317. Q. You then believed the report of McGuigan that the values  
and tonnage existed in the Alamo as shown on those blue prints?—A. I do  
yet.

318. Q. And you did at that time?—A. Yes, and we had no cause to  
doubt.

319. Q. You had no cause to doubt what McGuigan said was true?  
—A. No.

320. Q. These mines had been opened up and it was a simple matter  
the mines having been opened up to ascertain the values. You know  
that as a mining man?—A. You mean the mine had been opened up  
first —

321. Q. When the development work is done an engineer, a mining  
man, can tell what values are there?—A. Yes.

322. Q. It is not like prospecting work when you are looking at the  
surface and more or less guessing?—A. No, but it is a different thing when  
you open it up after it has been closed.

323. Q. How do you mean a different thing?—A. Because the tunnels  
are all slimed up.

324. Q. Do you mean it is difficult to find the values then?—A. More  
difficult.

325. Q. But not impossible for an engineer?—A. No.

326. Q. Fellows is a competent man, is he not?—A. Yes.

327. Q. And he is employed by you as manager of the Banner?—A. Yes.

328. Q. Still in your employ?—A. Yes. He did not examine that  
property, though.

329. Q. He did not examine it when?—A. He took those dozen  
samples, but that doesn't constitute an examination.

330. Q. But he took the samples after the lower tunnel in the Alamo  
was finally opened up?—A. Yes.

331. Q. Barnes was the first manager of the mine and he stayed there  
until about August, 1927?—A. Yes.

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332. Q. And why did he leave?—A. You will have to ask him.

333. Q. You don't know?—A. No.

334. Q. And Fellows took his place?—A. Yes.

335. Q. Now, I asked you what occurred after you got back from the mine in September. I think you started to tell me?—A. We carried on negotiations with Mr. Langer.

336. Q. Did he buy any stock before he entered into the agreement of the 7th of February?—A. No.

337. Q. Well, he finally entered into that agreement?—A. Yes.

10 338. Q. Which of course speaks for itself?—A. Yes.

339. Q. Now, some time subsequent I think you stated, and prior to the 17th of November you gave Mr. Langer the blue print, Exhibit 17?—A. No. We showed him a tracing and he wanted us to make a blue print and give him one. We did that at his request.

Mr. WALKEM: We might mark that tracing, Mr. St. John. Would you produce that tracing and let us have it marked.

Mr. ST. JOHN: Yes.

Mr. WALKEM: 340. Q. This is the pencilled sketch?—A. Yes.

341. Q. And you had blue prints taken off that?—A. At his request.

20 342. Q. At his request, and gave him a blue print?—A. Yes. (*Tracing marked Exhibit 48 for identification.*)

343. Q. Now, what was the conversation which took place between you with reference to that?—A. This blue print?

344. Q. With reference to the pencilled sketch, Exhibit 48. What did you tell him?—A. My brother was going through the file and he came across this and just threw it out to him and said, "There is something that might be of interest to you." I can't say the exact words, but that is in reality what was said. He looked this over and said, "Where did you get that?" And we said we had it all the time. And he said, "Why didn't you show it to me?" And we said, "We never, because it was not signed." And he said, "Obviously that is the work of an engineer." And we said, "Yes." And he said, "That is the most important document I have seen so far in connection with this property," and he rather resented because we had not shown it to him. He was very much impressed with it and then asked us to get him some blue prints and give him a copy.

365. Q. You don't know who was present naturally if you were not there. Did your brother tell you Mr. Kerr came in to see him?—A. Yes.

366. Q. And he told you he had discussed matters with Mr. Kerr?—A. Yes.

40 367. Q. Did he tell you what the discussion was?—A. He said he came in to get the agreement.

368. Q. Get what agreement?—A. The agreement of the 17th of November.

369. Q. He wanted to get that back?—A. Why, of course, he did.

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## No. 19.

## Evidence of Percival James Howard.

*In the  
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Defendant's  
Evidence.

No. 19.  
Percival  
James  
Howard.  
Examina-  
tion.

PERCIVAL JAMES HOWARD, a witness on behalf of the Defendant, being first duly sworn, testified as follows :—

## DIRECT EXAMINATION BY MR. FARRIS.

Q. Mr. Howard, did you have any business dealings with McTavish Brothers?—A. Yes.

Q. The individuals or the company or both?—A. The company.

Q. When did your relations with them begin, approximately?—A. I was quite closely associated with them and employed by them in 1924. 10

Q. That did not have anything to do with the Alamo?—A. No.

Q. But in other business deals?—A. That is right.

Q. What was it, stock selling or what?—A. It was in connection with another mining property.

Q. When did you first have any dealings with them or any discussions with them in regard to the Alamo Mines, Limited?—A. In March or April 1925.

Q. What did they propose or suggest to you at that time?—A. They told me the property—explained the conditions under which they had acquired it and after going into the details of it they made a suggestion 20 that I should organise a selling force and sell some stock for them and they were prepared—they had a private office, and they were going to set aside that office for my use.

Q. By they, who do you mean?—A. The McTavish Brothers.

Q. That is the individuals, P. D. and D. N. McTavish?—A. Yes.

Q. I suppose they had the company at that time, McTavish Brothers, Limited?—A. Yes, but I didn't take it on at that time.

Q. You say they explained to you how they had acquired the property, how do you mean? The Alamo or the McTavish Brothers?—A. I mean the Alamo Gold Mines, Limited. 30

Q. That is the property of the Alamo Gold Mines?—A. Yes.

Q. What did they tell you about the Alamo Gold Mines, how the Alamo Gold Mines, Limited, had acquired the property?—A. They told me they had acquired it from a Mr. Code. Mr. Code was a man whom I had known for probably twenty-five or twenty-six years. They told me how Mr. Code had acquired the property and he had turned the property over to the company. They had a patent to this property, I think they called it a patent, and he had turned the patent over to the company for half of the stock of the company and the company was capitalised at 3,000,000 shares with a par value of \$1. each. 40

Q. This was when, when was it this discussion took place?—A. In March or April.

Q. The year?—A. 1925.

Q. And you say at that time you did not enter into a contract with McTavish Brothers in connection with the Alamo?—A. No, not at that time.

Q. Although they gave you details with a view to your doing so. Did you have any further dealings with McTavish Brothers in regard to the Alamo?—A. In November 1925, we made the first sale of stock of the Alamo, I think it would be about the middle of November.

Mr. DAVIS : In this to Langer?

Mr. FARRIS : No, this was between McTavish Brothers and Howard.

10 Mr. DAVIS : But he is telling of sales of stock to somebody else apparently?—A. Well, it would be sometime about the 15th of November, I think, that I agreed to go on with the selling of stock in the Alamo for McTavish Brothers.

Mr. FARRIS : Q. On what basis?—A. 30 per cent. commission.

Q. How long did your stock selling arrangements with McTavish Brothers last?—A. It was changed the 5th of February, 1927, to 25 per cent. commission and 10 per cent. in stock and I discontinued selling for them in September or October 1927.

20 THE COURT : Your years must be out. You made your first sale in November 1927.

Mr. DAVIS : 1925, I think my lord?—A. 1925. I started with them in November 1925.

Mr. FARRIS : I might as well put this in now and then come back to it.

Mr. DAVIS : It was not produced in your affidavit of documents, apparently.

Mr. FARRIS : It was not given to Langer. Mr. Howard has just given us this document.

30 Q. This is a document which was subsequently entered into between you and Mr. McTavish?—A. Yes.

Q. Which McTavish has signed that?—A. D. N.

Q. And it is also signed by you, is it?—A. Yes.

Mr. FARRIS : I tender this.

Mr. DAVIS : Would you let Mr. St. John see it?

Mr. FARRIS : I was going to read it out loud so we could all hear it.

Q. This is an arrangement after the event, is it not, Mr. Howard?—A. Yes.

Q. That is to say you had had your dealings with Langer and had introduced him to McTavish Brothers?—A. Yes.

40 Q. And at a later date this document was signed to provide for your commission, is that right?—A. Well, I was going south. I was getting married in a few days and I wanted to have some adjustment. We had never had an adjustment.

Q. This is a document dated much previous to when it was signed. This is from D. N. McTavish to P. J. Howard, that is yourself?—A. Yes. (*Letter read and marked Exhibit No. 39.*)

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Columbia.*

Defendant's  
Evidence.

No. 19.

Percival  
James  
Howard.  
Examina-  
tion—con-  
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—  
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No. 19.  
Percival  
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Examina-  
tion—con-  
tinued.

Q. Now, you tell us that in the fall of 1925 you made an arrangement with McTavish Brothers, that is with the company, for the sale of shares in the Alamo Gold Mines, Limited?—A. Yes.

Q. At a subsequent date and while that arrangement between you and the McTavishes existed and in pursuance thereof did you interview Mr. Langer?—A. Yes.

Q. When would that be?—A. It would be in September, 1926.

Q. Where did you see Mr. Langer?—A. I first spoke to Mr. Langer regarding the Alamo mines when I met him on Pender Street just by the Bank of Montreal. We were chatting for a few minutes and he asked me what I was interested in at that time and I told him that I was interested in this mining property down in Oregon and we talked for a few minutes on the street and he said he was quite interested, that he would like to learn more about the property and I said that we could probably arrange to have the President or the Secretary meet him and we made an appointment—I made an appointment with Mr. Langer for P. D. and D. N. McTavish and we all met at Mr. Langer's house one evening.

Q. Don't go ahead too fast. Before we get to that you say Mr. Langer was interested. What had you said to him?—A. I had just given him a rough outline of the property as you would do on the street.

Q. Did you see him again before he met the McTavishes?—A. I don't think I did. I don't recall. I was talking to him on the telephone and made an arrangement for him or rather for me to take the McTavishes to his house.

Q. What was the nature of the conversation on the street? Give us the details as far as you can?—A. I told him we had two properties down there, what we called the Alamo mines and the Evans property.

Q. Yes?—A. That we had the patent, clear title to the Alamo property and had acquired the Evans property for \$40,000 payable \$4,000 a year for 10 years without interest. This Evans property was a large open cut or large vein over 200 feet wide and running 2,200 feet above the creek level and on the Alamo property there had been several thousand feet of rock work done there and told him it had been operated, but owing to not having the proper equipment on it they had not been able to recover the gold and the principal shareholders had died, was the story we had and I told him this, the other shareholders were not willing to spend any money on this and a Canadian had gone down and acquired the property.

Q. What about the equipment. What was wrong with it? Did you tell him that?—A. The report I had read on it stated that they had not the proper machinery on it to recover the gold. It was a light flaky gold and had gone off in the tailings.

Q. Was anything said about the nature of this mine by you to Langer?—A. The Alamo mine?

Q. Yes?—A. No, I only spoke about the enormous body of ore we had blocked out there.

Q. What about that? I want to know that?—A. I told him we had an open cut on the surface showing 1,000 feet and the first tunnel which

was driven in 90 feet showed a vein of 20 feet in width and it was upraised to the surface a vein of about 300 feet below and another cross cut was put in and exposed a vein there of 30 feet and values should run from \$8.00 to \$12.00 a ton, I think \$8.00 to \$10.00 on the surface and from the second tunnel there showed values of from \$10.00 to \$18.00 per ton, that the Number 3 tunnel had gone right down close to creek level and driven in a 1,250 foot tunnel and the vein was still 30 feet. This tunnel was driven in about 350 feet on the vein, one way, and 450 feet the other way, and the values were still there running from \$12.00 to \$18.00, but I explained to him the portals were closed.

Q. The what?—A. The portals, the entrances to those cross-cuts were closed and that the operations at that time were on the Evans, the development on the Evans, proving that.

Q. What was the distinction or was there any distinction in the nature of the two mines, the character of the two mines, the Alamo and the Evans?—A. From the company's point of view?

Q. From your point of view?—A. Well, the operations, the programme of the company was proving—

Mr. DAVIS: Is this what he told Mr. Langer? If it is I have no objection.

Mr. FARRIS: I will put it that way directly. I thought without leading I would put it the other way.—A. So far is what I have told Mr. Langer.

Q. So far what you have told is what you told Mr. Langer?—A. What I have said so far. In speaking to Mr. Langer I never made any comparison between the two properties that I recall at that time.

Q. Perhaps at a later time, Mr. Howard?—A. Yes, at a later time.

Q. What was said at a later time then, while we are on the trail of this and then we can go back and pick it up again?—A. The Alamo had proven to my mind the more valuable.

Mr. DAVIS: He is saying what he had in his mind?—A. That is what I told Langer.

Mr. FARRIS: Q. When would that be?—A. That would be subsequent to our visit to the Evans property in September.

Q. 1926?—A. I was in Mr. Langer's company a good deal for the first two or three weeks after we came back from Oregon.

Q. I think it would be better if we leave that and come to it in its turn. We will go back to the first time you saw Mr. Langer and got him interested?—A. Subsequently he wanted to learn more about the property.

Q. And you told him you would make arrangements for him to meet the McTavish Brothers?—A. Meet the President and Secretary of the company, that is the McTavish Brothers.

Q. Did you see Mr. Langer again before he was introduced to McTavish Brothers?—A. I don't recall seeing him. I was talking to him, but whether it was over the telephone, I think it was over the telephone.

Q. Was anything added to the information over the telephone?—A. No, I think not.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence.

No. 19.  
Percival  
James  
Howard.  
Examina-  
tion—con-  
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tion—con-  
tinued.

*Q.* All right then. Where did the introduction take place?—*A.* At Mr. Langer's house.

*Q.* Who was present at that time?—*A.* Mr. P. D. and Mr. D. N. McTavish and myself.

*Q.* And Mr. Langer?—*A.* And Mr. Langer.

*Q.* About what date would that be?—*A.* It would be about the middle of September, September the 15th.

*Q.* Have you seen this document before, Exhibit 18?—*A.* I don't recall seeing this one.

*Q.* Here is another one. There are two of them. That is the one you just gave us this afternoon?—*A.* This one? 10

*Q.* No, this is the one given by you to us at lunch time?—*A.* Yes, I carried this one.

*Q.* That is a duplicate of Exhibit 18, so I don't think, Mr. Davis, it is necessary to load up the record with both of them.

Mr. DAVIS : Very well.

Mr. FARRIS : *Q.* Take the one you have, the copy of Exhibit 18, where did you get that?—*A.* From Mr. P. D. McTavish.

*Q.* Was there anything took place between you and Mr. Langer with relation to the original of the one you have or the one which I just produced?—*A.* I showed this map to Mr. Langer in describing the property and the amount of work which was done according to the reports which we had in conjunction. 20

*Q.* Do you know whether you gave him one of them?—*A.* I don't think I gave him one, but I showed him one.

*Q.* You showed him one?—*A.* I had it with me.

*Q.* Do you remember at what interview you showed it to him?—*A.* I don't recall whether it was this map, this blue print which I showed him on the first interview which he had with the McTavish Brothers at his house or whether it was a similar one they had which was used. 30

*Q.* When you say this blue print, you are referring to Exhibit 18?—*A.* This blue print or a duplicate of it was produced on the first interview which we had at Mr. Langer's house at which Mr. P. D. and Mr. D. N. McTavish, Mr. Langer and myself were present. I remember it distinctly. It was spread on the dining-room table. Somebody came in and we had to leave the den and went to the dining-room, and this was spread on the table.

*Q.* What was said about it?

Mr. DAVIS : By whom?

Mr. FARRIS : By anybody?—*A.* Describing this map with the pencil marks that were on it. 40

*Q.* Who were describing it?—*A.* P. D. and D. N. McTavish. I might have said a word or so, but very little that night. D. N. and P. D. McTavish were describing the property. Do you want me to go through the description?

*Q.* If you please?—*A.* It was pointed out this was the green lead pencil marking or blue where the survey showed all that was Hematite.

Q. Maybe the marks on that are not identical and we had better put them both in. No, there are some marks on yours which are different.

Mr. DAVIS : Better put them both in.

Mr. FARRIS : There are one or two additional marks, so we had better have that one marked also. (*Blueprint marked Exhibit No. 40.*)

Q. You will now talk from Exhibit 40 with Exhibit 18 alongside of it?

Mr. DAVIS : Where did this second one come from?

Mr. FARRIS : The second one was in his possession. We got it just at lunch time.

10 Mr. ST. JOHN : You are putting that in?

Mr. FARRIS : Yes, that is Exhibit 40. There is no objection to letting the jury have a photostat copy?

Mr. DAVIS : No.

THE COURT : Have you two of them?

Mr. WALKER : Yes, here is another one.

THE WITNESS : This white line here is supposed to represent the elevation of the Alamo mountain.

Mr. FARRIS : Q. I will keep this other one in front of me so I can follow. That is the white line running somewhat diagonally from corner to 20 corner of the map?—A. Yes.

Q. That represents what?—A. The Alamo mountain.

Q. Remember what we are doing. You understand you are telling us what the McTavishes were telling Mr. Langer, leaning over the dining-room table?—A. I probably told him afterward. I did tell him afterwards.

Q. Just what was the substance or what did they say?—A. This blue mark was supposed to represent the surface showing.

Mr. DAVIS : Q. Is this what they said?—A. This is what they said.

Mr. FARRIS : Q. It looks green to me?—A. It is green or blue.

Q. You see that, gentlemen. I presume it shows there. Now, that 30 green or blue strip is what?—A. That is the surface showing of the vein.

Q. Yes?—A. And that was Hematite that was spoken of as a steam-shovel proposition. It was so highly oxidized, it could be taken out with a steam shovel. This number 1 tunnel, there was a cross cut of 90 feet to the vein, and the vein was 20 feet wide at that place, and they had an upraise from number 1 tunnel to the surface. Values on the top were eight to twelve dollars and on this number 1 tunnel still eight to twelve dollars. On my map there is a lead drifted a short distance, I think it was 70 feet. They spoke of 70 feet in the vein and then winched down 90 feet in the ore. Number 2 tunnel was a 400 foot tunnel and they struck 40 the vein, and the vein had widened out to 30 feet and values had increased from ten to eighteen dollars. The number 3 tunnel was driven from just slightly above the level of Clear Creek, 1,250 feet. In driving this tunnel about from 50 to 75 feet from the entrance to the tunnel they struck a vein of Hematite, and while it was only marked a twelve foot vein the showings really were about 40 feet. It was explained the reason we took the twelve feet was the very heavy overburden.

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Examina-  
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tinued.

*Q.* Is that here?—*A.* Yes.

*Q.* There is nothing on there to show that, is there?—*A.* No, we explained it was probably just like a mushroom top, and the large amount of hematite did not indicate the true vein, and they cut two other tunnels and had caught the vein and it was still 30 feet in width and met the upraise from number 2 to number 3 tunnel and the values were from ten to eighteen dollars. They drifted on the vein from this number 3 tunnel, drifted on the vein 350 feet one way and about 400 feet the other way and both ends were still in ore, both ends of the drift were still in the ore and the values were from ten to eighteen dollars.

*Q.* Now what else, so far as you remember, took place around the dining room table?—*A.* That evening? 10

*Q.* Yes?—*A.* Well, we had a photograph of the Evans property and we discussed the Evans property, the width of the vein and told Mr. Langer the vein was over 200 feet wide, and explained to him we had a little 15-ton mill on that property with a power plant there sufficient to operate three 15-ton mills with the crushing capacity of 75 tons a day with the three 15-ton mills and were desirous of having Mr. Langer come in with an investment of about \$5,000.00 which would enable us to purchase two more 15-ton mills and put them on that, on the shaft there.

*Q.* What was the general situation of the Alamo at that time?—*A.* The Alamo? 20

*Q.* Yes, I mean generally from what you knew?—*A.* Generally, the situation was at that time we had this 15-ton mill running or had that mill on the property, it was not running just at that time, I think, no, it was not running at that time, but we had some men doing some development work, and had a payroll and had to sell some stock to provide for the payroll. We also had the payments accruing on the Evans property. The payments were a matter of \$500.00 a month for eight months of the year, from the 1st of April to the 1st of November inclusive. Those payments had to be made and it was necessary to raise some money. The operations of a 15-ton mill on that very low-grade ore was not profitable, so we did not deem it was advisable. It had been running and Mr. Langer said he would not be— 30

*Q.* You asked him, you recollect that you had asked him for \$5,000.00 or the McTavishes had?—*A.* We suggested—we told him we would like him to come in and purchase—

*Q.* Purchase \$5,000.00 worth of stock?—*A.* Yes.

*Q.* And he said what?—*A.* He said he would not be interested in a small investment of that nature, or would not be interested in a \$5,000.00 investment is the words he used, but that he would submit a proposition in a day or so, subject to his approval after having had a look at the property, and he explained there was no use considering going down to look at the property. We desired or discussed his going down and having a look at the property, and he said there would be no use of going down to look at the property unless he would be assured, if he was favourably impressed with the property, he would be able to get sufficient interest in it to make it 40

worth his while, and it was finally arranged he would go down and see the property, and Mr. Langer, Mr. D. N. McTavish and myself went down to the property.

Q. About when would that be, Mr. Howard?—A. That would be, it was between the time of the first interview and prior to the 25th—between the first interview and the 20th of September.

THE COURT: It was in September, then?—A. It is very difficult for me to give exact dates.

Mr. FARRIS: Yes.

10 Q. Anyway, you did go down, did you?—A. Mr. Langer, Mr. D. N. McTavish and myself went down.

Q. Tell us what happened down there?—A. Well, on the way down occasionally we would talk a little bit about the property we were going to look at, and I handed Mr. Langer, in the presence of Mr. D. N. McTavish, I handed Mr. Langer the engineers' reports which we had on the property, and he took a glance through them and put them in his pocket. I expected to get them back, but I did not at that time, and we went out to have a look at the property. We passed the Alamo property, close to it, but we only looked at what is known as the Evans property.

20 Q. Why was that?—A. The Evans property was where the development work was going on. The essence of the contract on the Evans property was the prompt meeting of the payments, and it had to be proven whether or not it was worth while going on with it first because if it was found that it was not a profitable proposition, they could discontinue the payments, and it would revert to the vendors. Anyway, we went to the Evans property and spent a whole day there.

30 Q. What did you find?—A. When we got down there the mill was running on free milling ground. Mr. Langer, Mr. D. N. McTavish, Mr. Barnes and myself in the forenoon examined what was known as the gloryhole, the very wide vein. On the way out from Baker City, Mr. Langer had said: "Howard, if you have any alibi in regard to the width of that vein, now is the time to make it, because I have a tape measure and I am going to measure it." Mr. Langer was satisfied the vein was some 200 feet in width when we got down there. We took samples from different parts of this vein. We could not take chisel samples all the way across because we had not time, but we took samples here and there and then had lunch and later on in the afternoon went down in the vein where development work was being done which was a little richer.

40 Q. Still on the Evans?—A. Still on the Evans, and this vein they had sunk about 35 feet. We took samples where they were cross-cutting about 40 or 50 feet below that, to strike a vein on a lower level with the intention of upraising to this 35 foot level. They were in at that time about 85 feet on that cross-cut; and then we went down to the mill and did some panning. We all did some panning and all got some samples. By this time it was getting late and we left to come back to Vancouver.

Q. Yes?—A. Just as quickly as I think it was possible for Mr. Langer to have done after that, he had the assays made, and we brought home quite

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tion—con-  
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a few pounds of rock. I carried about 100 pounds, I don't know how much there would be altogether, but I think we had about 100 pounds of rock in a number of different samples and Mr. Langer had the assays made which were fairly satisfactory, and he arranged with Mr. Williams, the assayer, to have an assay made on Saturday afternoon. Mr. Langer and I went down and saw Mr. Williams make an assay of some rock we took down with us, and then we started in to negotiate for Mr. Langer coming into the company.

Q. Did you go to the Alamo at all?—A. No, we didn't go to the Alamo at all. We knew the portals were closed, and it was necessary for Mr. Langer to get back to Vancouver, and we only had the one day down there. 10

Q. Yes. Go on, Mr. Howard, please. You are telling it in a very interesting way. Just tell us what happened?—A. Well, after Mr. Langer had these assays made, it was a question of seeing how much Mr. Langer would buy and on what terms he would buy.

Mr. DAVIS: Is he telling now of a conversation between himself and Mr. Langer?—A. I am telling of a conversation between Mr. Langer and all of us. We were all interested.

Q. When you were present?—A. When I was present.

Q. What date?—A. I couldn't give a specific date, but prior to the 25th of September. 20

Mr. FARRIS: Q. It is the continuity of events he is giving. Then after Mr. Langer came back, what occurred?—A. I was seeing Mr. Langer every day, and seeing the McTavishes every day. We were not able to get right down to a basis, but Mr. Langer—it was explained to him we had a payroll—when I speak of "we," I am speaking of the Alamo Gold Mines Limited.

Q. Yes?—A. Had the payroll for September to meet and also had to make provision for the payment on the Evans property which would come due on the 1st of October. Mr. Langer agreed to take care of some of those payments, and while we had not entered into an agreement, Mr. Langer gave me a cheque for \$2500.00 on the 25th September. The cheque was made payable to me, and I turned the proceeds of the cheque over to McTavish Brothers. After the 25th of September, Mr. Langer frequently referred to these assays that we had had, and making an analysis of them and of the different samples. Some were lumps of rock, and some were very fine stuff, and some was small open rock and some what we called mud. This fine stuff had the higher values. The large ones were practically valueless, less than a dollar. I can't just give it exactly, but I think 68 cents and Mr. Langer appeared to be quite disturbed as to the amount of this higher grade, the fine stuff, what percentage there would be. Some of the fine stuff ran from 60 cents, I would say, to over \$20.00, and it would be necessary for the ore to be really profitably mined to average \$4.00 to the ton, and Mr. Langer frequently wondered whether it would average that and whenever that would come up I was quite confident, and we always spoke of the Alamo mine as the lee anchor we had out, and if the Evans did not prove to be a mine, we always had the Alamo, and I would speak of that to Mr. Langer. I believed the Alamo was a proven proposition, and from the 30 40

reports we had had, the only reason the operations had not been profitable before, was because they had not had the proper equipment on it for the recovery of the ore. I believed it to be true and I told it to Mr. Langer, expecting him to believe it, and I think he did. In speaking of the Alamo in that way to Mr. Langer, I am satisfied I did not say anything that the McTavish Brothers did not or would not have said regarding the property.

Q. And as a result of these discussions that you have just told us—— ?

A. Well, it became more in the nature of a deal for Mr. Langer to acquire the holdings that he wanted, in order to do that it made it necessary for the McTavish Brothers as directors to have the co-operation of the other directors, and it became more in the nature of a deal than of a sale, and it was some months after this, it would be, I think, in January, 1927, before they really got to a basis to work on.

Q. Was there a break or was there a continuity throughout?—A. Oh, a continuity. Throughout the dealings, Mr. Langer was providing all the money necessary for carrying on the operation.

Q. On the Evans property?—A. On the Evans property.

Q. Yes?—A. And, finally, they entered into contractual relations in 1927?—A. Yes.

Q. Now, there are two other documents which you gave us at lunch time that I want to ask you about. These came from your possession today, Mr. Howard?—A. This one here is just a map of the locality. It is not supposed to be drawn to scale and is not so represented.

Q. Where did you get it?—A. From McTavish Brothers. I think it was handed me by P. D. either by P. D. or D. N.

Q. Did you ever show it to Mr. Langer?—A. Oh, yes.

Mr. FARRIS: I think we had better put those in. It gives a rough idea of the various localities.

Mr. DAVIS: What is the other one?

Mr. FARRIS: The other is a copy of the pencil memorandum which I am putting in.

Mr. DAVIS: Of the pencil sketch?

Mr. FARRIS: Yes. I will have this sketch map of properties marked as an exhibit. (*Blueprint marked Exhibit Number 41.*)

Q. Now, you are producing another blueprint here, where did you get that?—A. From Mr. P. D. McTavish.

Q. I don't think we need to file this because we have one blueprint identical to it already in. That is a copy of Exhibit 19, so we will just refer to it as Exhibit 19. Now, this copy of Exhibit 19, where did you get it?—

A. I got it from Mr. P. D. McTavish in their office.

Q. Do you remember about when?—A. Oh, about the middle of July, 1927, sometime in July.

Q. Did you have any discussion with Mr. Langer in connection with it?—A. Mr. Langer?

Q. Yes?—A. In connection with this?

Q. Yes?—A. No.

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Q. Then I need not pursue that any further. You told me that when they first approached you to become active in selling shares, that would be in March or April, 1925, that they told you something about the way the property was acquired?

Mr. ST. JOHN: Excuse me, he said November, 1925.

Mr. FARRIS: No, he did not, Mr. St. John. He told me March or April that he had some discussion to the effect that Code had sold them for half of the capital shares. Did you get any more extended information on that along in the fall of 1925?—A. Well, the fall of 1925, not in regard to the manner in which the Alamo acquired the property, no. 10

Q. I see?—A. I was told in the fall of 1925 that Code had given to his co-directors, George Thomas, David Barnes, P. D. McTavish and D. N. McTavish, a certain portion of his one million and a half shares.

Q. Did they tell you how much?—A. No, a portion of the million and a half.

Q. Did you find out from them what that proportion was?—A. No, not in 1925, but in 1926 I did.

Q. What did you find out then from the McTavishes?—A. They divided 300,000 shares apiece.

Q. Who was in charge of the mine down at the Evans operations when you and Mr. Langer and the McTavishes went down there?—A. Mr. David Barnes. 20

Mr. DAVIS: What was the last question?

Mr. FARRIS: I asked who was in charge of the Evans operations when they went down there, and he said Mr. Barnes.

Q. That is the gentleman sitting over here?—A. Yes.

Q. Did you ever have any discussion with the McTavishes about him or his qualifications?—A. Oh, I knew Mr. Barnes before.

Q. That might not be fair. They might object to your knowledge about it; but did you have a discussion with the McTavishes about him, if not, we will pass on?—A. At any time? 30

Q. Yes, about his qualifications?—A. Oh, yes. When Mr. Barnes came up to take charge of property in British Columbia, they told me Mr. Barnes was a mining engineer and had been engaged in mining and working with his father until he was about 16 and then qualified as a mining engineer and had been for some years in Alaska in charge of operations for Mr. Martin, in fact, had spent all his life in gold mining, and that he was a very competent mining man.

Q. You had a little selling method, did you not, in the way of a gold brick. I don't mean an improper gold brick, but real gold?—A. Yes, I had a small one. 40

Q. Where did you get that?—A. From McTavishes, and the last one I had was handed to me by Mr. Guselle, the bookkeeper.

Q. What was this supposed to be?—A. It was supposed to be gold which was produced from the amalgam, came up in a jar from the Evans property, the first cleaning of the plate.

Q. Did you ever have any discussion with Langer, and I want to confine this to any time when the McTavishes were present, I know you did have at some other time, but do not answer the question unless the McTavishes were present, was there any discussion in their presence with Langer, about Langer's knowledge or experience in regard to mines?

Mr. DAVIS: At what date?

Mr. FARRIS: Q. Any date, and then I will ask him more particularly, but first I want to know if there was any discussion?—A. I wouldn't like to swear there was any discussion.

10 Q. You could not differentiate in your mind whether they were present or whether you were alone with him?—A. No, I couldn't be positive.

Mr. FARRIS: Your witness.

Mr. DAVIS: What time did your lordship intend to adjourn?

THE COURT: Would you like to go on now until five or start earlier in the morning, say ten o'clock?

Mr. DAVIS: I would rather start early in the morning.

Mr. FARRIS: Unfortunately, my lord, I have a matter coming up with Mr. Harold Robertson. It is in the Police Court, and I think they begin at 9.30, and I am afraid I cannot be back by ten o'clock.

20 THE COURT: In a case where it is a question of fact, I like to get a fresh start in the morning. We could start at ten o'clock and stop at four. That will give you gentlemen an opportunity to attend to your own business. This will be the cross-examination, Mr. Farris, and Mr. Walkem is here, so it will not matter if you are a little late.

December 7th, 1928.

(Court resumed pursuant to Adjournment.)

Cross-examination.

CROSS-EXAMINATION BY MR. DAVIS.

Q. You have known Mr. Langer and had known him for some time before you introduced him to Mr. McTavish, did you not?—A. Yes.

30 Q. You had known him socially as well as otherwise?—A. Not in connection with business.

Q. You had visited and dined at his house?—A. Not at that time.

Q. Well, afterwards; you had at some time?—A. Not until after I had introduced him to Mr. McTavish.

Q. Well, after that?—A. Yes.

Q. Yes. You have spoken about various statements in connection with the mine, the Alamo and the Evans, that were made to Langer by yourself or by the McTavishes in your presence. Those were all statements contained in these various reports, were they not?—A. They were statements  
40 that those various reports would corroborate.

Q. They were statements contained in various reports. The statements you made to Langer were taken from the various reports, were they not?—A. Yes, and from what the McTavishes had.

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Cross-exa-  
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Q. And what McTavish said were taken from the report also?—A. On what McTavish told me also. I did not finish the first part of that.

Q. And what McTavish told you was taken from the reports also?—  
A. From reports and verbal confirmations.

Q. By whom?—A. McTavish told me.

Q. Wait now.

Mr. WALKEM: Let him answer.

Mr. DAVIS: He is not answering the question.

Mr. WALKEM: He is.

THE COURT: If he can name the parties all right. If he does not remember all right.

Mr. DAVIS: Q. A verbal conversation by whom?—A. By Shepp.

Q. Who was Shepp?—A. Shepp was a man. I am telling you what McTavish told me.

Q. I see?—A. That Shepp was the man who had the Black Jack property.

Q. I see?—A. There was an arrangement entered into between Alamo Mines Limited and Shepp, or the owner of the Black Jack property by which the Alamo would acquire the Black Jack, and part of the condition was that they were to provide employment for Shepp on the Alamo property as I understand it, and Shepp had been employed on the Alamo property under McGuigan when this development work was being done.

Q. You say these statements contained in the various reports were contained also by this man Shepp, is that right, certain of the statements?—  
A. Certain of the statements.

Q. But there was nothing stated either by you or by the McTavishes to Langer so far as you know that was not contained in these various reports that we have had?—A. You will appreciate that I have not seen those reports and I don't know what happened.

Q. You heard the reports read here?—A. No, I was not here.

Q. Did you report anything to Langer that did not come either from the reports that you saw or from McTavish's statements as it was contained in the reports?—A. I stated to Langer—

Q. Can't you answer that question without stating what you stated to Langer? Will you read the question? (*Stenographer reads*: "Did you report anything to Langer that did not come either from the reports that you saw or from McTavish's statement as it was contained in the reports?")?—A. Shepp's confirmation was contained in the reports.

Q. I am not talking of confirmations, I am talking of statements, not about the confirmation of the statements?—A. Statements that I made to Mr. Langer would be the statements that would be confirmed by the reports and statements that McTavish Brothers may have made to me that I believed to be facts.

Q. And they were contained in these reports?—A. Not necessarily.

Q. Can you tell me a statement which was made that was in the reports?  
—A. Shepp's statement is in the report.

Q. Shepp only confirms the statement in the report. Didn't he? That is your own statement. Be frank about this?—A. I am trying to be.

Q. Yes.

Mr. FARRIS: I do not think that is a fair statement in view of Mr. Howard having said that he has not read these reports. You are asking if there are any reports.

Mr. DAVIS: That is not the last question at all, when I made that remark.

Mr. FARRIS: It is right on that.

10 Mr. DAVIS: No, it is not?—A. Let me have that question.

Mr. DAVIS: Will you read the question?

(*Stenographer reads*: "Can you tell me a statement which was made that was in the report?—A. Shepp's statement is in the report.

Q. Shepp only confirms the statement in the report, didn't he? That is your own statement. Be frank about this?—A. I am trying to be.

Q. Yes.")

20 Q. Now you can easily see, can't you? You can understand this, I am asking whether any statements were made to Langer which so far as you know, which you know by either yourself or either of the McTavishes that were not contained in these reports and you said that Shepp, that Shepp's was not contained and you have already said that Shepp only confirmed the statement in the report, so that the statement of Shepp does not get us any ahead. Do you say that you never saw these reports or read them before?—A. Yes, but for some time I have not been thinking of them.

Q. They were read at this meeting at Langer's house?—A. The reports were not read.

30 Q. They were there, were they not?—A. They were there, not all of the reports. I don't think any of the reports were there. The reports might have been referred to, but I don't think they were read.

Q. And the statements made by McTavishes and you at Langer's house purported to be statements in the reports?—A. That the reports would confirm.

Q. These statements were taken from the reports, isn't that right?—A. Yes.

Q. Now, the reports, a number or all of them, were produced, were they not, and handed to Langer before his first examination of the mine?—A. Yes.

40 Q. So that he had those. He kept them, too. I think you stated that already?—A. Yes.

Q. He kept these reports that were handed to him, and they were all the reports that we had here except this blue print of this pencil sketch if we can call that a report. That is correct?—A. The pencilled sketch was not there.

Q. The others were there?—A. The others were there, yes.

Q. And he took them when you gave them to him and kept them, and kept them so far as you know right along until after the 17th of

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No. 19.

Percival  
James  
Howard.

Cross-exa-  
mination—  
*continued.*

*In the  
Supreme  
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Defendant's  
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No. 19.  
Percival  
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Cross-exa-  
mination—  
*continued.*

November, 1927, when the final contract was made. Isn't that right?—  
Yes, so far as I know.

THE COURT: That is these reports you are referring to.

Mr. DAVIS: Yes.

Q. And as you say there were various discussions from time to time  
in connection with the property both before you went down and made  
that examination, which was in September 1926, was it not?—A.  
September 1926, yes.

Q. And when you went down—at least, he did, in November 1926.  
You did not go down the second time?—A. No.

Q. And all up to the 17th of November when this final contract was  
signed it was discussed more or less as to what the mine was worth and  
what was there and everything of that sort, isn't that so?—A. There  
was not very much discussion regarding the Alamo. The Alamo was  
accepted. The reports and statements made in connection with the Alamo  
were accepted as facts.

Q. Have I to go back to that again? There were no statements made  
to him that were not contained in the reports, is that not correct?—I  
think that is correct.

THE COURT: What?—A. I think that is correct.

Mr. DAVIS: Yes.

Q. And Langer had had possession of these from the time you mentioned  
and the statements had been discussed with him. Now, Langer knew just  
as well as you knew that all of these statements made to him came from  
the various reports, isn't that so?—A. If he read the report.

Q. Yes, if he read the reports he would know that. Now on this  
first occasion that you went down to the mine there was yourself, Langer  
and one of the McTavishs, which one?—A. D. N.

Q. Which is D. N.?—A. The one with the bald head.

Mr. DAVIS: I see we have a witness who wants to be funny.

THE COURT: You had better have that eliminated from the notes.

Mr. DAVIS: Yes.

Q. A number of samples were taken on that occasion?—A. Yes.

Q. Who took these samples?—A. Barnes, Mr. Langer, D. N. McTavish  
and myself went up and we all contributed to taking samples.

Q. I did not ask that. Who took them? What do you understand  
by taking a sample?—A. There was no chisel samples taken.

THE COURT: Q. Who picked them?—A. I picked some, Mr. Langer  
picked some, Mr. Barnes picked some.

Mr. DAVIS: Q. How many were picked altogether?—A. Samples?

Q. Yes?—A. The samples that were picked by Mr. Langer were  
kept separate. Those that Mr. Barnes and I picked I think were mixed  
together.

Q. We know the number of samples that were assayed. Whose  
samples were assayed? Who took these samples that were assayed?  
—A. My recollection of it—

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Q. Yes?—A. The samples Mr. Langer had taken, one assay was made on those. The other samples, there was also one made on those, and I think the whole thing was mixed together and an assay made on the whole thing. I think there were three assays or possibly four.

Q. You are away off on that. We won't bother about it. Did you take the samples into the assayer? Langer took them, didn't he?—A. Yes. I was with him when he took them the last time. I went with him with some of the samples.

Q. You did not take any of the samples to the assayer yourself. 10 They were taken by Langer?—A. Yes.

Q. Why do you hesitate?—A. I am not hesitating.

Q. None of the samples were taken by McTavish, isn't that correct? —A. Yes, the samples were left in Mr. Langer's charge when he came back from the trip.

Q. I am getting at the question now who took them. McTavish did not take them. Some were taken by Barnes, according to you, and some by Langer and some by you?—A. Yes.

Q. And those samples were taken so far as you can judge, were taken as fairly as possible?—A. At that time we thought we were getting a 20 fair sample.

Q. Yes, I would think so, and they were taken practically under the direction of Langer, weren't they?—A. Well, Mr. Langer took his own and anybody was at liberty to take any sample at any time. I was at liberty to pick up wherever I chose. Mr. Langer picked his up where he was. Mr. Langer did not tell me to pick up any particular part. I picked up some, and neither did he tell Mr. Barnes, and Mr. Langer picked up some samples himself.

THE COURT: Q. Were these taken in the opening, in the glory hole? There was plenty of loose stuff?—A. In the glory hole and in the shaft.

30 Q. In the glory hole there was plenty of light?—A. The glory hole is an open cut in the mountain side.

Mr. DAVIS: Q. There was plenty of light in the shaft also?—A. Yes, it was only 35 feet down.

THE COURT: Q. And your object was to see the value of the property. That is what you were there for?—A. Yes.

Mr. DAVIS: Q. Langer wanted to get control of this mine after he decided to go into it, didn't he?—A. Mr. Langer wanted to have the controlling interest.

Q. What was the difficulty about answering that question, if I am 40 not rude?

Mr. FARRIS: Why insinuate that there was difficulty. He answered frankly.

Mr. DAVIS: Why did you have to consider it so long? There was no question about it whatever?—A. Probably my brain is not functioning very quickly.

Mr. DAVIS: Q. The shares had been selling at 25c. a share, hadn't they?—A. Yes, some sold at 50.

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Defendant's  
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No. 19.  
Percival  
James  
Howard.

Cross-exa-  
mination—  
*continued.*

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 No. 19.  
 Percival James Howard.  
 Cross-examination—  
*continued.*
- Q. At which?—A. At 50.
- Q. I think you are wrong there. Did you sell any at 50?—A. Yes.
- Q. That was prior to introducing Langer to it?—A. Oh yes, a year prior, practically.
- Q. There was only one sale made at 50c., is that right?—A. No, three.
- Q. To whom?—A. Mrs. Anna Wilson, John Ireland, John Peene.
- Q. They were made by you?—A. The first sale to Mrs. Anna Wilson was made by me and Mr. D. N. McTavish accompanying me to Ruby Creek.
- Q. Were any additional shares given to these people?—A. Yes, 10 afterwards.
- Q. Sufficient additional shares to bring them up to 25c. a share?—  
 A. Yes, that was after Mr. Langer came in.
- Q. Jackson is dead, I believe, the one who made these reports?—  
 A. I do not know.
- Q. You do not know as to that?—A. No.
- Q. Now, Langer told you that he had been in mining districts in South Africa, didn't he?—A. Yes.
- Q. And he told you that he built the first cyanide mine there?—  
 A. Cyanide plant. 20
- Q. I beg your pardon, cyanide plant, he told you that?—A. Yes.
- Q. And he had some experience in buying a dump he said was salted?—  
 A. He bought a tailings dump.
- Q. And then he took a course in assaying. He told you that, too?—  
 A. Yes, he took a course in assaying.
- Q. In San Francisco?—A. Yes.
- Q. So that he would not be taken in again?—A. He did not rely on assays made by other—
- Q. By other people?—A. Yes.
- Q. And he did not rely very much on mining engineers either 30 apparently?—A. He never said.
- Q. He was a self-reliant man who relied pretty much on himself, isn't that correct?—A. He was a self-reliant man.
- Q. And he relied pretty much on himself. Isn't that correct from your experiences with him?—A. Yes.
- Q. You believed McGuigan's various statements, did you not?—A. Yes.
- Q. The McTavishes did?—A. Yes, I heard them state them as facts and they stated them to me and I am sure they believed them.
- Q. Exactly, and Langer believed them?—A. Yes.
- Q. You had some conversations with Mr. Bacon?—A. Yes. 40
- Q. He is a mining engineer, is he not, of high standing?—A. Yes, very high standing.
- Q. Pardon?—A. He is a mining engineer.
- Q. What is that last answer. Will you read that, please. (*Stenographer reads: "He is a mining engineer, is he not, of high standing?—A. Yes, very high standing. Q. Pardon?—A. He is a mining engineer."*)

Mr. DAVIS : Are you going to change that?—A. I want to explain what I meant by that. Prior to association with the Alamo I had occasion to make enquiries regarding Mr. Bacon and I went to the Chamber of Mines and the President of the Chamber of Mines told me that Mr. Bacon was a man that there was not enough gold in British Columbia to make him prescribe to something that was not right. Bacon was not always right.

Q. I do not think that there is a mining engineer, or a lawyer or anybody else that is always right. Mr. Bacon talked to you about the Evans property?—A. Yes.

Q. He told you that he could go down and operate it profitably himself?—A. Yes, he said that he could.

Q. Evans had been making a living out of that Evans property for a couple of years, hadn't he?—A. McTavish told me so.

Q. And Bacon told you so, didn't he?—A. No, Bacon did not tell me.

Q. That is in Bacon's report, isn't it? You read Bacon's report, didn't you?—A. Some time ago, I don't recall.

Q. It is one of the other reports that I will come to later?—A. I thought you referred to my conversation with Mr. Bacon?

Q. No, no?—A. I don't know just which reports it is in. I remember seeing it in one of the reports.

Q. Yes, I know it is. I thought it was Bacon. Now, you were honest throughout this transaction, were you not?—A. Yes.

Q. The McTavishes were honest, were they not?—A. So far as I know.

Q. Well, you haven't any doubt about it, have you?—A. No.

Q. That is all.

Mr. FARRIS : Just a minute, please. That is all, thanks.

(Witness aside.)

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No. 20.

Evidence of David Barnes.

30 DAVID BARNES, a witness on behalf of the Defendant, being first duly sworn, testified as follows :

DIRECT EXAMINATION BY MR. FARRIS :

Q. What is your occupation or profession, Mr. Barnes?—A. Mining.

Q. How long have you followed that?—A. Practically all my life.

Q. Have you had experience in British Columbia?—A. In one locality.

Q. Take this period, 1925, before you went to the Alamo where were your headquarters at that time?—A. At Texada Island, Vananda.

40 Q. And prior to that where was your home?—A. Prior to 1925?

Q. Yes?—A. In Seattle.



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tinued.

Q. Where are you living now?—Seattle.

Q. That is your regular home?—A. Yes.

Q. And has been for a number of years?—A. Since 1912.

Q. When did you first become connected with the Alamo Gold Mines?

—A. In the spring of 1925.

Q. Who interested you in that?—A. George Thomas.

Q. I beg your pardon?—A. George Thomas.

Q. Is he the Thomas that has been referred to here as one of the five promoters of this company?—A. Yes.

Q. Who were the others in that group?—A. W. B. Code, D. N. 10  
McTavish, P. D. McTavish and myself.

Q. Yes, that made the five. Now, who promoted, who owned this property at that time?—A. W. B. Code.

Q. You say that it was Thomas who got you into it?—A. Yes.

Q. Now, there was a company incorporated?—A. Yes.

Q. Called the Alamo Gold Mines Limited?—Yes.

Q. The company involved in this action. I believe you five men were the directors of the company as well?—A. Yes.

Q. Was there any arrangement made by Alamo Gold Mines for the acquisition of this mine from Code?—A. They were to buy the mine off 20  
Code for \$25,000 payable in royalty.

THE COURT: Speak up.—A. Royalties.

Mr. FARRIS: Q. Yes?—A. And the company was organised in the spring of 1925, and as I understood it—

Mr. DAVIS: Is this his own knowledge?

Mr. FARRIS: I want what you understood from your co-directors, what the arrangement was.

Mr. DAVIS: Conversations between him and his co-directors is not evidence.

THE COURT: If it is the plaintiff could give evidence of McTavish asking 30  
him and what they told him.

Mr. FARRIS: There is an action against the Alamo Gold Mines as well, my lord.

THE COURT: It does not make much difference which heading it goes in under What did he learn from McTavish. They looked after the incorporation part.

Mr. FARRIS: This is more than the incorporation. This is the arrangement by the Alamo Gold Mine with one of their directors as to the purchase price of this property and the issue comes whether the ultimate purchase price recited in the record is bona fide or fictitious and surely what 40  
this director in conversation with the others understood to be the actual price is material on that question whether we get it from McTavish or anybody else.

Mr. DAVIS: Surely not what was understood, but what was said at the best.

Mr. FARRIS: What was understood, showing the good faith.

THE COURT: Surely that question—

Mr. FARRIS : Q. Did you discuss the purchase price of the shares with your other directors?—A. Yes.

Q. What was the discussion?—A. The discussion was that we were going to organize a company for three millions. I suggested we organize for 500,000 or something small like that and they decided they needed a lot of stock and all the stock was to be issued. This is my understanding. This is the way I thought it was.

Mr. DAVIS : I object.

10 Mr. FARRIS : Q. Based on what?—A. They told me all the stock would be issued to Code and in turn, he was to turn back 300,000 shares to us and 300,000 shares apiece was to be put in the treasury for development purposes.

THE COURT : What did you get?

A. 300,000 shares.

Q. You were treated the same as the rest of you?—A. Yes.

Mr. FARRIS : Q. You said something in the start about \$25,000. Was this in addition to or in substitution—A. In addition to.

20 Q. After the company was incorporated the property was acquired, what did you do in connection with the business?—A. I did not do but very little. George Thomas was to handle the property down there and he delayed the thing for a year and McTavish Brothers said, "I guess it is up to you to go down and open up and run it." And so I left the B.C. Gold Mine and went down and started operations on the property.

Q. About when did you get down there, Mr. Barnes?—A. About the 1st of May, 1926.

Q. What did you undertake to do at that time?—A. I opened up the glory hole and put up the men.

30 Q. On the Evans property?—A. Yes, I put up a compressor and after I got the compressor up I found the water played out and we had to move that. It was useless. I put the mill up and started to take out rock from the glory hole, but I had to haul it about half a mile. I found out that did not pay and I built a road up to the shaft, and that shaft at that time was about 21 feet deep and I sunk it 31 feet, ten feet, and I milled the ore that came out of the shaft, and I sent the ore, I know I brought it, the amalgam to the McTavish Brothers, and after I got the shaft down 31 feet, the air was so bad I nearly lost a man on account of the gas getting in and I had to abandon that, and I went down the hill and started to tunnel in order to cut the vein 71 or 72 feet deep under the 31 foot shaft.

40 Q. Yes, I want to go back a little on that. How was your health at that time?—A. Good.

Q. You had had an operation?—A. Not at that time.

Q. You had had an operation prior to that?—A. No, I had the operation in February, 1926-27.

Q. Yes, I beg your pardon. All right. We will go on. Just continue. What took place during 1926?—A. Well, I had to abandon working the mill and I put in all the time working on the tunnel, cutting a ledge about 71 or 72

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feet deep and I continued that until; well, Mr. Langer, during that time, Mr. Langer and Mr. D. N. McTavish and Mr. Howard came down to the property and sampled everything we had and I explained what I was driving at and what I was doing and everything was satisfactory.

*Q.* What were you driving at?—*A.* To get under this ore, and perhaps take out enough to pay expenses. We were having a hard time for money.

*Q.* Yes, all right, go on. Give us a sketch of the thing?—*A.* I continued to work in that tunnel until I cut the vein and I got several wires to hurry up and cut that they were coming down again. I believe, I don't know the exact date, but it was around the 1st of November or the latter part of October or the 1st of November that Mr. Langer and D. N. McTavish came down and I had cut the values—

*Q.* What? You had what?—*A.* I had cut the vein or cut the deposit where the values were and found values.

*Q.* Then what was done then?—*A.* After they was there we decided to go down to the foot of the hill. I tried to explain to them my idea of mining, rather than to sink the shaft and do the work up there that we would go down the hill and cut and drive a tunnel 360 feet and I had just put up a—I was going to put in an upraise from the tunnel that cut the ledge 71 feet, and tram the ore down the hill and would try to make expenses and after Mr. Langer and Mr. McTavish came they decided to abandon that on account of the mill being small and drive this tunnel and develop a large body of ore and put in anywhere from a hundred to two hundred mill.

*Q.* Go on, what was done?—*A.* I proceeded at once to get in shape for driving this tunnel. I drove this tunnel; I got started along about the 1st of December to drive the tunnel and had to put up a compressor.

*Q.* That would be December 1926?—*A.* Yes, I drove the tunnel continually, and I was on the job—practically all the time until along the 1st of February I got knocked out and I did not know what was the matter with me. I went to several doctors. Some said that I had typhoid fever and some said that it was heart trouble.

*Q.* Finally you got to a doctor?—*A.* Yes, I found a doctor in Seattle, who told me that it was my tonsils.

*Q.* You had your tonsils taken out?—*A.* Yes.

*Q.* What date was that?—*A.* Along about the 13th of February.

*Q.* 1927?—*A.* Yes.

*Q.* How long did you stay under treatment in Seattle with the doctor?

—*A.* Well, about ten days.

*Q.* And then where did you go?—*A.* Back to the mine.

*Q.* What shape were you in after that?—*A.* Very good.

*Q.* Your health improved, did it?—*A.* Yes.

*Q.* Were you able to attend to your duties?—*A.* Yes.

*Q.* And did you attend to them?—*A.* Yes.

*Q.* There is a suggestion that from that time on you were not well and that you were unable to do your work?

Mr. DAVIS: Who suggested that?

Mr. FARRIS : Mr. McTavish in a letter.

Mr. DAVIS : We say not.

Mr. FARRIS : Q. What do you say about that?—A. I was at the mine doing everything possible I could do. We made the footings and everything went just as smooth as it could.

Q. All right, go on?—A. I drove the tunnel continually. I was there the first of March. I always paid from the 3rd to the 5th. I was there before pay day and I kept on driving the tunnel until I got where I figured the value ought to be and I could not find anything and that was along the latter part of April. I wired to Vancouver that it was absolutely necessary that the big people in the game should come down there, that I had closed down on account I could not find any values. I got a notice from—

Mr. DAVIS : I submit this document should be produced. My learned friend is giving evidence of written communication.

THE COURT : Q. You wired to Vancouver?—A. Yes.

THE COURT : Is that telegram in?

Mr. FARRIS : No. You haven't any other wires now?—A. No, I did not keep any copy.

Mr. ST. JOHN : Q. What is the date? We will produce anything we have?—A. I wired to McTavish Brothers.

Q. What time?—A. The latter part of April.

Mr. FARRIS : All right. Then what happened?

Mr. ST. JOHN : Just a minute.

Mr. FARRIS : We will see if we can locate that.

Mr. ST. JOHN : What is in this telegram?

Mr. DAVIS : A telegram there about the closing down.

THE COURT : The point is that he told them that there were no values and that he would have to close down. That is what he said already.

Q. Did the defendant come down, Mr. Langer?—A. No, no one came down.

Q. Did you see him from that time until the fall?—A. I did not see him from that time until last April or May in Vancouver.

Q. Of this year?—A. Yes.

Mr. DAVIS : This is the one undoubtedly.

Mr. FARRIS : Q. This is a telegram on April the 30th 1927, sent from Sumpter, Oregon. Would that be the place?—A. Yes.

Q. The McTavish Brothers, purporting to be sent by David Barnes :

“Have gone quite a distance beyond where vein ought to be stop found no trace of it shut down today till survey is made about may fifth sorry one of you could not come down let me know about Alamo I can come to Vancouver if necessary.”

Would that be the wire?—A. I either wired or wrote that there was no value.

Q. You say here that you found no trace of it. I will put this in anyway. (*Telegram referred to marked Exhibit No. 42.*)

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Q. What was the next thing that was done, Mr. Barnes?—A. I closed down and I would not say whether it was a wire or a letter I got, but I think it was a wire stating—

Mr. DAVIS : Wait a moment.

Mr. FARRIS : Have you got that wire ?

THE COURT : A letter or a wire, which was it?—A. I think it was a wire.

Mr. FARRIS : This was about what date?—A. This was about the 1st of May.

Mr. FARRIS : Here is one April the 30th.

Mr. DAVIS : That is the one which was put in. 10

Mr. FARRIS : This is the reply.

Mr. DAVIS : Oh.

THE COURT : Where does it come from, Mr. Walkem ?

Mr. WALKEM : That comes from Mr. Barnes' letter file.

Mr. DAVIS : We agree that telegram was received. It is only a copy.

Mr. FARRIS : It is to David Barnes.

“Continue work in tunnel until survey made stop rush work on Alamo tunnel.

McTavish Brothers.”

*(Telegram referred to marked Exhibit No. 43.)* 20

THE COURT : That is the same date ?

Mr. FARRIS : That is on the same date.

Q. What was done then, Mr. Barnes?—A. That was when I received the telegram to go 100 feet. I received that telegram to go another 100 feet.

Mr. DAVIS : Now, wait. I object. Please do not give the contents of any letters or telegrams.

Mr. FARRIS : Here is a telegram on your file dated May 5th from McTavish Brothers.

Mr. ST. JOHN : We have the carbon copy of it here.

Mr. FARRIS : This one says : 30

“Continue pushing work on Evans tunnel wire total footage to date. When can surveyor finish job wire results survey soon as completed. When will snow and frost be gone from Alamo so work can be carried on properly. How is road Baker to Granite. Wire answer.”

*(Telegram produced marked Exhibit No. 44.)*

Mr. ST. JOHN : Then there is a letter of the same date.

Mr. DAVIS : Do you want the letter of that date ?

Mr. FARRIS : Yes.

Mr. WALKEM : There is the original. 40

Mr. FARRIS : It confirms—I do not know that it adds anything unless you want it in.

Mr. DAVIS : Yes, I would.

Mr. FARRIS : This letter is the same date and it confirms the wire and then goes on :

“ Mr. Langer is very anxious to finish the Evans tunnel, so that we will know definitely what to expect there. There is a possibility that you may have to go in 100 feet or more, depending on the dip of the vein and also the dip of the porphyry. He thinks it would be wise to finish this work and then have the same men available to do the work on the Alamo. At that time frost would be sufficiently out of the Alamo and the hill side sufficiently dry to permit work being carried on in the most advantageous manner and at the least possible cost. We trust, therefore, that you have wired us answering all the questions contained in the wire and also letting us know how the road is over the mountain, or in other words, whether or not it will be possible to motor from Baker City out to the mine. The weather is a little better here and we trust it is changing for the better down there. Hoping to hear from you—”

(Letter referred to marked Exhibit No. 45.)

Q. Having received the wire and that letter then what did you do?—  
A. As soon as possible I got the men back and did not drive ahead in the tunnel, but cross cut the dyke in the lower tunnel to see if I could pick up the vein.

Q. Yes?—A. And also in the upper tunnel, but found no values.

Q. Found no values?—A. No.

Q. Then what happened?—A. I took the men and went down to clean out the Alamo mine.

Q. That was the first work done on the Alamo by you people?—A. Yes.

Q. That would be about what date?—A. About the 20th of May, I imagine.

Q. 1927?—A. Yes, but I did have the survey made previous to that, but with that Mr. Fellows made a survey to see if I was right about the location of the vein in the tunnel.

Q. Would this Exhibit 18 help in describing what you did at the Alamo. I want you to give his lordship and jury a general idea of what your activities were at the Alamo?—A. Well, this tunnel No. 2; Tunnel No. 1 is on the other side of the hill. It is not located right on this blueprint and I went up and took my men; I went up to clean out tunnel No. 2. It was very soft and slippery and slimy and I went in to where I could not hold the ground on account of the moisture. It run too much and I decided to let that dry out, and started the tunnel No. 3 to clean that out.

Q. That is shown on the lower left-hand corner?—A. And I went into tunnel No. 3. I went in until it would not hold the ground on account of the wet and I went back to tunnel No. 2 and finally got through.

Q. How far did you get?—A. To the raise.

Q. Would that be the 400 feet showing there?—A. I never measured it, but it was right in that neighbourhood.

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*Q.* Would that approximately take you to where this section comes through?—*A.* Yes.

*Q.* Now, have you completed your activities?—*A.* On tunnel No. 2 outside of panning it and seeing if I could get values which I could not then I came back and kept on working on tunnel No. 3 until finally I got in the hard part about 150 feet in. I got through that and found all kinds of mud but not very much caved until we got to the porphyry dyke close to the raise.

*Q.* You were proceeding along tunnel No. 3 marked 1250 feet altogether?—*A.* Yes. 10

*Q.* As indicated on this map how far had you got when you struck the porphyry dyke?—*A.* About 1200 feet.

*Q.* From the entrance to this corner is supposed to be 1250 feet?—*A.* From the map it is.

*Q.* You say that you got in about 1200 feet?—*A.* I never measured it, but I figured 1200 feet.

*Q.* You came into the porphyry ledge or dyke, you call it?—*A.* Porphyry dyke.

*Q.* All right, then, what did you do?—*A.* After I finished that I went back on the Evans and started drifting on the Evans. 20

*Q.* Yes?—*A.* Went in, well, I was in there when I left, on the upper tunnel, possibly 40 or 45 feet.

*Q.* About when would it be when you left the Alamo to go back to the Evans?—*A.* It would be along about the middle of July.

*Q.* The middle of July?—*A.* I think so.

*Q.* 1927. How long do you think you had been working on the Alamo roughly?—*A.* Well, let us see, I had four men, I spent \$1405. on the Alamo. I was on the Alamo a little better than a month.

*Q.* Now, did anybody come down from Vancouver?—*A.* Along the latter part of June D. N. McTavish came down. 30

*Q.* Did you have any conversation with him?—*A.* Mr. D. N.?

*Q.* Yes?—*A.* Yes sir.

*Q.* Where were you operating at the time he got down?—*A.* We were cleaning out the Alamo when he got down there.

*Q.* What did you report to him?—*A.* I reported to him that I considered it useless to go ahead, that I could not find any values and that I could not figure any more use spending any more money.

*Q.* What property were you referring to when you told him that?—*A.* Referring to both of them.

Mr. DAVIS: What is this again? 40

Mr. FARRIS: He said he did not see much use going ahead, that he could not find any values in either properties.

Mr. DAVIS: Has he given the time?

Mr. FARRIS: *Q.* When Mr. McTavish came down, what time do you say it was?—*A.* Along the latter part of June, some time after the middle of June.

*Q.* Were you working on the Alamo at that time?—*A.* Yes.

Q. What did Mr. McTavish say, give the full conversation?—A. Mr. McTavish said that values were bound to be in there according to the report. I told him that I could not find any on the dump—I found a little on the surface and on dump 3, but if you haven't any values in there and no ore is taken out of the mine it is of no value.

Q. What dump are you referring to?—A. Dump No. 3.

Q. Of which?—A. The Alamo mine.

Q. And what did Mr. McTavish say to that?—A. He just insisted that the values had to be in there. I told him that he had better quit and  
10 get another property for the stockholders of the Alamo mine. And he said he could not quit.

Q. Anything more? Tell it as fully as you can?—A. He said that he could not quit. I said "Why"? He said, "We have too many stockholders, we have to go ahead." I suggested that it would be better to get another property where we might make good for them.

Q. Was there any discussion about Mr. Langer?—A. Well, yes, there was. I said, "I cannot see why Mr. Langer does not come down here." And he said, "That he was an awful busy man and that it was just a mere trifle for him—that he did not have the time to spare about that," and I  
20 said—may I repeat what I said?

Q. Yes?—A. I said, "To hell with Mr. Langer if he is too busy to come down here, then he has no business to be in the mine."

Q. Now, then, what was the result of your conversation with him, Mr. McTavish?—A. Why he insisted to keep going ahead on the Evans and let the Alamo dry up until we could get through the porphyry dyke and along about the 20th of July he left and come to Vancouver or Portland, or some place. He left, but came back.

Q. He was down there quite a while?—A. Probably ten days at that time. I had this conversation with him and he left and came back and  
30 he and I left to look at that property in Nevada, to be gone four days, but we were gone eight days and when we come back, why, I don't recall his going to the mine again. I think he might have, but he was not there long if he did.

Q. What time would it be in your opinion when he left to come north?  
—A. Oh, around about the 25th of July some time.

Q. Had there been any discussion about your leaving?—A. Yes.

Q. Tell us about that?—A. I told him that I wanted to leave and he said that he could not see why on account of me being interested down there. I told him that I did not figure my interest amounted to anything,  
40 so he talked it over and said, "If that is the way you feel about it, all right. Will you stay until Mr. Fellows can come down?" I told him I would, that I would stay until the 15th of August.

Q. I am not clear that you told the reason that you wanted to quit?—  
A. I told him that I was dissatisfied with this thing, that I did not think there was anything of value that I could find and I did not want to spend anybody else's money where I would not spend my own. I said that I

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could not see any chance of finding anything and that I did not want to spend money on it.

*Q.* What did you base that statement on?—*A.* I could not find any values. I could not see any chance of finding any. When I cross cut the dyke in the Evans I found it absolutely blank and right on line and there was no sign of a fault to me. I could not figure any use spending any more money.

*Q.* Then did you stay there until the middle of August?—*A.* Until the 11th.

*Q.* And you continued working?—*A.* Yes.

*Q.* Did you have any communication with McTavish about the McGuigan report?—*A.* About the McGuigan report? 10

*Q.* Yes?—*A.* I told him I did not believe it after I had done my investigating, that I could not see where there was any foundation for any of it. I could find gold on the surface, but not on the dumps, in the lower dumps.

*Q.* Then when you left along about the middle of August what did you do then?—*A.* I came to Seattle.

*Q.* Yes?—*A.* And from Seattle to Bellingham and then back to Seattle and then to Vancouver. 20

*Q.* Did you see the McTavishs in Vancouver?—*A.* Yes.

*Q.* Can you remember about when it would be?—*A.* It must have been along about the 17th or 18th of August.

*Q.* Yes, did you see Mr. Langer at that time?—*A.* No, sir.

*Q.* Which of the McTavishs or both or did you see them both?—*A.* I think I seen them both.

*Q.* Whereabouts did you see them?—*A.* In their office.

*Q.* What discussion took place there?—*A.* I told them—Evans had been doing some prospecting on the Alamo mountain, not on the Alamo ground, but the mountain. He had located some claims and had quite a good showing and as near as I could trace it out it appeared to me that it might have went in the upper end of the Alamo ground and it was quite a good showing. I told them about it and they seemed very well pleased about it. A little later I saw them and said I was away off, that Mr. Fellows made a survey and never came anywhere near touching. 30

*Q.* How much later?—*A.* I think this was about October 5th or 6th.

*Q.* Are you still a director of that company?—*A.* No sir.

*Q.* When did you cease to be one?—*A.* About that time, that is the time, October 5th or 6th, the first part of October.

*Q.* 1927?—*A.* Yes. 40

*Q.* When were you put off or resigned, or how did you get off?—*A.* I resigned.

*Q.* Was there any discussion at that time with the McTavishs about your resigning?—*A.* The only thing I recall at that time, I don't know whether it was that time or later, they said that I got them into the Alamo and they were not sorry even though it was not what it ought to have been.

Q. I want a little more detail if I can get it, a little more detail about what they said about your being away off on this find that Evans made which you at one time seemed to think would run into the Alamo?—

A. What they said about it?

Q. Yes?—A. They said that I was mistaken, that it did not go through there. I told them what I thought the values were.

Q. If that had gone where you thought it was would it have been in any of these tunnels?—A. No. The Alamo ground; it was beyond any of the workings; it was up the hill.

10 Q. I want to ask you as to the correctness of some of the statements in this letter exhibit 24, a letter written by Mr. D. N. McTavish to Mr. Langer?

Mr. DAVIS: What date is that?

Mr. FARRIS: It is August 13th, 1927, Mr. Davis. It is written to Mr. Langer in the Old Country, and the second paragraph he tells them that he left and drove down to Baker.

THE COURT: What is the date?

Mr. FARRIS: August 13th, 1927. Just to refresh all our minds I will read a few paragraphs:

20 "I left shortly after seeing you and drove down to Baker. The weather was very hot——" and so on.

That would be his getting down there in June some time?—A. Yes.

Q. "I called in Mr. Fellows——"

"The work had gone on steadily in the upper tunnel and when I left two weeks ago they were in 40 feet."

Evidently he left the end of July, because this letter is dated August the 13th?—A. Yes.

30 Q. "There was no change or no indications to show that there had been any fault or slip. I called in Mr. Fellows, the engineer who made the survey of the tunnel and he agreed with Mr. Barnes that the only thing to do was to drive straight ahead." Is that correct?—A. Yes.

Q. Well, is that consistent with your statement that there was no value there?—A. That is the only way I could find value, that was, to drive on the strike of the ledge straight ahead.

40 Q. "We then decided that if there was a considerable amount of driving to be done that we should take the pipe out of the lower tunnel and run it up the hole to the upper tunnel and do this work by the use of air. While it would take four or five days to make this change I thought it would be time well spent as they could then make an average of 6 feet a day instead of 2. I left instructions for them to wire us just as soon as there was any change that might be of interest, otherwise to keep the work going as fast as they could. Mr. Barnes succeeded in getting air circulating in the Alamo tunnel and ultimately got in 1,200 feet."

That is true?—A. Yes.

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Q. "Here he came to the big porphyry dyke that is mentioned in the reports. This porphyry, as you will remember, is something like sandy clay and at this point it had caved very badly, filling the tunnel for several feet back. It was broken up in very small particles and being wet whenever they attempted to take a shovel full out near the top it would run very energetically right back to the floor of the tunnel. Mr. Fellows suggested that since the weather had turned very hot this might dry out very materially in the next few weeks and he advised giving it a chance. If it is not sufficiently dried out it might be necessary to tunnel around it. It is very encouraging to find that the large porphyry dyke is just as indicated in the various reports." 10

Did you find any values in that porphyry dyke?—A. No.

Q. Did you try to find them?—A. Yes.

Q. Did you report that to Mr. McTavish?—A. I told him I could find no values no place.

Mr. FARRIS : I think I might call the attention of the gentlemen of the jury as I follow it. This heading points down the bend of the tunnel, cross cuts the main vein and passed through 10 feet of mineralized porphyry running \$8.

Q. Now, then, he comes to the reference to Mr. Evans. I will read on : 20

"Mr. Evans, from whom we bought the property that bears his name has been prospecting for two years on the Alamo hill and he has found what Mr. Fellows reports as a very fine showing. It is a vein that appears to carry good values and it cuts right into our property. Mr. Barnes went up to look at it and was very much pleased. He spent some time on the hill and came to the conclusion that if our 1,200 foot tunnel were driven on some distance further it would cut this vein. However, we will know more about it when you return."

Now, you say you thought that fact was correct?—A. Yes. 30

Q. But that you learned different from McTavish later?—A. Yes.

Q. "When I reached camp I heard some intimation to the effect that Mr. Barnes had expressed dissatisfaction. I excused him on the ground that since his operation last spring he has been anything but well."

Is that true?—A. He has been well ever since the operation.

Q. "However, knowing your feelings in the matter, I made up my mind that if he gave me any opportunity there was only one thing that I could do. After being there for some days I asked him if he was sincere in the statements he had made regarding his desire to get away. He said he was." 40

I will not read any more, unless Mr. Davis wishes.

It strikes me the parts that I am concerned with for the moment have been read.

Mr. DAVIS : That is all right. It has been read already. It has been put in, except that you might read to the end of that paragraph.

Mr. FARRIS : The last paragraph ?

Mr. DAVIS : No, the one you were reading, to the end of that paragraph.

Mr. FARRIS : All right.

“ After being there for some days I asked him if he was sincere in the statements he had made regarding his desire to get away. He said he was. I presume he expected that I would try to persuade him to stay on, but I simply informed him that if a man had gotten himself into that frame of mind, then, of course, there was no use arguing with him and asked him when he would be prepared to leave. He then said that he did not wish to leave us in the lurch and that if he got reasonable holidays it might be all right. However, I paid no attention to this remark and told him that he did not need to worry about that as I had already spoken to Mr. Fellows and arranged with him to carry on until you returned. Mr. Barnes then suggested that he would carry on until the 15th, so by the time you receive this letter the work will be going on under new management.”

This is one of the last paragraphs :

“ Mr. Barnes will therefore be leaving the work on Monday. He is coming home to Seattle and will then make a trip up here to see us. At that time he will give us a verbal report of what has happened since I left and if there is anything of interest I shall pass it on to you.”

Q. You did come up, you told us ?—A. Yes.

Q. And did make a report ?—A. Yes.

Q. The same as before, that there was no value there ?—A. Yes.

Q. And you did give that to Mr. McTavish ?—A. Yes.

Q. When did you next see Mr. Langer ?—A. Along in May, April or May, 1926, '27, 1928.

Q. At any time after you were in charge of the work down at the mine, were you ever given an opportunity of a consultation with Mr. Langer ?—A. No sir, not alone.

Q. Did you ever pan over the dump at the Alamo ?—A. Yes.

Q. Did you find a good showing in the panning ?—A. No.

Q. When did you do the panning ?—A. I panned pretty nearly continuously after we started cleaning out the tunnel.

Q. And at any of these pannings were the pannings good ?—A. No.

Q. Well, now, as a mining engineer, what significance was there in that ?—A. That there wasn't any values in the mine. You would find some values on the dump if there were.

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*Q.* Did you report that to McTavish?—*A.* Yes.

*Mr. DAVIS: Q.* What date is this?—*A.* That was when D. N. was there, the latter part of June.

*Q.* Did you pan; were there any tailings down the creek, say a mile down?—*A.* I never panned down there, I never panned a mile down.

*Q.* Do you know if there were any tailings down there or not?—*A.* No, I do not. I could not see them.

*Q.* Did you ever report to McTavish or either of them that you had panned down there?—*A.* No.

*Q.* And had found showings of amalgam in the tailings?—*A.* No, sir. 10

*Mr. FARRIS:* Your witness, Mr. Davis.

CROSS-EXAMINATION BY MR. DAVIS.

*Q.* You are a mining engineer, Mr. Barnes?—*A.* I am not a graduate.

*Q.* Pardon?—*A.* I am not a graduate engineer.

*Q.* Are you or are you not a mining engineer?—*A.* I suppose you would call it that. I have been at it all my life. I have been engineer for several properties.

*Q.* But you never took any course anywhere?—*A.* No, only a short course.

*Q.* You told the McTavishs you were a mining engineer?—*A.* No. 20

*Q.* You did not put up qualifications, such as you did when I asked the question. Did you tell them that you were a mining engineer?—*A.* When I met McTavish I never talked about it.

*Q.* Did you not tell McTavishs at any time you were a mining engineer?—*A.* I don't recall ever doing it.

*Q.* Will you swear you did not?—*A.* I cannot swear to it.

*Q.* And if you did you did not give the qualifications the minute I asked you, that is, that you had not graduated?—*A.* Yes, I told them I had not graduated.

*Q.* You did tell them that?—*A.* Yes. 30

*Q.* You did tell them that you were a mining engineer? And put in that qualification. You remember now?—*A.* Well, I don't recall when I met McTavishs.

*Q.* If you never told them you were a mining engineer and you have just sworn so far as you remember you did not, why would you tell them you had not graduated?—*A.* I did not tell them that right on the start.

*Q.* I asked you at any time?—*A.* Yes, I told them I never got a chance to graduate.

*Q.* I am instructed you did not tell them any such thing, that they had to write and enquire of the Colorado School of Mines as to whether you had or not. That is the place?—*A.* Yes, that is the place I started to school. 40

*Q.* How long were you there?—*A.* I was there possibly five months.

Q. No possibly. You would know how long you were there. What do you call a semester at that school of mines?—A. That was from September to the Christmas holidays.

Q. Now, that was the time and the only time you were there?—A. Yes.

Q. You made, however, some reports on this mining property, did you not?—A. When I looked at it first, yes, I wrote a letter about it.

Q. That is your signature, isn't it?—A. Yes sir.

Q. Did you make this report on June 3rd, 1925 :

10 "The Alamo Gold Mines Limited,  
Vancouver, B.C.

Gentlemen :

"As per your request to make a surface examination of the Alamo Gold Mine, near Granite, Oregon, will say that I was on the property and adjoining properties for two and one-half days, panning the dumps and outcrops and in every case found free gold in the pannings, which I consider all pay ore. No assays were taken as I was unable to get in the tunnels to get ore in place."

Did you make that report?—A. Yes.

20 Q. Is it correct?—A. The dump is on the surface.

Q. Is it correct, what you state here, is it correct?—A. Yes, I got values.

Q. What is stated here; I will draw your attention to it again and then you can make any explanation you like :

"Panning the dumps and outcrops, and in every case found free gold in the pannings."

Did you pan the dumps on the Alamo?—A. The two upper dumps and the outcrops.

Q. You did not pan the lower dump?—A. No.

30 Q. This would be misleading : "Panning the dumps and outcrops." Wouldn't that mean you had panned all the dumps?—A. Might be at that.

Q. Will you swear you did not pan all the dumps?—A. Yes, sir.

Q. In every case where you did pan dumps and outcrops you found free gold. That is correct?—A. Yes.

40 Q. "The conditions for mining and milling are most favourable—accessibility, timber and water for all purposes. The formation is argillite and porphyry and dykes of granite cutting the formation at right angles. The vein material is quartz porphyry from 3 to 10 feet wide with a northeast and southwest trend." That is correct?—A. Yes.

Q. "The ore on the large dump." What is the large dump?—A. That must be the lower dump.

Q. The lowest tunnel of all?—A. Yes.

Q. That is the one that you said you did not pan?—A. Yes.

Q. "The ore on the large dump shows oxidization to a great depth and also from the size of the dumps shows a great amount of development

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work and from my inspection will say that I find the reports and letters written by W. H. Jackson, James McGuigan and C. A. Smith to be correct." You made that report?—A. As near as I could tell.

Q. You made that report?—A. Yes.

Q. The statements there is what you believed to be the case at the time?—A. Yes.

Q. "The Alamo is a free milling ore and with the large amount of ore that is blocked out together with the proper management and equipment can be made one of the largest paying mines in the northwest." You reported that and believed it to be true?—A. I believed it to be true at that time. (*Document referred to marked Exhibit No. 46.*) 10

Q. Is that your signature?—A. Yes sir.

Q. This is a letter, I take it, to the Alamo Mines Company.

Mr. FARRIS: Letter of what date?

Mr. DAVIS: June 3rd, 1925. To whom was the last one addressed?

THE REGISTRAR: Addressed to the Alamo Mines.

Mr. DAVIS: This is merely addressed: "Gentlemen." I presume it is the Alamo Mines. Do you know whether you addressed it to the Alamo Mines or McTavish Brothers?—A. I don't remember.

Q. "Vancouver, B.C. June 3rd, 1925. 20

"Gentlemen:

While on my inspection trip to the Alamo Mine I examined the dump and surface of the Black Jack Mine 1 mile from the famous Red Boy Mine and two miles from the Alamo Mine. I found the formation and conditions the same as the Alamo. Free milling oxidized quartz at great depth. The owner, Mr. Sheedy, run 20 tons from a 6 foot vein, 1,480 in the cross cut tunnel which plated \$10 per ton. There is over 700 feet of backs from the tunnel level to the surface. I consider this a very valuable property the same as the Alamo can be made a wonderful mine. 30  
About three miles from the Black Jack Mine is the Evans property which I examined and which has not been developed to any extent, but find the surface showings very fine as to free milling gold quartz. Where the open cut work has been done Mr. Evans, the owner, has made a living for his family for three years, by panning the fines, averaging from \$4 to \$8 per day. This ore pans extremely well and with development will be a wonderful mine."

You made that report?—A. Yes.

Q. Is it correct?—A. Yes.

Q. When you speak of the open cut you are talking of what is called the glory hole?—A. Yes. 40

Q. Just about what size?—A. You mean now or at that time?

Q. At that time?—A. It was about 30 feet in the hill and about 12 feet deep, going in from nothing to 12 feet.

Q. How broad?—A. The top was about ten feet and at the bottom about 4.

Q. It was opened up sufficiently to show what the vein was there?  
—A. It was not what you would call a vein. It was a deposit.

Q. That is the one you could work with a steam shovel?—A. Yes, on the surface.

Q. You did not have assays made, but you merely panned?—A. Merely panned.

Q. In panning, instead of assaying, it is not, of course, as accurate as assaying?—A. Not exactly, but if you cannot get values in a free milling area in panning, the free gold is not there. If you have free  
10 milling; if you haven't got it, there is no use mining.

Q. In panning you may underestimate from the result of the panning, but you would not overestimate, because by panning you cannot get all the gold that is there?—A. No, you cannot.

Q. Then it goes on with reference to the Evans: "Two openings have been made on two separate veins, one by shaft 15 feet deep and one open cut on vein or dyke 100 feet wide." That is correct?—A. Yes.

Q. "The vein where the 15 foot shaft is sunk is about 4 feet wide of very high grade gold ore." That is correct. That shaft is still there, in fact, you sunk it an additional 10 feet?—A. Yes. Sunk from the  
20 amount I say was there down to 21 feet—

Q. In other words, you sunk it another 10 feet?—A. Yes.

Q. And those values have always been found in that shaft?—A. No.

Q. No question about that?—A. No question about the values being found there.

Q. That is the Evans?—A. Yes.

Q. "In conclusion will say that this is one of the most interesting mining districts I was ever in, from Colorado west and from Mexico to the Arctic Circle." You have been around quite a bit?—A. Yes, I have. (*Letter referred to marked Exhibit No. 47.*)

30 Q. Now, I understand some time in June McTavish, that is D. N. McTavish, was down at the mine?—A. Yes.

Q. At that time you told him in substance—

THE COURT: June of what year?

Mr. DAVIS: '27, June, 1927, and at that time you told him that the mine, meaning by that the Alamo and the Evans was no good?—A. Yes, sir.

Q. No question about that?—A. Not a particle.

Q. That neither the Alamo nor the Evans was any good?—A. Yes.

Q. And who was present at that time?—A. D. N. McTavish.

40 Q. And who else?—A. No one else.

Q. Wasn't Fellows there when you had the conversation?—A. No.

Q. Didn't Fellows go around with you when you were looking at the mine?—A. Part of the time he did. Not at that time.

Q. Why didn't you make this statement in the presence of Fellows?  
—A. Fellows and I had the same talk and decided on the same thing.

Q. At the same time in June, 1927, you told Fellows that neither of those mines were any good?—A. Yes.

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Cross-exa-  
mination—  
*continued.*



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mination—  
*continued.*

Q. That there wasn't sufficient showing to warrant further exploitation of them?—A. Yes.

Q. That is what you told Fellows at that time in June, 1927?—A. No, I told Fellows—I don't know whether it was on the way—

Q. You just said you did.

Mr. FARRIS: Let him finish the answer.

Mr. DAVIS: Do you want to take it back?—A. No, I had several consultations with Fellows and the last consultation, I don't know when it was, we were talking about the values and I told him I did not consider there was any there at all. He says that he would not give \$6.75 for both of the mines when we started. 10

Q. You swore a moment ago; you told Fellows in June, 1927, at the same time, that is, during the visit of D. N. McTavish, that there wasn't anything in the mine, as you told McTavish. Do you take that back?—A. I could not swear to it being June.

Q. You did swear that it was June.

Mr. FARRIS: What is the question? (*Stenographer reads: "You swore a moment ago; you told Fellows in June, 1927, at the same time, that is, during the visit of D. N. McTavish, that there wasn't anything in the mine, as you told McTavish. Do you take that back?"*) 20

Mr. DAVIS: Do you stick to that statement or do you say that you want to withdraw it or modify it?—A. We had so many conferences I cannot say exactly the time this happened with Mr. Fellows. He was the superintendent and manager of the Banner mine and he was not at our place but very little.

THE COURT: How far is that away from the Alamo?—A. Six miles, six or seven.

Mr. DAVIS: Q. You see, Mr. Barnes, it is of very great importance as to whether or not you made this statement to Mr. Fellows, because Mr. Fellows is here and we can get his account of it. 30

THE COURT: Is the time material?

Mr. DAVIS: Yes.

THE COURT: Would he carry it in his mind?

Mr. DAVIS: It is very material, because there was a time when there was a difference of opinion as to the Alamo mine. As to the Alamo it is most material.

Q. Now, you would naturally if you had these conferences at that time as you say with Fellows, the two of you discussing as to what you thought about the mine, wouldn't you?—A. Yes.

Q. And that would be the natural time to tell Fellows what you thought about it?—A. Yes. 40

Q. Now, you were writing letters more or less all the time to the Alamo Mines or to the McTavishes?—A. Yes.

Q. And you were making weekly reports?—A. Yes.

Q. Of the work being done and the result of the work done. Did you ever in any of those letters or in any of these work reports—I am

talking now of June, 1927, make any such statement as that that neither mine was any good?—A. In June?

Q. Yes, this time when you told him verbally?—A. When I told him verbally?

Q. Did you put that in writing anywhere where we can have some proof of it beyond question?—A. No.

Q. You were writing letters during June right along?—A. Very few, because D. N. was there most of the time.

Q. You made weekly reports?—A. Not in June.

10 Q. None at all in June?—A. I don't think so. If I did they have them.

Q. Did you at any time in any of the reports you made in writing, or letters that you wrote at any time say that neither the Evans nor the Alamo was any good?—A. No, I don't believe I did.

Q. Isn't it most remarkable you should not do that?—A. Up to the time I wired for them to come down I would not have taken one dollar a share for my stock.

Q. You are not answering the question.

Mr. FARRIS : He is. He is giving the explanation.

20 Mr. DAVIS : Q. Do you consider that an explanation?

Mr. FARRIS : Let him finish.

Mr. DAVIS : Q. I don't want him to stop, go on?—A. I was interested in the property and if the values had gone, if I had not thought they had, I would not have driven the tunnel. I did not want to dispose of any of my stock, which I never did.

THE COURT : That was in May?—A. Yes.

Q. You thought your stock was worth \$1 a share?—A. No, I did not find the values. I wired them the 30th of April.

Q. Up to that time you believed the property was all right?—A. Yes.

30 Q. The shares were good value?—A. Yes.

Mr. DAVIS : Q. You have not answered my question. I ask you if it was not remarkable that you should not have put such an important thing in writing, in letters or reports?—A. I could write and wire for them to come that I wanted them there to explain to them. I could write and wire all I wanted and there wasn't one showed up on the property from the 1st of November until the latter part of June. They were the ones who were running the property outside of doing the work.

Q. Is that the only explanation you can give?—A. I wanted to talk to them personally. I was not here.

40 Q. Have you any further explanation of why you did not in writing and in sending the weekly reports say anything of this sort in those letters?—A. I did not send any after that.

Q. What was the last weekly report?—A. It must have been about the 25th of April.

Q. Don't you think when you came to that conclusion in connection with a mine that it would be about time to send a weekly report setting that

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*continued.*

fact out?—*A.* I think they will find letters that I had gone the limit and did not find values and when you don't find values a mine is worthless.

*Q.* What day?—*A.* That is either a wire or letter along the latter part.

*Mr. FARRIS:* Mr. Barnes does not keep his letters. The only letters we have are the ones you produced.

*Mr. DAVIS:* And no other letters there?

*Mr. ST. JOHN:* We have produced the whole file.

*Mr. FARRIS:* We don't know whether it is all there.

*Mr. ST. JOHN:* We vouch for that.

*Mr. DAVIS:* *Q.* When we put the witness in he will vouch for that. 10

I don't suppose we are accused of stealing part of the file, so to speak. However, we will put them in order to test this, all the letters we have from you and all the reports. Do you say or suggest that in any of these you made a statement which in substance meant the same you say you made to McTavish when he was at the mine in June?—*A.* No, sir.

*Q.* You knew there were a great number of shareholders in the Alamo Mine, didn't you?—*A.* I surmise that there was.

*Q.* You knew there were, didn't you? You took enough interest in it. You attended some of the meetings?—*A.* Yes, if I remember right, D. N., I told him that he ought to get another property and quit and he said that he could not on account of having so many stockholders and I think he said that he had around 700. 20

*Q.* You did know?—*A.* Yes, at the time.

*Q.* At the time you made the statement you knew there were a great many shareholders in the company and you knew that Langer was a very large shareholder?—*A.* No, I did not know exactly what arrangements were made with Langer at all.

*Q.* Now, knowing there were a large number of shareholders don't you think it was your duty as manager there to make reports from time to time, to put somewhere in those reports or letters a statement such as you gave to McTavishes, don't you think so?—*A.* I don't think I made any report after that time. 30

*Q.* But you would make them whether you did or not?—*A.* But D. N. was there and he was one of the principals, the same as I was.

*Q.* You see it is a very important statement and a certain amount of attack is being made on it by reason of the fact that you never put this in writing in such a way that it could be proved?—*A.* I never figured anything had to be proved.

*Q.* There was a rather peculiar question that my learned friend asked at the end of his examination. He asked you whether you had ever been given an opportunity of having a consultation with Langer and you said no at once. What did you understand by that? Did you ever have an opportunity of having a consultation with Langer?—*A.* No. 40

*Q.* What do you understand that to mean?—*A.* Well, I understand it to mean for me to have a consultation with Mr. Langer alone.

*Q.* Opportunity given you by whom?—*A.* I saw; I never saw Mr. Langer but three times and every time there was someone with him.

Q. I am trying to get at this peculiar question, given an opportunity, by whom, now did you understand that question?—A. I just understood it as I could never see Mr. Langer unless one of the McTavish Brothers was along.

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Q. Do you suggest that the McTavishes did anything to keep you away from discussing matters with Langer?—A. No, I don't suppose they did.

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Q. That is clear enough?—A. They just wanted to be there.

Q. You left the impression with me from your last answer that you thought that they did. Supposing the McTavishes were there was there any reason you should not make any statement you should make?—A. I did.

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Q. The mere fact of the McTavishes being there when Langer was there did not interfere with your making statements as to the condition of the mine?—A. What does that refer to—I think——

Cross-exa-  
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*continued.*

Q. Will you read the question, please.

(Stenographer reads: "The mere fact of the McTavishes being there when Langer was there did not interfere with your making statements as to the condition of the mine?")

A. I always did.

Q. It did not interfere?—A. No.

Q. If you have anything else to say I have no objection?—A. After I left the mine, can I go on talking?

Q. Go on as long as you like if you will keep to the point?—A. After I left the mine I wanted to see Mr. Langer. I was informed by Mr. Code——

Mr. DAVIS: Now——

Mr. WALKEM: You said that you would let him talk as long as he liked and now you are stopping him.

Mr. DAVIS: As long as we are not getting hearsay evidence. I object so far as Mr. Code is concerned. If you can make your statements without giving hearsay evidence, I have no objection, but I say frankly I do not care to trust to your making hearsay statements.

THE COURT: As long as he is restricted. You will have to have a copy of the laws of evidence?—A. I don't know what to say.

THE COURT: Anything that the McTavishes did or told you that would be all right?—A. It was conveyed to me.

Mr. DAVIS: Q. Now, you understand?

THE COURT: What they said or did?—A. What I want to get at is the reason why I did not get to see Mr. Langer, so I cannot tell it.

Mr. WALKEM: They won't let him tell.

Mr. DAVIS: The witness has already stated that the McTavishes did nothing to interfere with him. That is good enough for me. Now, I will read and put in some of the letters. I am not going to read them all because there are too many.

Q. You knew that Langer was putting up money to run the mine after September, 1926?—A. After November, 1926.

Q. Then you would know that he must be heavily interested?—A. Yes.

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Q. Now, first I read a letter of May 17th, 1926. These are all letters from Barnes to the McTavishes or to the Alamo. That is your letter, isn't it? There are a number of them and I will go through them as quickly as I can, and then I intend to put in all the letters to show how many he wrote?—A. Yes.

“ May 17th, 1926.

“ Note what you say about sending sweet some gold which I will do at once as it is here.”

“ Everything is going fine—— ”

Mr. FARRIS : There is a lot left out. 10

Mr. DAVIS : Q.

“ Everything is going fine, but have had some bad weather. Expect to be grinding out gold in next two weeks if I can get all the necessities here. Am trying to rustle plates. Had to come to Baker to get the line shaft and pulleys.”

“ Well, things look good and will soon be producing.”

There is more in the letter ; if my learned friend wishes me to read it I will.

Mr. FARRIS : No, I don't think so.

*(Letter referred to marked Exhibit No. 48.)*

Mr. DAVIS : Q. The next is June 2nd, 1926, re Evans : 20

“ Everything is going O.K., and will soon be humming.”

“ Everyone thinks we have a dandy plant and are sure surprised to see the gold.”

If there is anything in that letter that my learned friend wishes I will read it.

THE COURT : Are these addressed to anyone ?

Mr. DAVIS : The envelope is not with it. It is addressed to Dear McKs. Now, dear McKs. means McTavishes. Let me see the letter?—Yes.

*(Letter referred to marked Exhibit No. 49.)*

The next is a letter of June the 12th, 1926. Is that your signature?—A. Yes, sir. 30

Q. I am reading from that as follows :

“ Have had a number of visitors who are very much stuck on our mill and lay out all around.”

Is there anything that my friend wants ?

Mr. FARRIS : All right.

*(Letter referred to marked Exhibit No. 50.)*

Mr. DAVIS : The next is July 13th, 1926?—A. Yes, sir.

Q. Re Evans :

“ Will start mill on shaft ore in three days. Shaft is looking fine, getting richer and wider with depth.” 40

“Welch and his friend left for the Banner. I was sorry I could not go with them. I was surely surprised to see them, but glad as they got the richest pannings I have ever seen out of the shaft.”

“The shaft certainly looks good.”

What pannings did they get that were the richest that you had ever seen out of it? About \$20, wasn't it?—A. It was in the neighbourhood of \$20 per ton.

Q. Per ton?—A. Yes.

(Letter of July 13th referred to marked Exhibit No. 51.)

10 (Letter July 16th referred to marked Exhibit No. 52.)

Q. There had been a shareholders' meeting a few days before you wrote that letter of July 13th and you gave the shareholders a glowing account of the mine, did you not?—A. Yes.

Q. You told them about the big expanse of ore running 2,200 feet over the hill?—A. Yes.

Q. And 200 feet wide?—A. Yes.

Q. And spoke and wrote of it as an enormous body of ore?—A. Yes.

Q. The next letter is July 17th, 1926. That is your signature, is it?—A. Yes, sir.

20 Mr. DAVIS: I have had to put the letter of July 16th in because one of the paragraphs came from the letter of the 13th and one from the letter of the 16th. That is your signature?—A. Yes.

Mr. FARRIS: How about this one?

Mr. DAVIS: I am not reading all of it, but I am putting them all in. I will put in the whole file so there will be no question. We will put in everything that we have.

Q. That is your signature?—A. Yes, sir, July 17th.

(Letter referred to marked Exhibit No. 53.)

Mr. DAVIS: July 17th.

30 “The shaft is sure looking good better every round and if it goes to the 50-foot mark we certainly have a real mine.”

I suppose it is unnecessary to ask you whether the statements contained in your various letters and reports are correct. You are willing to say they are correct?—A. Yes.

Q. You never made any false statements in your letters or reports?—A. No, the gold is there.

Q. The next letter is July the 20th, 1926. Is that your signature?—A. Yes sir. (Letter referred to marked Exhibit No. 54.)

Q. July 20th, re Evans:

40 “You fellows are surely some financiers to do what you have done and it sounds good.”

“Shaft is looking fine, but a hard proposition to work without air.”

The next is August the 11th, 1926. Is that your signature?—A. Yes, sir. (Letter produced marked Exhibit No. 55.)

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Q. August 11th, re Evans :

“ Got the best pan from the shaft to-day I have ever had.  
Will have mill going Monday 16th for a short run.”

The next is October 11th, 1926. Is that your signature?—A. Yes. (*Letter marked Exhibit No. 56.*)

Q. Re Alamo :

“ I think that Mr. McGuigan tried to run the mill at double the capacity and natural enough would lose most of the gold even if it was coarse, and if it was very fine would lose it much quicker. Now, fine gold is just as easily saved as coarse gold if milled properly, and I don't think there is a thing to worry about along this line. McGuigan had a stamp mill and I understand from several good authorities that he run it at twice its capacity and this will not work with any kind of mill or ores either.”

When did you come to the conclusion that McGuigan's report was not correct?—A. After I got the—

Q. When was the time about as near as you can give it?—A. Along in June.

Q. Of 1927?—A. 1927, yes.

Q. Were you never in either the upper or second middle tunnel of the Alamo work?—A. Yes.

Q. After it was cleaned out?—A. Yes.

Q. Were you in both?—A. Not the upper one.

Q. I am asking about the upper and middle tunnel?—A. I don't think the upper tunnel was ever cleaned out.

Q. The middle tunnel, were you in that after it was cleaned out?—A. Yes.

Q. What date was that?—A. I cannot tell the date. It was in June.

Q. You say the middle tunnel was cleaned out in June?—A. Yes.

Q. All right?—A. So that we could get in for cleaning it out, but so we could get through it.

Q. The lower tunnel at that time had not reached the vein, had it?—A. No.

Q. Then you would not expect to find anything in the lower tunnel as far as it was concerned at that time?—A. No.

Q. And you did not examine it afterwards?—A. After it was cleaned out?

Q. Yes?—A. Yes.

Q. When, what date?—A. I could not say just exactly what date. It was in July.

Q. July of what year?—A. 1927.

Q. The lower tunnel was cleaned out in July, 1927?—A. Not the full tunnel as far as I had gone. I have never been there since it was cleaned out.

Q. It was not cleaned out in June or July, 1927, or any time when you were there?—A. No.

Q. Did you send this telegram of November 1st, 1926, sent by you from Sumpter, to D. N. McTavish, 503 London Building, Vancouver, B.C.?

“Vein pans for 8 feet pay streak about the same as in bottom of shaft as to width and values.”

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Did you send that?

Mr. FARRIS: What date is that?

Mr. DAVIS: November 1st, 1926.

THE WITNESS: Yes, sir, that is on the Evans. (*Telegram referred to marked Exhibit No. 57.*)

10 Q. Did you keep a copy, I presume you did, of your letters and telegrams that you sent out?—A. I did not.

Q. Isn't that a rather peculiar procedure?—A. I 'phoned my telegrams to Sumpter, as we were 53 miles from Baker and about 23 miles from Sumpter, and I 'phoned all my telegrams.

Q. Was there any trouble about writing out the telegram before you 'phoned it?—A. I never did. It was no trouble, no.

Q. Wouldn't it be more businesslike to keep copies of the correspondence?—A. Possibly it was.

Q. Did you keep copies of the letters?—A. No.

20 Q. When you went away from the mine you took away all the records with you, didn't you?

Mr. WALKEM: Not records.

Mr. DAVIS: Wait a moment.

A. All the records of what?

Mr. DAVIS: In connection with the—

A. Just what I was entitled to.

30 Q. You would not be entitled to take anything away in connection with the mine?—A. I was entitled to my cash account of the money that they sent to me and the bank statement and that kind of stuff, because they had them in Vancouver to keep.

Q. I am talking of matters connected with the mine and not your personal matters at all. You would have considerable in the way of records in connection with the mine?—A. Everything comes to Vancouver.

Q. You had no records whatever filed away in your office at the Alamo mine in Oregon?—A. In connection with the mine?

Q. Yes?—A. Outside of money spent.

Q. I say first, did you have anything there?—A. I don't understand.

40 Q. Did you have anything on file in the way of letters, telegrams, vouchers or anything, books of any kind?—A. Cheque books, stubs, bank balances for every month.

Q. That is all you had there?—A. And my time book.

Q. Yes, is there anything else you had there?—A. I don't recall.

Q. Nothing else in the shape of documents?—A. I had copies of these reports sent to the head office.

Q. You had copies of them?—A. Yes, I kept those.

Q. Anything else?—A. Not that I can recall.

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Q. Why did you keep copies of the reports and not of your letters?—  
A. I had nothing to refer to in the letters and I would in the reports.

Q. Whatever there was there you took it away with you?—A. Yes.

Q. The next is a letter of November 12th, 1926. Is that your signature?  
—A. Yes, sir. (*Document referred to marked Exhibit No. 58.*)

Q. This is *re* Evans :

“ I am disappointed with the assays myself. Something when  
the sample out of ore bin only went \$7.20 as I know it will go \$25.”

What ore bin is that you are referring to?—A. The ore bunkers at  
the mill. 10

Q. That is in connection with the Evans?—A. Yes.

Q. And you did know it would be \$25?—A. It panned for \$25. That  
is very good panning. The next is a letter. Tell me if I am going too  
fast for you, Mr. Farris.

Mr. FARRIS : Yes, just a minute. You can mark this and we will go  
into this further.

Mr. DAVIS : Then there is a second letter of November the 12th.  
Apparently you wrote two on the same day. That is your signature?—A.  
Yes.

Q. This is a second letter : 20

“ By the way, before I forget it, I had a very eminent government  
geologist, guess you will know what I mean on the Alamo or Ruby  
Creek this A.M. and he thinks that the ore will be much wider on  
other side of porphyry dyke.”

(*Letter referred to marked Exhibit No. 59.*) Then the next is a letter of  
January the 11th, 1927. Oh, who was the man, by the way, who was the  
man?—A. Mr. Morris, of the Sunset Copper Company.

Q. Was that the Alamo or the Evans?—A. The Evans.

Q. I see it says,

“ I had a very eminent government geologist. Guess you will 30  
know what I mean on the Alamo or Ruby Creek.”

What do you mean by that?—A. The Alamo or Ruby Creek.

Q. Yes, which was it?—A. On the Alamo. We called everything the  
Alamo and it was the Alamo; it was the Ruby Creek or the Evans property  
that everybody visited.

Q. Which one was it you were referring to here?—A. The Evans.

Q. Now, January 11th, 1927, is that your signature?—A. Yes.

Q. That is your signature?—A. Yes. (*Letter referred to marked  
Exhibit No. 60.*)

“ I had a man here yesterday to figure on opening tunnel and 40  
he said if it was him he would open No. 2 instead of the lower one as  
he knew there was good ore in the second one.”

Who was that man?—A. I cannot recall.

Q. You cannot recall?—A. Unless it was Tim Sheedy. He told me  
there was good ore in the Alamo, the fellow who worked the Black Jack.

Mr. ST. JOHN : Speak out a little louder?—A. I said unless it was Tim Sheedy, the man who worked the Black Jack—he worked in that tunnel and told me that there was good ore in there.

Mr. DAVIS : The next is April 18th, 1927.

Mr. FARRIS : There is no letter in between these dates?

Mr. DAVIS : There are, I think. I am going to put them all in. These are the only ones that we have specially noted :

“ Re Evans : “ Panning a little makes it look good.”

(Letter marked Exhibit No. 61.)

10 Q. The next is dated May 31st. Is that your signature?—A. Yes.

Q. Re Alamo :

“ Dump pans quite good and Evans thinks his high grade prospect comes on our ground.”

What dump are you referring to there?—A. The second one. (Letter referred to marked Exhibit No. 62.)

Q. Now, August 6th. This is your signature?—A. Yes. (Letter marked Exhibit No. 63.)

Q. Re Alamo :

20 “ Have spent most of the day on the Alamo Hill trying to find where Roy Evans find hits the Alamo, and as near as I can judge neither one of the tunnels have cut it as it is further up the hill than where the shaft is. Roy’s find prospects good, and the Alamo tunnels will have to cut it. Might be that Roy’s vein is where they headed as Sheedy told me that the vein they were after on the hill dipped to the west and the one they cut dipped to the east.”

THE COURT : Q. When did you cease to work on the property?—A. When did I cease.

Q. Yes?—A. August 11th, 1927.

30 Mr. DAVIS : Now, I have here a file marked David Barnes. I have not been through it at all myself. I am instructed, however, that this contains all the rest of the letters or telegrams to or from Mr. Barnes with the exception of those put in. I will tender it in evidence.

THE COURT : You are not going to encumber the record in that way, are you. Why not have Mr. Walkem and Mr. St. John get together.

Mr. ST. JOHN : This was produced to Mr. Walkem, long ago.

THE COURT : He can express himself now if he wants it to go in, otherwise we are going to have a very heavy record here.

Mr. FARRIS : We were in this position, when we saw those documents, so far as I am instructed—

40 Mr. DAVIS : I am willing to turn them over to my learned friend.

Mr. FARRIS : I think we had better have another look at this.

Mr. DAVIS : Yes, if there is anything you want put in, you are at liberty to have it put in.

THE COURT : That is showing confidence in them.

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mination—  
*continued.*

Mr. DAVIS : I am trying to.

Mr. WALKEM : We don't allege that they are concealing anything.

Mr. DAVIS : I am aware that my learned friend is not alleging we were concealing anything, but they are very definitely alleging that the McTavishes have concealed something, and when I say we, I refer to the McTavishes. As my learned friend says the file shows the extent of the correspondence between them which is of considerable importance.

THE COURT : The reason I asked the question, it apparently closes in August.

Mr. DAVIS : Yes, the 6th of August is the last in the file, at least the last that we put in. Whether there is anything subsequent or not I do not know. 10

THE COURT : It might be important for the jury to know whether there was anything after that date.

Mr. FARRIS : I was looking to see. There are a few.

Mr. ST. JOHN : There are. There is up to October here. There are letters here from Barnes up to November 8th, 1927.

Mr. DAVIS : How many ?

Mr. ST. JOHN : October, November, September 20th. There are at least four letters after August 6th, the last one put in. And the last one here is November 8th. 20

Mr. DAVIS : We are putting the whole file in. There will be no dispute about our understanding.

THE COURT : Let us have an understanding. It is either in or not in. If it is in I could read through it as well as the jury to see what is in it. There is no use imposing on them.

Mr. FARRIS : I suggest that it be left until after lunch and we may be able to go through it by that time.

Mr. DAVIS : I am giving you more than that, I am turning the file over to my learned friend and they can have it until tomorrow morning or until their case is closed to go through that file, and if there is anything there that they claim will help their case out I consent to it going in. 30

THE COURT : You are handing it over to them physically now in court. They can take it over.

Mr. FARRIS : I say that my learned friend has been repeating that, and is making a case out of nothing. There has been no suggestion at any stage that there has been any suppression of documents, nor any suggestion up until Mr. McTavish came down in 1927 that Mr. Barnes saw anything wrong with this mine and there is nothing after that in the way of letters to amount to anything. My friend is building up a case out of thin air. 40

THE COURT : I have in mind the allegation in the counter-claim.

Mr. FARRIS : There is a direct attack on the plaintiff in regard to the suppression of facts in the summer of 1927. That is the only time that there is an allegation of fraud in that transaction. All these others are misrepresentations, not alleged to be fraudulent misrepresentations at all,

we do not say that Mr. McTavish or any of these fraudulently misrepresented the conditions at the Alamo. We say that they were innocent misrepresentations and they are bound by them if they are not true. All this proceeding by them is beside the point. We do say that when McTavish came down in the summer of 1927, D. N. McTavish and Barnes reported to him that he concluded there was nothing there, that was suppressed. My friend can wave the documents around for a week and it may impress somebody who does not know the facts.

10 Mr. DAVIS : My friend has overlooked the fact why lay stress on these documents being put in or looked over by my friend. I made a point, and that was this, that the witness made verbal statements that are important, and yet he was writing reports of the work, and letters and telegrams.

Mr. FARRIS : The answer is that the bulk of the documents you are producing were at a time prior to that.

THE COURT : That is a matter of argument.

Mr. FARRIS : But my friend has proceeded to argue on the face of this about seven times and has been waiving these documents each time.

Mr. DAVIS : Now, I am putting in four of these letters. I am not going to read them, but I am putting them in to show the dates.

20 Q. That is your signature?—A. Yes.

Q. I will put them all in together. That is your signature too?—A. Yes.

Q. November 8th, that is your signature?—A. Yes, sir.

Mr. FARRIS : You are still putting in letters.

Mr. DAVIS : I am putting these four letters in. I am not going to read them. I am going to show there were communications as late as the 8th of November from Mr. Barnes.

THE COURT : Give the respective dates.

Mr. DAVIS : The date is August 6th.

THE COURT : You have one.

30 Mr. DAVIS : This is another one, August 6th, September 30th, October 10th and November 8th. I will put them in as one exhibit. (*Letters referred to marked Exhibit No. 64.*)

Q. Were you there when Langer took his samples in September of 1926. You were, were you not?—A. Yes, sir.

Q. Were you there when he took his samples in November, 1926?—A. Yes.

Q. You were in charge of the mine during that time?—A. Yes.

Q. I suppose it is unnecessary to ask you whether you did any salting of the mine?—A. Salting?

40 Q. Yes, you know what salting is?—A. I sure do.

Q. And you did not do any?—A. No.

Q. And did not cause anybody else to do any?—A. No.

Q. And being in charge of the mine nobody had an opportunity of salting it on those occasions?—A. No.

Mr. FARRIS : Is there any suggestion that anybody did it?

Mr. DAVIS : Yes, it was suggested in the examination for discovery of Langer, and when he gets in the box I will refer to it.

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THE COURT: You heard Mr. Farris' statement. He made a statement, the statement he was making was one that would influence the jury and myself as to the stand that he is taking in the whole action.

Mr. FARRIS: Do not misunderstand me, I said so far as the misrepresentations at the time, Mr. Langer was induced primarily to come into this—we do not allege that the misrepresentations were fraudulent.

THE COURT: Salting a mine is fraudulent.

Mr. FARRIS: We are not alleging that. The only allegation tinged with fraud is the suppression in the summer of 1927 of the information obtained from Barnes. 10

Mr. DAVIS: That is all right. With that statement I do not need to go into it.

Mr. FARRIS: There is no suggestion in that other—

Mr. DAVIS: The suggestion was made by the Defendant.

Mr. FARRIS: My friend is building up something to knock down that is not in the pleading.

Mr. DAVIS: It is in the examination for discovery of Langer.

THE COURT: He was meeting it through this witness.

Mr. FARRIS: My friend knows that he cannot allege fraud when it is not pleaded. 20

Mr. DAVIS: Langer asserted that and I have to meet it by this witness when he is in the box.

Mr. FARRIS: He is building up a case to knock down by this witness.

Mr. DAVIS: Q. Now, you saw, you say, one of the McTavishes or both of them on August 17th or 18th in Vancouver?—A. Yes.

Q. And had a conversation?—A. Yes.

Q. Where was it, in their office?—A. In their office.

Q. The two of them were there?—A. I would not say positively.

Q. I want to identify the conversation. You only had the one conversation with them during that month of August, at least after the middle of August, in 1927, is that right, after you left the mine?—A. Yes, the substance of the conversation— 30

Q. I am not asking that. I am only trying to identify the conversation. You gave evidence of a conversation with McTavish on the 17th or 18th of August?—A. Yes.

Q. What I am trying to get at, was there any other conversation with McTavish after you left the mine in the month of August, except that one?—A. No sir, not that I can remember.

Q. And in that conversation you told them that it looked as if a certain vein might turn out from the Evans?—A. On the Alamo, that the Evans had hit the Alamo here. 40

Q. Then on the 5th of October you say you had another conversation with McTavish. Where was that, in the office?—A. Yes.

Q. The two of them were there?—A. I am not positive. I don't think they were. I think there was only D. N.

Q. That is the only conversation you had with them in the month of October, 1927, so that I can get the conversation identified?—A. I am not positive.

Q. In this interview of the 5th of October, you told the McTavishes then what. I want to get this clear?—A. I told them; they said they had several meetings. D. N. said they had several meetings, and everybody had signed the book but me, and he wanted to know if I would. I said yes.

10 Q. What do you mean by signing the book?—A. The minutes or whatever it is, of their meeting.

Q. This was not the conversation that you gave us in your examination in chief, was it?—A. What?

Q. In chief you gave this evidence that in August you went there and told them there was some prospect of a new vein running into the Alamo?—A. Running in the upper end of the Alamo group.

Q. Yes, and then in October you came back and had a conversation with them and they told you that it was not so?—A. Yes.

Q. That is what I am getting at?—A. I thought it was about me  
20 resigning.

Q. No, I did not ask that. What did they tell you about this vein?—A. They told me that Mr. Fellowes had surveyed it and it missed the Alamo ground entirely.

Q. This particular vein, all right. Look through these and see if these are your reports of the workings of the mine?—A. Yes sir.

Mr. DAVIS: I put all the weekly reports in, sent in by Mr. Barnes while he was in charge at the mine.

Mr. FARRIS: You might note that there are none after May 21st, 1927?

Mr. DAVIS: That is quite correct. (*Document referred to marked*  
30 *Exhibit No. 65.*)

Mr. DAVIS: That is all.

THE COURT: Proceed.

Mr. FARRIS: The only thing is, I have no re-examination. If in checking up these letters if anything turns up that I want to ask, I presume that he might be recalled on that.

THE COURT: On that alone, yes.

(*Witness aside.*)

THE COURT: Next witness.

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## No. 21.

## Evidence of Joseph Francis Langer.

Mr. FARRIS : Will I open with Mr. Langer before lunch, my lord ?

THE COURT : You might as well.

JOSEPH FRANCIS LANGER, the Defendant herein being first duly sworn, testified as follows :

## DIRECT EXAMINATION BY MR. WALKEM.

Q. You reside in the City of Vancouver ?—A. Yes.

Q. And what is your occupation ?—A. I am a builder.

Q. You were formerly living, I believe, in South Africa ?—A. Yes. 10

Q. What was your occupation there ?—A. I was a builder there.

Q. Some reference has been made to your mining experience in South Africa. Will you kindly tell us about that now, and the extent of it ?—A. The extent of that was that I done a lot of contracts on the mines, building all kinds, putting up all kinds of machinery and mills and cyanide works and matters of that description.

Q. Had you actually ever done any mining ?—A. Never done any mining.

Q. During your life have you ever done any mining ?—A. I never done any mining. 20

Q. Reference was made to your taking a course of assaying ?—A. Yes, I did take a course of assaying.

Q. Where was that ?—A. In Oakland, California.

Q. What was the purpose of that ?—A. With a view of treating tailings by cyanide in Alaska.

Q. Had that to do with anything else except gold ?—A. No, just gold.

Q. As a matter of fact are you capable of locating—would you be capable of going in the field and locating a mineralized vein ?—A. No, I have no idea about minerals.

Q. If a piece of quartz was handed to you, could you tell what kind it was ?—A. I have no idea at all. 30

Q. Did you ever suggest to McTavish Brothers that you were a man of extensive mining experience ?—A. Never, never said it.

Q. Pardon ?—A. No.

Q. Who is Mr. Kerr ?—A. He is my book keeper, financial adviser.

Q. He has been working with you during the time covered by this transaction in question ?—A. Yes.

Q. Who did you first meet with regard—in connection with this Alamo mine ?—A. Mr. Howard.

Q. When did you first meet him ?—A. Oh, possibly the early part of September, 1926. 40

Q. Where ?—A. On Pender Street, I think it was.

Q. That is in the City ?—A. In the city.

Q. What conversation did you have with him?—A. Oh, he told me about a gold mining proposition he was trying to sell shares in.

Q. Did he say in the first place for whom he was acting?—A. Yes, McTavish Brothers.

Q. Yes, go ahead?—A. He told me about this wonderful mining proposition and he was trying to interest me in it.

Q. What mining proposition was it?—A. Then called the Alamo mine.

Q. And what did he tell you about the Alamo mine at that time?—

A. He told me that there were two mines, one was a developed mine that  
 10 had worked some 20 years ago and that it had closed down for some reason, in fact, the reason he said was that they could not recover the gold, but that the good values were in the mine, but that they could not recover the gold and by the time that they got crushing they had no more capital and the management decided then that what was necessary to recover the gold was that they had to put in a cyanide plant or concentrating table, I am not quite sure, but they needed some new method of recovery besides amalgam, but they could not find the money and the mine closed down.

Q. Did he mention which mine that was?—A. The Alamo mine and he said there was a further property connected with it called the Evans  
 20 Block, situated a mile further on on which they had a shaft down 20 feet or thereabouts in which they found good values and there was also an open cut which they called the gloryhole which was not quite as high a value as the rest of it, but it was considered a very good low-grade proposition as the ore was of considerable extent. In fact he said that it would pay all right as a steam shovel proposition.

Q. I see. You are telling the first interview you had on the street?—

A. Yes, he was telling me this on the street to interest me.

Q. Was there any discussion as to the extent of these values?—A. Yes, he then mentioned the Evans, because the Evans was the richer property of  
 30 the two and he said that it went over 20.

Q. What did he say about the Alamo?—A. He intimated that the Alamo was about a \$10.00 proposition and up.

Q. What about the tonnage of ore. Was anything said about that?—

A. He told me that if I would like to be interested he would see me later and give me the particulars which he did.

Q. I see. Is that all you recollect?—A. Yes, on the first interview.

Q. How did the interview conclude?—A. Well, I had not made up my mind to see him again, but he was very persistent and so far as I remember he rang me up wanting a further interview and I then told him that I would  
 40 see him at the house.

Q. Yes, and what occurred after that?—A. He came to the house.

Q. Is that the time that the McTavishes were there?—A. No, he came first.

Q. You had another interview with him at the house, Mr. Howard did not seem to recollect that?—A. Yes he came to the house and he brought a blueprint with him.

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tinued.

Q. Let me see that, Exhibit 18. Is that the blueprint Mr. Howard gave you at the time?—A. Yes, that is, or one like it. Yes, this is it. I remember the green mark on the top.

Q. What discussion took place between you and Mr. Howard at the house?—A. He gave me this blueprint and he said that this represented the workings of the Alamo mine and he said that it was the portals had caved in, and that it was not possible to examine them, but he said that these values were in the mine as shown on this drawing.

Q. I see. What further discussion did you have?—A. In regard to this particular property he went over the whole situation, and also mentioned the Evans. What he particularly emphasized, and what I asked him for was if all this was true, that I could not waste my time looking at anything unless it was authentic, and he said that the McTavishes gave him this proposition representing it as absolute fact. 10

Q. Was there any discussion as to what the amount was that you would invest?—A. He just asked for a few thousand. He wanted to interest me for a thousand or two.

Q. I think that he said \$5000.00 in his evidence?—A. It was some small investment, because I was very short of money.

Q. What was your answer to that?—A. I told him that I could not invest anything unless it was proven to me it was a certainty, and then I would take a very large interest in it. 20

Q. What did he say to that?—A. He said "It is one of the biggest things there ever was, and absolutely certain."

Q. What was the final outcome of that conversation?—A. I then consented to see the McTavishes.

Q. And when did you see them? I don't know whether I asked you the date of this?—A. Some time in September. It was before we went to the mine. We went to the mine later.

Q. Had you been given the reports at this time?—A. No, the reports were handed to me on the train, on our journey. 30

Q. You say that you arranged to have a meeting with the McTavishes. Did that occur?—A. Yes.

Q. Where?—A. At my house.

Q. Who were present?—A. I have a recollection that one of them turned up first.

Q. One of the McTavishes?—A. Yes.

Q. You don't know which one?—A. I am not sure, but I think it was D. N.

Q. At any rate, did they both turn up?—A. My recollection is that one was there, but at any rate there was a meeting when both of them were there. 40

Q. You think possibly: Howard detailed a meeting when the two McTavishes, himself and you were there?—A. Yes.

Q. You think possibly there was a meeting before that?—A. Yes, I have a recollection that there was only one there and he apologized that his brother could not come that evening. I will not be definite on that point.

Q. If you have no definite recollection of that meeting you had better not go into it. Have you a better recollection of the next meeting?—A. Yes, when both were there.

Q. Who were present?—A. The two McTavishes, and I am not sure whether Howard was there, but I know the two McTavishes were there and they stayed several hours.

Q. Now, what occurred at that meeting?—A. First of all—

THE COURT: I was thinking that we might just as well adjourn now. You are opening up with the meeting of the McTavishes. We will adjourn.

10 Mr. WALKEM: My lord, with regard to the file of correspondence produced by my learned friend, I think that it had better be marked as an exhibit, just the whole file.

THE COURT: It is all in as an Exhibit then.

Mr. WALKEM: Well, my learned friend has suggested that it be put it.

THE COURT: What will happen then in the event of an appeal?

Mr. WALKEM: In the case of an appeal it is only a matter of counsel agreeing as to what portions, if any, need to go in the appeal book.

Mr. ST. JOHN: I think that we could agree on that, your lordship.

THE COURT: All right.

20 (*File produced marked Exhibit No. 66.*)

Mr. WALKEM: Now, Mr. Langer, I think we left off when you were about to describe the meeting at your house with the two McTavishes and Mr. Howard. Just tell us what occurred that evening?—A. Well, at the outset, the McTavishes tried to impress me about their honesty of purpose, and the length of time they had been in Vancouver and so forth. Then they went to describe the property.

Q. Did you have this Exhibit 18 there this evening?—A. Yes, that was there.

30 Q. Yes?—A. And I made it quite clear at the outset that I would have nothing to do with the proposition unless it was absolutely a good thing and it was a certain payable proposition, and they reiterated to me that it was that, and that everything that was contained in the blueprint were facts.

Q. I see. That had to do with the Alamo, the blueprint?—A. The blueprint.

Q. What was said about the Evans?—A. The engineer's reports were not—

Q. You had not seen the engineer's reports then?—A. No, they were not exhibited then, but McTavishes made references to them and they told me they had these engineer's reports which they would hand over to me.

40 Q. What did they tell you outside of saying they had not the engineer's report. Did he give you any particular report concerning the Evans at that meeting?—A. Yes, they told me how they acquired the property from Code and they formed a company, a \$3,000,000.00 company and that it was a going concern, that they were selling stock; they were selling stock as high as 25 cents; that they had a mill on the Evans property which had turned out gold; that the values in the shaft at the Evans was \$20.00 and over, and that

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there was an open cut of considerable importance at the Evans called the gloryhole which was considered more in the nature of a low-grade proposition, but that the ore bodies were enormous; that it was in extent something 200 feet wide by several feet long. They had traced it and they said the values in the glory hole went from four dollars to six dollars and seven dollars.

Q. Yes?—A. With reference to the Alamo which impressed me very much was the fact that though it was impossible to get in the tunnel into the workings in the Alamo that manager Barnes had panned all over the dump and had got good values.

Q. They told you at that time, did they?—A. Yes.

Q. That Barnes had panned the Alamo dump?—A. Yes, and had found good values on all the panning.

Q. Yes?—A. They also said to account for the loss of the gold, they told me the reason the mine closed down was that they could not make any recovery, but they said it was accounted for in the fact that either the amalgam was bad or that the ore did not lend itself to amalgam, but the facts were that they were losing the values and that Barnes had panned amalgam as far down as one mile in the creek from the mine, that is, the tailings. Those two facts impressed me very much in the way the mining had been done to such a considerable extent as the plan showed that it terminated on the vein of several hundred feet, and that there must be some ore lying about somewhere, and when they told me Barnes had these pannings on the dump, that satisfied me the values must be as indicated in the plan.

Q. I see. Incidentally, did you ever have any discussion with Barnes, did you have any consultation with him or discussion with him regarding this mine, that is, alone?—A. Not after what happened subsequently. I see the reason.

Q. Never mind the reason, tell us the facts?—A. No, I never had any opportunity. D. N. McTavish who was with me was always butting in, he was always there.

Q. Now, at this meeting was there any discussion as to what money you should invest, at the meeting at your house?—A. They started talking about what they wanted for their shares. They were selling shares. I asked what was the lowest price they got for shares, and they said ten cents, but they sold very few at ten cents. The shares that were selling at the moment when they were seeing me, they were around 25 cents, and I told them again that I would not be interested at all unless it was for a considerable block of stock.

Q. I see, at this meeting what did you finally decide to do?—A. To visit the mine.

Q. Then I understand you went down to the mine shortly afterwards, you, and who went with you?—A. D. N. McTavish and Howard and myself.

Q. And when were you given the reports which were filed, as exhibits? You heard me read them, Exhibits 28, 29, 30, 31 and 32?—A. Yes.

Q. When were you given those?—A. On the train.

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- Q. Who by?—A. By Howard. Well, McTavish was standing next to him. In fact we were sitting down in the drawing room.
- Q. Now, what took place on the train going down, how long did it take you to get there?—A. Oh, a day and a night.
- Q. You gentlemen were all together during that time?—A. Yes.
- Q. Did you have any further discussion about it?—A. We were practically discussing the mine and its prospects all the time.
- Q. I see. Along the line of your previous conversation with them?—A. Yes.
- 10 Q. Now, what did you do when you got to the mine?—A. Well, on the way to the mine we passed the Alamo. The Alamo is the first property you arrive at driving from Baker. The Evans is situated a mile further, and as we drove by they said “This is the Alamo, the dump and the frame of the mill.” It is on the roadside.
- Q. Did you know that the Alamo had been closed down for a great number of years?—A. Yes, they told me at the first meeting that it had been closed down over 20 years.
- Q. They pointed it out to you as I understand?—A. Yes.
- Q. And you went on to the Evans?—A. Yes, I went straight up to the
- 20 shaft on the Evans property.
- Q. Who was there at the Evans?—A. Barnes.
- Q. Mr. Barnes?—A. Yes.
- Q. What did you do?—A. Well, we went down the shaft, but I cannot recollect if we went down the shaft before we had lunch or not, but it was either before or after lunch we went down the shaft and took some samples.
- Q. In what way did you take samples?—A. I was down in the shaft and Barnes, and I am not sure whether McTavish was in the shaft or not, but Barnes was there and Barnes took some of the samples and I took some of the samples.
- 30 Q. How did you take them?—A. Oh, just picked them up with my hands.
- Q. That is the loose—A. I picked up rock in the mine.
- Q. Were you able to define the vein yourself?—A. No, it struck me as extraordinary. Barnes said “This is the vein, the full width of the shaft,” and I just thought to myself, “I cannot see no vein, but I presume it is the vein.”
- Q. What did it look like to you?—A. It looked to me like any other rock.
- Q. You were not capable of recognizing this ore-bearing rock?—A. No.
- 40 Q. You say that you picked the samples up off the floor of the shaft?—A. Yes, Barnes had a hammer and chipped some off the wall. He had no chisel, just a hammer.
- Q. Did you get any other samples?—A. Then we went to the glory hole.
- Q. No tunnel was driven below the shaft?—A. Yes, a small tunnel.
- Q. Did you go in it?—A. Yes.
- Q. What did you do there?—A. Took a few samples.

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Q. In the same way?—A. Yes.

Q. Then you went in the glory hole?—A. After that.

Q. What did you do there?—A. Took a few samples there.

Q. In the same way?—A. Yes.

Q. What did you do with those samples?—A. They were brought to Vancouver and I had them assayed.

Q. Did you attempt any further examination of these mining properties outside of what you have described?—A. Not at the moment. We went subsequent.

Q. But on that particular time?—A. No. 10

Q. Now you went down again?—A. I might say that in coming back we got off at the Alamo and just walked up. I think the elevation in the bottom tunnel, the main tunnel is about a 100 foot rise and we just walked up and they just showed me that the tunnel was sealed, and I saw where the mill had been standing. The frame was still there, and I came right down and got in the car and away. We were not there more than about five minutes.

Q. That was in September?—A. Yes.

A. After you got your samples analyzed or assayed, did you have any further discussion with the McTavishes?—A. Well, we were discussing it all the time. 20

Q. What was the purport of the discussion after this first trip?—A. Well, I decided to buy some of the stock and the arrangement, the contract that was made later was the result of that trip.

Q. Before you made the contract, I think the contract was in February, you made another visit to the mine?—A. In November.

Q. Who went down that time?—A. D.N., only D.N. and myself and Mrs. Langer.

Q. What did you do at that trip?—A. Up to this point Barnes had driven in the tunnel, that was the Evans, and intersected the vein. 30

Q. That was the first tunnel, some 30 feet below the surface?—A. Yes, and that was the reason for the trip down in November. It was to see the vein that was encountered, on that trip.

Q. What did you do on that trip?—A. Took samples of the vein on that level.

Q. Is that all you did?—A. We might have done some panning there. We did some panning on the first occasion too which I forgot to mention.

Q. Then what did you do with those last samples?—A. Had them assayed.

Q. Had those assayed?—A. Yes. 40

Q. What was done after that?—A. Well, as far as I remember we negotiated about the contract and the contract was the result of those trips.

Q. Let me see now, that contract was filed, or is it?—A. Yes.

Mr. ST. JOHN: It is Exhibit 17, Mr. Walkem.

Mr. WALKEM: The Agreement?

Mr. ST. JOHN: Yes.

Mr. WALKEM: Let me see that please.

Mr. WALKEM : Q. That is the agreement you finally entered into. At least that is the first definite agreement you entered into, isn't it?—A. Yes.

Q. The 17th of February, 1927?—A. Yes.

Mr. WALKEM : That agreement has been read, gentlemen of the jury; that is the agreement whereby Mr. Langer agreed to put \$17,000.00 in for the development of the mine and to get shares at five cents a share and was given certain options.

Q. How much money have you put in under this agreement?—A. \$28,600.00.

10 Q. Now, had you been satisfied with the results of the assays which you took on these two trips?—A. Well, they were much lower than they were indicated to me with the meeting with the McTavishes, but they pointed out to me that the depth of the shaft, that is the depth from the top to the bottom, had indicated that the vein was widening and it was also getting richer with the depth and it was hoped and expected when they went down it would increase both in value and in width.

Q. I see. When was it decided to drive this lower tunnel to the 300 foot depth on the Evans?—A. When I was at the mine in November.

Q. And it was hoped then to strike the vein at that level?—A. Yes.

20 Q. I see.—A. I mentioned to the McTavishes the fact that this tunnel called for a large expenditure and that supposing we get into where the vein is supposed to be and we don't strike it, D.N. said, "Of course it will be there, the only thing is it will be wider and richer than it is on the top."

Q. Was there any discussion at that time regarding the Alamo?—A. I expressed my surprise that they were, as I termed it at the time, fooling away with the Evans and putting up a mill there when they had a certain developed mine at the Alamo.

30 Q. What did they say to that?—A. McTavish's reply was, "We have got an engineer, and we went by the advice of the engineer, and furthermore the values in the Evans are more than twice as much as in the Alamo, because they were indicated to be over \$20.00 whereas we always looked upon the Alamo as being \$10.00 or \$12.00 ore."

Q. Was there any discussion as to what would be the result or the situation if the Evans property did not turn out any good?—A. We always considered the Evans as a secondary condition. The real factor of paramount importance was the Alamo, as this was a developed mine with assured values.

Q. I see.

40 THE COURT : Did you know the price it passed for from the owners?—A. No, my lord, it was not discussed.

Mr. WALKEM : Q. They had not told you they had got this stock for nothing?—A. No, they impressed me that everything was done in a proper straightforward manner. If I had thought any other way I would have kicked them out of the house.

Mr. WALKEM : Now, I would ask my learned friends, to save time, to admit three stock purchases and the prices paid that are given in the particulars.

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Mr. ST. JOHN : We have a different opinion on the first one. The first 62,500; we say it was 250,000, and if you will admit that, I will admit the other.

Mr. WALKEM : *Q.* Now, you made three stock purchases from McTavish Brothers Limited?—*A.* Yes.

*Q.* During 1927, independent of the final agreement of the 17th of November, being the subject matter of this action?—*A.* Yes.

*Q.* And there is a difference of opinion between you and Mr. McTavish of the first purchase? Mr. McTavish states that you agreed to purchase 250,000 shares at first? —*A.* There was one purchase, I don't know whether 10  
it was the first or second where I agreed to purchase a larger sum than I actually did, because during the time or later, after I made the first payment, I told him that it was very difficult for me to finance it and they said all right and we agreed to take the amount I had paid for it.

*Q.* I do not think there is any dispute between my learned friend and myself that obviously the first purchase Mr. Langer was to take 250,000 and finally took 62,500.

Mr. ST. JOHN : That is right?—*A.* Yes.

Mr. WALKEM : *Q.* Then you admit the first purchase. If we get these particulars; they are set out in the particulars in the defence?—*A.* I might 20  
explain at the time that I said to them, "Later on when I find my finances are easier, I will take them up or take on a larger block." It was always understood that I would buy more stock.

*Q.* The first purchase on the 14th of January, if Mr. St. John will check me —

Mr. ST. JOHN : What was that?

Mr. WALKEM : Just check me, the first purchase was on or about the 14th of January, 1927.

Mr. ST. JOHN : Yes.

Mr. WALKEM : 62,000 shares at 12½ cents—that is the 250,000 and 30  
finally he took 62,500 at 12½ cents. We will get the total in a minute, and then on the 17th of June 125,000 shares at 15 cents.

Mr. ST. JOHN : Yes.

Mr. WALKEM : And the 12th of July, 1927, 62,500 at 12½ cents.

Mr. ST. JOHN : That is right.

Mr. WALKEM : *Q.* You got all those shares and paid for them?—*A.* Yes.

*Q.* \$35,937.50, and the exact amount invested under the Alamo agree-  
ment was \$28,660.00. The ledger shows \$28,660.00 and the witness said 40  
\$28,600.00.

THE COURT : That is under that agreement.

Mr. ST. JOHN : If I am being called on to admit that, it should be pointed out that part of the purchase price was paid in land.

Mr. WALKEM : Yes.

THE COURT : The land was not surveyed.

Mr. ST. JOHN : Yes, it was all surveyed.

Mr. WALKEM: We are not dealing with the final purchase of the 750,000 shares. Mr. Langer purchased 250,000 during the summer outside of the 750,000. He purchased one million shares altogether.

THE COURT: What became of the land that was conveyed?

Mr. WALKEM: The land was turned over on the first purchase and went to McTavish Brothers. We do not know what became of it. They got it. The land in the final purchase, the two lots in the final purchase, which he was to turn over, he never did turn over. That was when the agreement was repudiated.

10 Q. Now, Mr. Langer, did you ever see this Exhibit 38, this pencil sketch?—A. Yes.

Q. And this is a blueprint of it?—A. Yes.

Q. That exhibit 38 is the sketch and the blueprint is exhibit 19. When did you see that?—A. I am not sure when it was, but it was before I made the last purchase of 750,000 shares.

Q. That is sometime before November 17th?—A. Yes.

Q. And just tell us the circumstances?—A. I came into the office.

Q. Whose office?—A. The McTavishes.

Q. Who were there?—A. The two McTavishes.

20 Q. Yes?—A. And we had some discussion about the mine and registering, and then they brought out this and handed it to me and said just look at this, we have just found this. Here is further proof of what there is in the mine.

Q. Yes?—A. And when I looked at it I could see that it had been prepared by a man who knows his business, presumably by an engineer, and I said it was very valuable to have and I asked them to have a blueprint made of it and send it to the mine and to my surprise when I went to the mine and asked Fellows if he got the blueprint—

Q. When was that?—A. In November.

30 Q. November, 1927?—A. Yes. Fellows knew nothing at all about it, and though presumably the McTavishes placed some value upon it, they only handed it to me to bluff me.

Q. That is a matter of conjecture. Where did you get the blueprint, Exhibit 19?—A. From the time they had it made, this is the second one, the first one did not come out very good. This is the second one. This is a copy from this.

Q. I see. Now, did you ever meet this Mr. McGuigan who has been referred to?—A. Yes.

40 Q. When?—A. I am not sure, but it was subsequent to the meeting for the sale of the 750,000 shares.

Q. Subsequent or prior?—A. I mean prior to.

Q. Where did you meet him?—A. They brought him to my house.

Q. Who brought him?—A. Both McTavishes.

Q. Were they with him?—A. Yes.

Q. Who was present at that interview?—A. Mrs. Langer was there.

Q. Yes, and you four?—A. Four, yes.

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tinued.

Q. What took place at that interview?—A. They always told me about McGuigan being the man who had actually done the work on this mine. He had been there some three years and I always was very anxious to meet this McGuigan, because he was the man who did most of this work, and was manager of the mine.

Q. Yes?—A. So, I was very glad to see McGuigan, and I cross-questioned McGuigan as to values in the mine and his statements all concurred with this blueprint. He said the ore bodies varied 20 to 30 feet, that they went \$10, \$12 and \$17.

Q. You were talking about the Alamo to him, I presume?—A. The Alamo, yes, yes. At the time, McGuigan had nothing to do with the Evans. He is purely and simply the Alamo man. I asked him how much gold they recovered, and I could not get a satisfactory reply. He said he was so busy about the mine that the gold was sent to their head office, and I did not get any definite reply as to the actual amount of gold they got out, but he was emphatic in the values, that the values were absolutely there.

Q. Did you have those blueprints?—A. No, I just enumerated the values as they were indicated in the blueprint.

Q. And you say he corroborated those?—A. Yes.

Q. Now, we come to the agreement, the subject matter of this action, of the 17th November. When you got the 750,000 shares, just tell us the circumstances regarding that purchase?—A. Well, we had been negotiating for some considerable time about a considerable block of stock, as the time was growing close to the actual opening of the Alamo. They always told me that they had not all the stock, but that they always mentioned their associates, that they would have to get part of the stock from their associates, and the time finally came when they said they could deliver those shares. The price, we haggled about the price for some little time, and at last we arranged about the price and the amount of stock to be purchased was 750,000.

Q. Well, the agreement is filed. When was that sale closed?—A. I am not sure, some time in November.

Q. Was it closed on the same date as the agreement? The agreement is dated the 17th?—A. Oh, yes.

Q. What time of day?—A. In the evening they came to my house. This sale was concluded in the presence of Mr. Kerr. The four of us were there, the two McTavishes, Mr. Kerr and myself.

Q. I produce a letter of the 17th August, 1927, which I would like to file. That is the letter written to Mr. Langer in England.

Mr. FARRIS: August 17th.

Mr. WALKEM: Q. Where is the original of this letter, Mr. Langer?—A. I received this letter in England.

Q. Where did this copy come from?

Mr. DAVIS: I haven't any such letter.

A. This copy Mr. Kerr gave me. I remember receiving this letter in England.

Mr. WALKEM: What exhibit will this be?

THE REGISTRAR: Exhibit 67. (*Letter referred to read and marked Exhibit No. 67.*)

MR. WALKEM: Q. Now, the purchase of this 750,000 shares took place on the 17th November, and what events followed that?—A. Two or three days afterwards; well, we were expecting to hear that Mr. Fellows had succeeded in finally opening the Alamo from day to day. He was clearing out the tunnel in order to get to the veins, so that he could sample them.

10 Q. Was anything being done at that time with the Evans?—A. Oh, yes, he was also working on the Evans tunnel. So I went up expecting to hear the result of these assays, and not getting them, I called to the office, and when I went into the office and asked McTavishes—

Q. Whose office?—A. McTavishes'.

Q. Yes?—A. I asked McTavishes what about these assays.

Q. Were they both there?—A. Yes, I asked them, "What about these assays, have you got them?" And they said yes. I said, "What are they like?" He said, "They are not good." I said, "What did they go?" They said, "Practically nothing." They did not tell me what they went. They said they went practically nothing.

20 Q. Were these final assays of the Alamo waiting for all this time?—A. Yes, and the Evans.

Q. And the Evans?—A. Yes, I said, "This is a nice state of affairs." They said, "Yes, we feel very badly about it." And they said, "So far as you are concerned, we are only too sorry that we used up your \$5,000." That is, the cheque for \$5,000 I gave them the night when this agreement was made. "If we had not used that we would be only too pleased to return that." And with regard to the \$10,000 note they had for three months, they said, "We will return you that and we will return the agreement," and I said all right.

30 Q. I see. Did you get your agreement?—A. Well, I expected to get the agreement the following day by mail. It did not come. I expected it every day and it did not come, and then I said to Mr. Kerr—

Q. Never mind what you said to Mr. Kerr.—A. I asked him to go and see.

Q. You sent him down?—A. Yes, I sent him down. I said to Mr. Kerr—

Q. Never mind what you said to him. You are not allowed to give that in evidence. You can say that you sent him to Mr. McTavish's office.

—A. It is the same thing. I told him—

40 Mr. DAVIS: Now—

Mr. WALKEM: Q. Never mind what you told him.—A. I sent him to the office of the McTavishes to get that agreement.

Mr. DAVIS: Now—

Mr. WALKEM: Q. He will tell what he did himself when he comes in. You cannot tell what Mr. Kerr said to you.—A. All right.

Q. I think you wrote a letter at that time. That letter has been filed?

THE REGISTRAR: Yes, Exhibit 25.

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tinued.

Mr. WALKEM: *Q.* Now, as a result of Mr. Kerr's report to you what did you do? Did you send that letter, that is, Exhibit 25?—*A.* Yes.

THE COURT: What is the date?

THE REGISTRAR: The 8th December, 1927, Exhibit 25.

Mr. WALKEM: Let me see that. I would like to refresh the memory of the jury with regard to this letter. This is a letter to McTavish Brothers Limited. (*Reading Exhibit 25.*)

*Q.* Did McTavish Brothers Limited ever reply?—*A.* Never replied.

*Q.* They never answered your remarks in that letter?—*A.* No.

*Q.* Did they see you personally with regard to it at all?—*A.* No.

*Q.* Were you in town all the time?—*A.* Yes, we tried to get them to call on me, but they never came.

*Q.* You tried to get them to call on you?—*A.* Yes.

*Q.* There is a reference there to Mr. McGuigan when you called on them after the 17th, being the meeting which you mentioned in which they said they would send back this agreement. Was Mr. McGuigan mentioned then?—*A.* No, Mr. McGuigan's name was never mentioned.

*Q.* You say there was no stipulation at that meeting that the calling off of the transaction was dependent on Mr. McGuigan's report?—*A.* There was no mention of McGuigan at all.

*Q.* McGuigan was not mentioned at all?

Mr. DAVIS: I object to that as a leading question.

Mr. FARRIS: I think that we are entitled to have that information. He has written this letter to these people to know where they got the information to put in here about McGuigan. It sounds on the face of it as if the two stories were inconsistent.

THE COURT: I think so.

Mr. WALKEM: *Q.* You did want to get the information about Mr. McGuigan? Where did you get the information about Mr. McGuigan?—*A.* They told Mr. Kerr—

Mr. DAVIS: Now—

Mr. WALKEM: *Q.* You got it from Mr. Kerr?—*A.* Yes, the excuse they made—

Mr. DAVIS: Well, I object to this.

Mr. WALKEM: We will get that from Mr. Kerr.

THE COURT: You are calling Kerr, and he will show what occurred.

Mr. WALKEM: Yes, we will call him.

*Q.* Is the letter of November 19th, 1927, from Fellows, filed?

THE REGISTRAR: I don't seem to have anything of that date.

Mr. WALKEM: Will you produce the letter?

Mr. ST. JOHN: Yes, here it is (*producing*).

Mr. WALKEM: I will file this letter of November 19th, 1927, from Fellows to McTavish Brothers Limited. (*Letter read and marked Exhibit No. 68.*)

Mr. WALKEM: The telegram of the 21st November, 1927, is that filed? If not, I would like that produced. I think possibly that is filed as Exhibit 33.

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- THE REGISTRAR : 33, the 21st November, 1927, that is in.
- Mr. WALKEM : Let me see the exhibit, please.
- Mr. FARRIS : That is the one that has gone in.
- Mr. WALKEM : That is all right, then. Letter, December 6th, 1927,
- Mr. Fellows, has that been filed ?
- THE REGISTRAR : Exhibit 34.
- Mr. WALKEM : That is filed, is it ?
- THE REGISTRAR : Yes.
- Mr. FARRIS : Yes.
- 10 Mr. WALKEM : That is filed.
- Q. Now, did you ever have any conversation with McTavish regarding Barnes ?—A. Yes.
- Q. What was that ? What did they tell you about him ?—A. Well, they told me—
- Mr. DAVIS : When was this ?
- Mr. WALKEM : Q. Tell us when ?—A. About the time they told me the reason for his leaving the Alamo.
- Q. When did this take place ?—A. Oh, after I came back from England.
- 20 Q. That would be the middle of the summer ?—A. I came back from England in August.
- Q. What did they tell you about Barnes ?—A. They told me that Barnes, after he had his tonsils taken out, that he was in a very bad way, that he was lazy, that he laid about, he did not go in the mine once a day, that he was attending to nothing, and that he was so small in his actions that he would not even allow a few cups to be purchased for the cook ; he would not allow some of the people that we had favour from, such as carters passing there, he would not allow them to have a meal there, and generally he was cantankerous and useless, and finished up by saying that
- 30 he was a thief as well, and the thievery came in the fact that he even finished up by stealing the radio set. So that they impressed me that he was both a physical and mental wreck.
- THE COURT : Q. When was this ?—A. That was in August, your lordship.
- Mr. WALKEM : Q. Was he with the company then or had he gone ?—A. He had gone. That is the reason we had got rid of him.
- Q. Did they say he left or that they discharged him ?—A. They said that he tried to make some excuse when they got to the mine, how he was not feeling good, but if he had a holiday for a few months he would feel
- 40 better, and they said, " We were very glad to get the opportunity to fire him." So when he said that McTavish said, " All right, Barnes, that is all right with us ; we have a man to take your place, Fellows." And " We were very glad to get the opportunity to get rid of him."
- Q. Were you in court when Mr. Barnes gave his evidence ?—A. Yes.
- Q. And you heard the evidence which he gave, and in which he stated that he told McTavish that these properties were of no value ?—A. Yes.

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*Q.* Was that information conveyed to you by McTavish?—*A.* Never. To the contrary, it was the other way, as to the millions we were going to make out of it, to the last minute.

*Q.* Was any adverse report ever conveyed to you?—*A.* No, just the opposite.

*Q.* Mr. Barnes further states that when he struck the porphyry dyke he found no values. Was that information given to you by McTavish?—

*A.* What mine is this?

*Q.* The Alamo?—*A.* No, the Alamo was not reported. They made some reports to me with regard to the tunnelling of the Evans, that he was not encountering the veins, and accounted for that that it was a slip, as they termed it, and that it would be encountered at some other point. 10

*Q.* Now, my learned friend in his Statement of Defence states that you went into this transaction relying on your own judgment and investigation into these different transactions. What have you got to say to that?—*A.* No, I went purely on the representations made to me by the McTavishes. I have no experience in mining.

*Q.* Would you have made these different purchases had these representations not been made?—*A.* I would not have put in a dime unless they were made to me as representations of fact. It was always facts they gave me. 20

*Q.* You have the 750,000 shares at the present time?—*A.* I presume I have.

*Q.* And you are ready to return the same?—*A.* Yes.

Mr. WALKEM: Your witness.

Cross-exa-  
mination.

CROSS-EXAMINATION BY MR. DAVIS:

*Q.* I think you said you were a builder in England, Mr. Langer?—*A.* Yes.

*Q.* You left England to go where?—*A.* To come here.

Mr. WALKEM: South Africa.

Mr. DAVIS: I was asking Mr. Langer. I am much obliged for any information from you. 30

Mr. WALKEM: You got up and made a statement that he did not make, that Mr. Langer said he was a builder in England.

Mr. DAVIS: I understood him to say that.

Mr. WALKEM: He did not say it in his evidence to-day.

THE COURT: Mr. Walkem is right. It does not amount to anything.

Mr. DAVIS: I understood that he said he was a builder there.

*Q.* When did you leave England?—*A.* To come here?

*Q.* No, I did not say that. Were you not a builder in England?—*A.* At what time? 40

THE COURT: *Q.* Any time?—*A.* I am a builder there now.

Mr. DAVIS: *Q.* But not prior to that. You were a builder prior to your first leaving England?—*A.* I went over to England to start building operations there when the War broke out in 1914.

THE COURT : Q. Where were you born?—A. I was born in Germany.  
Q. And from there you went some other place?

Mr. DAVIS : Q. I understood you to be English?—A. I am generally taken to be because I have been among British people all my life.

Q. Where did you go from your home in Germany?—A. To South Africa.

Q. What year was that?—A. '78. I was born in '72.

Q. You went out to South Africa in '78?—A. Yes.

Q. How long were you in South Africa?—A. I left South Africa for  
10 this part of the world about 20 years ago.

Q. That was about 1908?—A. Yes.

Q. And at that time you would be about 40?—A. About 40, no 36, 35  
or 36.

Q. You went there in '78 you say?—A. Yes.

Q. And left in 1908 when you were about 36. What was your business  
in South Africa, while you were in business there?—A. I was building.

Q. You were building there?—A. Yes.

Q. What were you building mainly?—A. Building houses.

Q. Where were you located?—A. In Johannesburg.

20 Q. And you built a cyanide plant, I understand?—A. Houses and  
general construction.

Q. You built a cyanide plant there?—A. Yes.

Q. And you left there about 1908?—A. About that.

Q. Where did you go then?—A. I went to San Francisco.

Q. How long did you remain in San Francisco?—A. About two years.  
When I say San Francisco I mean San Francisco and Oakland which is  
only across the bay.

Q. What were you doing there?—A. Building there.

30 Q. Was it during that period, between 1908 and 1910, you took your  
assaying course there?—A. No, I came over; I left San Francisco and went  
to Alaska.

Q. You left San Francisco in 1910 and went to Alaska?—A. About  
that.

Q. Roughly?—A. I went to Alaska and stayed there a few months.

Q. You went to Alaska about 1910?—A. Yes.

Q. How long did you stay in Alaska?—A. I was not there three or  
four months.

40 Q. What were you doing there?—A. I was working on the mine as a  
carpenter and I was also doing some bricklaying. I am a carpenter by  
trade.

Q. Is it correct that you contemplated entering a mining venture in  
the way of buying a dump?—A. No, I went with a fixed purpose of—

Q. I don't care about your purpose in going there. I am only asking  
what you did when you went there?—A. I went there—

Q. There is nothing wrong about it, did you have this deal, or  
contemplated deal about buying a dump up there?—A. What dump?

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Cross-exa-  
mination—  
*continued.*

Q. Any dump?—A. It was tailings.

Q. Did you have that?—A. Yes.

Q. There is nothing wrong in that.

Mr. FARRIS: Why does my friend put it that way? The witness is trying to explain, or was, and my friend immediately stopped him, and creates the impression that there is something wrong?—A. I could save time by telling him.

Mr. FARRIS: You cannot put an artificial impression on it.

Mr. DAVIS: I do not think the jury will be led away by artificial impressions. 10

Q. Did you have some other deal, or was it merely contemplated?—

A. I went there for the purpose of securing tailings.

Q. I don't care about the purpose. Did you make a deal?—A. No.

Q. Is it correct you found there had been some salting done?—

A. Where?

Q. In connection with these tailings?—A. No.

Q. There never was anything of that sort?—A. Are you speaking about Alaska?

Q. Yes?—A. I had nothing to do with any salting, nor did I know of any. 20

Q. I did not say you had. Did you accuse the people you were buying from of having the tailings salted?—A. No, there were no tailings to salt. You are all mixed up and you are only wasting time.

Q. Never mind about that. Where was this salting episode, South Africa?—A. No, there was no salting in South Africa. You have hold of the wrong tail.

Q. We were told by one of the witnesses you had some trouble about salting?—A. No, no trouble about salting. What happened was this—do you want me to tell you?

THE COURT: Q. Tell us about the salting?—A. There was no salting, my lord. He has the wrong idea. What happened was, in the early days in South Africa before the cyanide process was established up to that time they lost 50 per cent. of the gold because there was no other method of recovering it with the exception of concentration. A couple of young fellows turned up with a cyanide plant, an experimental plant, and put up this experimental plant in the Mayer and Charlton mine. Though I was only 18 years of age I saw great opportunities, and I went across and studied this operation and it was successful. They showed me the gold, and seeing that there were great opportunities and owing to the fact that there were innumerable dumps of tailings all over the country, I decided to get a dump of tailings and work it with the cyanide process. What happened was this, I took samples of the tailings all over the country in order to get the best tailings there were, and I gave these assayers the samples, and it was generally understood that all tailings in Johannesburg were good, so presumably he gave me a fictitious assay. When I finally decided to erect a plant on the dump the scalings were supposed to be \$10.00. I erected the 30 40

plant and when the plant was ready to be operated I found that there was nothing in the tailings. What happened was that the assayer either did not assay the tailings or guessed at the values or deliberately swindled me.

Q. Or somebody salted the dump, the samples?—A. No, they could not sample them. They could not take gold out to salt them. It is the other way.

Q. That led to you taking this course?—A. Yes, a double course, not only to prevent me being swindled again, but for the additional reason that I had not very much capital, and if I could assay myself, I would be able to operate a plant and do my own assaying.

Q. Where did you go from Alaska? You went from San Francisco to Alaska, and back to San Francisco to take an assaying course?—A. When I was told that I could get this dump that the tailings were in, they would be making tailings every day and it was a very good mine. The mine was the Chicagoff Mine, they have taken millions out of that mine. They agreed to give me the tailings, and I took some of the tailings to San Francisco and I arranged with a professor, this is Oakland, rather, to take a course in assaying, so that I assayed my own tailings and treated them myself, with cyanide, and the whole experiment and investigation was satisfactory, and I went up to Alaska to work these tailings.

Q. When did you leave Alaska, what year?—A. This was only a month or two afterwards, because when I got back to Alaska, another firm had bought the mine, as a matter of fact, and I did not get the mine after all.

Q. You went from Alaska to where?—A. To here.

Q. Did you assay for other people there?—A. I done a few assays for the mine operating at Chicagoff.

Q. When did you leave Alaska?—A. I was only there six months.

Q. When did you leave?—A. What date did we go there, I cannot recall the date.

Q. The last date I have is that you left San Francisco in 1910?—A. Then I came back here to Vancouver.

Q. You came here 1911 or 1912?—A. 1912. I am not sure, I think 1912.

Q. How long were you here?—A. About two years. I left here when war broke out in December, 1914.

Q. The war broke out earlier than that?—A. I went in December.

Q. In December, 1914. So that you were here some two or three years?—A. Yes.

Q. What were you doing here?—A. Contracting here.

Q. Then you went over to England during the war?—A. Yes.

Q. What were you doing during the war?—A. I started working as a carpenter for a few months, and then I got some piece work and worked myself up until I took contracts myself. I had no money when I went back.

Q. But you prospered there during the war?—A. Yes, not during the war; I made my money after the war.

Q. I don't mean any reflection?—A. It was after the war.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence.

—  
No. 21.

Joseph  
Francis  
Langer.

Cross-examination—  
*continued.*



*In the  
Supreme  
Court of  
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No. 21.  
Joseph  
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Cross-exa-  
mination—  
*continued.*

Q. And you made, as a matter of fact, a considerable sum of money before you came out here?—A. Yes.

Q. Running into hundreds of thousands of dollars?—A. Yes.

Q. And you came back here when?—A. About 1923.

Q. August, 1923. When was it you made the compromise with your creditors?—A. Before I came back.

Q. I know, but about when?—A. A few months before I came back.

Q. At that time you had a large amount of money in England?—A. I did not have a large amount. I was making a large amount, but the money I was making was in plant and building.

Q. You were well off at that time in England?—A. Yes.

Q. There is no doubt about that. Why did you make a compromise of 50 cents on the dollar?—A. I don't know what it was. I will tell you the reason, when I was here I was robbed, and I was robbed by people—and there was quite enough money to pay the creditors, but they swindled me when I went away.

Q. We will get some of the facts?—A. Let me tell you further.

Q. Go on?—A. When I made the compromise, I told my solicitors —

Q. Never mind that?—A. I intend to pay 100 cents on the dollar as soon as I make some money in Vancouver where I lost it.

Q. Coming back to the details of it, what was the amount, roughly, of these debts? They consisted of judgments against you?—A. Yes.

Q. There were some dozen or more judgments against you?—A. I don't know how many there were.

Q. Running to what amount?—A. I have no idea.

Q. Some \$20,000.00?—A. I don't know what it was. I know that I paid some thousands over here.

Q. And there was interest all the time. They had been running on for years?—A. Yes, possibly.

Q. So that the amount would run up to probably \$25,000.00 or \$30,000.00?—A. I don't know what the amount was.

Q. At what rate did you compromise those claims?—A. I don't remember what it was.

Q. It was some 25 per cent., wasn't it?—A. I don't know what it was.

Q. Would you swear that it was more than that?—A. No, it might have been less, I don't know.

Q. You say all these judgments were cases where people robbed you?—A. The principal ones were. The architects were responsible.

Q. Now, for instance, we will pick out one instance, the Union Bank, you compromised with them for 25 cents on the dollar. Did they rob you?—A. No.

Q. All these others, I can read out the list for you, Everett Sash & Door, Cullen, Kydd Bros., Wright-Cameron, Clarke Bros., Williams & Co., Northern Electric; which one of those robbed you?—A. I told you before that I was going to pay them, and I mean to pay them.

Q. Which one if any of those robbed you?—A. I don't mean individually, I mean there was plenty of money to pay everybody, but the

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architects worked the business in such a way, that instead of there being 100 cents on the dollar to pay everybody, to my amazement when I enquired I found that many people had lost money.

Q. Your architects?—A. No.

Q. Whose architects?—A. The people who were building. They are well known to be scoundrels.

Q. All the architects here are scoundrels?—A. No, if you were here you would know Townsend & Townsend.

10 Q. We will not get into a discussion between you and me. I will take your statement as to the reason you did not pay the debts. Those were honest debts?—A. Yes.

Q. It was because you considered that some architects with whom you had this were scoundrels and had done you up?—A. I left lots of money here to pay everybody 100 cents on the dollar.

Q. You did not?—A. Well, I left the money here.

20 Q. For that reason you came to the conclusion that you would compromise with these men at 25 cents on the dollar when you had plenty of money to pay them?—A. It was only a compromise for a very short period. I told you I would pay them and I will, for the simple reason that I have not made a nickel in Vancouver.

Q. Haven't you given a statement that you were worth over two million?—A. Yes. And I say that I have not made it here.

Q. Then you made it in England before you came. Then you had two millions in England when you made this compromise?—A. No, not at that time.

Q. At any rate, you have had for some time on your own rating, over two million dollars after all liabilities were taken off. That is the statement you have given?—A. That is quite correct.

Q. You had not paid up these amounts?—A. I have not done so yet.

30 Q. By the way, one of these judgments was by the Bank of Vancouver?—A. Yes.

Q. After you had made this compromise with the liquidator of the Bank of Vancouver, Mr. Houlgate, for something like 25 cents on the dollar and after you came back here didn't you make a boast to one of the officials of the Bank of Vancouver of how you had done the people up here, that you had over £20,000 lying in the Bank of England when you made the compromise?—A. It is a lie.

Q. The boast is a lie?—A. It is a lie.

40 Q. But the fact is correct you had £20,000 cash lying in the Bank of England when you made the compromise?—A. It is a very certain thing that I would never have £20,000 lying in the bank. As a matter of fact I have always got an overdraft, always.

Q. Now, when you came out here you at once went into a considerable building?—A. It was not my intention to go into any considerable building. It was my intention not to do anything at all.

Q. I am not asking you about your intention?—A. Think what you like.

*In the  
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Court of  
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Defendant's  
Evidence.

No. 21.  
Joseph  
Francis  
Langer.  
Cross-exa-  
mination—  
*continued.*

- In the Supreme Court of British Columbia.*  
 Defendant's Evidence.  
 No. 21.  
 Joseph Francis Langer.  
 Cross-examination—  
*continued.*
- Q. You built these theatres?—A. I built one with the intention of only building one.
- Q. You also went into a number of mining deals or speculations which ever you choose to call them, entirely apart from this Alamo?—A. I did.
- Q. To mention some of them, the Revenue Mining Company?—A. That is so.
- Q. The Independence?—A. The Independence is operated by the Revenue.
- Q. The Cedar Creek?—A. Operated by the Revenue.
- Q. But another Independence Mine. The Martin Woolsley?—A. 10  
 Operated by the Revenue, no, it is private.
- Q. You are in that?—A. I have an interest in it.
- Q. The Rufus?—A. No.
- Q. Isn't that one that is in your statement?—A. No, it might have been, I had a few Rufus shares.
- Q. The few were thousands?—A. A few thousands.
- Q. About 50 or 60 thousand?—A. Oh, no.
- Q. You don't think it was that many?—A. No, I don't think I had more than two or three thousand.
- Q. The Selkirk?—A. A few thousand. 20
- Q. And then this Theodosia, what is that?—A. The Theodosia and the Western Copper is really one operation.
- Q. What was that 75 per cent. commission on the sale of the Theodosia and the Western Copper which you valued at \$150,000.00, a note?—A. This was a note a gentleman had here who negotiated the sale of the Revenue; the Western Copper and the Theodosia.
- Q. Yes?—A. He had a note for \$150,000.00 which was only payable when the actual commission was paid over on the two millions, and I purchased this note from him at a discount.
- Q. But you put it in the statement as 75 per cent. of the commission, and 30  
 put the value at \$150,000.00?—A. 75 per cent.
- Q. Yes?—A. That is right now. I say I bought the commission note, 75 per cent. of the commission note.
- Q. And you valued that at \$150,000.00?—A. It was not valued. That is actually what it is worth when this man gets his money.
- Q. If the deal goes through?—A. The deal is through.
- Q. The money is paid, the two millions is paid?—A. No, the property was sold to the Detroit Western Syndicate, and there was \$200,000.00 as commission, of which I paid 75 per cent.
- Q. And when the two millions is paid?—A. I get \$150,000. 40
- Q. In other words if the prospect turns out to be wealthy mine?—A. It is not a prospect.
- Q. It is not a prospect at all?—A. No.
- Q. Now you had a number of representations, you say, from Howard and from the McTavishes and you were insisting that you would only go into a speculation of that kind if it was absolutely certain?—A. Precisely.
- Q. Is that right?—A. Yes.

Q. Do you really think, Mr. Langer, that you can get mines that are absolutely certain in which you can buy shares at five cents apiece?—A. I don't think. The Alamo had been in operation. The values proved that there was no thinking.

Q. You were getting a pretty good bargain if it was absolutely certain?—

A. There was nothing about bargaining, it was a question of needing money and they could not raise it, and the time when I found them their shirts were hanging out of their breeches.

Q. It did not occur to you that it was not an absolute certainty?—

10 A. I invest money for the best possible price I can get.

Q. Do you think there was any absolute certainty about the so-called mining prospects and the position that it was in?—A. There was not a possibility at all. This was a certainty. The mine had been developed and was not an undeveloped mine. This was a developed mine.

THE COURT: The Alamo?—A. The Alamo.

Mr. DAVIS: Which had been abandoned over 20 years before?—

A. Precisely.

Q. And in 20 years it had not been worked and the works caved in and were all covered in and could not be examined?—A. And I have yet  
20 to know that the values evaporated.

Q. And furthermore you knew what had been paid for it?—A. I did not know.

Q. You did not know?—A. I did not know.

Q. Will you swear?—A. Absolutely.

Q. Wait a moment, will you swear that you did not know prior to your entering into the contract of everything that took place in connection with the incorporation of that company and the division of the shares and so on?—A. I never knew that they did not pay anything for the property if I knew they got that property by juggling I would not have had anything  
30 to do with it.

Q. As a matter of fact all of that was turned over by you to your solicitor, Mr. Baird?—A. It was.

Q. Are you not aware that Mr. Baird went into the matter with Mr. St. John?—A. He went into the matter. He had to draw up the contract.

Q. I presume Mr. Baird would report to you the substance of what he learned from Mr. St. John?—A. He did not report to me. They got the mine by juggling.

Q. I did not say anything about getting the mine by juggling. How-  
40 ever, this matter was referred by you to your solicitor at the time, Mr. W. J. Baird, and Mr. W. J. Baird reported whatever was necessary to you. He passed it for you, so to speak. The legal matters were left to him by you?—A. Yes.

Q. We will just leave it that way?—A. The only thing Baird pointed out to me that was of importance and that was the possibility that this thing would not be legal as the property was in the States and that being

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No. 21.

Joseph  
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Cross-exa-  
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*continued.*

*In the  
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Joseph  
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Cross-exa-  
mination—  
*continued.*

foreigners we might not be able to operate it, and he was going to look into the matter.

Q. We will go into that later on. Now, you wanted to get when you did go into it, you wanted to get control of the shares naturally?—A. It was gradually working up that way. At the commencement I did not.

Q. As a business man you would want to have control of the shares? —A. This developed later on.

Q. You had seen these various reports, had you not?—A. Yes.

Q. And there was nothing represented, in the statements, represented to you by either Howard or the McTavish's that are not in those reports? 10

—A. I would not like to say that.

Q. Will you swear that there was anything represented to you by either Howard or McTavish not contained in the reports?—A. I think possibly that is so.

Q. Yes, that is so. You knew that the McTavish's were not mining engineers?—A. They tried to impress me that they were.

Q. Do you swear that they told you they were mining engineers?—A. They told me they had been busy with mines.

Q. So had you for that matter?—A. They told me they had operated the B.C. Gold and operated it. 20

Q. But that would not be mining engineers. You knew that they were not mining engineers because you have already sworn to that?—A. I might not know that they were certified engineers in the term of mining engineers, but they might know a lot about mining.

Q. You have already sworn you knew they were not mining engineers? —A. They were not certified.

Q. Have you or have you not?—A. Yes, I might have done.

Q. Yes, you did?—A. But I mean to say I knew that they were connected with mines and had a lot to do with mines. That is how they impressed me. 30

Q. How would they know about the Alamo Mine. It was covered up and nobody could examine it?—A. They told me they made full investigations and were satisfied that the representations they were making to me were facts.

Q. The full investigations were in these reports, the full information? —A. I simply believed what they told me.

Q. Didn't you know that all their statements were based upon these reports and nothing else?—A. No.

Q. What else were they based upon?—A. I don't know.

Q. You never understood that they were simply based on reports?— 40  
A. I simply took everything they gave me as facts as they stated them and I believed them.

Q. What about Howard's statements to you? Did he represent to you anything that is not in the report?—A. Well, I don't know.

Q. Did he or did he not?—A. Generally we were only discussing the reports, the engineer's reports and the plans.

Q. How did you suppose, if you do suppose, that the McTavishes had any further information with reference to the Alamo than what is contained in McGuigan's and other reports?—A. I did not suppose. I just took it for facts and believed them.

Q. So far as you knew they had no way of knowing outside of the reports?—A. I did not give it a thought. I just believed them.

Q. Did you believe McGuigan's report?—A. Yes.

Q. And really it was McGuigan's report you proceeded upon?—A. I took a lot of stock in McGuigan's report, because he was the man who did  
10 the operation actually.

Q. It was really McGuigan's report that you proceeded upon?—A. Not only that, but that helped.

Q. You were down at the mine in 1927, in November, weren't you?—  
A. Yes.

Q. You had a conversation with Mr. Fellows?—A. I had a few words with him.

Q. At the hotel I am speaking of?—A. Yes.

Q. And after you had been at the mine?—A. Yes.

Q. Do you remember that you stood in the corner alone with him  
20 talking a long time about the mine?—A. I only had a few words with him.

Q. Did you tell Mr. Fellows that it was McGuigan's report that you were relying on and that you were proceeding upon that?—A. No.

Q. Nothing of that kind?—A. No, I simply told him I was surprised that he did not get the blue print. That is the first intimation I had that he never had a blue print.

Q. Did you tell him anything of the sort that I have mentioned?—  
A. No.

Q. I want it clear that you did not tell him anything of that sort?—  
30 A. I might have mentioned that I went a lot on McGuigan's report because he was the man who did the development work.

Q. Yes, did you give this evidence in your examination for discovery, question 139, 140 and 141 :

“ Q. You read them through——” that is the reports that were referred to on the examination——“ you read them through and examined the blue prints and so on?—A. Yes.

Q. And discussed these things with the McTavishes before you went to the mine?—A. Yes.

Q. Did they at that time make any reports with regard to the  
40 mine which are not contained in these documents?—A. Well, I could not say offhand that they did. Probably they did, I cannot recall at the moment.

Q. You cannot remember?—A. No.”

Did you give that evidence?—A. If it is there it must be so.

Q. If you gave it it is correct, is it not?—A. I presume so.

*In the  
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Court of  
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Defendant's  
Evidence.

No. 21.

Joseph  
Francis  
Langer.  
Cross-exa-  
mination—  
*continued.*

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Joseph  
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Langer.  
Cross-exa-  
mination—  
*continued.*

Q. Well, you would not give evidence that you did not think was correct?—A. Well, it is a long time ago.

Q. You thought that everything that was in that report was correct, did you not?—A. I believed them.

Q. Yes. Now, I will read you questions 602 to 607 inclusive and you can follow me and I will ask you whether you gave this evidence and whether it is correct:

“Q. Well, let us just make a summary just now to see if we can catch them in this way. First, take this question of the misrepresentation by itself and now refer to the time you visited the mine, the first time they showed you these reports and that blue print which were put in as the first exhibits. Now, do you allege at that time they made any misrepresentation?—A. Oh, yes. 10

Q. Well, what did they do or say?—A. Well they represented the mine to be as indicated in these engineers' reports.

Q. In other words, they said what is there is true?—A. Yes.

Q. Well, did they say how they knew it to be true?—A. Well, by believing these reports.

Q. They believed the reports?—A. Yes.

Q. I see.—A. That is the reason I invested these enormous sums in the mine.” 20

Did you give that evidence?—A. Yes.

Q. Is it correct?—A. I suppose it is, partially correct.

Q. Now, take the first visit you made to the mine when Howard was along, D. N. McTavish, was it, and Barnes?—A. D. N.

Q. You took a number of samples?—A. Yes.

Q. And you had them assayed?—A. Yes.

Q. Will you produce those assays?

Mr. WALKEM: Which ones?

Mr. DAVIS: The ones at the first visit. 30

Mr. WALKEM: November 17th and 18th. (*Produces.*)

Mr. DAVIS: Those will be the ones.

Q. This is the result of that, is it not? Your counsel produces them?—A. Yes. (*Documents referred to marked Exhibit No. 69.*)

Q. These added up average about \$9 a ton? Those are better really than the certificates that we had, are they not?—A. What certificates?

Q. Of assays?—A. You have—I don't know what you mean.

Q. Yes, that the McTavishs showed you?—A. They did not show me anything. They just said that it went nothing.

Q. I am talking about before the contract was entered into. 40

Mr. FARRIS: What date are these?

THE REGISTRAR: The 17th and 18th of November, 1926.

Mr. DAVIS: Q. Didn't they show you their assays that they had got?—A. I don't remember seeing any assays there.

THE COURT: Q. Did they take samples at the same time and get them assayed?—A. I don't believe they did.

Q. That is my impression.

Mr. ST. JOHN : This was the year before, 1925.

Mr. DAVIS : Oh, I am speaking of the time when they went out there.

Mr. ST. JOHN : No.

Mr. DAVIS : Q. Take a look at those assays. Do you say those were never shown to you by the McTavishs?—A. I don't ever remember seeing them.

Q. Will you swear that they were not shown to you?—A. I don't remember seeing them.

THE COURT : Any assay?—A. No, no certificate. They just told me  
10 the values.

Mr. DAVIS : Q. You swear that they were not shown to you?—A. I don't. I don't remember seeing them.

Q. If they told you, were they the values contained here in the assay taken by themselves?—A. That corresponds with what they told to me.

Q. Yes, these assays correspond with what they told you?—A. They did tell me on the Evans that it was over \$20.

Q. That would not correspond with this at all?—A. There is one there 18. I am not speaking of the average.

Q. I am talking of averages. Did these assays correspond with what  
20 they told you they had got from the samples taken by them which they had assayed?—A. No, they told me about individual assays. I don't remember seeing those certificates.

Q. I know. Are the results of these certificates the same as what they told you?—A. Not what they told me. It was a bit higher.

Q. Will you swear that they told you anything different from that? Take a look?—A. I cannot remember particularly, but I do remember that they represented particularly that the Evans was over the 20.

Q. I am talking of assays, not the reports?—A. I am speaking of the  
30 the assay, that it went over 20. That smaller assay they might have got from the glory hole.

Q. You swear that they did not show you these?—A. I won't swear. I don't remember seeing them. (*Documents referred to marked Exhibits "A" for identification.*)

Mr. DAVIS : It is impossible to finish with this witness tonight and I would like to have all his examination at the one time, the rest of it, before he goes out of the box. Your lordship said yesterday that you would begin at 10 and adjourn at 4.

THE COURT : You cannot get through today?

Mr. DAVIS : It is impossible.

40 THE COURT : I look at it this way, the jury here are all business men and want some little time for their affairs. We started at 10, and we can start at half past nine, if you like, Monday morning, if you think we will make progress. Is that satisfactory? Then, Monday morning at half-past nine. Might I just state, it is hardly necessary to warn you not to discuss this case with anybody in the meantime. Keep it to yourself and act on the evidence.

*In the  
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Defendant's  
Evidence.

No. 21.  
Joseph  
Francis  
Langer.  
Cross-exa-  
mination—  
*continued.*



*In the  
Supreme  
Court of  
British  
Columbia.*

December 10, 1928.

(Court resumed pursuant to adjournment.)

CROSS-EXAMINATION CONTINUED BY MR. DAVIS.

Defendant's  
Evidence.

No. 21.  
Joseph  
Francis  
Langer.  
Cross-exa-  
mination—  
continued.

Q. From February 7th on you had control of the work that was done on these mines, did you not?—A. No, not control.

Q. You mean that seriously that you had not control?—A. Yes. We discussed the situation from time to time, but there was never any understanding that I had absolute control. I made suggestions, of course.

Q. Did you not have an agreement with them that you were to have control from the 7th of February on?—A. Control of the money.

Q. Control of the direction of the work?—A. I don't know that specifically, but I do know that I gave orders with regard to the expenditures.

Q. Don't you know that you had an agreement with the Plaintiffs that you had direction of all the work from the 7th February on?—A. I have not read the agreement since and if it is in the agreement it is there.

Q. Certainly. But you stated in your examination for discovery that you had no share in the direction of what was being done at all, did you not?—A. Well, I had some share in the direction, because the various matters were discussed from time to time.

Q. That is not what I asked you. Did you say in your examination for discovery that you had no share in the direction of what was being done?—A. If that is so, that is a mistake, because I did have some say in the direction.

Q. I will read to you from your examination at question 224 :

“Q. Did you have any share in the direction as to what was being done?—A. Nothing at all.”

Now, as a matter of fact, you had full direction and control, had you not of the 7th of February?—A. If the agreement says so, that is right.

Q. Don't you know what was in the agreement?—A. No, I haven't read it since.

Q. You didn't know at the time what was in the agreement?—A. At the time I signed it, sure, I knew.

Q. Did you not know then you had direction. Is your memory as bad as all that?—A. It is not bad.

Q. Why, when you wanted to be absolutely certain about your business and about the condition of the mine and so on, why did you not have the property examined by a competent reliable mining engineer?—A. Because I believed the McTavish's what they told me to be correct, and I did not see the necessity, because I didn't know the McTavish's then as well as I do now. Now, I wouldn't trust them across the street.

Q. I understand that, but don't you think it a serious thing when you were wanting absolute certainty, the wisest thing would have been to have it examined by a competent mining engineer?—A. It might have been wise as things have turned out, but at the time I had absolutely confidence in their statement.

Q. As it has turned out their statements were no better than your own. You went down and looked into it the same as they did?—A. We couldn't get into the Alamo.

Q. I am talking about the Evans?—A. The Evans was merely a secondary consideration. I looked upon the property as a hole in the ground. It looked to me like a proposition which would be worth spending a few thousand dollars on, but the main question there was the Alamo which was a developed and proved mine.

Q. But you did not at any rate think it worth while to check up the statements made by these various mining engineers by having an examination made by an engineer of your own?—A. I didn't think it was worth while because I believed what the McTavishs told me.

Q. You believed what you saw in the reports?—A. I believed the McTavishs, that they were straight men.

Q. What did the McTavishs know except what they got in the reports?—A. I didn't question their statements at all.

Q. How could they get any information except what was in the reports?—A. I didn't worry about that. I didn't give it a thought.

Q. Didn't give it a thought. Now, you knew, or did you know how the assays turned out that were taken there when you went down in November, 1927?—A. Yes.

Q. And how did they turn out?—A. The only assays that were taken when I was down in November—

Q. The year '27, mind you?—A. Yes. The only assays we took when we went down in November that happened this way, when I arrived at Baker I saw their manager, Mr. Fellows, and I might say before I went to Baker I had several reports from the McTavishes that Fellows had concentrated his prospecting work on the glory hole and that he got very encouraging showings, that he found the ore around about four, five and six dollars. When I went to the mine I saw Fellows at Baker and he confirmed these reports, so that when we all went to the mine we went to take samples at this glory hole and in the first instance Fellows started to pan.

Q. Yes?—A. And to my amazement I saw that the pans, there was practically nothing in the pans and I said to McTavish, who was standing by, I said, "What is the matter with this man Fellows?" "He said the values here were four, five and six dollars." And I says, "These will not go \$1." So I concluded right then and there on the spot that Fellows was either a fool or a rogue.

Q. I see.—A. Either one of the two, either did not know his business or was deliberately lying, therefore, we took the assays and when they were assayed they came out exactly as I predicted, less than \$1.

Q. Coming back to the question I asked you: You took certain samples when you were down there in November 1927, that is correct?—A. Yes.

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Court of  
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Evidence.

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Langer.  
Cross-exa-  
mination—  
*continued.*

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Cross-exa-  
mination—  
*continued.*

Q. And you got them assayed?—A. Yes.

Q. And you saw the result of those assays?—A. Yes.

Q. And the result was practically nil?—A. That was from the glory hole, but I never paid any attention to that. I always thought the glory hole was an exaggerated affair and paid very little attention to the condition of the material.

Q. But you knew what the assays were?—A. I knew the glory hole was valueless and always did think so.

Q. I don't want to stop you at all because it might be suggested I am trying to keep you from saying something, but I wish you would just answer my questions and not go further. I understand you agree to this, you went down and took samples, brought them back, had them assayed and the results of those assays were shown to you by the McTavishes?—A. They were not shown to me by the McTavishes. I got the assays myself. 10

Q. You got the assays yourself?—A. Yes.

Q. So you knew the result of the assays which were got on the Evans some time in November before you signed this agreement of November the 17th?—A. That is the Evans.

Q. Is that correct?—A. That is the glory hole. Don't forget that was the glory hole which I never placed any value on at all. 20

Q. The samples you took at that time were taken from the glory hole alone?—A. No, we got one or two, I am not sure on the dump.

Q. I would ask to have those assay certificates produced. Yes, go on?—A. Either one or two. We took a few odd specimens of rock on the Alamo.

Q. And did you take any in the shaft?—A. No, we were not in the shaft, as far as I recollect.

Q. Will you swear that you did not?—A. I wouldn't swear, but I don't remember it. 30

Q. So a few days before you entered into this agreement of November 17th you found that the assays instead of running as they did when you had taken them before and as the McTavishes had taken them had petered out altogether in that one particular place?—A. No. I never placed any value on the glory hole as I told you. I thought it was an exaggerated proposition.

Q. I have heard that; but you took samples from the glory hole and found the values there of about \$9?—A. That was one, but the average would not work out that.

Q. The average was about \$9?—A. In the glory hole? 40

Q. Yes.—A. That is absolute nonsense.

Q. We will refer to those later. Now, these are the certificates, are they not, of the assays that you got when you were down there in November, 1927?—A. Which is which?

Q. You will see the date at the top?—A. November 24th, is that the one? Oh, I see, glory hole, yes. Just as I always predicted.

“ First 6 foot glory hole east side. Second 6 foot section glory hole east side—the first one is nil, the second .60. Third 6 foot sample glory hole east side 80c.; fourth sample east side glory hole 80c.; fifth sample east side glory hole nil. Mostly from east side, partly from west side glory hole six foot sample nil.”

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And then the last sample taken from upper part of glory hole \$1.60. Then there are four other samples from the south side of the valley. That is  
10 across the valley and then there is quartz from Alamo tunnel and from the face of the Alamo tunnel, but those were just pieces that we picked up just curious to know if there was anything in them.

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*continued.*

*(Certificate marked Exhibit No. 70.)*

Q. Those assays as we have gone over them disclose practically nothing?—A. Yes.

Q. And your assays which were taken in 1926 were very different, were they not?—A. Yes.

Q. You might show us those, too?

Mr. WALKEM: 1926, what?

20 Mr. DAVIS: In November, 1926.—A. Yes.

*(Certificate of Assay marked Exhibit No. 71.)*

Q. Notwithstanding that, you went on and entered into your agreement of November 17th?—A. I told you that I never considered the values in the glory hole.

Q. Yes?—A. Not seriously. I thought possibly that when we got going and were able to crush thousands of tons a day the glory hole may be a probable paying proposition, and as for the other samples we picked up at the Alamo the one was a chunk of mud, outside it looked more like lime to me than anything and the manager Fellows said we might try it  
30 there might be something in it and the other piece which you say was got from the Alamo we did not get into the Alamo, because the time was too short to go down and examine the Alamo. When I got down there the tunnel was still blocked, so you couldn't get through. The chances are this was merely a chunk of stuff we found in the tunnel at the mouth.

Q. You said on Friday that the agreement which is dated the 17th of November, 1927, which you entered into with McTavishes was signed on the night of the 17th?—A. Oh, that is the last one?

Q. Yes?—A. I don't know the date.

Q. I understood you to say on Friday that it was signed on the night  
40 of the 17th?—A. The letter speaks for itself when it was signed.

Q. It doesn't show whether it was signed in the daytime or in the evening?—A. I believe it was. They were in an awful rush for their money and you can depend upon it that before the ink was dry they were up and got their money.

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mination—  
*continued.*
- Q. I understood you to say on Friday it was signed in the evening, is that so or not?—A. What evening?
- Q. On the evening of the 17th?—A. I wouldn't say that, because I don't remember the dates, but I know it was signed in the evening.
- Q. As a matter of fact, the deal had been completed——?—A. When?
- Q. The day before the agreement was signed and you had given your cheque the day before?—A. It was not an agreement. It was a letter.
- Q. Well, the letter constitutes an agreement?—A. The letter was signed at the time the cheque was given.
- Q. It was?—A. Yes. 10
- Q. You swear to that?—A. As far as I know.
- Q. Do you know?—A. Would I pay over the money until the agreement was signed?
- Q. Never mind about that. Do you swear it was signed at the same time the cheque was given?—A. Yes, well, I mean, as far as I remember.
- Q. Are you sure?—A. In any case, Mr. Kerr was there and he will witness the whole transaction.
- Q. I want to know about your memory. Can you say or can you not, and if not, say so, and I will not bother further?—A. It would be an extraordinary thing if it were so. To the best of my recollection the whole 20 thing was signed there that night.
- Q. But you are not sure?—A. If you create a doubt on it probably you are right, but as far as my memory serves me it was all done that night.
- Q. The Alamo tunnels were being cleaned out at that time, were they not?—A. Yes.
- Q. And Fellows would be all through cleaning them out in a few days?—A. It was blocked up—he said he could see over the top, but even if you could see over the top in a formation like that there might be further blocks further on, but he said it would be unsafe and unwise to crawl over the top. 30
- Q. I didn't ask about that. I don't wish to take up more time than I have to. The question I am asking you is this: You knew that Fellows would have these tunnels all cleaned out in the Alamo so that samples could be fully taken within a few days, did you not?—A. I don't know. This few days business had been going on for months before that. They had been continually asking me to go ahead and that it would be finished in a few and a few days. They wanted me to go down and see it, and I said: "I am not going until the tunnels have been cleaned out." That was going on for some time, and finally, I said I will go, but it was with the assurance they would be certain to be cleaned out when I got there and when I got 40 there just as I expected it was not cleaned out and could not be.
- Q. I want to ask you that question again. Were you not aware that within a few days after the 17th of November the Alamo would be cleaned out to such a degree that full samples could be taken and accurate knowledge obtained of conditions in that Alamo mine?—A. I told you that few days story was a continual thing and it was a joke, a few days, and a few days and that is all it ever got to and I naturally wanted to have an

assurance that it would be cleaned before I went down and I wanted to have the examination made before the snow came.

Q. I am not worrying about your examination?—A. What was your question?

Q. I asked you if you were not aware that the Alamo tunnels would be cleaned out in a few days after the 17th of November?—A. A few days didn't worry me the least little bit. I had full confidence that they were responsible men and that the reports made to me were absolutely true. I had faith in the McTavishes and I never doubted for a moment but what we would get the results shown in the plans and other reports.

Q. You seem to know what I was after?—A. Why, certainly. You are not the only one who has a little intelligence.

Q. We will not go into a discussion of that. At any rate, after the 17th of November, when you entered into that contract you knew that the tunnels would be cleaned up so that the fullest information could be got, were you not?—A. Not a few days, it might have been weeks.

Q. As a matter of fact it was two or three days after the 17th, was it not?—A. I don't know, because—

Q. Wait one moment. You were informed of Fellows' samples which he had assayed at Baker and the result sent up by wire which came on the 21st, was it not? That telegram was on the 21st of November, four days after you signed this agreement, stating the tunnels had been fully sampled and assayed and there was nothing in the mine. Would you please answer that question?—A. Yes.

Q. On the 17th November you received that word?—A. That did not necessarily tell me the tunnels were cleaned out, so that I could get in. Fellows might get in but still I couldn't.

Q. Never mind about that. Tell me, did you receive that information on the 21st of November?—A. Yes.

Q. If you had waited a few days longer instead of signing this agreement on the 17th of November you would have had that information before you?—A. I suppose so, but that doesn't say that I could have got in there to examine the mine. These miners have big boots. They can go over and through places which I couldn't go in.

Q. I don't know if it is intentional or otherwise, but I am not examining about your making an examination at all. I am merely asking as to this one point that if you had waited a few days you would have had the full information about the conditions in the Alamo which you knew on the 21st of November, that is right?—A. I suppose so, that is the report that I got.

Q. Now, if the tunnels were cleaned out fully, if you had waited and the tunnels were fully cleaned out and the samples were in accordance with the McGuigan report you would not have been able to have bought those shares for 12½c., would you?—A. Yes, precisely, and let me tell you the McTavishes were continuously after me trying to induce me to buy the large block of stock. There were several reasons for that and one of the reasons was they and their associates, as they called them, that if we waited

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until the tunnels were opened up they would not sell this block of stock for a few cents and the deal had to be gone through with on their work and I had absolutely confidence that when this tunnel would be opened up the results would be as we had expected them.

Q. Coming back to what I asked you if the agreement had stood over until after the tunnels were cleaned out and after the assays were got, had the assays corresponded with McGuigan's report you could not have bought shares from either the McTavishes or anybody else for anywhere near 12½c., could you?—A. That I don't know.

Q. Do you think you could?—A. Perhaps not. 10

Q. I think, witness, that you might well go that far. So in buying before the real test came, you were taking a gamble?—A. I was taking no gamble.

Q. If you were taking no gamble why did you not wait and find out absolutely?—A. Because I always felt those values were there.

Q. That is, you believed these reports?—A. Absolutely, the representations made by McTavish.

Q. And you thought it was a desirable thing to close the deal up before Fellows' assays came in, because otherwise you might have to pay a much higher price, isn't that the reason?—A. They made me a price. 20

Q. Isn't that so? Surely that is right. You saw that telegram, did you not?—A. I don't remember seeing it.

Q. Will you swear you did not see it?—A. I don't remember seeing it.

Q. Will you swear you did not see it?—A. No, I will not swear I did not see it, but I don't remember seeing it.

Q. As a matter of fact, did not the McTavishes turn over to you all the reports from both Fellows and Barnes?—A. I don't know if I got all the reports, I got reports from them. I wouldn't be surprised if they kept some of them back.

Q. You don't know if you received that or not?—A. I might have 30 received it. I wouldn't say I did not receive it. I don't remember.

Mr. DAVIS; I would ask that this be marked for identification, then, my lord.

THE COURT; "B" for identification.

Mr. DAVIS; Q. Now, on the 14th January, or we will say sometime in January of 1927 you bought 250,000 Alamo shares from the McTavishes at 12½c. a share, did you not?—A. I believe that is correct, yes.

Q. There is no question about it, is there? We have already had this evidence from you on discovery and I don't want to take up so much time?—A. Yes. 40

Q. That is correct?—A. Yes.

Q. In the latter part of February or the beginning of March did you not go to the McTavishes and beg off the carrying out of the whole of that contract?—A. What happens is this—

Q. Would you mind answering the question first and then giving your explanation?—A. Yes, I told them I didn't think I could finance it. It was

not convenient at that time and they didn't mind because I told them I would buy stock later on when my finances were in better shape.

Q. I want to get at the short facts. You went to them a month or so after the contract for the 250,000 shares had been entered into?—A. Yes.

Q. And you told them the financing was going to be a little difficult for you?—A. Yes.

Q. And if you put up the money for the shares you would not be able to put up the money for carrying on the development work under the contract of February 7th?—A. I didn't say that. I said it would  
10 inconvenience me, but I didn't say I couldn't carry on the matter, because it was not a very big proposition, it was only a thousand or so a month.

Q. They then allowed you to get out of that contract, did they not?—  
A. That is right.

Q. You had taken up at that time about 62,000 shares, leaving approximately 190,000 shares still to be paid for?—A. There was a considerable amount, yes.

Q. Well, it is about 190,000 shares?—A. Somewhere about that.

Q. If you question it I will prove it?—A. Somewhere about there.

Q. And they let you out of the 190,000 at that time?—A. Yes.

Q. On your statement that it would inconvenience you. We will put  
20 it that way?—A. Yes.

Q. Now, at that time had you not entered into an agreement with the Revenue Mine Company by which you were paying them \$10,000 a month for certain interests in that Company?—A. There was an agreement made, yes. I don't remember the amounts to be paid.

Q. Will you say it was not \$10 a month for ten months?—A. It may have been \$10 a month or it may have been more.

Q. You are a business man. Do you mean to tell me you have not  
30 any idea what deals you make?—A. I know some of the notes were \$20,000 and some \$10,000, but possibly it was not for each month. I know it was a considerable sum.

Q. It was \$100.00\* was it not?—A. Yes.

Q. And you got them to call off that particular sale by telling them  
you were hard up for money and at the same time you were paying considerable money into another mining concern?—A. I told them I would take up the shares later on when I was able and as a matter of fact, I have done it.

Q. I am talking about what happened at the time?—A. That is what  
40 happened at the time. It was simply deferred and that I would take them up later on.

Q. But you were under no written agreement to do so?—A. No.

Q. No. Have you that agreement with reference to the two hundred and fifty thousand?—A. I haven't got it here, no.

Q. You haven't got it, or have got it?—A. I haven't looked at these things for some time.

Q. You tore it up, as a matter of fact, did you not, at least, you have already stated you tore it up?—A. Probably. The thing was at an end.

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\* *Sic.*



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We agreed the thing was at an end. As a matter of fact, they knew I was the only money in sight and everything was all right, they could get it later on. That was the basis on which we worked. I was the only man with money in sight and if the offer they made me was favourable I would take it up later on.

*Q.* Yes. Now, did you state in your examination for discovery that you couldn't remember why that agreement was rescinded?—*A.* Why?

*Q.* Yes?—*A.* I have thought of it since and remembered it.

*Q.* But at that time you didn't know why it was rescinded?—*A.* The matter had completely gone out of my mind. 10

*Q.* Now, on the 7th of October, 1927, you wrote a letter to the Alamo Gold Mines Limited. Is that your signature?—*A.* Yes.

*Q.* That letter reads as follows:—

“ Vancouver, B.C., 7th of October, 1927.”

It is addressed to the Alamo Gold Mines Limited and signed J. F. Langer.

“ With reference to Mr. Kerr's meeting with Mr. McTavish to-day I hereby intimate that unless shares at the rate of 5c. are issued to me for the amount expended in excess of the \$17,000 provided for in the agreement such shares to be in addition to the 1,000,000 shares agreed 20 to be issued for the expenditure of \$17,000 and the erection of a 200-ton mill, I shall not be responsible for any further expenditure incurred after the receipt of this letter.”

You wrote that letter, did you not?—*A.* Yes.

*Q.* Now, that provision in the agreement you were referring to was the first paragraph in the agreement, was it not, and I will read to you the first paragraph of the agreement of the 7th of February, 1927. The second party, that is yourself, hereby agrees to pay to the first party, that is the Alamo mines, from time to time as required, the moneys necessary for the purpose of developing the said mining claims of the first party, and in particular for the purpose of continuing the construction of the tunnel 30 already commenced on the Isabel Evans group for a distance of 800 feet more or less, to intersect the vein already disclosed in the upper workings of the said Isabel Evans group and also for the purpose of clearing out the existing tunnels on the Alamo group. It was for those two things?—*A.* Yes, sir.

*Q.* Running the tunnel in 800 feet more and in regard to cleaning out the Alamo tunnels. The agreement goes on, and the other parties hereto agree that the whole direction of the said work and the entire amount of the expenditure of the said moneys in connection therewith, shall be in the hands 40 of the second party, that is yourself. It is understood and agreed that the second party shall not be obliged to advance more than the sum of \$17,000 including moneys already advanced for that purpose, on account of the construction of said tunnel on the Isabel Evans group. That is, you were not to be bound to expend more than \$17,000 to construct the Evans tunnel?—*A.* Yes, but read on. The crux of the matter is the next paragraph. I read all about that.

Q. Wait a moment, you made a condition subsequently that under that you were only to expend \$17,000 on the tunnel and the cleaning out of the tunnel?—A. Absolutely. That was arranged in Mr. Baird's office. I protected myself on the expenditure of the \$17,000 and no more. That covered the two items.

Q. I have the agreement here. Do you say the next paragraph helps any? I will read it.—A. That was the understanding and I made myself fully understood that under no conditions would I expend more than \$17,000. \$15,000 was to be used for intercepting the vein in the Evans and \$2,000 was what we estimated would clean out the tunnels in the Alamo.

Q. I understand your position, but I want to know how by any stretch of the imagination you could come to the conclusion this agreement warranted the position you took.

Mr. WALKEM: My lord, that agreement is very much involved and I am just as much opposed as my friend is to wasting time, but surely the question is hardly for this witness.

THE COURT: Why not let the witness who is not a lawyer give his idea of the law?

Mr. WALKEM: He has given that, but my friend is attempting to take the position that this agreement is perfectly clear on the face of it. It is nothing of the sort. It is most involved and it is a matter of law.

Mr. DAVIS: No, it is not a matter of law.

THE COURT: It is a matter of argument afterward if it is as he says. It is open to argument afterward whether counsel had a right to assume that position was correct.

Mr. WALKEM: My friend is taking the position that the agreement is clear on its face.

THE COURT: I do not imagine this case is going to turn upon the construction of that agreement.

Mr. DAVIS: Q. I understand what you say is that was subsequently modified in Mr. Baird's office, is that it?—A. Before the agreement was drafted. I didn't bother myself much about the shares or how the Company was formed, because I knew nothing about it, but here was something I did know about and that is contracts and work and so often in my life time I have been brought face to face with similar conditions when there is absolutely no amount fixed and it drags on indefinitely so that I was emphatic on the point that that amount must be fixed at \$17,000.

Q. Exactly, and it is fixed?—A. The \$17,000 was going to clean out the tunnels and intercept the other veins.

THE COURT: Q. And your solicitor so understood?—A. Yes.

Q. And you think that document carries out your views?—A. Absolutely.

Q. And Mr. Walkem thinks so, too?—A. It was absolutely understood at the time.

Mr. DAVIS: I want to find out if there is anything outside of this first paragraph because, my learned friend to the contrary notwithstanding

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mination—  
*continued.*

I think it is very clear. You said something about the next paragraph—  
A. I don't know if it is the next, but further on.

Q. I will hand you the agreement and I want you to tell me which paragraph verifies that?—A. I am not a legal man. Mr. Walkem and Mr. Kerr went into this thing.

Q. If you say there is some other paragraph in this agreement verifying that I wish you would point it out?—A. I know Mr. Kerr can point it out.

Q. I want to be fair to you?—A. I am not a legal man at all.

Q. I understand that, but some things are very simple.—A. I merely make that remark because it was a matter of controversy at the time and I was very firm on the point. 10

Mr. FARRIS : I had better put Mr. Walkem in the box.

Mr. DAVIS : I will read this paragraph to you and see if this is the one :—

“The second party further agrees to pay on behalf of the first party all payments as they shall become due by the first party to the said Roy M. Evans and Isabel Evans under the said agreement dated the 15th day of June, 1925, but in the event that the second party shall not exercise the first option hereinafter set out—”

Before I go on with that I want to read this other clause again.

“The second party hereby agrees to pay to the first party from 20 time to time as required, the moneys necessary for the purpose of developing the said mining claims of the first party and in particular for the purpose of continuing the construction of the tunnel already commenced on the Isabel Evans group for a distance of 800 feet more or less to intersect the vein already disclosed in the upper workings of the said Isabel Evans group.”

As that reads, have you any doubt as to what it means?—A. I know there is a paragraph further on.

Mr. WALKEM : Surely that is a matter —

Mr. DAVIS : This is cross-examination and I think my friend ought not to interfere. If the understanding is absolutely clear or rather the state- 30 ment is absolutely clear, if that is so, and it is clear to anyone then surely in cross-examination if it can be shown something which is absolutely clear has been insisted upon as meaning something else, that has an effect—

Mr. WALKEM : That is what I object to. My friend says that state- ment is absolutely clear. I say it has absolutely the opposite meaning and my friend is going to be given an opportunity later on in another action to prove that very thing. There is another action between these parties in which the construction of this very clause has got to be decided by the court.

Mr. DAVIS : If I state a certain thing and say that is clear and my friend 40 says it is not that is a matter of argument as to whether he is right or I am.

THE COURT : Why press this witness unduly on this point if it is so clear ?

Mr. DAVIS : All I have done is to try and get from him what he says he is relying on and he says it is some other part of the agreement.

THE COURT : I thought he was from the remark he made.

Mr. DAVIS : Apparently now he does not?—A. Absolutely I do.

Mr. DAVIS : I have to find out what he bases that statement on.

THE COURT : Surely, Mr. Walkem knows if there is any other statement in the document —

Mr. WALKEM : I don't know that there is. I do not want to make an admission without studying that agreement. Defendant's Evidence.

THE COURT : Well, let us get on.

Mr. DAVIS : Q. Under this contract of the 7th of February which I have read, you obtained four different options, did you not?—A. What options? No. 21. Joseph Francis Langer.

Q. The shortest way is to hand it to you?—A. You mean with reference to erecting machinery? Cross-examination—

Q. Yes, the mill?—A. Yes. continued.

THE COURT : That is the agreement in question. You could buy it in different ways.

Mr. DAVIS : Q. If you erected a mill in a certain way you got certain shares.

THE COURT : There must have been some expenditure under that agreement, Mr. Langer?—A. Yes, as a matter of fact the money was expended most extravagantly. I placed confidence in Mr. Baird and in the McTavishes so much so that Mr. St. John even prepared it or helped to complete the agreement. I was not particularly interested in the working out of the agreement. I left it to them.

Mr. DAVIS : Q. You are not complaining about Mr. Baird, are you?—A. I mean—

Q. Are you complaining about Mr. Baird, who acted for you?—A. I say this, if there is any doubt about the agreement who am I to blame?

Q. I am asking you, are you complaining about Mr. Baird at all, your solicitor?—A. If that is not clear then he did not do his work, his duty properly.

Q. It is quite clear, I think, just what was intended?

THE COURT : What I was trying to get at is apparently there were various options that might have been taken up.

A. Yes. I think they were busy with it a couple of months.

Q. Yes, I was just coming to that. All that must have taken time?—

A. I gave up all hope that the thing would ever be finished.

Mr. DAVIS : Q. Mr. St. John was acting for the Alamo Company and the McTavishes, and Mr. W. J. Baird was acting for you?—A. Yes, Mr. St. John had a go at it and I believe he drafted part of it.

Q. Now, coming back to what I was asking you, in that agreement there were four different options by which you put up a mill in a certain way and got so many shares?—A. Yes.

Q. The shares increasing in size as the mill increased in size?—A. Yes.

Q. But the next result is you get for the money expended shares for about 5c. apiece?—A. Somewhere about that.

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Evidence.

No. 21.

Joseph  
Francis  
Langer.

Cross-exa-  
mination—  
continued.

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Cross-exa-  
mination—  
*continued.*

Q. And your idea was to have control of the voting power?—A. That is the idea after putting up so much money.

Q. And you have a provision that voting power on the 530,000 shares would be turned over to you for a certain length of time in addition to those which would be sold you at 5c. apiece?—A. I believe that is correct.

Q. For the purpose of having control. And then you provide that if you take up the further option, to take a larger amount of shares provision is made for the Alamo Company increasing its shares so as to enable them to give you 2½ million, I think it is?—A. Something like that.

Q. Now, the trip that you made to the mine in November, 1927, had that any relation to the shares you were contemplating buying from McTavish Brothers?—A. When was this? 10

Q. Your visit to the mine in November, 1927. Had that anything to do—?—A. No, I went to see—the Alamo was supposed to be opened and I wanted to get into the Alamo and see the workings inside and sample it.

Q. But you had been negotiating for the purchase of 750,000 shares for some time before you went down?—A. Oh, yes.

Q. Did not the visit have some connection with the possible purchase of these shares?—A. No, I was not concerned with the visit to the mine. The shares were more or less a question on my part whether I could finance it or not. 20

Q. Why did you say in your examination for discovery as a matter of fact the shares did not interest me very much?—A. Well, these shares were flying about, that is to say, the officials knew me and here was 100's of thousands of shares which the shareholders wanted to sell, so I knew I could always get the shares whenever I wanted to.

Q. At a certain price, I suppose?—A. Yes, at a certain price.

Q. And if the assays, after the tunnels were all cleaned out, were these very high assays you, of course, could not get them at any such price as this 12½c.?—A. All I know is they offered to sell me these shares and they wanted money badly and in consideration of getting a large sum they made this last deal of \$93,000 if I remember right. 30

Q. And you wanted the deal closed up before it was definitely ascertained how the assays ran, before the tunnels were cleaned out?—A. The tunnels didn't worry me at all.

THE COURT: Q. The values you would get down there did not have any weight in the matter?—A. None at all. I figured the values were there, always thought so, and I expect they will say themselves we always expected the values were there. 40

Mr. DAVIS: I am not talking of the values when you were down, but the values which might have been discovered by Fellows from samples after the tunnels were cleaned out?—A. I had no doubt the values were there.

Q. But you knew you could not buy at 12½c. if it turned out that way. Now, I would ask my friend to produce the share certificates?

Mr. WALKEM: Here are the last 750,000. Do you want to file those?

Mr. DAVIS: I want to file them all so we can see what they show.

Mr. WALKEM : They are all the same. If you have one certificate you have them all.

Mr. DAVIS : If they are all the same. They are all the same, are they ?

Mr. WALKEM : Exactly the same, every one.

Mr. DAVIS : I will put in only one, No. 587.

Mr. WALKEM : For how many shares ?

Mr. DAVIS : This one is for 100,000 shares. (*Share Certificate marked Exhibit No. 74.*)

10 Q. Under one of your contracts for shares from the McTavishes, part of the purchase price was to be paid by the transfer of Lot 5, Block 351, District Lot 526, is that correct?—A. Yes.

Q. This is a copy of a letter from them to you asking for the lot to be conveyed. The letter is January 14th, 1928. If you have the original I will put it in, if not we can put in the copy?—A. Yes.

Q. And after receiving that you sent them the transfer of certificate of title to the lot, did you not?—A. Yes.

Q. So that that part of the agreement was carried out?—A. Yes.

Mr. WALKEM : Here is the original. (*Letter marked Exhibit No. 75.*)

20 Mr. DAVIS : Q. Now, you stated in your examination that there was no answer at all to your letter of December 8th?—A. Yes.

Q. On the 12th of January you received a letter from the Alamo mines after you had written, saying this agreement of the 17th November had been cancelled. In that letter the following paragraph occurs :

“Needless to say your letter is a distinct surprise to us in view of the fact it constitutes a repudiation of your contract with Alamo Gold Mines Limited.”

You received that, did you not?—A. Yes.

Q. Now, I will put in another letter, Letter of January 23rd, 1928, from McTavish Brothers Limited to J. F. Langer.

30 Mr. WALKEM : Here it is. (*Letter marked Exhibit No. 76.*)

Mr. DAVIS : I will read that letter. This is after you had written your letter of December 8th, of course. (*Reading.*) You knew when you received that that the McTavishes did not agree that that contract had been cancelled?—A. That was the first intimation we had that they went back on their word. Then we found they were rogues.

Q. You knew from this letter at any rate?—A. At that time, yes, that was the first intimation we had they were going to slip out.

Q. That they were rogues?—A. Yes.

40 Q. You did not write to them at any time up to January 23rd, and suggest there had been mis-representation, did you?—A. Up to that time when I wrote that letter or up to the time when they asked for the transfer I had full faith in them that they would comply with their undertaking to cancel the agreement. That was the first intimation I had they were going back on their word, that they were rogues.

Q. You did not write them and tell them they were rogues and had misrepresented the property, did you?—A. I wrote them after that.

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mination—  
*continued.*

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mination—  
*continued.*

Q. I know, but did you write them any letter telling them there had been mis-representations prior to the 23rd January, 1928?—A. When they wrote those letters although they asked for those lots, we still had their word they were getting or trying to get McGuigan to go and examine the mine, because they told Mr. Kerr—they said they would cancel that agreement only if McGuigan goes up to the mine and failed to show them the ore and the values.

Q. Now, would you mind answering my question. Did you write any letter making a claim to the McTavishes that there had been mis-representation by them of these properties prior to the 20th February, 1928?— 10

A. Because I was still hoping—

Q. Please answer the question first?—A. No, I did not, for that reason.

Q. Now, you can give your reason?—A. For that reason.

Q. Then I will refer to the letter?—A. I might say they went very craftily about this business, because they asked for the conveyance of that one lot, the Number 5 lot, which of course they were entitled to. They didn't indicate then, did not show their hand in any way that they were going to repudiate their agreement, but immediately they had that transfer then they wrote and asked for the other two lots and then I knew they 20 were the rogues they were always reported to be.

Q. When do you say the transfer was given?—A. I don't recollect the date. The transfer speaks for itself.

Q. As a matter of fact it was after the date of this letter, was it not?—A. I don't know.

Q. So your theory does not seem to fit in.

Mr. WALKEM: What was after the date of the letter?

Mr. DAVIS: The transfer of the property, I am instructed. If there had been mis-representation you talk about now why did you turn over that lot under the agreement which was based on the same mis-representation?— 30

A. Because at that time their promise to Mr. Kerr was they would get McGuigan and they still had faith that McGuigan would show the veins and the values, so I gave them the lot because they were entitled to the lot.

THE COURT: Is the lot covered in the 17th November agreement?—

A. No, the previous one.

Q. It was not the lot included in the agreement of November?—A. No, my lord, the other two are.

Mr. DAVIS: Q. Did you receive a letter of February 17th, 1928 from the McTavishes. I would ask my friends to produce that.

Mr. WALKEM: Yes. 40

Mr. DAVIS: Q. That is the letter, is it?—A. Yes, they say here—

Q. Never mind, Mr. Langer, it is another letter of the same date that I want.

Mr. WALKEM: "We wrote you on January 23rd"?

Mr. DAVIS: No, the other one.

Mr. WALKEM: That is the one I gave you before.

Mr. DAVIS : " On the 23rd of January we wrote you regarding deed to be delivered to us in accordance with our agreement with you." Evidently they did not consider the contract ended.

Mr. WALKER : That is the first deed is it not ?

Mr. DAVIS : No, that is the deed under the agreement of November 17th. (*Letter read and marked Exhibit No. 77.*)

THE COURT : Make that clear, Mr. Davis.

Mr. DAVIS : We will ask him.

Mr. FARRIS : Yes, that is right.

10 Mr. DAVIS : There is no doubt about it. That deed referred to the deed under the agreement of November 17th?—A. There are two lots under the agreement of the 17th of November. This would not refer to that. This says deed. The other is deeds to two lots.

Q. Which one do you say it refers to?—A. To the first one.

Q. Well, it does not. We will go back again. Give me the letter before that, the letter of the 23rd of January to which reference is made in that letter. There you are. Just read that and you will see what your counsel has said is correct, that the deed referred to is the deed under the agreement of November 17th?—A. This is where they are trying to get the other two lots, that is, with reference to the November transaction.

Q. Having looked at that letter what deed do you say is referred to in the letter of the 17th of February? Answer one way or the other and I will not trouble with it any more. It is clear enough?—A. I know they got the one lot and then when they got the one lot they asked for the two.

THE COURT : Q. Answer the question. Does it refer to the lots covered by the agreement of the 17th of November?—A. This one, my lord, covers the two lots.

Q. Never mind. Does it refer to the lots covered by the agreement 30 of the 17th of November?—A. This one is the one lot, but I am not sure about the other. Mr. Kerr knows more about these transactions because he handled them.

Mr. DAVIS : Q. Never mind. I will not take time. Then we will put in your letter of February 20th, 1928. That is your letter, is it not?—A. Yes.

(*Letter read and marked Exhibit No. 78.*)

Q. Now, that is the first time you ever talked about misrepresentation, is it not?—A. Yes.

Q. You had a long interview with McGuigan, you said, I think, at 40 your house?—A. Yes.

Q. And in that interview he substantiated the various statements contained in his reports, letters and blue-prints, did he not?—A. Yes.

Mr. FARRIS : Is "substantiated" the right word?

Mr. DAVIS : I think so.

Mr. FARRIS : That would mean he proved it.



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mination—  
*continued.*

Mr. DAVIS : I think "substantiated" is the word he used himself. However, we will not split hairs about it. I want to make sure whether I put in when I was putting in questions 603, '4, '5 and '6, did I put in question 607 of the examination of Mr. Langer?

THE COURT : That is in your own case?

Mr. DAVIS : In the cross-examination of Mr. Langer Friday afternoon. If not, and perhaps it will be shorter, if 607 is not in I want to put it in now. It is as follows : (*Reading.*)

THE COURT : What is the number?

Mr. DAVIS : 607.

Q. Did you make this statement on your examination, second examination for discovery, the last examination for discovery. I will read it. Question 79 : "Did Howard ever make any representation to you that is not set out in the reports which he showed you?—A. No. His representations generally confirmed the reports and the reports confirmed these representations." Did you give that evidence?—A. I did.

Q. Is it correct?—A. It is correct.

Q. Did the McTavishs ever put anything whatever in the way of their accounts being examined and their bank balance being examined and their books generally being examined?—A. What? To me?

Q. To you, yes, or to Mr. Kerr, who represented you?—A. Their bank balance? What do you mean by their bank balance?

Q. I say, did the McTavishs ever do anything. I may say there is a question as to my instructions as to the date of that deed he is checking it up. I think from what he says now I was wrong in my statement.

Mr. WALKEM : That is the deed of Lot 5.

Mr. DAVIS : Yes, the one that he gave.

Q. Did the McTavishs ever do anything to interfere with the fullest examination of their books and bank account and that sort of thing?—A. No, not that I know of.

Q. On the contrary they assisted Mr. Kerr to examine them and check them?—A. Examine the accounts for moneys being expended on the Alamo.

Q. To show they were turning over to the Alamo Mines the moneys they received for the sale of Treasury stock?—A. Oh, no. That was merely in connection with the money that was being spent at the mine, the \$17,000 I was spending on the mine. We never checked up, and never had any occasion to check up about the stock.

Q. Will you give me the letter of November the 11th, 1926?—A. I never had any suspicion that the share transactions were irregular. I thought everything was straight and above board.

Mr. WALKEM : How does the letter start?

Mr. DAVIS : "We have just received the enclosed letter from Mr. Barnes which is self-explanatory."

Mr. WALKEM : Here.

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Mr. DAVIS : Q. You received that letter, did you, of November the 11th, 1926?—A. Yes. (*Letter read and marked Exhibit No. 79.*) That was with reference to the expenditure on the tunnels.

Q. Then, will you produce the letter of January 24th, 1927 : McTavish Brothers to J. F. Langer.

Mr. WALKEM : " Herewith we enclose statements."

Mr. DAVIS : " Herewith we enclose statements."

Q. You received that letter, did you not?—A. Yes.

Mr. DAVIS : Have you the statement there ?

10 Mr. WALKEM : No, I don't see it.

(*Letter read and marked Exhibit No. 80.*)

Mr. DAVIS : Is that not exactly what Mr. Langer just said?—A. It is in regard to expenditures on the mine. It doesn't refer to any share transaction.

Mr. DAVIS : I am simply putting these letters in?—A. It might be taken to refer to a share transaction.

Q. You made your statement, Mr. Langer, and your counsel has also made his statement. That is all that is necessary. Now, you say that at this interview on the 21st or 22nd of November McTavishs stated they  
20 would cancel that contract entirely?—A. Absolutely.

Q. And who were present at that interview?—A. The two McTavishs.

Q. And——?—A. And myself.

Q. And yourself. Now, if they made any such agreement as that why did you not get the agreement back at the time?—A. Because I didn't want to show I was in any way doubtful they would carry out their word. I naturally expected it would be sent in by mail the next day.

Q. Why should you not get it when you were there instead of leaving it to be sent in by mail?—A. I just took it that way. Up to that time I thought they were straight genuine men.

30 Q. I think you have told the jury a number of times they were crooks, so we can take that without further repetition?—A. I cannot emphasize it too much.

Q. We can take it as stated each time that the McTavishs were crooks?—A. It is a well known fact.

Q. But when the other agreement was cancelled you had taken it and torn it up?—A. Yes.

Q. Why didn't you tear this up the same way?—A. It just happened they didn't give it to me and I didn't ask them.

40 Q. Why didn't you ask them?—A. I trusted them, and when I went home I told Mr. Kerr.

Q. Never mind what you told Mr. Kerr?—A. I thought they acted exceptionally well in offering to terminate the agreement and I thought I would get the agreement in due course.

Q. And you have no other reason to give?—A. Absolutely none.

Q. The note was there as well. Why didn't you get it?—A. I didn't know where they had the note. They might have had it some place which was not getatable at the moment.

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mination—  
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Q. Why shouldn't you ask?—A. Why should I ask? I thought they acted exceptionally well in the matter and I was very pleased, and I concluded the matter was at an end.

Q. That is the best explanation you can give?—A. There is no other explanation.

Q. How long did this interview take?—A. Oh, ten minutes, a quarter of an hour.

Q. I am instructed you were there about two hours?—A. Two hours, nothing. That is all we went to discuss. I was very much disgusted and they said, what about the shareholders, and said they were intending to put another property in to give the shareholders something for their money and that is all that was discussed. They were going to put in another property and this thing was at an end. I was very much disgusted. 10

Q. You were there only ten minutes?—A. Might have been a quarter of an hour.

Q. But not more than a quarter of an hour?—A. No.

Mr. DAVIS : That is all.

Re-exa-  
mination.

RE-EXAMINATION BY MR. WALKEM.

Q. As a matter of fact, Mr. Langer, did you or did you not exercise control over the mining operations after that agreement of the 7th of February was signed?—A. Well, you can call it control. I gave my views on what should be done, but they had their manager Barnes who was the engineer and he carried on the operations as he thought best. I didn't know anything about mining. I merely looked after seeing that the money was properly expended. 20

Q. When this composition which was referred to your creditors was made where were you at the time?—A. I was in England.

Q. And who made the arrangement with your creditors?—A. Mr. Baird entirely.

Q. That is W. J. Baird?—A. W. J. Baird. 30

Q. Did you personally make any misrepresentations to your creditors with regard to your financial position?—A. Not at all. I had nothing to do with it.

Mr. DAVIS : There is no re-examination about that.

Mr. FARRIS : Yes, you were creating a certain impression.

Mr. DAVIS : No, I didn't say there were any misrepresentations by him.

Mr. WALKEM : Did you instruct Mr. Baird to make any misrepresentations?

Mr. DAVIS : I object to instructions to Mr. Baird. Mr. Baird can be called. 40

THE COURT : It is a side issue and I do not see why so much time should be taken up with it. It is not the real issue in this case.

Mr. WALKEM : Surely I can examine the witness on points raised by my friend. However, if my friend objects to my asking the witness about it, all right.

Mr. DAVIS : I have no objection.

THE COURT : Evidence was adduced by Mr. Davis, that statements were made by him to compromise with his creditors. He had not come out here then.

Mr. WALKEM : No, and I wanted to show what the circumstances were.

Mr. DAVIS : There is no objection in the world to Mr. Baird going in the box and giving the circumstances.

Mr. WALKEM : But surely this man's instructions to his solicitor is the crux of the whole situation ?

10 THE COURT : I think the situation is simply raised to create the idea that this man was particular about his various transactions. If you wish to give evidence in the possession of Mr. Baird as to how he stood you can bring out as far as this transaction is concerned, but do not go too far afield.

Mr. WALKEM : Well, I will not pursue it.

THE COURT : How soon after you made this composition did you come out here?—A. I think about twelve months.

Q. And when you got here I suppose some of these creditors found you were wealthier than they thought?—A. At the time all my money was in real estate over there and I simply said to Mr. Kerr—

20 Mr. DAVIS : Now?—A. I mean to Mr. Baird.

Mr. DAVIS : I submit—?—A. Matters have come up which I was not aware of—

Mr. DAVIS : One moment. Does your lordship wish him to give this conversation ?

THE COURT : I asked the question if his creditors knew he was wealthier than they supposed, but he has not answered it. However, that is all. Any questions, gentlemen ?

THE FOREMAN : No.

(Witness aside.)

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*continued.*

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No. 22.

**Evidence of Harold L. Batten.**

HAROLD L. BATTEN, a witness on behalf of the defendant, being first duly sworn, testified as follows :

DIRECT EXAMINATION BY MR. WALKEM.

Q. Mr. Batten, you are a mining engineer?—A. I am.

Q. I understand you graduated at Toronto University?—A. Yes.

Q. In mining?—A. In mining.

40 Q. And what experience have you had since you left Toronto University?—A. About 17 years general practice first of all with The Bewick Moreing & Company, London, England, then with the Inspiration Consolidated of Miami, Arizona. Then I went with the Consolidated Mining & Smelting Company here.

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tion.

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Examina-  
tion—con-  
tinued.

*Q.* How long were you with the Consolidated Mining & Smelting Company?—*A.* Four and a half or five years.

*Q.* What was your position with them?—*A.* A large part of the time on operations and about fifty per. cent. of the time on mine examinations and field work generally.

*Q.* Who else were you with?—*A.* The B.C. Silver Corporation and then with the Britannia Mining & Smelting for two and a half years.

*Q.* What was your occupation with them?—*A.* Assistant superintendent of mines.

*Q.* And the last few years?—*A.* After that I was with a Victoria syndicate. That was from 1925 until the end of last year and since the end of last year I have been in private practice. 10

*Q.* I presume you are conversant with all kinds of mines?—*A.* No, not with iron and coal, but I am with the mines we have in British Columbia.

*Q.* Did you examine the Evans group and the Alamo mine?—*A.* Yes.

*Q.* I see, when did you do that?—*A.* On the 1st of June, 1928.

*Q.* Yes, 1928. Now, tell us just what you did?—*A.* We met Evans in the morning and he took us first of all to a place where they were working at that time. He had a little prospecting tunnel that he was driving in. We looked at that and he said he expected to cut in very shortly— 20

*Q.* Never mind, just tell us what you did yourself?—*A.* I looked at it and then we looked over a couple of outcrops and then we went to a shaft that had been sunk about 30 odd feet.

*Q.* That was the main shaft?—*A.* Yes, the main shaft on the property, the only shaft that we saw.

*Q.* Did you examine that?—*A.* Turnbull and I went down and looked at it. I examined the material on the dump taken from the shaft and then ran a rough survey down from the shaft to the first tunnel. That I think was 50 feet below the level and parallel with the shaft and we went over those workings and after we had been over those we continued a rough survey down to the lower tunnel. The lower tunnel was locked and we had the key and went over the lower tunnel. I was not over the lower tunnel entirely, because while going over the workings a message came that there was a telegram for me and I had to get back. I got back in time to look at the lower tunnel. 30

*Q.* Yes, did you examine what is known as the glory hole?—*A.* Yes, I examined it before the lower tunnel. We went to the upper tunnel and then went across to the glory hole and came back the upper tunnel. We examined the glory hole and sampled that fairly thoroughly.

*Q.* Did you examine the vertical shaft on the Evans?—*A.* I saw just one. It is not vertical, it is an incline shaft. 40

*Q.* How many tunnels were there?—*A.* Two in these workings but the other tunnel they were working on at the time, the small prospecting tunnel—

*Q.* That was apart from this?—*A.* Yes.

*Q.* Did you take samples of these different places?—*A.* No, only in the glory hole. We took a couple of spot samples in the other works, but

did not examine the workings below the shaft excepting the two spot samples we took.

Q. Why didn't you fully complete your examination of the Alamo and Evans mine?—A. When we got there we had lunch and went over to the Alamo. I had heard that Mr. Fellows was there and we went over and called on him and he informed us that he had received instructions from his principals, the McTavish Brothers, that he was not to permit us to make an examination and he said that he had no option but to refuse us permission, that he had to carry out his instructions. He said that he had no course, but to refuse us.

Mr. ST. JOHN: I do not think that my learned friend should put the evidence in in this way. As a matter of fact it was always agreed and it is on the record that he could examine.

Mr. WALKEM: If my friend wants to make an explanation afterwards all right. I am bringing this out at the present time—I am simply giving this man's reasons why he did not complete the examination.

THE COURT: It is all before me. Why not let the jury understand it.

Mr. ST. JOHN: The order in court shows that ultimately an order was made for an examination of the tunnel, but we had to have representatives present. That was argued before the order was made. We never objected to an examination of the tunnel.

THE COURT: The order went that there would be an examination subsequently.

Mr. WALKEM: Q. At any rate, at this particular time you were refused admission into these mines?—A. The Alamo.

Q. What occurred with regard to the Evans?—A. We had no trouble going over the Evans. Evans showed us over the property in the morning and he had to leave at noon. And Tim Sheedy showed us over in the afternoon, in the new property.

Q. What samples did you take?—A. We took samples from the face of the lower tunnel, that is, on the Evans group, and we took a sample on the face—I suppose it is really a cross cut in that tunnel and also we sampled the glory hole.

Q. Have you got those samples, the result?—A. I have the assay results. (*Producing.*)

Q. Which are those?—A. These are all the samples here, 1 to 9 and 21 and 22.

Q. Are those all the samples you took while you were down there?—A. Yes.

Q. What are the results just generally. Do they show any value?—A. No, not commercially, only very low values, and traces, 3/5000's on one, \$4 and \$4.80 and another one 5/1000's.

Q. Why did you not complete the examination of the Evans?—A. Because we got a wire from Mr. Langer calling us back.

Q. Was that after Mr. Fellows refused permission?—A. Yes.

Q. Had you wired Mr. Langer?—A. Yes, telling him what happened.

*In the  
Supreme  
Court of  
British  
Columbia.*

Defendant's  
Evidence.

No. 22.  
Harold L.  
Batten.

Examina-  
tion—con-  
tinued.

*In the  
Supreme  
Court of  
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Columbia.*

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Evidence.

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Harold L.  
Batten.  
Examina-  
tion—con-  
tinued.

Q. I will file that as an exhibit. (*Certificate of Assay filed as Exhibit No. 81.*)

Q. These assays were made by Eldridge & Company of Vancouver?—

A. Yes.

Q. You delivered the samples to them intact?—A. Yes, to their representative in my office.

Q. Now, did you make any surface examination outside of going into these tunnels and the glory hole?—A. We looked over two outcrops that showed in between his little prospect tunnel and the shaft.

Q. From the examination which you made what is your opinion as to this Evans property?—A. It is a matter of opinion. I saw nothing that I would consider commercial on the property. 10

THE COURT: Commercial value?—A. Commercial value, my lord.

MR. WALKER: Q. Now, in the case of a mine which had been opened up to or blocked out and assays taken in different places, is there any difficulty in stating with definiteness what is contained in that mine?—A. If the ore is blocked out you can state with definiteness within narrow limits.

Q. Just explain what you mean?—A. In figuring tonnage and grade, sampling is an approximation. The more samples you take the closer your results will approximate the true thing, so that when you have ore proven you can by increasing the work more closely approximate the exact result. With proven ore, they are definite statements of course. There is no question about that. 20

Q. It would not be the same thing as is often given on an undeveloped property?—A. It is quite different. We differentiate between what is statement of fact and statement of opinion. Things depending on opinion are speculative. They are speculative, whereas proven tonnage is actual proven value.

Q. That is what you classify as statements of facts?—A. Yes, 30 statements of fact.

Cross-exa-  
mination.

CROSS-EXAMINATION BY MR. ST. JOHN.

Q. Mr. Batten, the surface outcrop looked pretty good?—A. Not to me.

Q. Did you test them in any way?—A. No, looked at them.

Q. There is a method of testing free gold by panning?—A. Yes.

Q. You did not do that?—A. No.

Q. You did not assay them?—A. No.

Q. How wide is the vein at the surface outcrop?—A. I did not see any definite vein. There is a sheer with a certain amount of quartz breaking through mixed up with slate. As I remember it was merely an outcrop and you could not tell the width. 40

Q. It was not developed sufficiently?—A. No.

Q. As to the tunnel, were you down in the tunnel?—A. Yes.

Q. Could you see any ore there?—A. No.

Q. I see. And you were told that considerable values had been got out of the tunnel, first, speaking about the shaft?—A. Yes.

Q. You did not sample the shaft at all?—A. No.

Q. Did you see any ore in there?—A. No, nothing that I would call ore.

Q. But you have been told that good values had been got out of the samples there?—A. I had been told that good values had been obtained from the stuff near the surface. I did not know what was left on the dump was the material that was supposed to have carried the value. There was some material there.

Q. Why didn't you take samples in the shaft?—A. Because if I had to make a complete examination it would take several days and you have to make proper preparation. We were merely taking a preliminary look over the property to see if it had indications of being a commercial proposition.

Q. If you had time to make a thorough examination you would sample the shaft?—A. Yes.

Q. Because that would have a bearing in forming an opinion of the property?—A. Yes.

Q. As a matter of fact, the indications were not sufficient for you to pass an opinion on the property?—A. Yes, I have already stated it.

Q. You would say that your opinion would not be changed if you made a fuller examination?—A. In view of the samples we did take in the important places it is very unlikely, but I might, if I was going to make a complete examination sampling all the works—it would take a long time. If I was examining it from a commercial point of view I should warn my clients that they were not warranted in incurring the expense.

Q. You made an examination of the glory hole deposits?—A. Yes.

Q. Did you trace that any distance in the mineralized area?—A. No.

Q. Were you informed by Evans that it extended a considerable distance?—A. I got very little information from him.

Q. Was he there?—A. No.

Q. Did you have any reports on the Evans?—A. I had some.

Q. You saw it mentioned in the reports that the glory hole deposit extended 2,000 feet over the hill. Did you see that?—A. No.

Q. Had you ever been told that?—A. I was trying to tell you what I read in the report, that there was a vein 200 feet wide and I examined what they had there and I came to the conclusion that the glory hole was sunk in what was probably a solidified sandy shale. There is no vein there. The country is broken. It is a sheered country, but there was no definite veins and so far as the horizontal continuity is concerned it did not have anything to make an investigation. This vein may run a considerable distance. I did not consider it of importance if it did.

Q. When you say there is not a well defined vein there you did make a sufficient investigation to determine that?—A. You can look at the glory hole and see the vein there.

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Evidence.

No. 22.  
Harold L.  
Batten.  
Cross-exa-  
mination—  
*continued.*



*In the  
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—  
No. 22.  
Harold L.  
Batten.  
Cross-exa-  
mination—  
*continued.*

Q. The ore being on each side of it?—A. It would be possibly a big sheer.

Q. A vein might be a 100-foot vein?—A. But veins have a definiteness.

Q. It is not a true commercial proposition. Is that it? Isn't it true that commercial propositions occur in fractured zones of that kind?—

A. Certainly.

Q. I understand where the structure is broken up as it appears to have been in many places that the infiltration of the gold bearing solution gets an opportunity of getting through the rock?—A. Yes.

Q. And whether there is a commercial body of ore depends on the extent of the fracture?—A. Depends on the extent of the fracture and the amount of replacement. 10

Q. You did not have much chance to investigate that, you say. Did you go down to the creek below the glory hole?—A. Yes. I missed that. There is a tunnel below the glory hole, but it was not driven far enough to go under.

Q. Did you do any sampling in the vicinity?—A. No, not there, because we were getting away.

Q. Where did you get the \$4?—A. Out of the glory hole.

Q. I see that the assayer has not carried out the values there. It would not be of much use to the jury to look at a thing of that kind. You say, anyhow, as to these that the only that carries any value there is No. 6?—A. Yes. 20

Q. Which was taken from the glory hole?—A. Yes.

Q. Now, I suppose that engineers like other people make mistakes at times as to their opinions as to claims?—A. Yes.

Q. I understand that some very important properties examined in this country, examined by eminent engineers and turned down, eventually turn out to be good paying property?—A. Yes.

Q. Take the Premier?—A. The Premier. 30

Q. The Premier was examined and deserted three times before it was brought into production?—A. Yes.

Q. The Big Missouri is another example of a big mine being turned down by eminent engineers?—A. As you said.

Q. We all make mistakes?—A. Yes, I have made them.

Q. You say even today after your examination, your more or less superficial examination of the Evans that it is still a matter of opinion whether that mine is worth developing?—A. Absolutely a matter of opinion.

Re-exa-  
mination.

RE-DIRECT EXAMINATION BY MR. WALKEM. 40

Q. Engineers do not make mistakes about ore that is blocked out, do they?—A. Not if they have had any good training, and they are trying to arrive at the true facts of the case.

Mr. ST. JOHN: I have not suggested that anything was blocked out.

THE WITNESS: Will I be required any further?

Mr. WALKEM: No.

(*Witness aside.*)

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## No. 23.

## Evidence of Richard F. Hill.

RICHARD F. HILL, a witness called on behalf of the Defendant, being first duly sworn, testified as follows :

## DIRECT EXAMINATION BY MR. WALKEM.

- Q. What is your occupation?—A. Mining engineer.  
 Q. Where do you live?—A. In Vancouver.  
 Q. How long have you been carrying out this occupation?—A. About twenty years.  
 10 Q. What experience have you had?—A. I started as superintendent in the Yukon, in the Big Min mine and I carried out three years work at Ladysmith looking for ore; three years on the Engineer mine exploring the veins and in charge of the mining and milling and more recently up at the Burney Metal on Silver Creek.  
 Q. You recently examined the Alamo Mine at Baker, Oregon?—A. Yes.  
 Q. When did you go down there?—A. I arrived there on the 15th of August at 10.30.  
 Q. The 15th of November, you mean?—A. Yes.  
 Q. Last November?—A. Yes.  
 20 Q. And who was with you?—A. Mr. Langer.  
 Q. And who else?—A. Mr. Langer and the man who took us down to help him sampling.  
 Q. What other engineer was with you?—A. No other engineer with me.  
 Q. Did some other engineer join you afterwards?—A. Yes, two days later and Mr. Pickard.  
 Q. First, did you examine the Evans group?—A. No, I first surveyed the Alamo on the afternoon of the 15th and 16th. On the morning of the 16th I went up to see Mr. Evans about a mile above where the Alamo was  
 30 and after talking to him for some time he told me that he did not care to have me examine or sample the ore.  
 Q. Was he in charge of the Evans group?—A. He owned it.  
 Q. He refused to allow you to examine the property?—A. Yes, he refused.  
 Mr. WALKEM: We will give evidence to show that the Evans group reverted to Evans. The payments had not been kept up.  
 Mr. DAVIS: I suppose that can be agreed to.  
 Mr. ST. JOHN: Yes, the defendant did not put up the money and could not keep it.  
 40 Mr. WALKEM: Q. Mr. Evans is the owner at the present time and you could not examine it without his permission. Did you examine the Alamo Mine?—A. Yes.  
 Q. Tell us what you did with regard to the Alamo?—A. On the afternoon of the 15th and all of the 16th and 17th I was surveying the results embodied in the plan which you have now.

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 tion.

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Richard F.  
Hill.  
Examina-  
tion—con-  
tinued.

*Q.* Is this the plan showing your work?—*A.* Yes, that is the plan showing my survey.

*Mr. WALKEM:* I will file this. (*Plan produced and marked Exhibit No. 82.*)

*Q.* Now, tell the jury shortly what you did without being too technical, because none of us are technical here?—*A.* Well, the result of my survey showed that it was impossible to indicate any particular portion of this thing or so-called vein and sample it.

*Q.* First, let me ask you what workings were there?—*A.* On the lower level, No. 3, firstly, on the surface there were a few open cuts and 50 feet below on the other side of the hill there is a caved in tunnel. 10

*Q.* Look at exhibit 18 and tell us if the workings correspond with exhibit 18?—*A.* Have the jury seen exhibit 18?

*Q.* Yes?—*A.* It does not conform for the simple reason that the shaft or upraise shown on 18 does not run to the surface as shown. It runs from the No. 2 to the No. 3 level on the line about 380 feet vertical and then there is an offset of 140 feet and then it raises possibly to the surface, but there is no means of ascertaining because those upraisings have been filled.

*Q.* Is the No. 1 tunnel at the top there?—*A.* The No. 1 instead of being directly over the No. 2 it comes directly on the other side of the hill, the right hand instead of the left. The surveyed plan is not correct. 20

*Q.* Is the No. 2 tunnel there?—*A.* Yes.

*Q.* And the No. 3 tunnel is there?—*A.* Yes.

*Q.* And the uprise is the same except that there is an offset?—*A.* There is an offset of 140 feet and it runs up possibly to the surface. No doubt it does. It is caved.

*Q.* Just proceed to tell us what you did when you got there?—*A.* I started on the afternoon of the 15th I started surveying. First of all, I might say that I saw Mr. Fellows after Mr. Langer had gone home. About half past one I went back on the chance that Mr. Fellows was there and he introduced me to Mr. Charles Briggs as his representative and told him that if I would let him have a quarter of my own samples it would be satisfactory. Mr. Charles Briggs accompanied me. 30

*Q.* Who is Mr. Briggs? He was the representative of Mr. Fellows or the McTavish Brothers?—*A.* I imagine so. He was introduced by Mr. Fellows. Then on the evening of the 17th, on the afternoon of the 17th, I did some sampling on my survey. I got back to Granite that night and Mr. Pickard had arrived.

*Q.* He was the other engineer?—*A.* Yes. On the Sunday morning we went back on the property and went all over it and outlined our mode of sampling. I started sampling in the afternoon and continued sampling until the evening of the 21st. During my time I took 43 samples, and I think Mr. Pickard took 53 or 55. Out of the 43— 40

*Q.* Now, we will just file—did you deliver these samples to Mr. Eldridge?—*A.* Yes.

*Q.* Are these the results?—*A.* Yes.

*Mr. WALKEM:* I will file these. I will file the four as one exhibit.

Mr. FARRIS : Those are the assays?—A. Yes. Here is the certification of receipt for the samples. These samples are sealed.

Mr. WALKEM : We will not file that. That is not necessary. (*Four certificates of assays marked Exhibit No. 83.*)

Q. So far as the commercial values are concerned, what are the results of these samples?—A. I have it briefly here. I can put it better this way. On the surface out of four samples I got one that gave 40 cents in gold, one that gave 20 cents and two that gave a trace. On the second level there were 34 samples, I got two that gave 5 cents in gold and a trace of silver, 10 two that gave 10 cents in gold and a trace of silver, one that gave 5 cents and a trace of silver, two that gave 5 cents in silver and 27 that gave nil or a trace. On the third level I got one that gave 5 cents in silver and four that gave a trace or nil. I think if the jury saw that plan—

Q. They will see it. The net result was what?—A. No commercial values at all.

Q. Did you to the best of your ability make a thorough examination of that mine?—A. A thorough sampling and incidentally, of course, as I was sampling, it was an examination. We saw all that was to be seen and there was no possible channel in that place to get any values so far as the 20 works are opened up now.

Q. What is your opinion as to the value of that property?—A. I think it is nil, that is, may I add a proviso? Of course, as she is opened up there might be some extension, but I doubt it. There is no indication to show that there are any exceptions.

Q. Now, is there any possibility of any large body of ore being blocked out in that mine as it is being developed?—A. They would have been blocked out if they had been there. The works are such as you could have blocked out a body of ore.

Q. Are those bodies of ore there?—A. No, because the sampling 30 covers practically all of the work. It is not possible that there is anything in existence.

#### CROSS-EXAMINATION BY MR. ST. JOHN.

Q. You did not get into the upper tunnel at all?—A. No, but we were on the lower tunnel, the second tunnel.

Q. There are three tunnels, you were in 2 and 3, numbering from the top?—A. Yes.

Q. That is the usual method, the first is at the top?—A. Yes.

Q. The workings in there did not indicate anything at all?—A. No.

Q. Are the raises from the first tunnel to the surface, if there be a 40 raise?—A. There are two or three, but they are caved in. We took sufficient samples on the surface and then on the second level, it is only 200 feet. If it is possible to block that, it must be below the second level. The second level is thoroughly sampled. I took 34 samples.

Q. Did you examine the other veins on the Alamo property?—A. No.

Q. There was snow on the surface?—A. Yes.

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No. 23.  
Richard F.  
Hill.

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mination.

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Richard F.  
Hill.  
Cross-exa-  
mination—  
*continued.*

Q. And that interfered with the surface examination?—A. No, not necessarily. If there was any chance of running across anything leading out from the so-called vein, so-called surface showing, we would have followed it out.

Q. You have been informed that there were two other veins on the property?—A. No.

Q. Did you not see any of those reports?—A. Casually looked at them.

Q. You had McGuigan's report and Jackson's?—A. I did not have Jackson's.

Q. You saw McGuigan's report?—A. Yes. 10

Q. You read that through?—A. It is a brief report and does not give much.

Q. There was a reference to the two veins?—A. Yes, but I did not go into that.

Q. You are a mining engineer?—A. Yes.

Q. Where are you employed now?—A. I have an office of my own in the Standard Bank Building.

Q. And what mines have you been working on lately?—A. The Burney Metal mine. I had charge of that on Silver Creek for three and one half years. 20

Q. That is being run by the Revenue Mining Company?—A. No, by Bush & McCullough and is known as the Martin Woolsley.

Q. Mr. Langer is interested in the Martin Woolsley Mine?—A. I don't know.

Q. You have been informed that he is?—A. Yes.

Q. Have you done any other work for Mr. Langer's company?—A. No, just this one.

Q. The Martin Woolsley. I see. One other question. Would it be possible that the ore chute which is disclosed at the surface and, as we are informed, in the upper tunnel may have dropped off to one side or the other so that it may have been escaped in these under-workings?—A. I know, my dear sir, but when you cross cut across the zone and it fails to disclose any ore chute, unless you call 40 cents—that was taken on the surface. 30

Q. Shall I read these again?—A. No, I remember that.

*(Witness aside.)*

## No. 24.

## Evidence of Thomas D. Pickard.

THOMAS D. PICKARD, a witness called on behalf of the Defendant, being first duly sworn, testified as follows :

*In the  
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## DIRECT EXAMINATION BY MR. WALKEM.

Defendant's  
Evidence.

Q. What is your occupation, Mr. Pickard?—A. I am a mining engineer.

Q. Residing in Vancouver?—A. Yes.

Q. And what experience have you had as a mining engineer?—A. It dates back about 30 years.

10 Q. Just shortly?—A. In Rossland, I worked in the War Eagle mine and at Fairview at the Nickel Plate Mine in Hedley; at the Anyox property and Goose Bay on property over in Alaska, South Eastern Alaska.

Q. Those are the principal ones?—A. And I worked with Nick Rodgers a number of years.

Q. Have you been practising?—A. Not recently until the last year. I have been away from the country for about twelve years.

Q. Did you make an examination of the Alamo Mine recently?—A. I did.

Q. With Mr. Hill?—A. Yes.

20 Q. That was just last month?—A. Yes, in November. I left here, I think, on the 15th.

Q. First, did you take any samples yourself?—A. I took something over 52, or 53 or 55, I forget which.

Q. Are these your assay results?—A. Yes.

Mr. WALKEM: I will file these. It is another exhibit of samples taken by Mr. Pickard, 55 samples, three sheets. (*Document referred to marked Exhibit No. 84.*)

30 Q. Just while dealing with those samples, do these samples show that you found any ore of any value?—A. The first sample I got was \$1.80. The first assay I got of my samples was \$1.80, and the next one I think was 50 cents, and there are eight or ten 20 cents, no, five cents.

Q. Just in a general way, do those assays show ore of commercial value or not?—A. No.

Q. Now, I would like you to look at Exhibit 82. Did you collaborate with Mr. Hill in the preparation of this plan?—A. Yes.

Q. Does that represent the work done by you gentlemen on that property?—A. Yes.

Q. So far as your work is concerned——?—A. Mr. Hill made the survey and I sampled with him.

40 Q. I see. Just tell me generally what you did, what examination you made?—A. Well, first we went up on the surface and sampled the out-crop and then we sampled the number 2 tunnel, the centre tunnel, and then we sampled the lower, number 3 tunnel.

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tion—con-  
tinued.

Q. Did you make a complete examination of the mine?—A. Only when sampling.

Q. Pardon?—A. I sampled it where the work had been done.

Q. I mean all these interior workings?—A. Yes.

Q. What is your opinion of the value of the property?—A. In the present workings I don't think there is any commercial value. There is none shown in the samples that we took.

Q. That is all.

Mr. ST. JOHN: That is all, Mr. Pickard.

(*Witness aside.*)

10

No. 25.  
Robert  
Kerr.  
Examina-  
tion.

No. 25.

**Evidence of Robert Kerr.**

ROBERT KERR, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FARRIS:

Q. What is your occupation, Mr. Kerr?—A. Accountant.

Q. For whom do you work?—A. Macaulay, Nicolls & Maitland.

Q. How long have you been associated with them?—A. Four years.

Q. Have you had any business associations with Mr. Langer?—A. I have.

20

Q. In what way?—A. Since 1925 I have looked after Mr. Langer's financial affairs.

Q. That is part of the work of Macaulay, Nicolls or is it an additional side line?—A. No, at night. Mr. Langer was too busy in the day time and I could do the business for him at night in my spare time.

Q. When did you first come in touch with the deal between Mr. Langer and McTavish Brothers?—A. Of course, I heard from Mr. Langer about in September, 1926, but the first time I had any dealings with McTavish Brothers was later than that. I could not tell you the exact date. It would probably be November or December when Mr. Langer asked me to see them and adjust the terms of the agreement.

30

Q. Well, now, have you any recollection of the agreement of the 7th of February, 1927?—A. I do. I had a meeting with the McTavish Brothers.

Mr. DAVIS: Now, wait. The agreement of the 7th of February is there and speaks for itself.

Mr. FARRIS: Yes, I was merely giving that as a lead as to the time.

Mr. DAVIS: Oh.

Mr. FARRIS: Q. Having drawn your attention to the date, the 7th of February, 1927, you recall there was an agreement?—A. I do.

40

Q. With that suggested to your mind, you were going to tell of some interview with McTavish Brothers. I think you had lunch with them one day?—A. Yes, I had lunch with them one day at which time the agreement was discussed, the terms of the agreement.

Mr. DAVIS: That I object to if my learned friend is going to tell the terms.

Mr. FARRIS: No, it relates to the description of these properties. I am not challenging in any way the terms.

Q. Was there any discussion of these properties? That is what I am concerned with?—A. Yes, the McTavish Brothers practically the whole of the time at that lunch, which lasted anywhere from an hour to an hour and a half, enlarged on the property and explained to me that there was a mine there with about 200,000 tons of ore blocked out and it would mean a large fortune for Mr. Langer as well as themselves.

Q. Anything about the value?—A. They told me the values were there, anything from \$10 to \$18 per ton.

Q. Did you make any enquiries from them as to how it came this was left?—A. I asked out of curiosity how it was that there was a mine standing there with the ore ready to be taken out and that no one ever done it. They explained that the mine had stood there about 20 years unwanted, and it was because of the lack of finances and that mining had a black eye and that no one was willing to put money in it, that the tunnel was blocked up and that it required money to get into it.

Q. Did you make any report to Mr. Langer of the information?—A. I reported the whole thing to him and practically drafted out the agreement and it was then passed on to the lawyers and finally adjusted.

Q. During 1927 you had some interviews with the McTavishs?—A. Yes, I had interviews all the time with them.

Q. Were you present at any of the interviews at Mr. Langer's house?—A. At a number of them.

Q. With McTavish Brothers?—A. Yes.

Q. Was there anything said that you recall at those interviews?—A. Nothing in particular, except this that they were continually enlarging upon the wonderful proposition it was and on the values that were there.

Q. Did you ever see these exhibits in Mr. Langer's possession in the fall of 1926 or one similar to this?—A. I have seen that. Mr. Langer did show it to me.

Q. Did McTavish Brothers inform you of the source of their knowledge or how was it put to you?—A. Well, they made them, so far as I judge, from the conversation matters of fact.

Mr. DAVIS: It is not what he judged, it is what he said.

Mr. FARRIS: I am trying to get it as accurate as I can?—A. Put it this way, they never expressed anything else; they never expressed the opinion that it was a proposition or a prospect, rather.

Q. In October, in September or October, 1927, do you recall an interview with McTavish Brothers?—A. Yes, I do.

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tion—con-  
tinued.

*Q.* You might tell us about that?—*A.* They suggested that Mr. Langer might buy further shares. 750,000 was the amount mentioned, so that he might get complete control of the company. They said that he had the facilities for working, seeing he was interested in the Revenue Mining Company and the operations could be directed from that office. There was a price mentioned of 25c. per share as shares were being turned over at that time at that price, and also that the prospects were so good and looked so well that they were having difficulty in getting them, their associates, to consider that price.

*Q.* You passed this on to Mr. Langer?—*A.* Yes. 10

*Q.* Did you come back with any proposition to the McTavishs?—*A.* Yes, there was a proposition made.

*Q.* And what was that?—*A.* It was on a basis of around about 10c. Nothing came of that for a week or two.

*Q.* The upshot was, however, this agreement of November 17th?—*A.* Yes.

*Q.* Now, do you recall anything about the completion of this agreement or letter it really is, the agreement of November the 17th?—*A.* I was present when Mr. Langer signed at his house.

*Q.* What time of the day was it?—*A.* In the evening, I should judge about 8 or 8.30. 20

*Q.* What was done about the certificate, do you recall?—*A.* The certificates were all ready and handed over.

*Q.* The whole 750,000?—*A.* Yes.

*Q.* Although the money to be paid over——?—*A.* Was spread over a period.

*Q.* They endorsed the certificates there that night?—*A.* No, everything was ready. The certificates were all made out.

*Q.* Now, did you get any instructions—— I do not want you to say what they were, but instructions about seeing McTavishs shortly after that?—*A.* Yes. 30

*Q.* How many days later would that be?—*A.* About a fortnight later.

*Q.* And did you see the McTavishs?—*A.* I called at their offices and I saw Mr. P. D. McTavish.

*Q.* Now, what did you say to him?—*A.* I told him that I had been asked by Mr. Langer to call with a view to getting back the agreement of the 17th of November, 1927, together with the note for \$10,000 which Mr. Langer had given them at that time, as Mr. Langer told me that the agreement had been called off.

Mr. DAVIS : No. I object. 40

Mr. FARRIS : He is telling what he told McTavishs.

Mr. ST. JOHN : He did not put it that way.

Mr. FARRIS : *Q.* I only want you to state what you stated to McTavishs?—*A.* That is what I stated, that was my reason for asking for the note back.

Q. What reason did you give them for asking——?—A. Mr. Langer had told me that in view of the assays showing no values they had agreed to cancel the agreement of the 17th of November. That was——.

Q. What did Mr. P. D. McTavish say?—A. He said that that was all right up to a point, but there was this reservation, that the agreement was to be returned if Mr. McGuigan would not substantiate his report on the property showing values there.

Q. Let me see if we have got this right. You say that you went and asked about the note and the agreement?—A. That is so.

10 Q. And in doing so you stated Mr. Langer sent you there to do it inasmuch as McTavish had agreed to give it back?—A. Yes.

Q. And Mr. P. D. McTavish said that was so up to a point, but was only to be given back in case McGuigan cannot substantiate his story?—A. That is right.

Q. And McGuigan being the engineer who had made the report on the Alamo Mine?—A. Yes.

Q. Did you say anything about your understanding?—A. I told them that was not what Mr. Langer had told me was the understanding of the arrangement.

20 Q. Then what did Mr. McTavish finally say about it?—A. It was left at that, so that Mr.—— I understood that Mr. McGuigan——

Mr. DAVIS : No.

Mr. FARRIS : What were you told by McTavish?—A. They were getting Mr. McGuigan to go and see the property.

Q. What was to happen to the agreement. What was his last word on that?—A. The matter was left at that until Mr. McGuigan had examined the property.

Q. I suppose you reported this to Mr. Langer?—A. Yes.

30 Q. And you were present when the letter of the 8th of December was written?—A. Yes, I drafted it.

Mr. FARRIS : That letter is in, isn't it?

Mr. WALKEM : Yes.

Mr. FARRIS : Q. You drafted that letter?—A. Yes.

Q. Did you hear any conversations between Langer and McTavish about Barnes? That would be some time in the summer or fall. I think in the summer or fall of 1927?—A. No, I had direct conversations with McTavish on the point. Mr. Langer was in England at that time.

40 Q. What did they say to you?—A. They told me that they were greatly disappointed in Mr. Barnes. They did not know what was coming over him, he had been a wonderful man, but since his illness he had never been the same and that he was trying to dispose of a radio that was theirs, belonging to the Company, and he had also damaged the auto. He had even tried to stop people trying to get meals there, strangers who were on their way.

THE COURT : During the summer of 1927?—A. That was in August, my lord.

Mr. FARRIS : Your witness.

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Defendant's  
Evidence.

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Robert  
Kerr.  
Examina-  
tion—con-  
tinued.

## CROSS-EXAMINATION BY MR. DAVIS.

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—  
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—  
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Kerr.  
Cross-exa-  
mination.

Q. He complained also about Barnes loafing on the job and not properly attending to his work?—A. That is so.

Q. And he had taken everything away when he left, including this radio which belonged to the Company?—A. Yes.

Q. And generally they had become dissatisfied with him?—A. Yes.

Q. What is your position with Macaulay & Nicolls?—A. I am Secretary of the Company and Accountant.

Q. And accountant. And is it accountant's work you were doing for Mr. Langer?—A. Chiefly. 10

Q. You kept his books?—A. I kept his books.

Q. Now, you say that the McTavishs made certain representations about the mine and the condition of affairs there and so on. What they stated were the statements contained in these various reports, were they not?—A. I had not seen the reports.

Q. You saw them at some stage of the proceedings?—A. I have seen them.

Q. You did see them at some stage of the proceedings?—A. Yes.

Q. And the statements they made were the statements contained in these various reports?—A. Yes. 20

Q. And they were given as statements coming from these reports?—A. They were never referred to as coming from the reports.

Q. Everyone knew that those reports were there containing those statements, didn't they?—A. They might.

Q. That was common ground among all of you, wasn't it?—A. The reports were so little referred to that they passed entirely out of my mind.

Q. But that was the only source from which the McTavishs could get that information?—A. I have no idea about that.

Q. They were not mining engineers. You understood that perfectly?—A. Yes. 30

Q. And what they were giving as the condition of the mine came from these various reports they had and which from time to time they showed to Langer?—A. They might have been, but they were never so expressed in my presence.

Q. They never referred to the reports at all?—A. No.

Q. Never referred to the reports?—A. Not in my presence.

Q. Never referred to the reports in your presence?—A. No.

Q. And never showed you the reports or showed them to Langer in your presence?—A. No.

Q. From anything they said you would not know that any report was ever made on the mine. Do you go that far?—A. They might have been mentioned incidentally. 40

Q. What do you mean by incidentally? Wasn't it clear enough from their statements that the information they had about the mine came from these various reports?—A. No, I have already said the reports were so

very seldom mentioned; they were statements made by McTavish Brothers.

THE COURT: Q. When did you understand the McTavishs had become interested in the property?—How long previous to the time you got into it?—A. Oh, I understood it had been a number of years they had been prying this thing along.

Q. You understood that?—A. Yes.

Q. They had been connected with the property for a number of years?—

A. Yes.

10 Q. Did you know how?—A. No, had no idea.

Q. Did you know how they acquired it?—A. No.

Q. All right.

Mr. DAVIS: Q. When was the cheque given for the agreement of November 17th, for the first payment? Have you that cheque here?

Mr. WALKEM: No, we can get it.

Mr. DAVIS: He may know.

Q. When was that cheque given? The agreement was signed on the evening of the day on which it was dated, November the 17th?—A. Yes.

20 Q. Had the cheque been given before that? I am instructed the cheque was given the day before, the 16th, is that correct?—A. I could not say without reference to the cheque.

Q. You don't know about that?

THE COURT: The cash book would show?—A. Yes, my lord.

Mr. WALKEM: We will have the cheque produced.

Mr. DAVIS: Q. Did you look into the facts in connection with the formation of the Company?—A. No, Mr. Langer employed his lawyer for that, I understand.

Q. I understand you are a Scotch solicitor, are you?—A. Yes.

30 Q. Did you know any of the facts in connection with that?—A. No, I had no knowledge.

Q. That was left entirely to Mr. Baird?—A. It was.

Q. It was P. D. McTavish, was it, that you saw, when you went there asking for this agreement?—A. Yes.

Q. How long were you there?—A. Oh, I should say about 20 minutes.

Q. 20 minutes. Well, what was the conversation during all that time. There would be a good deal of conversation in 20 minutes?—A. Mr. McTavish can do a good deal of conversing in that time.

Q. Anybody can in 20 minutes?—A. No.

40 Q. I am not asking that as a joke or anything. I want to know if you were there talking for 20 minutes and what you were talking about?—A. He was doing the talking.

Q. What did he tell you?—A. He was speaking about the proposition and even then he would not believe that these reports as to the values were correct.

Q. Were correct or were not correct?—A. Were correct. He would not believe—

Q. The assays?—A. Yes.

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Cross-exa-  
mination—  
*continued.*

Q. And that he would not believe that the reports they had were not correct, McGuigan's report, for instance?—A. Yes.

Q. So that you understood as you had before that the foundation of all their information was these reports of McGuigan and Bacon?

Mr. WALKEM: He did not say that before. Excuse me one minute. If my learned friend wants to ask the question all right, but he has no business to make statements.

Mr. DAVIS: I agree. It was my mistake. I did not intend to make the statement. It was a statement in the way of a question.

THE COURT: Mr. Walkem is right.

Mr. DAVIS: Certainly, if it is a statement undoubtedly he is. I did not intend to make a statement. Frequently a question is put in the form of a statement.

THE COURT: I know, sometimes I put statements that way.

Mr. DAVIS: Q. Did you understand at that meeting that all this information came from these reports, McGuigans, Bacon and so on?—A. The whole conversation was on McGuigan's report, not the others.

Q. Not the others?—A. No.

Q. And you had understood before that these statements were based on these various reports of McGuigan and others, had you not? That is a question, not a statement?—A. No.

Q. You had not?—A. No.

Q. You hadn't any idea during all these various conversations that you were present at between the McTavishs and Langer you never had any idea the statements McTavishs were making came from these various reports, is that correct?—A. Never troubled to find out.

Q. I did not ask you if you troubled to find out. Will you read the question?

(*Stenographer reads*: "You hadn't any idea during all these various conversations that you were present at between the McTavishs and Langer, you never had any idea the statements McTavishs were making came from these various reports. Is that correct.")

A. No.

Mr. DAVIS: Q. I do not want to have any mistake about the meaning of "no." You did not?—A. No.

Q. You hadn't any idea?—A. No.

Q. That is all.

(*Witness aside.*)

Mr. WALKEM: I want to file a certified copy of the memorandum and articles of association of the Alamo Gold Mines Limited, certified under the seal of the Registrar. There is a copy in the book. I don't know whether there is a copy in the minute book, that is a correct copy. It can be checked up.

Mr. DAVIS: Without putting that in, cannot it be agreed that the copy is a correct copy and keep down these exhibits.

Mr. WALKEM : We can agree if it is a correct copy. I can check it up.  
 Mr. ST. JOHN : Yes. Can we take it that the certificate of incorporation  
 is in ?  
 Mr. WALKEM : Yes.  
 THE COURT : What about the articles ?  
 Mr. WALKEM : Those are in the minute book.  
 Mr. ST. JOHN : The articles are here in the minute book.  
 Mr. WALKEM : That is the case for the defence.  
 THE COURT : All right.  
 10 Mr. ST. JOHN : I will call Mr. Bacon.

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Robert  
 Kerr.  
 Cross-exa-  
 mination—  
*continued.*

**No. 26.**

**Evidence of William S. Bacon.**

WILLIAM S. BACON, a witness called on behalf of the Plaintiff, being  
 first duly sworn testified as follows :—

No. 26.  
 William S.  
 Bacon.  
 Examina-  
 tion.

DIRECT EXAMINATION BY MR. ST. JOHN.

Q. Mr. Bacon, you are a mining engineer?—A. Yes.  
 Q. A registered mining engineer in this Province?—A. Yes.  
 Q. How long have you been engaged in that business?—A. Over  
 35 years.  
 20 Q. You made an examination of one of the properties in question  
 in this action, didn't you?—A. Yes.  
 Q. Which one was that?—A. The Evans property.  
 Q. Did you make any examination of the Alamo?—A. I did not.  
 Q. Why not?—A. The snow was too deep and they said that the  
 workings were all blocked up, caved.  
 Q. What time of the year were you there?—A. It was in December,  
 I think.  
 Mr. FARRIS : What year ?  
 Mr. ST. JOHN : 1925?—A. Yes, 1925.  
 30 Q. Then you went to the Evans property, did you?—A. Yes.  
 Q. And you made an examination there. Is this the report? Is  
 this your signature to this report, Mr. Bacon?—A. Yes.  
 Q. This is your seal that is attached to this?—A. Yes.  
 Mr. ST. JOHN : I will put this in as an exhibit. (*Document referred  
 to marked Exhibit No. 85.*)  
 Mr. ST. JOHN : I will just read the part that refers particularly to the  
 examination of the property. There is a large part that refers to the  
 geography, topography, historical and so on, and coming to the question  
 of the property, the Alamo Group, the Black Jack and the Evans group?  
 40 —A. Yes.  
 Q. You examined the Black Jack I understand?—A. Yes.

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Q. Speaking of the Alamo on page 3 of Exhibit 85 you say : " Geology : —The Alamo : At the time of my visit it was impossible to make an inspection of this group of claims as a recent fall of snow had obscured the upper parts of the property and precluded any attempt to examine even the outcrops. However, from information received from miners who had been in the mine at the time when it was being opened up, I gathered that the property had been extensively developed, that the outcrops were particularly promising and that the under-ground workings had revealed the normal fissure veins in argillite — "

Mr. FARRIS : Surely my friend has no right to put in evidence of this kind. 10

Mr. ST. JOHN : This is the report.

Mr. FARRIS : He cannot put in hearsay of this kind.

THE COURT : I think that is right. You cannot send out an engineer on the ground and pick up information and bring it in here and put it in evidence.

Mr. ST. JOHN : Good faith.

Mr. DAVIS : It is intended to show the report there. We have put in copies of the report and we want to show that they are bona fide. They have put in reports on that. 20

Mr. FARRIS : There is nothing of that in our copy.

Mr. DAVIS : I am going to point out that that one page is not in.

THE COURT : If you can show that that one page is not in, then on the ground of good faith —

Mr. FARRIS : There is no attack of fraud on this claim of the case, we don't suggest that.

THE COURT : I was looking at the record. It is put in such a general way that it is difficult to instruct the jury.

Mr. FARRIS : I thought that I made it clear the other day.

THE COURT : You may have, but it is not in the record. The attack 30 in the record all the way is fraud.

Mr. FARRIS : With deference I do not think so. There are certain specific allegations of fraud, but so far as the first part of this case is concerned, it is based on the fact that they represented to us that we were buying a certain blocked out mineral area, which is like buying a barn with so much hay in it, or a timber limit with so much timber on it, and when we come to get it it is not there. That does not have to be fraudulent in order to make a case. It is a misrepresentation of facts, and if they are not true, certain legal consequences follow. This representation was made at the start. That is all that we allege. We do not say that it is a charge of fraud. We do say that in the summer of 1927 the McTavishes 40 knew that there was nothing there.

THE COURT : I want to keep my mind directed to everything that took place.

Mr. FARRIS : At that time we say that we are relying upon two things. We were relying upon the continuation of these representations given to us originally.

THE COURT : Are you attempting on the executed contract to obtain a return of the money ?

Mr. FARRIS : Yes, my lord.

THE COURT : That opens a question of law.

Mr. FARRIS : That may be.

THE COURT : My candid opinion is that this is not a case for a jury. However I am glad that you have shifted some of the burden on to a jury.

Mr. DAVIS : The point with reference to which we are putting in the report, my learned friend is going to take the position that what we said were representations of fact. We will take the position that they are representations of opinions and as a basis for that we must put in the original report of which we have already put in copies. That is the McGuigan report and this report and other reports. It would be unfair if we were not allowed to show that those were bona fide reports and those were the reports upon which we were basing the statements. The page which is out is another thing.

Mr. FARRIS : I think that I can save time. There is this that occurs to me. I do not want to preclude myself from this position, that these reports were continuing reports. There is the effect upon us and I will not suggest on our part that the McTavishes gave this fraudulently when they made them on the 17th of November, 1927. The McTavishes knew we were still relying on the information that they had given us at that time when they had obtained other information. We claim the full effect of any allegation of fraud as to that situation, and at that time, and so that I will not be embarrassed, I will withdraw my objection, so that there will be no embarrassment to me later on that.

Mr. ST. JOHN : We want to meet any suggestion that there is anything on the missing page which prejudices our case; there is nothing on this page.

Mr. DAVIS : The page speaks for itself.

Mr. FARRIS : They are not tendering this. I understand, as to its truthfulness, but simply as to that fact that this report was before the McTavishes.

Mr. DAVIS : And bona fide, of course.

THE COURT : That is what I said. You cannot prove facts that way.

Mr. ST. JOHN : Q. You made an examination of the Evans Group, as you say, in 1925. That was in November, you say?—A. Yes, I think it was. It was in the latter part of November as I remember it.

THE COURT : Q. Who were you acting for at the time. How did you get connected with this property?—A. I was sent there by the McTavishes.

Mr. ST. JOHN : Q. You were sent down to examine the property?—A. Yes.

Q. What did you find when you examined the Evans property?—A. I found a shaft about 13 feet deep at the time that I examined it and I took some samples from that.

Mr. DAVIS : Have you got this marked yet ?

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tion—con-  
tinued.

THE REGISTRAR : Yes, it is marked Exhibit 85.

THE WITNESS : Then we went down across ——

Mr. ST. JOHN : Q. Who went with you?—A. Mr. Barnes was along  
and Mr. Thomas.

Q. Mr. Barnes who was in court and gave evidence the other day?  
—A. Yes.

Q. And George H. Thomas?—A. Yes, and Mr. Cox and Mr. Sheedy.

Q. Yes?—A. We came to where they had had a fault.

Q. Tell us about the shaft first?—A. The shaft was 13 feet deep, and  
the vein had been somewhat disturbed in one place. The exact width 10  
I do not remember. I could tell by referring to my book.

Q. What are you referring to now?—A. The shaft.

Q. What paper are you referring to?—A. That is a copy of the same  
report that you have.

Q. Go ahead then?—A. I will get it exact. Well, as I stated here  
it was an outcrop of considerable promise. The vein was narrow at the  
shaft and had been somewhat shattered by the intrusion of the porphyry  
dyke which cuts the vein at almost right angles and constitutes itself one  
side of the shaft. That is on the 5th page of the report.

Q. Go on, Mr. Bacon?—A. "Excellent values are in evidence here. 20  
The vein property assaying across an exposed face of two feet." The  
result I got was \$18.20.

Q. How did you get them?—A. I handled the samples myself and  
gave them to Mr. Williams the assayer here.

Q. Have you got the assays?—A. The results of that I think I gave  
to them here somewhere.

Q. Yes?—A. The foot wall which is decomposed going \$4.27 a ton;  
while the intruding porphyry goes \$5.00 a ton. Very little exploratory  
work is required to determine the nature and extent of this vein, and also  
the dyke which cross cuts it. Considerable free gold can be panned 30  
from every part of the shaft, very little magnetite and practically no  
sulphides being in evidence.

Q. Mr. Bacon, the information that you obtained on this examination  
is all set out on this report?—A. Yes.

Q. I will just read the rest of it to the jury: "The 'Glory Hole'  
so called is the exception to the normal order of things. It is a large open  
cut and has revealed a zone of argillite and porphyry both of which are  
very much shattered and decomposed. The extent of this zone has so  
far not been determined; the open cut on the high side being about 40  
15 feet deep and 12 feet wide. It would appear to be considerably wider  
as neither walls nor boundaries have been encountered. It is difficult  
to classify this deposit with certainty, and further work will be necessary  
to determine with any degree of accuracy, either its extent or nature and  
thus reveal its possibilities. This much is certain, the zone or deposit as  
far as prospected and tested shows free gold of a surprisingly fine quality.  
Samples which I had assayed went \$4.40 to the ton, but extensive panning  
would indicate that the mass would exceed this considerably. The gold

from this open cut is of unusual fineness, being certified by the U.S. Mint at San Francisco under date of April 28th, 1925, as 976 fine or \$20.17 to the ounce."

Now referring to one statement you say: "Samples which I had assayed"—you took samples from that glory hole and had them assayed?  
—A. I did.

Q. And extensive panning would indicate—did you do that yourself?  
—A. There was extensive panning done there.

Q. Did you do them?—A. Not all of them.

10 Q. They were done in your presence?—A. Yes.

Q. By whom?—A. Mr. Barnes made some pannings and Mr. Thomas some pannings.

Q. Yes, I see. Now, in conclusion you say: "The Evans open cut—" that is the glory hole again, I suppose. "The Evans open cut, where the Denver Mill is being installed, lends itself to very low cost in handling the material and there is evidently sufficient gold-bearing ore in sight to operate one or two mills for a considerable period. The ore is entirely free milling and no difficulties whatever attach to a complete recovery of all values."

20 You say these statements are true and were the result of your investigations at that time?—A. Yes.

Q. What experience have you had in examining mines. In the first place what qualifications have you other than a mining engineer, a registered mining engineer?—A. I went to the technical school.

Q. Where?—A. That is in the States.

Q. What school?—A. First I started at Yale, then my people moved and I finished up in the University of the State of Iowa.

Q. Did you take a degree?—A. Yes.

Q. What experience have you had in mining since that time?—A. I have followed nothing else since that time.

30 Q. When did you graduate, roughly, how many years ago?—A. Nearly forty years ago.

Q. What companies, or what work specifically would you say you have done, or attended to since?—A. Well, I have been on the Western in Salt Lake and in a number of places in Utah. I was out for the Treadwell in Nevada.

Q. Doing what work?—A. Examining property and reporting. I have examined in this part of the country a number of properties that now belong to the Britannia group, and the last year or so I have been directing some work in the Alice Arm country up until last—

40 Q. And you have been engaged continuously in mining work all these years?—A. Yes, I have been in Mexico also.

CROSS-EXAMINATION BY MR. FARRIS.

Q. I understand you to say that you examined mines for the Britannia Mining Company?—A. It was not for the Britannia Company property, but property they acquired.

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Cross-exa-  
mination—  
*continued.*

*Q.* You did not examine them for the Britannia?—*A.* Not for the Britannia, no.

*Q.* What is your present activity in this work, what are you doing now?—*A.* I am following mining engineering.

*Q.* I know, but what immediate problems have you on besides this lawsuit?—*A.* I have the directing of the work at present of the Boston mine there near New Denver and then there has been some other property—

*Q.* Is this property operating?—*A.* They are operating, shipping ore.

*Q.* Is it a large operation?—*A.* It is not a very large mine, although 10 they shipped three cars a day after I left.

*Q.* How long have you been there?—*A.* Only a short time. The Thelma mine, I had the directing of the work in that. That is a prospect that is near Nicola.

*Q.* Who is engaged in that?—*A.* The Thelma Mining company.

*Q.* That is just a prospect?—*A.* Yes, although they have shipped two car loads of ore.

*Q.* Is that all?—*A.* I took it at the cross-cut and they were still doing drift work there.

*Q.* Do you know this man McGuigan?—*A.* I met him the day before 20 I came up to the trial with him.

*Q.* How long was that?

Mr. ST. JOHN: The day before the trial.

Mr. FARRIS: *Q.* Here in town?—*A.* Yes.

*Q.* He is here?—*A.* Yes.

*Q.* Is he in the court room?—*A.* He was this morning. I cannot say if he is now. I think perhaps he is.

*Q.* Do you know anything about his mining experience or activity?—*A.* I do not.

*Q.* Did you ever hear anything about him?—*A.* I have heard his name mentioned and further than that I do not know. 30

*Q.* Where did you hear his name mentioned?—*A.* I think I heard his name mentioned when I was down in Oregon on that trip, but I never met him.

*Q.* Did you hear anything about his qualifications or experience or reputation or anything of that kind?—*A.* No.

*Q.* All you heard about him was that he made the report?—*A.* I do not know as I heard he made a report even.

*Q.* I see. I cannot get any light from you on that. I understand that you were sent down to examine the Evans Mine by the McTavish 40 Brothers?—*A.* Yes.

*Q.* You were engaged and paid by them?—*A.* Yes.

*Q.* And made your report to them?—*A.* Yes, sir.

*Q.* Did you go to the Alamo at all?—*A.* I did.

*Q.* Were you asked to examine the Alamo?—*A.* It was the intention, I think, but conditions were such that we were unable to.

Q. It was the intention, you think. Were the McTavishes with you on this trip?—A. No, I don't think so.

Q. Surely you had your instructions. Where did you leave to go down there?—A. I left the city.

Q. You had instructions from McTavishes before you left here what you were to do?—A. If it was possible to do it.

Q. I did not ask about that. Did you get instructions as to what to do or try to do?—A. They requested me to look over all the property they were interested in.

10 Q. Didn't they give you anything more definite than that?—A. I don't think so.

Q. Did they give you that blueprint, Exhibit 18?—A. No.

Q. Just look at that, Mr. Bacon?—A. No, sir, I don't think I ever saw that before.

Q. So you had no plans or data from the McTavishes about the Alamo Mine property when you went down there?—A. No.

20 Q. You would expect if they had a definite plan like that and wanted you to investigate it they would have given you that plan, don't you think so. You would expect if a plan like that was available and you were to go into that mine, that they would give it to you?—A. Probably would.

Q. Isn't it a fact that there was no serious intention when you went down there for you to examine the Alamo Mine?—A. I don't know what their intentions were.

Q. What did they tell you about the Alamo?—A. Didn't tell me much, if anything, about the Alamo.

Q. But they did about the Evans?—A. Yes.

Q. What did they tell you about the Evans?—A. They wished me to examine that and see what my report would be on that.

30 Q. Now, we have it clear that they told you nothing about the Alamo mine, but did tell you they wanted to examine and make a report on the Evans?—A. Yes.

Q. Which you did?—A. Yes.

Q. Have you been back to the Evans mine since?—A. I have not.

Q. You have never been back since?—A. No.

Q. So whether the report that you made in December, 1925 has been verified by subsequent events you do not know?—A. I do not know.

Q. That is all.

(Witness aside.)

*In the  
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Court of  
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Plaintiff's  
Evidence.

No. 26.  
William S.  
Bacon.  
Cross-exa-  
mination—  
*continued.*

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 27.  
James P.  
McGuigan.  
Examina-  
tion.

**No. 27.**

**Evidence of James P. McGuigan.**

JAMES P. MCGUIGAN, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows :

DIRECT EXAMINATION BY MR. ST. JOHN.

Q. You have been engaged in mining for a good many years I understand?—A. Yes.

Q. How many years?—A. About 20 years, I guess.

Q. What experience did you have?—A. Well, mining and milling and prospecting in that time. 10

Q. Where?—A. In British Columbia and the Coeur D'Alene country and in Oregon principally.

Q. Did you have anything to do with this Alamo mine spoken of in this action?—A. Yes.

Q. What did you have to do with it?—A. I developed that mine and was on it about five years, developing it.

Q. In what capacity?—A. I was manager.

Q. You were manager?—A. Yes.

Q. And you had control of the development work?—A. I did.

Q. What five year period was that?—A. That would be from about 1900 to 1905 that I was working on that. 20

Q. Now, what was the extent of the development work when you left the mine?—A. At the time I left there there was about 1000 feet of work done altogether in the cross-cut and drift on the vein and up-raises.

Q. How much do you say?—A. About 1000 feet, 5000 feet altogether.

Q. What, first, as to the surface showings, on this vein, what about that?—A. There was a big outcrop on the surface there on the porphyry dyke and also on the vein itself.

Q. Did you test it yourself?—A. I did many times.

Q. How?—A. By panning and by fire assay too. 30

Q. Will you explain to the jury what would be the process in panning rock?—A. We pound the rock in a mortar as fine as you can and you simply pan it the same as you would gravel.

Q. And the gold remains in the bottom of the pan?—A. Yes.

Q. And what results did you get from this panning?—A. I always got good prospects in panning on that surface of the veins. We relied more on our panning at that time than we did on our fire assay.

Q. Now, coming to the number one tunnel, what was the state of the development on that at the time you left?—A. That was a cross-cut to the vein. That was the first tunnel that was opened up. 40

Q. I see?—A. And that runs through a porphyry dyke pretty near all the way on the cross-cut on the upper works, and there was a shaft put down there 70 feet with an upraise made to the surface.

Q. Did you recognize the vein?—A. Yes, we struck the vein on that.

Q. What did your examination of the vein disclose?—A. That it panned nicely.

Q. What values were indicated?—A. Running anywhere from three to eight or nine dollars.

Q. And what as to the quantity of ore that was developed?—A. That vein there was about 20 feet wide between walls.

Q. And what part of that vein panned gold?—A. You could get pannings all over that filling pretty near.

10 Q. All over the fill?—A. Yes, there were streaks that panned heavier than others.

Q. Now, what other development work was done on the number 1 tunnel other than what you have told us?—A. I think that was drifted on about 75 feet and then that was stopped and then number 2 started.

Q. You drifted about 75 feet on the vein?—A. After that shaft was put down.

Q. How far is that below the surface of number 1 tunnel?—A. I think that was about 70 or 75 feet.

Q. Now, number 2 tunnel is how much further down?—A. I think it was something over 100 feet if I remember right.

20 Q. Below number 1?—A. Yes.

Q. What work were you doing there?—A. That was a cross-cut through the vein.

30 Q. How far did you have to go?—A. We drifted in there in the wash for, I think, 90 feet before we struck bedrock and then we drifted a little way there in the formation, and we cut a vein, a blind vein in there, but it was not the Alamo vein, and we drifted a little farther and about that time some of the directors came in and thought we ought to be close to the vein and I started to cross-cut to the left to see if I could catch the vein a little quicker. I got what I thought was the vein, because we did not know where to look. We did not have an engineer's report; we just run in there blind at it. We run in quite a little way before we got to the vein.

Q. What test did you make?—A. Nothing only panning at that time.

Q. What values did you find there?—A. We judged it was going six or eight dollar ore.

Q. What would you say as to the ore body there, as to the quantity of ore?—A. About the same as they were finding in the other tunnel.

Q. How wide was the vein?—A. Running from 18 to 20 feet in there. There were places the engineer estimated it was a great deal more, but I gave an average of about that on it.

40 Q. You spoke a moment ago about a blind vein. What do you mean by that?—A. A vein that does not show on the surface.

Q. And then there is the third tunnel, about how much further down the hill?—A. That, I think, is 380 feet below number 2.

Q. And you cross-cut to the surface there?—A. Yes.

Q. How far did you have to go to get the vein there?—A. About 1,250 feet.

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tion—con-  
tinued.

Q. What workings were disclosed? Did you intersect any veins on the way in?—A. Yes, I cut three veins going in.

Q. Did you sample them?—A. No, not very much.

Q. What did you find out?—A. About that time we were getting ready to put up our mill and there wasn't very much of anything done on it, just as it is. I made a turn and started to make an upraise so that I could get the ore down to the mill through this.

Q. From where?—A. The upper tunnel. That is the ore I figured on getting out, that oxidised ore.

Q. You built a mill?—A. Yes.

Q. And put it into operation?—A. Yes.

Q. How long?—A. It was only running about six weeks.

Q. What results did you get?—A. We could not save the values in the ore. It was slimy ore.

Mr. FARRIS: What was that?—A. We could not save the values on the ore, it slimed.

Mr. ST. JOHN: It is what you called amalgam ore?—A. A mill would stamp amalgam.

Q. You say that you were not saving the values, they were going over in the tailings. What makes you think you were not saving the values?—A. With what little experimenting I did do I found out that the slime was running very high in gold.

Q. Explain to the jury what you mean by "sliming"?—A. The tailings coming from the mill were not running very high, were running around something like a dollar, and I knew from my assays that I was getting, I had my own assays.

Q. What was it you said, the tailings were not running very high?—A. The tailings from the mill.

Q. That would be the refuse from the mill?—A. Yes.

Q. It was running how high?—A. Around 80 cents to one dollar a ton.

Q. After it got through the mill?—A. Yes, I knew from the assays I was getting out that I should be getting more than that, and I asked the mill man if he could not do something.

Q. Don't give evidence of what you said, tell us what you did?—A. If there couldn't be something done to save that.

Q. That is getting in what you said, I want what you did?—A. There was a froth going over the plate all the time and I watched that froth and I took two five-gallon coal oil cans full of it and I took it over and put it on the heater and it dried out and I had two half cans of dry slime in the morning and I cut it down and quartered it up and I gave it to the assayer and he gave me 40 out of one and 60 out of the other, so I considered that was where my values were all going.

Q. Eventually the mill closed down?—A. Yes.

Q. How long did you stay after that?—A. I stayed at the mine a year after that, I guess.

Q. What were you doing after that?—A. Looking after the mine. There was nothing doing there.

Q. Development work was stopped?—A. Yes.

Q. Why was that?—A. I was just living there, just looking after the mine and stopping there.

Q. As caretaker?—Q. Yes.

Q. After the mill was closed down there were no further mining operations?—A. No.

Q. I see. Now, Exhibit 30, please, Mr. Registrar. Just look at Exhibit 30, Mr. McGuigan. Who did you give this report to in the first place?—

A. To Mr. Jennings.

10 Q. That is why we have nothing but copies. Just read that over and see if that is the report you made at that time?—A. Yes, this is the report I made at that time.

Q. Now, read it through. I am going to ask you if the statements contained in that are true?—A. Yes, those would be all right.

Q. You say those statements are true?—A. Yes.

Mr. ST. JOHN: I will read this at this stage again. I do not know if it has been read or not. (*Reads Paragraph 1 of Exhibit 30.*)

20 Q. What is a cold-blooded sample?—A. Where you do not try to pick up the best of the ore and give a good average, and you are not trying to get the best results.

Mr. FARRIS: I thought it would be the other way round.

Mr. ST. JOHN: That is a mining term?—A. That we prospectors use, I guess.

Q. How was the work being done at the last? Was it an extension to the east on the vein?—A. Yes.

Q. On the number 2 tunnel?—A. No, that is on number 3.

Q. This is on number 3?—A. That was after I left there.

30 Q. "A stope on the vein some 60 feet distant from this point where I was stoping the day I shut the mine down gave me an assay of \$17.00 per ton."?—A. Yes, that is all right, I was there then.

Q. Where was that, what tunnel?—A. That would be about number 1, between number 1 and the surface.

Q. "Number 3 tunnel is the working tunnel . . . in the mill for about 50 cents per ton"?—Well, now, there is a letter, Exhibit 31, it purports to be a letter to Mr. Code from you. Look that over and see if you identify that letter as being written by you. It is just a copy. Read it right through, Mr. McGuigan?—A. I think that is all right.

Q. You remember this letter?—A. Yes.

Q. How does this happen to be written to Mr. Code?—A. He wrote me.

40 Q. What would you say as to the statement of facts set out in this letter?—A. Well, them are facts in that letter.

Q. This letter is dated December 22nd, 1922, and it is addressed to W. B. Code. I will read it. (*Reads Exhibit 31.*) Now, by the way, did you have an assayer?—A. I did, yes, after I started that mill.

Q. Your statements are based to some extent on the information you got from him?—A. Yes.

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tion—con-  
tinued.*

*Q.* When did you first meet Mr. Langer, the Defendant in this action?  
*—A.* I met him here about a year ago when I came here.

*Q.* Where did you meet him?—*A.* At his own office.

*Q.* Who were there?—*A.* Me and Mr. McTavish and himself and myself.

*Q.* Which McTavish?—*A.* Both of them.

*Q.* Both P. D. and D. N. McTavish were there at Mr. Langer's and yourself?—*A.* Yes.

*Q.* How long did the interview last?—*A.* I guess we were there probably a couple of hours. I cannot remember exactly now. 10

*Q.* What took place at the meeting?—*A.* Well——

*Q.* Before you go on to that, do you remember the date you were there?—*A.* No, I do not.

*Q.* What month?—*A.* Was it in November?

*Q.* We will put that otherwise.

Mr. FARRIS: Perhaps he knows the year.

Mr. ST. JOHN: *Q.* You said it was about a year ago?—*A.* Yes, but not this late in the year. I think it was October or November.

*Q.* Tell what took place?—*A.* I just went on and outlined that to him, I outlined things to him as I have outlined them to you here on those same reports and what I thought about the ore, and what questions he asked me about the ore and how it could be saved. I told him my ideas of it. He seemed to think favourable of the idea. 20

*Q.* What part did he take in the proceedings?—*A.* How that light flaky gold could be saved.

*Q.* Did Mr. Langer say anything to you?—*A.* Yes, he questioned me.

*Q.* What did he question you about?—*A.* About the mine and about the values in it and how it was we did not save the values in the ore.

*Q.* And what you told him is practically in substantiation of what is in the report?—*A.* Yes. 30

*Q.* Do you remember anything else in general?—*A.* No.

*Q.* All right.

Mr. DAVIS: My friend Mr. St. John would like to have Exhibit 8, the stock register, out to-night, and my friends on the other side have no objection, if your lordship permits it.

THE COURT: All right, give it out.

Mr. DAVIS: We will return it in the morning.

Mr. ST. JOHN: *Q.* Mr. McGuigan, I produce Exhibit 38 to you. Just take a look at that. (*Handing document to witness.*) Look at this exhibit, have you got any knowledge of that document?—*A.* Well, I think that is one of the draftings of Stanley, the man that made the survey of the claim. 40

*Q.* I see?—*A.* When we patented the claim—or getting it ready to patent. I think that is one of his——

*Q.* Was Stanley an engineer?—*A.* Yes.

Q. What makes you think this is his work?—A. Because I saw blue-prints that he made one time that almost duplicates this—something similar to that.

Q. What about the writing on it?—A. That looks like his writing, too. Of course I can't—it is quite a while since it has been drawn.

Mr. ST. JOHN : All right that is all.

THE WITNESS : I think that is Stanley's map—drawing.

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tion—con-  
tinued.

Cross-exa-  
mination.

CROSS-EXAMINATION BY MR. FARRIS.

- 10 Q. Where do you live, Mr. McGuigan?—A. In Spokane.  
Q. What is your address there?—A. 503 East Central.  
Q. Is that your business address?—A. No, my business address is  
613 10th Avenue.  
Q. What do you do there?—A. I run a grinding shop there.  
Q. What?—A. I am running a grinding shop at the present time.  
Q. A grinding shop?—A. Yes, sir.  
Q. What is that?—A. I grind cutlery, everything from an axe to a  
razor.  
Q. Sharpening axes?—A. And knives.  
Q. Cutlery?—A. Yes.  
20 Q. How long have you been in that business?—A. Well, I have been  
at it since 1920 now continuously.  
A. Since 1920. How long have you lived in Spokane?—A. About  
32 years.  
Q. When did you cease your connection with mining activities?—  
A. Well, about—along about 1920.  
Q. What mine was the last you had anything to do with?—A. Well,  
I think the last mine that I done was in the Coeur d'Alene country.  
Q. You think?—A. At the Ozaks.  
Q. What did you do there?—A. I run a mill there.  
30 Q. How long?—A. About a year.  
Q. Now, you came down here and found Mr. Langer in the fall of  
1927?—A. Yes.  
Q. You came from Spokane out here, did you?—A. Yes, sir.  
Q. On purpose to see Mr. Langer?—A. Yes, sir.  
Q. Who brought you down here?—A. McTavish Brothers.  
Q. They brought you down here, yes. And that was the reason they  
brought you, it was for the purpose of seeing Mr. Langer?—A. Well, I  
didn't know who I was going to see, but I came here—  
Q. But they brought you down to make a report?—A. Yes, sir.  
40 Q. And when they got you here they told you the man they wanted  
you to report to—to make a report to Mr. Langer?—A. Yes.  
Q. And they took you to his house to make that report?—A. Yes, sir.  
Q. Which you did?—A. Yes, sir.

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mination—  
*continued.*

Q. I suppose you went over it with the McTavishes before you went there, did you?—A. No, I don't think I did very much, we didn't—

Q. Well, you did in a general way?—A. I expect we did in a general way.

Q. Yes. Now did you ever have any interest in the way of ownership in the Alamo mine?—A. Yes, I did.

Q. When?—A. When it was first incorporated.

Q. Speak a little louder?—A. When it was first incorporated.

Q. When was that?—A. That would be in 1899, I think.

Q. 1899, there was a company incorporated at that time, was there?— 10

A. Yes.

Q. How much interest had you in it?—A. Well, I think my brother and myself, we had something over 150,000 shares in it.

Q. How many shares were in the company?—A. It was incorporated at that time for a million shares.

Q. A million shares; you and your brother had 150,000. Did the shares have any value—what value had they?—A. Well, it was—I think the par value was 10 cents on the stock exchange.

Q. I see, and how much did you pay for your shares?—A. Well, we— in incorporating the company, some of the claims that I put into the 20 incorporation, I got—

Q. You had stock for some claims?—A. I got some stock for the claims that I put in, and I paid 10 cents a share for some stock that I bought.

Q. How much did you pay?—A. I don't know. I can't say.

Q. You don't remember?—A. No, I don't know.

Q. Now, was this mine ever sold?—A. It never was.

Q. How did Code get it?—A. Why they bought—the only thing was they had it sold for taxes.

Q. But it stayed in the name of the old company?—A. Yes.

Q. For how many years?—A. Well, up until the time he—until the 30 time—

Q. It stayed there abandoned for about 20 years?—A. Yes, sir.

Q. And the company never paid taxes on it or anything?—A. Well, they did pay for—till all the money they had in the treasury was gone, and then it was—they ceased to pay any more taxes.

Q. So Code had it put up for sale for taxes and he bought it in?—

A. Yes.

Q. Do you know how much he paid for it?—A. No.

Q. Well, just paid the taxes, did he, or did he pay that much?—

A. I don't know, there might have been some little expense, I guess 40 advertising.

Q. How much would the taxes be, have you any idea?—A. No, I don't exactly know.

Q. They wouldn't be very much on an abandoned mine, would they?—

A. Well, I think something like around \$75.00 a year, something like that.

Q. \$75.00 a year, and how many years did the company pay it, do you think—ten years?—A. I can't say, I can't remember.

Q. Well, it wouldn't be any more than about \$1000.00 then that Code would have paid for it?—A. Well, I can't give you any data on that, because I never went into the details on it.

Q. Was it before or after Code bought it that he saw you?—A. Why I think it was after he bought it that I saw him, if I remember right.

Q. You wrote this letter after he bought it?—A. I think so.

Q. Yes. How did you come to write him that letter?—A. I think that he wrote to me for the data on the mine.

Q. Yes. Well, he didn't want evidence in writing after he bought it, because he had already bought it, so the idea was that he wanted to interest other people, was that it, to get them?—A. I presume so.

Q. Did he pay you for that opinion?—A. Never did.

Q. Did you charge him?—A. No, I never—I never presented him with any bill for it, and I never got nothing for it.

Q. What?—A. No, I never got nothing for it.

Q. Now, when was the last time you were at this mine—the Alamo?—

A. Oh, I think the last time I was at the Alamo mine was in 1906.

Q. 1906, that is 22 years ago?—A. Yes, sir.

Q. This Exhibit 18, did you ever see this before. (*Handing document to witness.*)—A. No, sir, I don't think I ever saw that.

Q. You never saw that before?—A. No, I don't think so.

Q. You can follow what that purports to be, can you?—A. Well, I can follow it all right.

Q. Would you say that was an accurate statement of the mine as you knew it?—A. Well, that is pretty good—that is a pretty good drawing of it, this part, that cross-cut into the vein, that is what that represents, and this number 2, I suppose that is—no, that is a tunnel which runs different to that.

Q. That is the wrong side of the hill, is it not?—A. Yes, that is—

Q. It is on the wrong side of the hill?—A. Yes, it is on the wrong side of the hill, that ought to be across, I think, there.

Q. It was evidently made by somebody who was not familiar with the ground?—A. Well, either that or he hurried it up to make it quick.

Q. He was hot on somebody's trail. You never saw that until I showed it to you now?—A. I don't remember ever seeing that, no.

Q. How long have you known Mr. Code?—A. Never saw him till he came to my office—my shop, with Mr. Thomas.

Q. Now, when did you know you were coming here to give evidence this time?—A. Why, I didn't know—I didn't know what the results was at all until I got here.

Q. When did you know that you were coming here?—A. I think about a week ago. I am not sure.

Q. About a week ago. How far is it from Spokane to where this Alamo Mine is?—A. About 550 miles.

Q. About 550 miles. Coming here to Vancouver, which way did you come—via Seattle?—A. Yes, sir.

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mination—  
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mination—  
*continued.*

*Q.* How much out of your way would it be to go down to the Alamo Mine?—*A.* Well, I couldn't tell you that.

*Q.* Well, it isn't very far, is it. What part of Oregon is this place anyway?—*A.* It is about 50 miles from Baker City.

*Q.* That is near Portland, is it not?

*Mr. ST. JOHN:* No, south-eastern Oregon.

*Mr. FARRIS:* It is in south-eastern Oregon?

*Mr. ST. JOHN:* Yes.

*Mr. FARRIS:* Oh, I see.

*Q.* How is the shortest way coming from Spokane?—*A.* Well, I always 10  
travel over the O.W.R. & N.

*Q.* You came direct from Spokane down here?—*A.* Yes.

*Q.* Yes, is there a line over there that comes right into the coast?—  
*A.* You take the Sumptor Valley narrow gauge.

*Q.* Came from there where?—*A.* I went into Whatcom and then we  
switched in from Whatcom.

*Q.* Well, anyway, it isn't a very hard trip from Spokane to go to Baker,  
is it?—*A.* Oh, no, it is not.

*Q.* If you have any curiosity to go back there?—*A.* Well——

*Q.* You heard that these tunnels had been opened up, didn't you?— 20  
*A.* Yes, I understand that they are partly opened.

*Q.* You knew that Mr. Fellowes was in charge of the work there?—  
*A.* Well, I never knew Mr. Fellowes——

*Q.* Well, I say you knew that Fellowes was in charge of the work there?  
—*A.* Well, he told me so since I came here.

*Q.* Yes, he told you so, and didn't the McTavishes write and tell you  
that?—*A.* Well, they told me that he was engineer there. I don't remember  
whether they said Mr. Fellowes was in charge or not. I couldn't tell you  
now.

*Q.* Did you complain that he didn't know how to make proper tests 30  
of this mine?—*A.* Yes, I made that remark.

*Q.* Yes; and it was through the McTavishes that the arrangement was  
made for you to come here to give evidence, was it not?—*A.* Yes, sir.

*Q.* But they didn't make any arrangement for you to go down and see  
the mine first?—*A.* No, sir.

*Q.* No; and it was—how many years did you tell us? How many  
years, 22 years?—*A.* Yes, about 22 years since I have been there.

*Q.* 22 years since you have been there. Why didn't you go down, Mr.  
McGuigan?—*A.* Well, at one time they wanted me to go and I was sick  
and I couldn't go at that time. 40

*Q.* Well, you got better?—*A.* I beg your pardon?

*Q.* I see you got better?—*A.* Yes, I got——

*Q.* Well, why didn't you go?—*A.* Well, I wouldn't—I wasn't asked to  
go down then.

*Q.* You weren't asked to go?—*A.* If I remember right, at the time  
when I was——

Q. I understand you to say that Mr. Code was brought in to see you by Mr. Thomas?—A. Yes, sir.

Q. Now, who was Mr. Thomas?—A. Well, I don't know a thing about him.

Q. You don't know about him, I see?—A. I never met him until I met Mr. Code, they both came in and introduced themselves to me.

Q. Now, this document that is in front of you—let me have a look at that, will you? This Exhibit 38, whose writings did you say you thought this was in?—A. I thought it was Engineer Stanley's.

10 Q. Engineer Stanley's, so you suggested you could recognize the handwriting?—A. I thought I could.

Q. Well, now, would you be good enough to show me what handwriting on that document you recognize?—A. Well, this looks like his figures here.

Q. Well, that is not handwriting, and these are printed figures, aren't they—letters?—A. No, these are made with a lead pencil.

Mr. ST. JOHN : Made with a lead pencil.

Mr. FARRIS : Yes, I know.

Q. Which figures do you say look like his?—A. Well, now, if any of it, it all looks like his.

20 Q. What about the printing?—A. It looks like his printing.

Q. There is not a word—there is not a single written word in the whole document, is there?—A. No, no, it is all—

Mr. FARRIS : You got a photograph of that, gentlemen of the jury.

Mr. WALKEM : No, I think not—only the blueprint.

Mr. FARRIS : Q. How long since you have seen any figures made by Mr. Stanley?—A. I don't think I saw any made since—I think—about 1903.

Q. 1903. That is 25 years ago; and you are suggesting that these printed words—the figures made in lead pencil, you think, are made by a man whose figures you haven't seen for 25 years?—A. Yes, sir.

30 Q. What has become of Mr. Stanley?—A. I couldn't say.

Q. He is not here on this trial, is he?—A. No.

Q. You haven't seen him around?—A. No.

Q. You don't know whether he is here or not?—A. No, sir.

Mr. ST. JOHN : Q. Mr. McGuigan, while you are in the box, when were you asked to visit the mine—about what time? What date was that?—A. I can't remember the date.

Q. What year?—A. Well, it was 1927.

Q. About what month?—A. I think October.

40 Q. And who asked you to visit the mine?—A. Well, through the McTavish brothers.

Q. The McTavishes, I think, wrote to you and wired to you to see if you could go?

Mr. FARRIS : I am sorry, I didn't get that. Mr. Walkem was speaking to me, I didn't hear what it was.

Mr. ST. JOHN : I just asked him if he visited the mine. He said the McTavishes had asked him, he says, to report in November, 1927.

THE WITNESS : Yes.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

—  
No. 27.

James P.  
McGuigan,  
Cross-examination—  
*continued.*

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

No. 27.  
James P.  
McGuigan.  
Cross-exa-  
mination—  
*continued.*

Q. They told you to go down and see it?—A. Yes.

Q. Now when you made that report in 1923, Exhibit 30, had you any interest in the property at that time?—A. No, none whatever.

Q. I see, now—A. They sold me out when they sold it for the taxes.

Q. When did you first learn that there was a lawsuit between the plaintiff and defendant on these matters?—A. When I came over here on this last trip.

Q. That is on the present trip to Vancouver?—A. Yes, sir.

Q. That is last week?—A. Yes, sir.

Q. When did you first learn that the tunnels had been opened up in the Alamo?—A. I think in July. I think it was in July that they wrote me and told me the tunnels were being cleaned out. 10

Mr. ST. JOHN : That is all.

Mr. FARRIS : Just a minute. I think I want to cross-examine on that.

Q. Are you suggesting that the first time you knew the tunnels were opened on the Alamo was July of this year?—A. Yes, sir.

Q. Well, what about the information that was given you in the fall of 1927, when they told you that Fellowes had made samples of this mine and they had got an assay. Didn't you know then that Fellowes was in the mine?—A. Well, I can't remember just what— 20

Q. A man who can remember printing for 25 years ought to remember that, you know. You knew, Mr. McGuigan, you knew in the fall of 1927 that Fellowes had taken samples out of the Alamo mine, that there had been assays made of these samples, and that they showed no commercial value, didn't you?—A. Well, they wrote me something to that effect.

Q. Yes, you knew then, and you knew that samples couldn't be taken out of that mine unless it was opened up?—A. I certainly did.

Q. Yes, so you must have known that it was opened up at that time. Don't hesitate?—A. Well, I ain't sure whether I did or not.

Q. Where did you think they had got them?—A. Well, I couldn't tell you that. 30

Q. When you made your first report on this mine, that has been put in here as an exhibit—

Mr. ST. JOHN : That is Exhibit 30.

Mr. FARRIS : 30 or 31—the first one was 30.

Q. When you wrote that you had an interest in this mine, hadn't you?—A. When was that?

Q. Well, don't you remember when it was?

Mr. FARRIS : Let me have it, Mr. Allan, please, Exhibit 30.

Mr. ST. JOHN : December 22nd, 1923. 40

Mr. FARRIS : Q. Don't you remember when you made this report? Will you say whether you had any interest then or not?—A. Is that the letter I wrote Mr. Code?

Q. Did you ever make a report when you had an interest in this mine?—A. I never made any report until a short time before it was sold for taxes, that I remember.

Mr. FARRIS : Well, I may have embarrassed the witness, because this report was earlier than it is. This report was not until 1923.

Q. Now, as I understand it, Mr. McGuigan, in 1923, although this was comparatively recent—the mine had not been sold for taxes at that time, had it?—A. No, I think not.

Q. No, and you did have your shares in the company at that time?—A. If the company ever revived, I suppose I would have had.

Q. Yes, but why were you making this report to Jennings?—A. Because he figured on trying to do something with the mine.

10 Q. Was Jennings one of your syndicate?—A. No, sir.

Q. Then he was figuring on buying the mine from your company and starting it up?—A. He was figuring on trying to get somebody to do something with it.

Q. Yes, and either buy it or take it up in the name of your company and go ahead with it?—A. No, I don't think that Jennings ever intended to take it up in the old company's name at all.

Q. He intended to buy it from the old company and go ahead with it?—A. I think that Jennings figured, if I remember right, going to work and buying that in for taxes, because he knew it was outlawed then.

20 Q. Did he tell you that?—A. Well, I think he did.

Q. You think he did?—A. I think he did.

Q. Are you sure?—A. I am pretty sure, that he—that was the things that he had outlined.

Mr. FARRIS : All right.

Mr. ST. JOHN : That is all, Mr. McGuigan.

(Witness aside.)

Mr. ST. JOHN : I call Mr. D. N. McTavish.

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No. 28.

Evidence of Donald N. McTavish.

30 DONALD N. McTAVISH, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows :—

DIRECT EXAMINATION BY MR. ST. JOHN.

Q. Mr. McTavish, you are an officer of the Plaintiff Company, are you?—A. Yes.

Q. What position do you hold?—A. President.

Q. President of the Company, and have been president of the Plaintiff Company during all the period in question in this action?—A. Yes.

Q. Now, the Alamo Company was incorporated as shown by the Exhibit there on the 17th of March, 1925?—A. Yes.

40 Q. For the purpose of acquiring what property?—A. The Alamo.



*In the  
Supreme  
Court of  
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Plaintiff's  
Evidence.

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Donald N.  
McTavish.  
Examina-  
tion—con-  
tinued.

Q. I see, and how did you learn of this property?—A. Through Mr. Barnes.

Q. Mr. Barnes?—A. Yes.

Q. You had known Mr. Barnes before this, had you?—A. Yes.

Q. You were associated with him in connection with another mine in which he was engineer, I believe?—A. Yes.

Q. Did Mr. Barnes ever say anything to you about his qualifications?—A. Yes.

Q. Before this time?—A. Yes.

Q. What did he say?

Mr. FARRIS: That is not evidence?—A. Well, just——

Mr. ST. JOHN: Never mind.

Q. Now, Mr. Barnes spoke of the property to you, did he?—A. Yes, and Mr. Thomas. I think they were together.

Q. I see. Well, what did they bring to you in the line of documents?—I couldn't tell you just at the first interview.

Q. Yes, well, it doesn't matter about the first interview?—A. Well, they had seen Mr. McGuigan's report.

Q. They had produced that, that is Exhibit 30, is it not?

Mr. FARRIS: It is Barnes, not Thomas, he is speaking about, isn't it, Mr. St. John?

Mr. ST. JOHN: What?

Mr. FARRIS: It was Barnes that the witness was speaking of, not Thomas.

Mr. ST. JOHN: Yes, Barnes.

Q. Now, I produce Exhibit 30, is this report—that is, the report of which this is a copy, was this one of the documents that was shown to you. (*Handing document to witness*)?—A. Yes.

Q. Produced to you; and what else?—A. There was—what is the date of this—there was another report by Mr. McGuigan.

Mr. DAVIS: As to my friend's objection to the statement of Barnes as to his engineering ability, surely it is part of the investigation which we made. In addition to that it would be—it may be all connected with the reason why he was willing to let him go. It seems to me we have a right to put that in.

THE COURT: What do you say, Mr. Farris? You remember the incident that occurred this morning as to the different features. It is part of your case to show that these people were acting with a lack of good faith or lack of——

Mr. FARRIS: All right, I will withdraw the objection.

Mr. ST. JOHN: Well, then, I will come back to the question.

Q. What did Barnes represent to you as to his qualifications?—A. The information we got from Mr. Barnes regarding his qualifications was to the effect that when he was a boy he went into a mill with his father—his father was a mill man.

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30

40

Q. What kind of mill?—A. Presumably gold mill or mine—and at a later date, after being there for about four years, he attended the Colorado School of Mines.

Q. Yes?—A. I don't recall that he ever said he took a full course there, but he left us with the suggestion that he had attended there.

Q. Yes?—A. And led us to believe that he was a qualified mining engineer.

Q. Well, now, what other documents were produced to you in the early stages before you decided to take on this mine, besides Exhibit 30?—

10 A. There is another report of Mr. McGuigan's.

Q. That would be—

Mr. WALKEM: Pardon me, Mr. St. John, did he say that Barnes produced that Exhibit 32.

THE WITNESS: I said Barnes and Thomas.

Mr. ST. JOHN: Barnes and Thomas, yes.

Q. You saw Thomas along with him at this time as well, did you?—

A. Yes. I said that I didn't know whether it was at the first interview or not.

Q. Yes, Thomas had been at the property, hadn't he?—A. Yes.

20 Q. Well, then, I produce Exhibit 31, is this another report that you saw at that time. (*Handing document to witness*)?—A. Yes.

Mr. ST. JOHN: That, gentlemen of the jury and your lordship, is the letter addressed to Code from McGuigan, dated December 22nd, 1923, and Exhibit 30 is the McGuigan report.

Q. Now, what else did you get at this time?—A. There was another report by a man—I forget his name.

Q. Jackson?—A. Jackson.

Q. Yes that is Exhibit 29. This is the report, Mr. McTavish. (*Handing document to witness.*) I think I have the original here?—A. That is a  
30 copy of it, I believe.

Q. Yes?—A. We had the original.

Q. Is this the original. (*Handing document to witness*)?—A. Yes, that is the original.

Mr. ST. JOHN: Well, we will put that in as an Exhibit. We will make that the Exhibit then your lordship. (*Document marked Exhibit No. 86.*)

Q. Now, what else did you get?—A. I don't remember—

Q. From Barnes or Thomas in the early stages?—I don't remember anything else just at that time. Mr. Code came into it—early in the negotiations. Mr. Code came into it and then we got all the documents  
40 that he had.

Q. Yes. Well, these, I presume were among the documents that you had, were they?—A. Yes.

Q. I see. Now, when did you get that pencil sketch that has been produced here as an Exhibit?

Mr. FARRIS: I think the jury have that, 38.

Mr. ST. JOHN: Exhibit 38.

*In the  
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tion—con-  
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—  
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Donald N.  
McTavish.  
Examina-  
tion—con-  
tinued.

Q. When did you get this Exhibit 38. (*Handing document to witness*)?—  
A. That came in a file during the negotiations, I just couldn't tell you.

Q. Now, what period did these negotiations cover?—A. You mean how long.

Q. Well, I mean at what time, what year, what months?—A. I couldn't tell you just exactly about that, Mr. St. John.

Q. By relation to the fact that the company was incorporated on March 17th, 1925?—A. It was prior to that.

Q. How long before that?—A. Over a period of probably two or three months; I don't recall that.

Q. And this pencil sketch you received during that period?—A. Yes.

Q. That is Exhibit 38. By the way, we might deal with that now. When was this pencil sketch, Exhibit 38, first shown to Mr. Langer?—  
A. That would be in the spring—about May of 1927.

Q. May of 1927?—A. The way I know that, because I checked it up by getting—he asked us to get blue-prints made.

Q. Yes?—A. And I went and got the bill from the people who made the blue-print and checked up on the time.

Q. That is the blue-print that has been put in here as Exhibit 19. This is one of the blue-prints that was made at Mr. Langer's request, is it? (*Handing document to witness*)?—A. Yes.

Q. I see, that is supposed to give in graphic form the information given in Exhibit 38. Now, we will deal with that again when we come to put in the cross veins. Now, did you do anything to verify the information that was contained in these reports in the early stages?—A. Oh, I couldn't just at that time, Mr. St. John, I mean in the spring, at that time of the incorporation. We sent Mr. Barnes down at a later date.

Q. I see, Mr. Barnes visited the mine, did he?—A. Yes.

Q. And he made a report on that, did he not?—A. Yes.

Q. That is in here as an Exhibit. At any rate you did get a report from Mr. Barnes. Oh, here it is—Exhibits 46 and 47. You identify this Exhibit 46 as being a report received by you from Mr. Barnes. (*Handing document to witness.*)—A. Yes.

Q. And Exhibit—.—A. Wait now. Yes.

Q. And Exhibit 47. (*Handing to witness.*)—A. Yes.

Q. Is that letter received covering the other—the first was on the Alamo, 46, and the other covers the Evans?—A. Yes.

Q. Now, who were your associates in the promotion of the Alamo Gold Mines Limited. Who were your associates in the formation of the company?—A. Mr. Code and Mr. Thomas, Mr. Barnes and McTavish Brothers.

Q. I see. Now, did Thomas do anything towards investigating the property?—A. Yes.

Q. And you received a report from him in regard to the matter too, didn't you?—A. Yes.

Q. When did Thomas visit the property?—A. I couldn't tell you just the exact time.

Q. What year?—A. '25.

Q. Had he any mining experience?—A. I understand so.

Q. What?—how extensive?—A. 40 years, he told us.

Q. Yes, I see. Well, then, who owned the property at the time you opened negotiations, the time the company acquired it?—A. W. B. Code.

Q. W. B. Code, and he conveyed the property, I understand, to the company?—A. Yes.

Q. For the transfer to him of practically all the stock of the company except five incorporated shares?—A. Yes.

10 Q. Then I understand that by agreement these shares were then divided among the parties, 600,000 to Code, 600,000 to Thomas, 600,000 to Barnes and 12,000 to McTavish Brothers Limited?—A. Yes.

Q. Now, I produce this letter dated June 30th, 1925, signed by George H. Thomas, is the report you got from him. (*Handing document to witness.*)—A. Yes.

Mr. ST. JOHN: Will you mark that as an Exhibit, please.

(*Document marked Exhibit No. 87.*)

Q. This is addressed to McTavish Brothers, Limited, June 30th, 1925. (*Reading.*) That is the Thomas that you have spoken of as being the person  
20 who was associated with Mr. Barnes in introducing the property to you?—A. Yes.

Q. Then Exhibit 32. I produce Exhibit 32. (*Handing document to witness.*) Do you identify that as being the——take the first part first?—A. Yes.

Q. The stuff from Smith. This, I understand, Mr. McTavish is the letter from Smith that you——copy of letter that you received, is the actual one you received. (*Showing document to witness.*)—A. Yes.

Q. From which Exhibit 32 was drawn?—A. Yes, Mr. Code received it, we received it from Mr. Code.

30 Mr. ST. JOHN: We will put that in as Exhibit 88.

Mr. ST. JOHN: I won't read this to the jury at the present time, because it has been already read before.

Mr. FARRIS: What is this?

Mr. ST. JOHN: This is a letter from Smith to Code. It is the original that we received, of which copies were sent—January 27th, 1925.

Q. Now, I understand that you were referred at that time also to various reports from Waldemar Lindgren?—A. Yes.

Q. With regard to this property?—A. Yes.

40 Q. On the lower part of Exhibit 32 appears some statements by Lindgren in regard to that property. (*Handing document to witness.*)—A. Yes.

Q. Do you know anything about this man Lindgren, who he was—where he is, or if he is still living?—A. I couldn't tell you his exact position, but he is considered perhaps the outstanding authority in the United States on Mining.

Q. He was the head of the Geological Survey of the United States?—A. I have heard so.

*In the  
Supreme  
Court of  
British  
Columbia.*

Plaintiff's  
Evidence.

—  
No. 28.  
Donald N.  
McTavish.  
Examina-  
tion—con-  
tinued.

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Donald N.  
McTavish.  
Examina-  
tion—con-  
tinued.

Q. At any rate this extract that is in here is an extract from the book. You have it here?—A. Yes.

Mr. FARRIS: Let me see the extract, Mr. St. John, will you, please.

Mr. ST. JOHN: We will produce that later, your lordship.

Q. Well, now, is there any other data that you had before you in the earlier stages of this promotion before you started interesting capital in the venture?—A. I think not.

Q. Now, when was the Evans property acquired by the Company? I have got the Evans agreement put in, but I understand it is referred to in that agreement of February 7th. The agreement with Evans is dated June 15th, 1927, I presume that is—?—A. That is the date. 10

Q. That is the date, yes. That is shown in Exhibit 17 if I could look at that just a moment. Exhibit 17, you identify this agreement as being an agreement between the defendant and the various parties named there as of that date. (*Handing document to witness.*) Look at the signatures. It is executed by McTavish Brothers Limited is it not?—A. Yes.

Q. And by you and P. D. McTavish individually and by Mr. Langer, and you will notice that in the second page of this agreement it recites the Evans agreement as being dated 15th June, 1925?—A. That would be correct. 20

Q. That is when you got the Evans property?—A. Yes.

Q. And it has been already stated here that it was being bought for a lump sum of—how much?—A. \$40,000.00

Q. Payable—?—A. \$4,000.00 a year without interest.

Q. And the \$4,000.00 a year, as was said, I think by Mr. Barnes, is payable \$500.00 a month for eight months of the year?—A. Yes.

Q. I see. Now, what was your plan for securing capital for the development of these properties?—A. At what time?

Q. Well, when did you decide to develop them, how were you going to get in there. What did you do, Mr. McTavish?—A. You mean after we decided to acquire the Evans? 30

Q. Yes, when you got the Evans you decided to go on with the development, but how were you going to get the money?—A. We decided that we would pool half the stock we had and sell it and turn the proceeds over to the company.

Q. Half the stock that McTavish Brothers Limited had?—A. And Barnes, and Thomas and Code.

Q. That is, the shareholders all agreed that they would contribute to the pool, one half of their shares?—A. Yes.

Q. To be disposed of for the benefit of the company. Now, that is covered by an agreement which is here, Exhibit 5, Agreement dated the blank day of March, 1925. You will notice it is executed by McTavish Brothers Limited, I think, is it not. (*Handing document to witness.*)—A. Yes. 40

Q. This is the agreement which provided for the creation of the pool and so on, is it not?—A. Yes.

Q. Now, did you make any inquiries as to the whereabouts of Jackson, the man who made one of these reports submitted here. Did you learn anything about him?—A. We understood that he had—that he was dead. I never heard anything about him.

Q. I see. Well, I mean, how did you understand it. Did some person tell you?—A. Through either—some of the associates, Code or Thomas or Barnes.

Q. Yes. Now, when did you first commence selling shares in the Alamo mine?—A. It would be just after we agreed to take up the Evans  
10 property.

Q. I see; and when did you proceed to actual development work?—  
A. On the Evans?

Q. Yes?—A. We didn't go there to do any work that summer. Mr. Thomas was to go down, but he kept delaying it until it was too late, so we didn't do anything—

Q. Was the development work begun in 1926?—A. 1926.

Q. Now, in the meantime you sent Mr. Bacon down, didn't you?—  
A. Yes.

Q. And you received from him a report which was filed here today as  
20 Exhibit 85?—A. Yes.

Q. That is the report, is it not, Mr. McTavish. (*Handing document to witness.*)—A. Yes.

Q. That you received from Mr. Bacon. Did Mr. Bacon advise development of the property?—A. Yes.

Q. Now, we come to—I think that is all that is mentioned about the year 1925; coming to the year 1926, you say you commenced development, under whose directions was that carried on?—A. Mr. Barnes'.

Q. Mr. Barnes, he became an employee of the company, did he then?—  
A. Yes.

30 Q. What was his remuneration?—A. \$350.00 a month.

Q. \$350.00 a month; then what was done towards development, just in general terms?—A. He commenced the installation of a mill.

Q. Did he advise the installation of a mill?—A. Yes.

Q. I see. Well, did you own a mill or did you have to buy one?—  
A. We bought it the year before—the fall before.

Q. I see. Then he began the erection of it, is that what you mean?—  
A. Yes.

Q. In the spring of 1926?—A. Yes.

40 Q. And how far had the development work gone on at the time you introduced it to Mr. Langer?—A. The mill had been finished, the shaft on the top had been sunk to a depth of approximately 30 feet; we had started to drift under that shaft, and the tunnel was in.

Q. What level was that about?—A. That would be—we would be cutting that—let us see—we would be about 75 feet below the surface.

Q. That is the Number 1 tunnel of the Evans?—A. Yes. That was in at that time somewhere in the neighbourhood of 100 feet—I don't remember exactly.

*In the  
Supreme  
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British  
Columbia.*

Plaintiff's  
Evidence.

No. 28.  
Donald N.  
McTavish.  
Examina-  
tion—con-  
tinued.

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Supreme  
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McTavish.  
Examina-  
tion—con-  
tinued.

Q. I see. Then you were introduced to Mr. Langer, as was already pointed out, by Mr. Howard?—A. Yes.

Q. Mr. P. J. Howard who gave evidence here. Now, will you tell what took place at the first interview between you and Mr. Langer. Who were present, first?—A. Mr. Howard, Mr. Langer, my brother and myself.

Q. You mean Mr. P. D. McTavish?—A. Yes.

Q. And yourself; and where did the interview take place?—A. At Langer's house.

Q. At Mr. Langer's house, and what was done, what was said now at that meeting?—A. We spoke about the property, and we produced these reports, that is— 10

Q. Speak a little louder?—A. We produced these reports and blueprints and —

Q. Now, what reports. You mean these reports?—A. McGuigan's and Jackson's.

Q. Yes?—A. I am not sure of the others.

Q. Now there are two McGuigan's there is the letter—A. Yes.

Q. There is McGuigan's report proper and then there is the letter to Code?—A. Yes.

Q. Well, which of these?—A. I think perhaps both of them, but there would be the report anyway. 20

Q. Yes, and what else?—A. And the blueprint of the property there—that sketch that was taken—made by Cox.

Q. That is Exhibit 18?—A. Yes.

Q. Let us see Exhibit 18. Is this the sketch you refer to? (*Handing document to witness.*)—A. Yes.

Q. That, or a copy of that you produce?—A. Yes.

Q. By the way, who prepared that?—A. That was prepared by Mr. Cox.

Q. Well, who is he?—A. Mr. Cox is—presumably an engineer. I never saw his qualifications. 30

Q. Well, he says he is?—A. He says he is.

Q. Yes?—A. We asked him to prepare that from the reports of Jackson and McGuigan.

Q. I see, on the data that you had from the reports—A. Yes.

Q. And Exhibit 18 is supposed to show graphically what is in the reports?—A. Just in a general way. It is not drawn to scale.

Q. I see. Now, what else did you produce to Mr. Langer in the line of documents or maps or anything on that first occasion?—A. I think that is all. 40

Q. I think there was another map here—contour map, wasn't there?

Mr. FARRIS: Barnes had that; I don't think Mr. Langer had that.

Mr. WALKEM: No, Howard.

Mr. ST. JOHN: It was Howard. Well, just a minute until I see whether it was produced at that meeting. Was it?—A. No —

Q. Exhibit 41, this may refresh your memory. This map here, Exhibit 41, was that produced at that meeting?—(*Handing document to*

witness.)—A. I don't remember that it was. I can't remember whether it was.

Q. You don't remember that it was?—A. No.

Q. But it may have been. I don't think that very much turns on it. Well, tell us what discussion took place then?—A. Well, we made it very clear to Mr. Langer that we didn't know anything about these properties except what was in these reports. Mr. Langer had represented to us that he was a man of considerable mining experience, and not having had that experience ourselves we were rather careful what we said to him.

10 Q. Yes?—A. And we asked him to—he said that he had told Mr. Howard previously, which is in evidence here, that he was not interested in a five thousand dollar proposition, and that he had gone up to see him on a larger one. We suggested—our suggestion was to him that he come down and look it over for himself, that we knew nothing about it but what was in these reports.

Q. Yes, well, then was there any extended discussion of the contents of the reports at this meeting?—A. I can't say that there was.

Q. How long did the interview last?—A. Probably an hour.

20 Q. Well, did you talk about anything else but the mine?—A. I couldn't just tell you. I can't recall anything else at the time.

Q. Did you make any representation to him at that time or at any other time, about this mine that is not set out in these reports?—A. No.

Q. Did Mr. Langer know—

Mr. FARRIS: Please don't lead the witness.

Mr. ST. JOHN: No.

Q. Well, put it this way: Could Mr. Langer tell from your statements whether they were based on the reports or not?

Mr. FARRIS: I object to that question. That is a very leading question, it is not only leading, but it is in the field of psychology and various other  
30 things.

Mr. ST. JOHN: Q. Did Mr. Langer at this first interview say anything as to the reports.

Mr. FARRIS: That is also leading. Why doesn't he ask what Mr. Langer said.

THE COURT: What, if anything, did he say?

Mr. ST. JOHN: Q. What if anything, did he say about that subject, that is the point?—A. You mean about mines?

Q. About his abilities in mining in general?

40 THE COURT: To judge of mines for himself, from a mining standpoint, what did he say?—A. He told us he had been in South Africa about 40 years ago. He was on the Rand when cyaniding was in its infancy, and that he had built some of the first cyaniding plants that had been built there.

Mr. FARRIS: You drop your voice, Mr. McTavish, once in a while.

Mr. ST. JOHN: Q. Yes, speak out?—A. That he had taken up on his own account one of the dumps that was there, and proceeded to work it over, I understood, by the cyaniding process; and he had come out to America, and he had gone to Alaska, and came back from there and took an

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assaying course in San Francisco—Berkeley, and had gone back with a view to getting control of the dump of the Chicagoff Mine.

*Q.* Yes?—*A.* But some person went up on the same boat that he did and beat him to it. So he stayed there for some time acting as assayer for these people.

*Q.* Well, then, as result of this conversation you all went down to the mine—at least who went to the mine?—*A.* Mr. Howard and Mr. Langer and myself.

*Q.* I see, and that would be about when?—*A.* I think we were there on the 8th or the 9th of September, 1926. 10

*Q.* Yes, how long after this meeting was this?—*A.* I couldn't tell you. It could only have been a few days.

*Q.* A couple of days, I see; was there any discussion about having the property inspected by an engineer?—*A.* Yes.

*Q.* What was said about that?—*A.* He said that he wouldn't depend on an engineer, that he would take his own inspection of it. He said they were just glorified surveyors.

*Q.* Yes, now tell us what took place going down on the train, if anything of importance, with regard to this mine?—*A.* There was a very little took place on the train. Mr. Howard handed him the reports—some of the reports, I think McGuigan's and Jackson's. 20

*Q.* Yes?—*A.* There was very little discussed about it going down. As a matter of fact I stayed pretty much away from him and Mr. Howard. I was with him some of the time, but not all the time, so I had very little discussion with him on the train.

*Q.* Very well, there was nothing happened on the train, then, of any importance. Well, then we will get to the question of what was done then—what was done there. What did the defendant Langer do?—*A.* We went out to the mill, looked over the mill, which he criticized very severely, criticized the installation, and we had lunch, and we went up to the shaft—I don't know whether we went to the shaft or the glory hole first. We went— 30

*Q.* Now, this is the Evans property of course you are talking about?—*A.* The Evans property.

*Q.* Yes?—*A.* We went to the shaft and took—he and Mr. Barnes went down the shaft, which was then about 30—30 feet deep—33 feet.

*Q.* Would you speak a little louder, Mr. McTavish?—*A.* They went down the shaft and they took some samples.

*Q.* Yes?—*A.* Some of these samples were for him to take home, which he did; and others were panned by Mr. Barnes when we got down to the creek. 40

*Q.* What results did they get from the pans?—*A.* They got—I think the pans from it there—I don't think there wasn't one of them with a triple string of gold from four to eight inches long.

*Q.* Would that indicate—what would that indicate, did they say?—*A.* They didn't say.

Q. Was there any discussion as to the quantities per ton—values per ton that would indicate?—A. I don't remember.

Q. Yes, what was done next?—A. The glory-hole was inspected, and the same procedure followed. Certain samples were taken by Mr. Langer to be brought home, and others were taken by him and Mr. Barnes, and I think I took one or two to be panned when we got back to the creek.

Q. Yes, well these samples that were taken in the glory-hole, were they loose stuff on the bottom of the hole or where were they taken from?—

A. They were taken for the most part along the west side of the glory-hole  
10 as you went into it, and across the face.

Q. That was from the rock in place, or from loose stuff in the workings?

—A. The ones that he got to take home were taken from the rock in place.

Q. I see. Now, what else was done towards investigating the property?

—A. These were taken back and some of them were panned, and the others were kept by Mr. Langer to take home.

Q. Did the defendant have any conversation with Mr. Barnes about the property on that occasion?—A. You mean in my presence?

Q. Yes?—A. Well, we were discussing the property more or less all the time we were around there.

20 Q. Well, what did Barnes say to him about the property?—A. Well, I couldn't just recall what he said at that time, it was—

Q. The substance of it?—A. His general conversation was favourable.

Q. Yes, what operation was Barnes carrying on at the time you arrived there?—A. Mr. Barnes had started the mill with a view to running it out of ore taken from the glory-hole.

Q. Yes?—A. He evidently struck among the sheer zone, and couldn't get sufficient stuff there, so he started to take it from the shaft up to the hole.

30 Q. Yes. This was before you got there?—A. Yes, he sunk that shaft about 30 feet or 33 or '4 feet, I forget, and the weather was very hot and the powder—the fumes wouldn't come out and the men couldn't get down there to work. One man was knocked out there.

Q. I see?—A. And it was then he decided to drive underneath it, to raise up to the bottom of that shaft, and when we got there he was doing that work, he was driving that tunnel.

Q. How far was he in on that tunnel?—A. He was somewhere in the neighbourhood of 100 feet—I just forget.

Q. Had he investigated the vein?—A. Oh, no.

40 Q. Not then, I see. How was he getting the ore down from the shaft to the mill?—A. He had a team of horses. That work was all stopped when we got there.

Q. I see. Now, did Mr. Langer make any more comments at that time upon the property?—A. When up on the glory-hole there, when we got there we were putting in—Mr. Barnes was putting in a tram to take ore down from the upper workings, that is the shaft down to the foot of the hill, and Mr. Langer suggested that it might be a good thing to drive a tunnel in from the bottom to get this vein.

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*Q.* How far down would they be from the surface?—*A.* They would cut the vein roughly at 350 feet below the surface.

*Q.* I see?—*A.* The tunnel would be in the neighbourhood of 800 feet long.

*Q.* I see, what was said about that?—*A.* It was ultimately decided that that would be the best thing to do, and we should go ahead and do that and abandon the——

*Q.* You say ultimately, do you mean on that occasion?—*A.* Yes, at that time.

*Q.* On that occasion?—*A.* Yes, it was decided to do it, and the work 10 was ultimately done.

*Q.* And you were going to abandon this tunnel?—*A.* No, that was to be finished.

*Q.* That was to be finished?—*A.* Yes.

*Q.* And then strike this tunnel farther down?—*A.* Yes. It may have been on the second occasion that we decided to drive that lower tunnel.

*Q.* What do you mean by the second occasion?—*A.* November 1st.

*Q.* Just a moment, the second visit you mean, by the defendant Langer?—*A.* Yes, a few weeks later.

*Q.* Oh, yes, I see. Well, then, did he spend any time looking the 20 Alamo over on that visit?—*A.* No. As we were coming away, Mr. Langer and I went up and looked at the portal of the lower tunnel. There had been some old buildings there—all caved, rotted.

*Q.* Yes, I see?—*A.* As near as we could judge the end was caved in for a matter of 100 or 125 feet.

*Q.* Well, you came back to Vancouver then after this examination, and what resulted?—*A.* We negotiated with Mr. Langer on this deal.

*Q.* On which deal. You see you had five different deals, you know, you want to keep them separate?—*A.* Well, the first negotiation you had with Mr. Langer was for 250,000 shares of stock, and an option on 750,000 30 more.

*Q.* Yes?—*A.* And at that time he undertook to pay the running expenses of the property and ——

*Q.* From what date?—*A.* From—I think including September of 1926.

*Q.* Yes, as a matter of fact he did pay the running expenses of the mine until a way on in October, 1927, didn't he?—*A.* Yes.

*Q.* After that time?—*A.* Yes.

*Q.* Well, tell us about your negotiations?—*A.* Well, we kept on negotiating and he kept coming back for more stock—drafting agreements and so on—until ultimately before we got the agreement signed, at that 40 time he was getting 55 per cent. or two and three quarter million shares.

*Q.* That is when the company was reorganized he was going to have that?—*A.* Yes, it was drafted in an agreement.

*Q.* The incorporation was to be increased by that agreement to what?  
*A.* Five millions.

*Q.* And of that he was to have two and three quarters?—*A.* 55 per cent.

Q. Eventually you got all the terms set out in that agreement of February 7th—?—A. Yes.

Q. Well, what caused the long delay in the negotiations from September, 1926, to February of 1927, other than what you have mentioned. You said he was always wanting more stock, and what else?—

A. Oh, that was the principal—we were trying our best to get the thing closed up, because it was getting worse all the time; if it went on a little further he would have all the stock the way he was going; but it was delayed principally by—well, his solicitor got the blame for it.

10 Q. It was supposed to be in Mr. Baird's hands?—A. Yes.

Q. When did it get to his hands, to your knowledge?—A. I couldn't say; I don't remember that.

Q. Well, then—?—A. It would be early—

Q. Before your negotiations were completed, had Mr. Langer made another visit to the mine?—A. Yes.

Q. What took place that time, and what was the occasion?—A. That was on November—I think November 1st, a few weeks after the other tunnel—

Q. What year—you are speaking of 1926?—A. 1926.

20 Q. Yes?—A. The tunnel had been completed and the vein had been cut—

Q. You speak of two tunnels on the Evans, there was an upper tunnel and a number 1?—A. There was an upper tunnel and the shaft.

Q. Yes, Number 1?—A. It had been completed, the vein had been cut there, which was nine feet wide, and Mr. Langer took some samples of that vein, had them assayed, and there were also samples taken at the glory-hole at that time and some more panning done.

Q. Well, had Mr. Langer anything to do with taking samples at the glory-hole at that time?—A. Yes, we were down there.

30 Q. Well, you say we; who do you mean?—A. Mr. Langer and Mr. Barnes and myself—there were one or two men down there, I forget who they were.

Q. Yes, but you and Mr. Barnes went with Mr. Langer whilst the sampling was being done?—A. Yes.

Q. Did they go back into the shaft again?—A. I don't think so.

Q. The sampling was on the first tunnel where they inspected the vein?—A. Yes.

Q. And then you were in the glory-hole?—A. Yes.

40 Q. I see; and was there any discussion between Mr. Langer and Mr. Barnes at this time about the mine?—A. Well, there was a general conversation, I don't know of any particular—

Q. Just the substance of what was going on, was there anything explained or talked about the mine at all?—A. Yes, I think it was at that time that Mr. Langer decided with Mr. Barnes that we should drive the lower tunnel.

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tinued.

Q. Yes?—A. Having cut the vein in the upper tunnel, drive the lower tunnel, make that the working tunnel and do away with this tramway.

Q. Well, what was said about this matter—what was finally decided on?—A. It was decided to go ahead and drive it. Mr. Langer said that he would undertake to provide the money for it.

Q. I see, and then that work commenced, did it?—A. That work commenced.

Q. On the lower tunnel, that is the tunnel which eventually went in about 800 feet?—A. Yes. 10

Q. Call it the Number 2 tunnel of the Evans?—A. Yes.

Q. I see, and you came back to Vancouver and had some more negotiations, I suppose, had you?—A. Yes.

Q. And eventually he signed up the agreement of February 7th, 1927?—A. Yes.

Q. Now in the meanwhile there was an agreement in January, 1927, whereby some of the stock belonging to McTavish Brothers Limited was sold to him?—A. Yes.

Mr. ST. JOHN: Have you that letter there, Mr. Walkem, of January 18th, 1927?

Mr. WALKEM: Who from? 20

Mr. ST. JOHN: To your client from the plaintiff.

Mr. WALKEM: No, I haven't.

Mr. ST. JOHN: I have a copy here if you will take the copy. (*Showing document to counsel.*)

Mr. FARRIS: All right.

Mr. ST. JOHN: I produce copy of letter dated January 18th, 1927, addressed to J. F. Langer by McTavish Brothers Limited. Do you identify this as being the copy of the letter sent. (*Handing document to witness*)?—A. Yes.

Mr. ST. JOHN: Exhibit 89. (*Document marked Exhibit No. 89.*) 30

Mr. ST. JOHN: I will read this letter of January 18th, 1927, J. F. Langer. (*Reading.*) If my friend would admit the receipt of these certificates it would just save us a lot of work. I suppose you will admit them?

Mr. FARRIS: Yes, well the certificates, whatever were produced we got.

Mr. ST. JOHN: Well, you got the certificate for 250,000 on this date, is that right?

Mr. FARRIS: I don't know.

THE COURT: Well, they admit that in the counter-claim, that is part 40 of the case.

Mr. ST. JOHN: If you don't admit it, we will produce them.

Mr. FARRIS: We only got this 2,500 apparently on that first deal.

Mr. ST. JOHN: But I want to prove that you got certificates covering 250,000 shares at this time.

THE COURT: I see and then the others later on.

Mr. FARRIS : Well, we couldn't say, we have——

Mr. ST. JOHN : That can be proved.

Mr. FARRIS : How can we produce these ?

Mr. DAVIS : Produce what you have, that is what we want to get at.

Mr. FARRIS : They are not here now.

Mr. DAVIS : Well, you can have them in the morning.

Mr. ST. JOHN : I just want you to admit.

THE COURT : Let the witness say so.

Q. Is that correct?—A. Yes, sir.

10 Mr. ST. JOHN : Q. The certificates mentioned there were sent with the letter, were they?—A. Yes, sir, we have his receipt for it in the stock book.

Q. The receipt is there?—A. The stubs.

Mr. ST. JOHN : Let me see the stubs. I will put them in.

Q. Did you receive the money—the cash payment that is referred to in that Exhibit 89?—A. Yes.

Q. And what about the other payments?—A. They were never made.

Q. Well, what happened to this agreement?—A. I was away.

Q. You were away at the time this was dealt with?—A. Yes.

20 THE COURT : Q. Well, but surely it was discussed afterwards, when you and Langer were friendly, and he was calling there to see you people?—A. It was discussed with my brother.

Q. Well, but afterwards, after you returned?—A. I don't think that one was discussed with me.

Mr. ST. JOHN : Q. Well, you know whether or not it was called off as to the balance of the payments, do you?—A. Yes, it was.

Mr. ST. JOHN : My Lord, I am reading from these share certificate stubs which are already in as an exhibit. This is a certificate dated 19th January, 1927. The numbers of the certificates given for that, 30 423, 4, 5, 6, 7, 8, 9, received certificate number for these numbers for 250,000 shares in the Alamo Gold Mines and so on.

THE COURT : That is his signature, is it ?

Mr. ST. JOHN : Q. Is this his signature—Mr. Langer's signature. (*Handing document to witness*)?—A. Yes.

Q. You are familiar with his signature, are you?—A. Yes.

Mr. ST. JOHN : That is Exhibit 13. Now, I ask my friend to produce statement of the 31st of March, 1927.

Mr. WALKEM : You had better put it in if you have any copy of it there. I don't think I have one here, Mr. St. John.

40 Mr. FARRIS : All right, put it in.

Mr. ST. JOHN : Your lordship, are we to continue until half past four to-day? You see we started so early and we would like to get away, most of us have got——

THE COURT : You are getting tired ?

Mr. FARRIS : Well, as far as I am concerned, I would like to meet the wishes of the jury, but subject to that I would like to get some time in my office during the day.

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THE COURT: Well, I think this half-past nine business has got to be stopped, it is too early in the morning. You will not be through for some time.

Mr. ST. JOHN: Oh, I will take some little time yet—quite a while yet.

THE COURT: Well, we will make it ten o'clock tomorrow morning.

Mr. FARRIS: Very well, my lord.

Mr. ST. JOHN: That will be satisfactory, my lord.

(Court adjourned until December 11th.)

December 11th, 1928.

(COURT RESUMED PURSUANT TO ADJOURNMENT.)

10

THE COURT: I may say that one of the jurymen is dangerously ill, as I am informed, and I suggest that you should confer to see what course you think better to pursue. It is not for me to direct the trial.

Mr. FARRIS: I have discussed the thing with my learned friends, Mr. Davis and Mr. Walkem. I do not think there is anything we can do but accept an adjournment.

THE COURT: What?

Mr. FARRIS: To adjourn.

THE COURT: I think there is provision in all cases to adjourn if there is a possibility of recovery within a reasonable time and then if there is 20 not, we will have to have a new trial starting all over again.

Mr. FARRIS: I don't think the time had arisen for that.

THE COURT: I asked the sheriff about it. Did you get a certificate from the doctor? We will assume the information is correct and work it out on that basis.

Mr. FARRIS: We were discussing it and we tentatively agreed if satisfactory to your lordship, upon a week from Thursday.

THE COURT: Do not get too near Christmas.

Mr. FARRIS: That will give us Thursday and Friday. There is rather an important case on Monday of *Montizambert vs. The Water Board*. A jury 30 trial which will likely last the first three days of the week.

Mr. DAVIS: We can finish in two days; I think there is no doubt about that. The only question will be whether Mr. Kayll will be sufficiently recovered on that date, but upon that we cannot tell until it turns up.

THE COURT: Can you make it say, Wednesday?

Mr. FARRIS: The only difficulty I see, my lord, is—

THE COURT: You may not be through?

Mr. FARRIS: I do not think we will. It is a jury trial and involves a question of breach of contract in connection with the clearing of a very 40 large area of land, and these things are apt to take some time.

THE COURT: Why make this arrangement without regard to the jury? I will ask you candidly, will that fit in, not with your comfort,

exactly, but with your engagements to go away or anything like that. I think they ought to be considered.

A JUROR: Your honour, I think Thursday and Friday of this week would suit us better.

THE COURT: We do not know that Mr. Kayll will be well at that time. There is no use adjourning for a day or two.

A JUROR: I could not attend next Wednesday.

THE COURT: Could you on Thursday?

A JUROR: I may be able to on Thursday.

10 Mr. FARRIS: That is Thursday of next week.

THE COURT: The case stands adjourned, on account of the illness of one of the jurymen, to Thursday the 20th of December at ten o'clock.

(Court thereupon adjourned until December 20th, 1928.)

December 20, 1928.

(Proceedings resumed pursuant to adjournment.)

THE COURT: Who was the last stenographer in this case?

THE REGISTRAR: Mr. Saunders.

20 THE COURT: Well, whatever is said this morning can be dictated to Mr. Saunders. In *McTavish v. Langer* I am instructed by the Sheriff that the jurymen whose sickness caused the previous adjournment is not well enough to attend court. They are hopeful, as I understand, that he will be ready this week. Anyway, the other day it was supposed he would be well this morning, to proceed with the trial, but he has had what might be called a relapse. Now, I instructed the Sheriff under the circumstances it is not advisable to have the other seven jurymen here in order that they might hear what we say. And they will have to be informed, and I am expecting both counsel will agree to that course.

Mr. ST. JOHN: Yes, my lord.

Mr. WALKEM: Yes, my lord.

30 THE COURT: I thought it was unnecessary bringing them here; they are business men and what we have to arrange now is only the date of the further adjournment. What do you say?

Mr. WALKEM: Well, my lord, the 2nd of January would suit all counsel. That would be Wednesday. That would give us Wednesday, Thursday and Friday which I think would be ample time to complete the trial.

40 THE COURT: Well, I would be willing to sit during vacation because the longer this case is adjourned the more difficult it will be for the jurymen to remember what the evidence is. In fact I think it will be a great strain upon their memory to remember what it is now even. And as against that the jurymen may not be well—

Mr. WALKEM: He has gone to bed with quinzy, my lord.

THE COURT: It was flu in the first instance.



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Mr. WALKEM : Yes, and it has now developed into an attack of quincy which it is doubtful he will get over in a week.

THE COURT : Well, he may recover and it may last for some time.

Mr. WALKEM : Well, my lord, my friend and I have agreed that if it suits your lordship we can adjourn it then until the Thursday after Christmas. Of course, Wednesday is a holiday.

THE COURT : There is a mix up over that. Monday is a holiday in the Court House and Wednesday is a holiday.

Mr. WALKEM : Well, the day after Christmas is always a holiday, Boxing Day. 10

THE COURT : Is it a necessary holiday ?

Mr. WALKEM : It is a statutory holiday.

THE COURT : Is it necessary ?

Mr. WALKEM : Yes, it is a necessary holiday.

THE COURT : Well, if you are pretty sure you can get through in two days—

Mr. WALKEM : Well, I am not sure of that.

THE COURT : Well, in any event, we will adjourn until ten o'clock on the 27th subject to it being known on the 26th that that juryman is able to attend. You will have to keep in touch with the case. Of course, if he 20 is not able to attend—

Mr. WALKEM : We will have to come up here again, my lord.

THE COURT : Then the understanding is if we have to adjourn it then it would have to be adjourned to the 2nd of January. Do you agree to that ?

Mr. KEILL : Yes, my lord.

Mr. WALKEM : Yes, my lord.

(Proceedings adjourned until December 27th, 1928.)

27th December, 1928.

(Court met pursuant to adjournment.)

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DONALD N. McTAVISH, resumed the stand. 30

DIRECT EXAMINATION CONTINUED BY MR. ST. JOHN.

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tinued.

Q. Mr. McTavish, when we last adjourned we had got down to the time when you re-visited the mine in June of 1927 ?—A. Yes.

Q. Now, it has been stated by the Defendant that something was said to you by Barnes which was concealed by you from Mr. Langer. What have you to say as to that ?—A. I went down to the mine in June—towards the end of June, 1927, and met Mr. Barnes and of course he told me that he could not find anything in these lower tunnels—the lower tunnel or the upper tunnel of the Evans. That information, of course, had come out in 40 his reports, and Mr. Langer had all that evidence. He never told me that he could not find any values in the glory hole and he never told me that he could not find any values in the upper tunnel and the shaft.

Q. That is on the Evans?—A. On the Evans, we were then working cleaning out—he was working cleaning out the tunnels on the Alamo.

Q. Just before we go on, to get the matter clear to the jury, on the Evans there were three tunnels. There was a third tunnel at the 75 foot level?—A. Yes.

Q. Which were in below the shaft?—A. Yes.

Q. And then there was an 800 foot tunnel down about 750 feet along?—A. Yes.

Q. 50 feet of the new tunnel?—A. Yes.

10 Q. And there was a third tunnel down by the creek about 250 feet long?—A. Below the glory hole, yes.

Q. Yes?—A. That wasn't really far enough in to show.

Q. Now, at the time you were there in June the third tunnel had not been constructed?—A. No.

Q. That was put in by Mr. Fellowes after Mr. Barnes left?—A. Yes.

Q. Then the second tunnel of the Evans was in about 800?—A. Yes, over 800 feet.

20 Q. Yes, what else?—A. Well, Mr. Barnes wasn't able to find anything in there, he was apparently lost and didn't know where he was. He had sent numerous messages for Mr. Langer to come down, and we had also arranged for him to get a surveyor to go in there and help him to locate the vein.

Q. He hadn't located the vein then?—A. No, he hadn't located it.

Q. Yes?—A. He didn't seem to know what he was doing there, he was hopelessly lost, in fact he shut the work down and didn't know what to do. We wired him to continue the work.

Q. You are referring to working the lower tunnel on the Evans?—A. On the lower tunnel, yes.

30 Q. Yes?—A. He did some work in the upper tunnel, and he wasn't driving on the vein at all. He was sheering right off from it, he didn't seem to know where he was going—all the men working for him knew; and when I got there later and found this out in July, I suggested that we get Mr. Fellowes to come up to help him to run the lines. I didn't like to tell him that he was—that I was informed he was going the wrong way or he would not have Mr. Fellowes there at all. So he continued working there during June and July and quit in August.

Q. Yes, that is on the Evans?—A. On the Evans.

40 Q. Well, now, as to the Alamo Mine—the other mine, what was going on with respect to it?—A. In June he was cleaning out these two tunnels—the lower tunnel, that is Number 3 tunnel and Number 2 tunnel. And the weather was very bad, the overburden there is heavy—the overburden was very heavy, perhaps 125 to 150 feet of clay overburden, before you got into solid rock. The frost had been coming out and it had been raining very hard, and this was slipping in just as fast as they could take it out, and it was very very difficult to tunnel this, and we were trying very hard to get in there before Mr. Langer would leave for the Old Country so he could come down and inspect that. However the weather continued bad

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and the material was very hard to hold and they didn't seem to be able to get on fast enough, but ultimately he did get in through the first 150 or 200 feet of the Alamo Tunnel—the lower tunnel.

*Q.* The third tunnel?—*A.* The third tunnel.

*Q.* Yes?—*A.* But could not get into the vein because of certain caves in the vein—in the tunnel.

*Q.* Yes?—*A.* On the upper tunnel, he was working there—the middle tunnel—

*Q.* That is the Number 2 tunnel?—*A.* The Number 2 tunnel.

*Q.* Yes?—*A.* He was working there also, and it was finally decided that Mr. Langer could not get down there before he left for the Old Country, so I left there on the 2nd of June—

*Q.* The 2nd of—?—*A.* The 2nd of July, and came back as far as Portland. I was in Portland on the 3rd, and I got a long distance call from my brother—

*Q.* Yes, well, don't mind that, just go on as shortly as you can?—*A.* I stayed there—I got a message that Mr. Langer was going to try and come down if he could before I came back; so I went down and got to the mine on the 5th. I stayed there for two or three days—I just forget how long, and during that time we did get into the upper—the middle tunnel.

*Q.* That is the Number 2 tunnel?—*A.* The Number 2 tunnel.

*Q.* Of the Alamo?—*A.* Of the Alamo.

*Q.* You say "we," now, who were you with?—*A.* Mr. Barnes—Mr. Barnes and myself. Of course we didn't get it cleaned out, it was very difficult to get in there, we had to climb over piles of rock on that and Mr. Barnes complained that the air was very bad and didn't think we should go in, but I wanted to get in if possible and get back here before Mr. Langer left for the Old Country to let him know what we had seen, and we went on in. The air was bad. Our object in going in was to get in—there was a 350 foot shaft down to the lower tunnel, and we wanted to raise the top off that so as to get circulation of air and if possible help to dry out the lower tunnel.

*Q.* There was a kind of wooden shaft or cover over it?—*A.* A wooden cover over it.

*Q.* Yes?—*A.* And as we went in we got to where there were two or three tunnels branched off in different directions and we didn't know which one to take. Mr. Barnes remarked that it didn't look good to him, it looked as though they were hunting for ore, and I remarked that that was precisely what they were driving these tunnels here for, to look for ore. We went on in and we found the top of the shaft. We took it off and came out, went in there, and got a matter of about 20 or 30 cuts and I suggested to Mr. Barnes that he should come up later and sample them after the air got better, and let us know the results of his sampling. There were no samples taken at that time.

*Q.* Yes?—*A.* I came out of there and came into my car and drove home as fast as I could in order to get here before Mr. Langer left for the Old Country.

Q. By the way, just for a moment, did you ever receive any samples or any reports from Mr. Barnes as to what he found in the Number 2 tunnel?—A. No.

Q. After that?—A. No. I was down there again in July—the end of July or the middle of July, and he never had taken any samples—or at least never gave us any results.

Mr. FARRIS: Q. You were down again, you say?

Mr. ST. JOHN: I beg your pardon?—A. About the middle of July I was down there again.

10 Mr. ST. JOHN: Q. Well, you came back to Vancouver, then. Is that before Mr. Langer left for the Old Country?—A. I got here a day or two before Mr. Langer left, and I told him exactly what I have said now, that we had gotten in there and that we had been in there about 20 minutes or half an hour, and that Mr. Barnes had said that this looked funny to him—looked as though they were gophering around, looking for ore, and that we had gotten no samples, and that I had left instructions with him to sample the mine. I recounted that to Mr. Langer in my brother's presence.

Q. By the way, did Mr. Langer ever express any opinion about Barnes' ability as an engineer?—A. Yes.

20 Q. When, and what did he say?—A. The first time we were down there he looked at the mill and said that it was very poorly constructed, and he didn't have any use for a man who had put it in in that way. I said that it was probably put in more with a view to temporary construction. I excused Mr. Barnes in that way; but from that time on he had no use for Mr. Barnes. When he found out what salary Mr. Barnes was getting, besides stock, he was quite incensed, and he always referred to him as a dirty swine. And the remark about him—me saying that he was a dirty thief, I never said that about Mr. Barnes, I never said it to anybody. When I came out from that trip I presumed—I had to tell Mr. Langer, he was the general manager  
30 spending the money—should tell him the conditions I found there. Mr. Barnes was acting in a very strange way, and I told him all about the things that I had learned there about what he was doing and—

Q. What had you learned?—A. Well, I had learned that he was charging meals and not turning the money in. At a later date he sold a radio to the cook that had been bought with the company's money.

Q. You are referring now to the time he left—this radio sold?—A. Yes, during the three trips down there, that is true, my first trip was in June and my second trip in the first part of July, and my third trip the last part of July.

40 Q. Yes?—A. There were other things. Later on he took the company's car after he quit and filled it up with gasoline and drove it to Seattle and charged the company for the gasoline and the oil. I told Mr. Langer all these things, but I never said that Mr.——I excused Mr. Barnes on the ground that he had been very sick.

Q. Mr. Barnes left the mine about what time?—A. Well, Mr. Barnes said in his evidence the other day that he left on the 11th. Mr. Barnes insisted to us that he stay there until the 15th, and insisted on getting his

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pay up to that time, and in December we paid him up to the 15th of the month. In December we gave him his pay for August.

*Q.* Yes. How did Barnes come to leave the mine. What is your explanation of that?—*A.* Well, he seemed to be very much dissatisfied—I don't know just what was the matter with him. He had been sick, and he certainly could not—he was lost in the Evans property and didn't know where he was going apparently or what to do; and he was rattling on a great deal about Mr. Langer not coming down, and he was rattling on about everybody else that had any connection with it, all while I was there, and finally, when I said—I asked him if he was quitting, he said he was. And I said, "Well, all right, when do you want to leave?" And he said that he would stay on if we would arrange to get him help. Evidently he was anxious to stay on, but I didn't pay any attention to that and arranged for him to leave on the 15th of August. 10

*Q.* Had his work been satisfactory?—*A.* Well, it had not been for the last few months, but had been prior to that.

*Q.* What objection did you have to his conduct of the mine?—*A.* I don't just understand you.

*Q.* I say what complaint if any did you have as to his work?—*A.* Of course we had hired Mr. Barnes primarily as a mill man, and when he went down there he was going to have the mill running within a reasonable time. He didn't do that and we discussed with Mr. Langer the advisability of getting another man; and since Mr. Langer had decided on driving that lower tunnel on the Evans, we decided that it would be all right to keep Mr. Barnes on, because driving the tunnel was a very simple matter, and then we would have him on hand when the mill was installed. 20

*Q.* Yes?—*A.* But during the last few months his work had not been satisfactory, and Mr. Langer was very much opposed to him being there.

*Q.* Well, in what respect was his work not satisfactory?—*A.* Well, in driving the tunnel, he was using much more powder than he should have used. In other words, he was not paying proper attention to the work at the mine, he wouldn't go up there for days at a time to see how the work was going on, and the men were—instead of driving the necessary amount of holes, they would drive fewer holes and load them up with powder, and use powder instead of hard labour. 30

*Q.* Yes. Well, would that have any other bad result on it than waste of powder?—*A.* Yes, one result was it made the tunnel larger than it should have been and made an excessive amount of waste rock to take out. As the tunnel was getting rather long, of course that was quite a serious item.

*Q.* Yes. Then anything else. Well, you wrote then to Mr. Langer when he was in the Old Country, reporting on this Barnes matter, didn't you?—*A.* Yes. 40

*Q.* Well, I will get that letter later, and then Mr. Langer got back from the Old Country about what time?—*A.* About the middle of August, I think, I don't just remember.

*Q.* I see. Well, did you see him then with reference to the mining operations—after he got back?—*A.* Yes.

Q. By the way, during this whole period from September, 1926, up to November of 1927, did you see Mr. Langer frequently or——?—A. Oh, yes, quite often.

Q. How frequently?—A. Well, sometimes we would see him a couple of times a week and sometimes oftener. Then again we might not see him for several days.

Q. Yes?—A. Whenever there was any word came in from the mine of course we—if it was important we would call him up and get in touch with him. Of course, we always sent a copy of it.

10 Q. That is the report that you received from both Barnes and Fellowes?—A. Yes.

Q. Were communicated to Mr. Langer?—A. Yes.

Q. So he was quite fully informed?—A. Always.

Q. Well, did Mr. Langer have any active direction in spending the money?—A. Oh, yes.

Q. What did he do?—A. We discussed things with him at various times, and the money was all carried—the work was all carried on under his direction.

20 Q. Yes, and was anything done to check up your expenditures?—A. Yes. It was arranged that his book-keeper, Mr. Kerr, should come over at stated intervals to check up with us.

Q. This is a letter that you sent—copy of letter that you sent to Mr. Langer. (*Handing document to witness.*) While he was in England, is it not?—A. This is one of them. I sent him one before this.

Q. Well, that is one?—A. Yes.

THE COURT: What is the Exhibit number?

Mr. ST. JOHN: Exhibit 67.

Q. Just to refresh your memory as to that, I will just read that.

Mr. FARRIS: What date is that?

30 Mr. ST. JOHN: August 17th, 1927.

Q. This was after your return from your third trip to the mine that summer?—A. Yes.

Q. And Fellowes was now in charge of the mine?—A. Yes.

Q. He took charge when?—A. Well, on the 15th.

Q. The 15th of August, 1927?—A. The 15th of August, yes.

Q. “J. F. Langer, Coburg Court Hotel, Bayswater, London. Dear Mr. Langer: We have just been favoured with a visit from Mr. Barnes——” oh, he had got back to Vancouver?—A. He came back to Vancouver.

40 Q. “He reports that Mr. Evans, who has been prospecting alongside the Alamo for the last two years, has at last been rewarded in getting the vein for which he was looking. When Mr. Barnes saw the vein just before leaving, he had a cross-cut in it for 12 feet, and had not yet reached the other side. He described this as a very rich vein, the fine stuff in which carries as much gold as the fine stuff in the 9-foot vein on the Evans, and that when crushed, the rock really contains more gold than the fine stuff. In other words, he says that he saw lots of samples that would easily go \$200 a ton and intimated that from the surface indications there is a

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possibility that the vein might go \$50.00 to the ton. I am just passing this information on to you as it came to me. At the same time, I have had a letter from Mr. Fellowes in which he says that the discovery made by Mr. Evans was undoubtedly very fine. Barnes spent a whole day on the hill and said that he definitely determined that the vein cuts right through our property." Then there is some other stuff that is immaterial. That doesn't look like you were——?—A. There is another one.

Q. It was referring to Barnes representing. The statements made in here as to this supposed new vein, are the statements made to you by Mr. Barnes?—A. Yes.

Q. When he came up?—A. Yes.

Q. By the way, what took place between you and Mr. Barnes on this occasion when he came up after he had left—after he had given up charge of the property?—A. He came up and reported what is in that letter, and he told me that that vein cut diagonally across the Evans—the Alamo property he meant—which he drew and made a sketch of it on paper, and as a result of that I sent out a report to the shareholders—a bulletin describing this to them and telling them just what Mr. Barnes had communicated to me, and he spoke very highly then of the Alamo property—that was really a very remarkable property.

Q. Yes. Now, Exhibit 24 is a letter I think I want to get. This is the other letter that you referred to as having been sent to Mr. Langer. (*Handing document to witness*)?—A. Yes, that is a copy.

Mr. FARRIS: Q. What date is that?—A. August 13th.

Mr. ST. JOHN: August 13th, 1927.

Mr. FARRIS: Exhibit 24?

Mr. ST. JOHN: This is Exhibit 24, August 13th, 1927. (*Reading.*)

Q. Now, the upper tunnel you mean there is which one?—A. That is on the Alamo—that is the middle tunnel, Number 2.

Q. Number 2?—A. Yes.

Q. That is the Number 2 tunnel?—A. Yes.

Q. "There was no change or no indication to show that there had been any fault or slip. I called in Mr. Fellowes, the engineer who made the survey of the tunnel, and he agreed with Mr. Barnes that the only thing to do was to drive straight ahead. We then decided that if there was a considerable amount of driving to be done that we should take the pipe out of the lower tunnel and run it up the hole to the upper tunnel and do this work by the use of the air." And the lower tunnel was on——?—A. On the Evans.

Q. That is the lower tunnel in the Evans?—A. Yes.

Q. "And run it up the hole to the upper tunnel and do this work by the use of the air." That is use your air compressor to run the automatic drills?—A. Yes.

Q. "While it would take four or five days to make this change, I thought it would be time well spent as they then could make an average of six feet a day instead of two. I left instructions for them to wire us just as soon as there was any change that might be of interest, otherwise to keep the work going as fast as they could." And then you go on to speak something

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more about the work being done. Then you say, "Mr. Barnes will therefore be leaving the work on Monday. He is coming home to Seattle and will then make a trip up here to see us. At that time he will give us a verbal report of what has happened since I left, and if there is anything of interest I shall pass it on to you." Now, what was the condition of the development of the Evans mine at the time Mr. Barnes left, just generally speaking—just in a very few words?—A. The shaft was down about 32 feet. There was a tunnel—the upper tunnel was driven about 155 or 160 feet in under that.

Q. Yes?—A. And tapped that vein at a depth of about 75 feet.  
10 There was another tunnel below that, the lower tunnel was driven in about 840 feet I think was the amount assumed to tap that vein below that again at a depth of about 350 feet.

Q. I see?—A. And a certain amount of work done on the glory hole. The glory hole was just a large hole.

Q. Then nothing much additional had been done?—A. There had been no additional work done since Mr. Barnes tried to run the mill.

Q. I see. Now, coming to the Alamo, the development of the Alamo at the time Mr. Barnes gave up the work?—A. At the time he left?

Q. Yes, take the different tunnels, take the first tunnel, Number 1?  
20 —A. Number 1 tunnel, there was nothing done on it.

Q. It never has been opened?—A. It never has been opened, no.

Q. I see, and Number 2?—A. Number 2 tunnel had been opened, just as I described a while ago, so that I crawled in over the rock, but after that he centred on the lower tunnel and hadn't done any more work.

Q. On Number 3 tunnel?—A. On Number 3 tunnel, he didn't do any more work on Number 2 tunnel.

Q. So Number 2 tunnel had not been opened up for examination?  
—A. No.

Q. Now, Number 3, what was the position of affairs there?—A. He  
30 had gotten in—he had gotten in to the porphyry dyke 1,200 feet, and didn't get by that.

Q. I see?—A. That had caved very badly, and he didn't get by that.

Q. I see. Well, then, after he left —?—A. In other words he never got to the vein.

Q. No. Now, when he left then Mr. Fellows came on August 15th. What did Fellows do with respect to the Alamo Mine?—A. He continued cleaning out the lower tunnel Number 3.

Q. I see, and what else?—A. Well, that is all he did there, was clean out that tunnel. He worked on there—I was down there with Mr. Langer  
40 on November 1st and he was still working there to get that tunnel cleaned out.

Q. I see?—A. There were some very bad caves and he was endeavouring to get through then.

Q. Yes, was anything else done in the Alamo by Fellows before November 17th, 1927?—A. Nothing but cleaning out that lower tunnel.

Q. I see. Now, about the Evans, was any work done on the Evans by Fellows?—A. There was a little work done. He started to do some

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work there, but when Mr. Langer was down on the 1st November he stopped him. When he took charge he decided that Mr. Barnes was driving off the vein, so he cross-cut back to get on to the vein, and drove in the vein for a certain distance on the upper tunnel; and in the lower tunnel he did the same thing, he drove along to pick up the vein down there.

Q. Now let me see, there are three tunnels on the Evans evidently?  
—A. Yes.

Q. You say upper and lower, which ones do you mean?—A. Well, the upper one is the one under the shaft, and the lower one—

Q. That is what number?—A. Yes, the lower one is the 800 foot 10  
tunnel.

Q. Call that Number 2?—A. Number 2.

Q. Yes?—A. The other one is really not a tunnel at all, it is just getting started.

Q. He started to tunnel in?—A. Yes.

Q. That was done by Fellows himself down there at the creek?—  
A. Yes.

Q. Yes. When did the negotiations open with Langer as to the sale of the shares in question in this action, that is, the ones that are sued on here?—A. When I came back in June he of course purchased that first 20  
250,000 shares, just before he went away he said that he wouldn't—just before he went away he said he wouldn't spend more than \$1000.00 a month during his absence. We had been spending between two and three thousand a month, and of course this was going to seriously handicap the work during the best months of the year for the work. Before going away he sent word with Mr. Kerr, who came to see us and said that Mr. Langer would not carry on the work any further unless he got shares from us for doing it—some other shares in addition to the shares that the contract called for.

Mr. ST. JOHN: I might point out at this stage to the jury that this contract is a little bit involved—sets out that on the installing of the first 30  
unit on the property he is to get a million shares to cover the cost of installing the mill, together with whatever work he might have done before that in opening up the mine. These one million shares are to come from all of that, how much or how little development work had been done.

Q. So you mentioned that he wanted shares —?—A. He wanted additional shares, in addition to that, yes, in other words he wanted some particular shares. We waited until he came back, and took the matter up with him, and he finally notified us that unless he got these shares he would not be responsible for any more expenditure. 40

Q. Now, just a minute. This is that letter of October —?—A. The 8th.

Q. The 8th, isn't it?—A. I couldn't say.

Mr. ST. JOHN: This is Exhibit 73.

Q. Yes, Exhibit 73 is the letter that you received, is it. (*Handing document to witness*)?—A. Yes.

Mr. ST. JOHN: Just to refresh the minds of the jury on that—this is a letter dated 7th October, 1927, addressed to the Alamo Gold Mines Limited and says: “With reference to Mr. Kerr’s meeting with Mr. McTavish to-day, I hereby intimate that unless shares at the rate of 5 cents are issued to me for the amount expended in excess of the \$17,000.00 provided for in the Agreement—such shares to be in addition to the 1,000,000 shares agreed to be issued for the expenditure of \$17,000.00 and the erection of a 200-ton mill—I shall not be responsible for any further expenditure incurred after the receipt of this letter. Yours Truly,  
10 J. F. Langer.”

Q. Yes, well, what took place then?—A. Well, of course that put us in a very serious position, and I discussed it with my brother, and we said—I said “Well, this looks very much like a freeze-out game. We haven’t got anything to do but sell out to him, if he buys.” So we made a proposition to him to buy us out. We made it through Mr. Kerr, and finally saw Mr. Langer in connection with this as well, and the deal was finally closed on the 15th of November.

Q. No, but in the meanwhile you had paid another visit to the mine, had you?—A. Oh, yes.

20 Q. When was that?—A. I was down there with Mr. Langer on November 1st, he and I went to the property on November 1st.

Q. Yes?—A. We went all over the Evans property and took some samples, and when we went back and went into the Alamo—the lower tunnel—Number 3 tunnel of the Alamo, as far as we could get, it wasn’t cleaned out yet.

Q. Yes?—A. Mr. Barnes was working on it. And we came back to Baker that night.

30 Q. Well, what else took place at the mine that day. Did you have any talk about the properties or anything that you recollect?—A. Nothing but casual remarks; I don’t remember anything special. Mr. Fellows was there all day with Mr. Langer going over the thing generally. I don’t remember any particular conversation.

Q. Where were the samples taken?—A. The samples were taken on the Evans’ property, in the Glory Hole and across the creek.

Q. Yes, I see. Well, then, what happened next?—A. We drove back to Baker and Mr. Fellows and Mr. Langer spent most of the evening together there. I wasn’t with them.

40 Mr. ST. JOHN: I think there is a telegram in there for identification —“B” for identification. It came in about Exhibit 73. I think we reserved No. 72 for it.

Q. This is the telegram that you got from Fellows, is it not (*handing document to witness*)?—A. Yes, one of them.

Mr. FARRIS: What date is that?

Mr. ST. JOHN: This is a telegram of November 15th. This was produced on the examination of Mr. Langer and left here to be proved.

THE WITNESS: Well, let me have that.

Mr. ST. JOHN: Well, it is just to identify the telegram.

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THE WITNESS : Yes.

Mr. ST. JOHN : That will be Exhibit 72 then. (*Document marked Exhibit No. 72.*)

Mr. ST. JOHN : Well, I will read that, 1927, November 15th, "Into the ore lower tunnel in Alamo sampling lower and Number two tunnel today vein big and looks good got five feet of quartz east crosscut lower tunnel Ruby Creek."

Ruby Creek, by the way, is the Evans' property.

"Taking samples to assay, will try to wire results by Saturday, big storm on."

I think Saturday of that week would be the 19th, wouldn't it? Have you got a calendar? 10

Mr. FARRIS : Yes, that is right.

Mr. ST. JOHN : Q. Saturday was the 19th. This would be on the Tuesday, then—Tuesday of that week that you received this telegram? —A. Yes.

Q. Now, was this telegram communicated to Mr. Langer?—A. Yes.

Q. How?—A. I couldn't just remember how we communicated that to him. I think we had it with us at his house on the 15th.

Q. I see. Now, then, the agreement in question was entered into— that is, Exhibit 1. This is the agreement executed by the plaintiff and the defendant Langer (*handing document to witness*)?—A. Yes. 20

Q. And you received \$5,000 on account of this, didn't you?—A. Yes.

Q. Where did you get that money?—A. We met with him the night before. We entered into the arrangement with Mr. Langer on the 15th. We went up to his house —

Q. The date of that is, you say — ?—A. The 7th.

Q. Yes?—A. We entered into that arrangement on the 15th, and on the 16th, in accordance with that arrangement, we went up to his house and we took 600,000 shares of stock with us to deliver to him. He would not close the deal unless he got all the stock, 750,000, so he gave —. We left the stock with him that night, and he gave us his cheque for \$5,000, and we were to bring the other 150,000 shares up the next day, which is what we did. We brought that up. 30

Q. I see, and this — ?—A. We had to turn over the whole 750,000. We wanted to keep that 150, and he wouldn't let us.

Q. Well, then, several days later—on November 21st, I understand you received a communication from Mr. Fellows as to the result of his assays—Exhibit 33. Exhibit 33, this is the telegram you got from Mr. Fellows at that time (*handing document to witness*)?—A. Yes. 40

Q. Were the contents of this communicated to Mr. Langer?—A. We phoned him immediately we got it.

Mr. ST. JOHN : I see. This, by the way, gentlemen of the jury, is a telegram November 21st. It says, "All of Number Two tunnel cleaned out" — (*reading Exhibit 33*).

Q. Well, then, what took place after you received this telegram?  
—A. It was phoned—we phoned that to Mr. Langer and he came right down to the office.

Q. Yes?—A. And we had an interview there lasting perhaps an hour or a little more than an hour, and discussed the situation. It put us in rather an awkward situation, and discussing what is the best thing to do—

Q. What was said?—A. We discussed what was the best thing to do. We suggested that when we had only got a dozen samples, that wasn't very many on a property where there was 5,000 feet of work done, we should  
10 continue on it and do some more work on the property, and in the meantime  
—evidently that was going to take a long time, that we should—we suggested getting a smaller property and putting a mill on it and getting to work and continuing with this work at the same time. But Mr. Langer told us to wire and have the work stopped, and to find out what the accounts were—the bills for labour and supplies.

Q. Yes?—A. We did that, and we never saw him since.

Q. By the way, what was the balance owing on account of labour and supplies?—A. Between four and five thousand dollars.

Q. Did he ever pay any of that?—A. No.

20 Q. And I understand you have been obliged to pay it?—A. We were not obliged to.

Q. But you paid it up?—A. We paid it up—the most of it.

Q. That is, the Alamo Company didn't have the money?—A. No.

Q. And the plaintiffs in this action have paid the money. Now, you heard what Mr. Langer said in the box about rescinding the agreement?—  
A. Yes.

Q. He said that you agreed on that occasion to rescind this contract—call it off. What do you say as to that?—A. At that interview that contract was never mentioned. It was never part of the discussion. What  
30 we were discussing was the original contract, and the work on that particular contract was not mentioned.

Q. I see. Was there anything further said about what should be done in carrying on the company's operations?—A. Just what I said awhile ago,

Q. Yes, was there anything in addition to that?—A. I don't remember anything in particular.

Q. Well, then, immediately after that interview you got in touch with Mr. McGuigan, I understand?—A. Yes.

Q. By wire?—A. Yes.

40 Q. And what took place?—A. We tried to arrange for him to go down there with Mr. Langer, but he evidently had pleurisy and could not go.

Mr. ST. JOHN: We have here, your lordship, a file of our correspondence with Mr. McGuigan at this time; we would like to put that in as showing—if my friend doesn't object. Strictly speaking, it is not admissible, if objected to. This shows our—

Mr. FARRIS: Well, is there anything there that we have not seen?

Mr. ST. JOHN: I think I have shown these to Mr. Walkem?

Mr. WALKEM: No.

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Mr. ST. JOHN : Well, we can go on for just a minute.

Q. Well, anyway, what result did you have from your efforts to get McGuigan to visit the mine at that time?—A. He couldn't come. He had had a very bad cold, and I understand he had pleurisy, and when he was in better shape of course the snow was too deep down there to make an examination.

Q. Yes?—A. And then he could not have made an examination properly anyway, because the upper workings were not cleaned out.

Q. Yes. Well, now Mr. Langer in his evidence stated very emphatically that you people practically guaranteed that this Alamo Mine had all this large quantity of ore. What do you say as to that?—A. We never guaranteed that the mine had any ore in it. We showed Mr. Langer these reports, told him there they were, we didn't know anything more about it than the reports told, than he did, and when he made his first trip down he and I went on and looked at the portals of the lower tunnel—the lower portals, and he knew that we could not get into that tunnel, he knew that we could not get into that mine at all, so we didn't make any statement about knowing that the ore was in there, which would be utterly foolish.

Q. Did you know anything about the mine—about the Alamo property that was not in those reports?—A. No.

Q. Well, did you communicate that fact to Mr. Langer?—A. Yes.

Mr. FARRIS : Please don't lead the witness.

Mr. ST. JOHN : Q. I am speaking about the Alamo?—A. Yes.

Q. No reports on the Evans, except Bacon's reports?—A. Bacon's reports, yes.

Q. And everybody could see what it was?—A. Yes.

Q. Did you ever make any representation?

Mr. FARRIS : Well, I think my friend should put the questions properly on this part of the case.

THE COURT : Put it in another form : What do you say to such a statement, there is an attack made here because you put up a fraudulent statement, and ask him what he says about that.

Mr. ST. JOHN : I think the question is quite proper, your lordship; the question was this : I say, witness, did you ever at any time make any representation to Mr. Langer as to a matter of fact which is not set out in the reports?—A. No, I certainly did not.

Q. I mean as to the Alamo mine?—A. No.

Q. Or as to the Evans' property?—A. No.

Mr. ST. JOHN : Do you object to these documents, Mr. Walkem?

Mr. WALKEM : Oh, I don't think there is any objection.

Mr. ST. JOHN : Q. Well, the first letter to McGuigan is November 21st, 1927 (*handing document to witness*)?—A. Yes.

Mr. ST. JOHN : I think we will put these all in just as one exhibit instead of marking them separately. (*Documents referred to marked Exhibit No. 90.*)

Mr. ST. JOHN : This letter of November 21st, 1927, James P. McGuigan (*reading*).

Q. Mr. McGuigan was here on a trip to Vancouver while you were negotiating with Mr. Langer?—A. Yes.

Q. And the telegram in reply is from Mr. McGuigan (*handing document to witness*)?—A. Yes.

Mr. ST. JOHN: That is dated November 22nd (*reading*).

Q. Then the 26th, your wire to him (*handing document to witness*)?—A. Yes.

Q. "Wire if possible for you proceed to Alamo tonight important." That is November 26th, 1927; and his reply the same date (*handing document to witness*)?—A. Yes.

(*Mr. St. John reads telegram.*)

Q. And then your telegram to him of the 28th November (*handing document to witness*)?—A. Yes.

(*Mr. St. John reads telegram.*)

Q. And then comes his letter to you of the 28th November (*handing document to witness*)?—A. Yes.

Mr. ST. JOHN: This is McGuigan's letter of November 28th (*reading*).

Q. I think that practically—December 2nd, the last letter to him, possibly I had better put that in (*handing document to witness*)?—A. Yes.

Mr. ST. JOHN: This is to McGuigan from the plaintiff, December 2nd (*reading letter*).

Q. And then his letter of the 5th December to you (*handing document to witness*)?—A. Yes.

(*Mr. St. John reads letter.*)

Q. And then your letter to him of December 7th (*handing document to witness*)?—A. Yes.

(*Mr. St. John reads letter.*)

Q. You identify these assay certificates, do you, Mr. McTavish (*handing documents to witness*). That is December 1925?—A. Yes.

Q. These were received by you in connection with Mr. Bacon's report?—A. Yes.

Q. Were they shown to the defendant Langer?—A. I believe they were.

Q. Yes.

Mr. FARRIS: What is the date of that?

Mr. ST. JOHN: We will put that in as Exhibit 91.

Mr. FARRIS: What are the dates of these?

Mr. ST. JOHN: These are December 1925. These are assays of Bacon's samples.

(*Document marked Exhibit No. 91.*)

Mr. ST. JOHN: This is December 7th, 1925. These are the certificates of J. R. Williams.

Mr. FARRIS: What are they on?

Mr. ST. JOHN: They are on the Evans and the Black Jack. Well, the Black Jack group was finally dropped; but on the Evans the values are shown: "Foot wall in shaft \$4.27 a ton; Vein proper in shaft \$18.20;

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Hanging Wall in shaft, \$2.40 a ton; Glory Hole, \$4.40; and the Porphyry in the shaft, \$5.00."

*Q.* Did you ever have any discussion with the defendant Langer as to where the mill was to be placed—the first mill?—*A.* Yes.

*Q.* When was that, and what was said?—*A.* That was in the earlier stages of the negotiations. Of course, it was to have been put up by the Evans property—or up right near the junction of the two creeks by the Evans' property because of the water there. That would be right on or opposite the Evans' property.

*Q.* Yes?—*A.* In the earlier negotiations there the Alamo was never really considered by Mr. Langer at all; all the negotiations were carried on with respect to the Evans. 10

*Q.* Yes. What part did Mr. Howard take in regard to negotiations with Mr. Langer?—*A.* It was Mr. Howard who introduced Mr. Langer to us, and Mr. Howard finally came to us and said that Mr. Langer was not interested in a small investment of five to ten thousand dollars, but if we had an investment of \$50,000 or \$100,000 he would be interested.

*Q.* Well, now, without going over it in detail, just generally, what part did he play in the negotiations?—*A.* Well, after that—we said we would submit to him a plan to put in a 50-ton mill, and after that he had very little to do with it—practically nothing. 20

*Q.* Yes?—*A.* He went with us once to Mr. Langer's house, but took little or no part in the discussion.

*Q.* Now, there was a suggestion made by Langer that you contrived matters so that he and Barnes would never get a chance to talk to one another. What do you say about that?—*A.* I think it is very foolish. I never had any such thing in my mind, and I didn't do it with Mr. Fellows. Mr. Langer is 21 years old, and if he wanted to talk with Mr. Barnes he could very easily have arranged it.

*Q.* Well, did he have any opportunity of talking to him?—*A.* As far as I know, I never tried to stop them. 30

*Q.* Well, did he talk to him to any extent at any time?—*A.* I don't recall that he talked to him when I wasn't there; he may have.

*Q.* No, but I mean when you were there at any time?—*A.* Well, that was—the discussion was general?

*Q.* Yes. This letter is already in, Exhibit 22. You remember this letter of February 24th, 1927, to Mr. Langer?—*A.* Yes.

*Q.* I will just read this paragraph: "Mr. Barnes, after many examinations by Seattle physicians, discovered that his tonsils were in extremely bad condition and he was obliged to have them removed. This was done last Wednesday and he is suffering from a very sore throat, but is recovering splendidly under the circumstances. As he will not return to the mine for a few days, it has occurred to us that you might desire that he make an inspection of the mills which you are going to visit. If so, you might wire him to Seattle, but unless this is done immediately he will undoubtedly be hurrying back to the mine as he is getting very impatient 40

about his unexpected delay owing to his operation. Mr. Barnes' address is Manhattan Apartments, Seattle."

This is written to Mr. Langer at the Ambassadors Hotel?—A. Los Angeles.

Q. Los Angeles?—A. Yes.

Q. Did you ever at any time conceal any information from Mr. Langer?—A. No, never.

Q. That you received about this mine?—A. I never did.

Q. Did you believe the contents of these reports—the McGuigan and Jackson reports?—A. Yes. We had no reason for disbelieving them.

Mr. ST. JOHN: That is all.

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CROSS-EXAMINATION BY MR. FARRIS.

Cross-exa-  
mination.

Q. Now, you told my friend Mr. St. John last week—or two weeks ago, was it, that we were here—that you were president of the plaintiff company. That is not so, is it, Mr. McTavish?—A. That I was president of the plaintiff company?

Q. Yes?—A. That is so.

Q. What, McTavish Brothers Limited?—A. Of the Plaintiff Company, no, that is not so.

Q. No, what is the Plaintiff Company, do you know?—A. Yes.

Q. What is it?—A. McTavish Brothers Limited.

Q. Well, then, you are the president of that company?—A. No, I thought he meant the Alamo Gold Mining Company.

Q. Who is the president of the Plaintiff Company?—A. My brother.

Q. Yes. Now, this company, McTavish Brothers Limited, is a private company?—A. Yes, sir.

Q. How many shareholders are there?—A. Two.

Q. How many—who are they?—A. My brother and myself.

Q. Yes. How many shares do you hold?—A. One.

Q. Par value how much?—A. I think it is \$10. I am not sure.

Q. How much?—A. I think it is \$10. I am not sure.

Q. \$10; and how many does your brother hold?—A. One share.

Q. Same par value?—A. Yes, same par value.

Q. So that the subscribed capital of this company is \$20?—A. Yes.

Q. We will assume that that is paid up. What is the nominal capital of the company, do you know?—A. \$20,000.

Q. \$20,000. Your brother is president of this company and what position do you hold in it?—A. Secretary.

Q. You are the secretary; and have held that position, I suppose, since its incorporation?—A. No.

Q. How long have you held it?—A. For—I would say a matter of three or four years.

Q. Yes. Well, that is long enough. By the way, how long has this company been incorporated?—A. About 15 years.



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Q. What?—A. About 15 years.

Q. It is a surprise to me—I didn't know private companies were in existence in this province that long.

Mr. ST. JOHN : Yes, the name was changed.

A. The name was changed, the company was resuscitated, if that is the right word.

Mr. FARRIS : Yes, resuscitated. What was the first name?—A. P. D. McTavish Limited.

Q. How long has it been in its second existence?—A. Oh, I would say a matter of five or six years; I just forget. 10

Q. Now, what business are you in generally, apart from these gold mines?—A. No other business.

Q. What?—A. No other business.

Q. You have no other business except this mine?—A. Just—oh, yes, just general brokerage business.

Q. General brokerage business?—A. Yes.

Q. And all that general brokerage business is done in the name of McTavish Brothers Limited?—A. Yes.

Q. Yes. I suppose that you have equal powers in that company, you and your brother? You are really partners, doing business in the name of this company?—A. Yes. 20

Q. And one is president and the other secretary?—A. Yes.

Q. And in every way you consider yourself as equal and having equal authority, I suppose, in what is done?—A. Yes.

Q. Now, what is the relationship between your company—the plaintiff, McTavish Brothers Limited, and the Alamo Gold Mines Limited?—A. What is the relationship?

Q. Yes, you are doing their business for them, are you?—A. We are doing—

Q. Are you handling the affairs of the Alamo Gold Mines Ltd.?—A. McTavish Brothers Limited? 30

Q. Yes.

THE COURT : You may sit down.

THE WITNESS : May I stand up?

Mr. FARRIS : I think he feels more aggressive standing up.

Mr. DAVIS : He is very mild, I was just going to ask him to speak a little louder.

Mr. FARRIS : I noticed just as soon as I started cross-examining Mr. McTavish got up.

THE COURT : I rather like it, I thought it showed an aggressive spirit. 40

Mr. FARRIS : Yes, that is what I say.

THE COURT : I thought perhaps it was out of regard for you that he was standing up, Mr. Farris.

Mr. FARRIS : I assume your lordship found that the thing was going to be very mild, so there was no need to interfere.

THE COURT : So it seems.

Mr. FARRIS: Q. Did the Alamo Gold Mines Ltd., have an office in Vancouver?—A. Yes, sir.

Q. Where was it?—A. In our office, McTavish Brothers Ltd. office.

Q. At the offices of the McTavish Brothers Limited?—A. Yes, the same office.

Q. The same office?—A. Yes.

Q. Now, the president of that company is yourself?—A. Yes.

Q. And the secretary of that company is your brother, Peter?—A. Yes.

Q. You have just reversed your positions?—A. Yes.

10 Q. And has this been so since the beginning of the operations of that company?—A. Yes.

Q. Yes. Now, when Mr. Langer was being interested by you and your brother in the Alamo Gold Mines Ltd., the idea was to sell the shares—sell shares from the capital of the company?—A. No, it was not.

Q. No, only for yourselves?—A. No, the company had no capital shares for sale.

Q. Well, I wasn't trying to trap you on that, Mr. McTavish?—A. All right.

Q. I am going into that later?—A. All right.

20 Q. The idea was to sell some of the shares that had been set aside for the use of the company?—A. Yes.

Q. Yes. All right, put it that way. And also to sell some shares from McTavish Brothers Ltd.?—A. No.

Q. You did sell a good many shares?—A. Later on, not at that time.

Q. Yes. When were the first shares that you sold him—McTavish Brothers Ltd.?—A. I think it was early in '27.

Q. Early in 1927?—A. I think so.

30 Q. You haven't sold any of the shares—yes, well, now when were the first shares sold on behalf of the company?—A. The contract was dated February 7th.

Q. What year?—A. 1927.

Q. Yes. So that was early in —?—A. But he had been carrying on the operation for several months at that time.

Q. Yes, I understand that; but it was early in 1927 when you sold the shares on behalf of the company?—A. Yes.

Q. It was about the same time that you sold the shares on behalf of McTavish Brothers Ltd.?—A. Yes.

40 Q. Which transaction was first?—A. We had closed our deal with him entirely on behalf of the company before the other was suggested, according to—

Q. How long after that your first was closed did you start the second, if you understand, we will get it this way chronologically?—A. According to that contract he was to get 2,750,000 shares of stock when he finally completed that contract, and he expressed a desire to run that up to 3,000,000 shares, and we sold him that 250,000 shares, and that was the contract that he made the false statements about and repudiated.

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Q. Now, when we were here before—you were here throughout the trial, were you not, you heard Mr. Davis' cross-examination of Mr. Langer?—  
A. Yes.

Q. Now, certain questions were asked him in regard to his financial position?—A. Yes.

Q. Where did you get the information to furnish that to Mr. Davis?—  
A. I never knew anything about it.

Mr. DAVIS : He didn't furnish it.

THE WITNESS : I didn't furnish it.

Mr. FARRIS : Q. You never heard of it before?—A. Never heard of it. 10

Q. As to his financial statements?—A. No.

Q. Or as to his compromise with creditors?—A. Never heard of it.

Q. You never heard of it?—A. I never heard of it before.

Q. The first you heard it was in Court?—A. Absolutely. I never heard he was born in Germany either. That was all new to me.

Q. But you have discussed—well, I won't argue that?—A. Yes, I did.

Q. What was the—you have a good many judgments against you, Mr. McTavish?—A. Yes, sir.

Q. And your brother also has a good many judgments?—A. Yes.

Q. They run up how much—how many are there, do you know?—A. 20  
Well, judgments, with the obligations that are not judgments—the judgments amount to about \$30,000 and the obligations about \$200,000, outside of judgments.

Q. That is against yourself?—A. Yes.

Q. And the same against your brother?—A. No, not necessarily.

Q. I see. You don't know whether they were more or less—well, I will ask him about that. Anyway, they are substantial in both cases?—  
A. Yes.

Q. When did you start to have judgments coming against you?—  
A. Immediately after the war started. 30

Q. Yes; 1914?—A. Yes.

Q. Now, when did you first incorporate this private company?—A. You mean, McTavish Brothers, Ltd.?

Q. No, P. D. McTavish & Company, you call it.

A. Oh, it was prior to that, it was prior to the war.

Q. Well, what year, do you remember?—A. No, I wasn't a party to that at all.

Q. Now, what year was it you told us you resuscitated that company?—  
A. It was five or six years ago, I just forget the time; I haven't looked it up.

Q. Five or six years ago?—A. Yes, I think it was about then. 40

Q. Why was that brought up. Why was that necessitated?—A. In order that we might carry on our business.

Q. I see. Now, you and your brother got 120,000 shares of the Alamo Gold Mines?—A. 1,200,000.

Q. I mean, 1,200,000?—A. Yes.

Q. Yes?—A. McTavish Brothers did.

Q. No, no, McTavish Brothers Ltd. didn't get them?—A. Yes.

Q. Eh?—A. That was the arrangement.

Q. Do you suggest that the 1,200,000 shares were issued to McTavish Brothers Ltd.?—A. No.

Q. No?—A. The nominees.

Q. The original agreement of March, 1925, contains nothing about McTavish Brothers Ltd., does it?—A. What agreement?

Q. What?—A. Between whom?

Q. The agreement of March, 1925.

Mr. ST. JOHN: Well, produce the agreement.

10 Mr. FARRIS: Q. Containing yourself, Code, Thomas and the others.

Mr. ST. JOHN: Why not produce the agreement?

Mr. FARRIS: Well, it is in as an exhibit, is it not?

Mr. ST. JOHN: Exhibit 5.

Mr. FARRIS: Q. No, this is Exhibit 4, Mr. McTavish?—A. Yes.

Q. This is the statement in lieu of prospectus, which is signed by the five directors of the company, David Barnes, George H. Thomas, W. B. Code, D. N. McTavish and P. D. McTavish?—A. Yes.

Q. And I see here under the heading No. 11, which is the form prescribed by the Government: "Full particulars of the nature and extent  
20 of the interest of every director," and so on. Now, you have signed this: "Each of the said directors, Donald Neil McTavish, Peter Duncan McTavish, David Barnes, and George Hiram Thomas, is to receive 600,000 of the shares, of the shares to be allotted to the said William B. Code as mentioned in paragraph (2) hereof." Is that correct?—A. It is correct, but it is not as originally arranged. You are asking me about our original agreement. Our original agreement was entered into in Seattle when the four of us were present. My brother wasn't there.

Q. What date was that?—A. I couldn't just tell you. There was an original draft of an agreement made, which is not in evidence here,  
30 which mentioned McTavish Brothers specifically.

Q. Yes?—A. And that was unfortunately put in that way, I didn't know—

Q. This document is dated 25th March, 1925?—A. Yes. You were asking me about the original agreement.

Q. Now, as a matter of fact, McTavish Brothers Limited never did receive 1,200,000 shares, did they?—A. McTavish Brothers?

Q. Yes?—A. Their nominees did.

Q. What?—A. Their nominees did.

Q. Their nominees did?—A. Yes.

40 Q. All right. McTavish Brothers Ltd. received 600,000 shares?  
—A. I couldn't tell you from memory.

Q. Who was their nominee?—A. Charles H. McTavish was one of them.

Q. Who was Charles H. McTavish?—A. My brother.

Q. Where does he live?—A. San Francisco.

Q. How many shares did he receive?—A. 600,000.

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Q. 600,000. The facts are that Code was the owner of this mine?  
—A. Yes.

Q. When you first came in touch with him. Your suggestion is, as I understand it—I am not sure whether it was in discovery or in chief—your suggestion was that the company would turn over to Code for this mine its total share capital?—A. Yes.

Q. Code in turn was to turn over to each of these individual directors 600,000 shares?—A. Yes.

Q. So that McTavish Brothers Limited or its two shareholders would have between them 1,200,000 shares?—A. Yes. 10

Q. Thomas would have 600,000?—A. Yes.

Q. Barnes would have 600,000?—A. Yes

Q. And Code, who had the gun, would have left another 600,000 shares?  
—A. Yes.

Q. You and your brother paid nothing for these shares?—A. We paid no cash.

Q. You paid no cash. Well, you paid nothing for them, did you?  
—A. If you like to put it that way it is all right.

Q. Well, I want to put it the way you like to answer it. I say, is that correct?—A. Well, we gave value for it, but we didn't give any 20 cash.

Q. You say you did pay in cash?—A. I say, we gave value for it but we didn't pay in cash.

Q. What value did you give for them?—A. If we hadn't, then they could have done something else with it, they wouldn't have given it to us, would they?

Q. I see. What value did Barnes give for his?—A. He was to give his services.

Q. What value did Thomas give for his?—A. The same.

Q. Eh?—A. The same. 30

Q. The same. In other words, the value that you were giving with this, that the five of you came together and decided, now we will incorporate a company to take over this mine, and we will split the shares of the company up amongst the five of us in equal shares. Is that right?—A. No, that is not right.

Q. That is not right. Well, what is wrong with it?—A. This proposition was brought to us by Thomas, Barnes and Code, and the proposition was put up to us that we would come in with them.

Q. I know, but after it had been put up to you, then when you sat around the table together to decide on a course of action, this was what 40 you decided on, is that the case?—A. Yes.

Q. Certainly that is what you decided on?—A. Yes.

Q. When you got your heads together to work out a scheme that scheme was that Code would turn this mine over to a company?—A. Yes.

Q. And the five of you would split the shares of this company up in equal shares amongst you?—A. That was his suggestion, it was not mine.

Q. Well, I don't care whose suggestion it was, that was the scheme that was arrived at?—A. Yes.

Q. Hit upon amongst you?—A. Yes.

Q. So that when you started out, the five of you, with this company, you put nothing into the scheme except that all of you were going to go ahead to see if you could work it out. That is right?—A. Yes, that is right.

Q. Now, I am going to take that up at a later date as a separate topic, but just to jump ahead for a moment. At sometime during your negotiations—we will decide when that was later—it was arranged that half of these shares were to be set aside for the use of the company?—A. Yes.

Q. Yes, all right?—A. At a later date.

Q. Well, we will go into that a little later. Now, in addition to these shares which you received, you also received a number of shares later on as commissions?—A. Yes.

Q. Yes, commissions for selling a portion of the shares that had been set aside for the company?—A. Yes.

Q. Yes, you received a substantial amount of shares for that purpose?—A. It depends on what you mean by a substantial amount.

Q. Well, how many did you receive?—A. I don't know.

Q. Is there any way I could find out?—A. I suppose you could.

Q. Well, how?

Mr. DAVIS: There is a statement in the evidence here, isn't there?

Mr. FARRIS: Well, I know, but I am not taking any stock in that, I want to know from this witness how many shares he received.

THE WITNESS: You can't find out from me because I am not a book-keeper.

Q. Well, who is your book-keeper?—A. Mr. Guselle.

Q. Have you any books that show how many shares you received?—A. Mr. Farris, that was later on again.

Q. Mr. McTavish, please answer the question?—A. Mr. Farris, that was later on again.

Q. Will you answer my question: Have you any books which will show how many shares you received?—A. I believe we have.

Q. Yes, where are they?—A. I don't know.

Q. You don't know. Well, who does know?—A. I presume they are scattered, some of them may be here; I don't know where they are.

Q. When did you last see them?—A. I don't keep the books, Mr. Farris.

Q. I don't care whether you keep them or not, you are one of two members of the company?—A. Yes, well, I agree—I don't keep these books.

Q. You are the secretary of that company?—A. Yes.

Q. Now, where are your books?—A. They are down in the office

Q. The books of McTavish Brothers Limited?—A. Yes.

Q. Are in what office?—A. In McTavish Brothers office.

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Q. Yes, and are there books there now that show records of the sales and the commissions that you earned?—A. I couldn't tell you. I didn't keep those books, Mr. Farris.

Q. Well, you are not going to get away from it that way, Mr. McTavish? —A. I see, well I am not trying to get away from you.

Q. Did you ever see a record in your books of the commissions you have received?—A. Now I have just told you I didn't keep these books and I don't know —

Q. Did you ever see them?

THE COURT: Q. You might not keep them, still you might look at 10 the books?—A. Well, then, I never saw them.

Mr. FARRIS: Q. Never looked at them?—A. I haven't looked into them, no.

Q. You were asked some questions about that before, were you not? You remember being examined for discovery, Mr. McTavish?—A. Yes, sir.

Q. Yes. I am reading now from question 79 of your discovery :

“ Q. Is it correct, as stated by your brother, that no record was kept of the sales of the shares?—A. As far as I know.

Q. Well, as far as you know, who kept the books in your office? 20 —A. The book keeper.

Q. Under whose instructions, your brother's?—A. Generally under my brother's.

Q. You were there all the time I presume?—A. No.

Q. In and out?—A. Yes.

Q. So there was no detailed record kept of the 50,000 shares sold at ten cents, of the 203,360 sold at 12½ cents or the 28,772 sold at 25 cents?—A. The details were just as stated by my brother the other day. We had not applications for them all.

Q. But you have no record at the present time showing to 30 whom those shares were sold or the amount of money received, or anything of that description? ”

What was your answer?—A. You read it.

Q. What was your answer?—A. You read it.

Q. Will you answer?—A. You read that fully —

Q. Give me your answer to that question?—A. No, I won't give it to you.

THE COURT: He read the examination, you can give your evidence as to what you said before.

Mr. FARRIS: Q. What is the correct answer to that question?—A. The 40 correct answer is no, because we didn't have the complete records.

Q. The correct answer is no. Your answer before was “ Not that I know ”?—A. Yes.

Q. So the answer is now “ No,” that no records or papers —? —A. No.

Q. — showing to whom these shares were sold, or the amount of money received, or anything of that description?—A. No, that we hadn't complete records. Mr. Farris, we started out to take applications for these shares, presuming that the application form would be the original entry. Some people would sign application forms, and some didn't, because they paid cash, so that there is no complete record. We have most of them.

Q. Now, here is your next question, Mr. McTavish: "Your brother said that you had none"?—A. That we have none?

Q. "Yes, well, I don't know anything beyond that." Now when did you get this new information?—A. I haven't got any new information.

Q. Nor have you a record of the disposition of the 165,368 shares issued in payment of commission?—A. No."

Is that a correct answer?—A. I presume so.

Q. What?—A. I presume so.

Q. You presume so?—A. Yes.

Q. What do you mean by that. Do you know whether it is a correct answer or not?—A. I told you before that I didn't know the details of that stock, I didn't keep the books.

Q. Now, I have before me your brother's examination on the same subject, and before I refer to that I am going to ask you again, what records have you in your office in connection with these commissions on sales of shares?—A. I have never checked it up Mr. Farris.

Q. You have never checked it up?—A. No.

Q. Are you aware that there was a notice to produce all your books?—A. Not to me.

Q. Not to you?—A. No.

Mr. FARRIS: I will ask my friend, Mr. St. John to produce any books that were given under this notice.

Mr. ST. JOHN: Well, I haven't got the books of McTavish Brothers Limited here. It refers to no issue in this action of any kind. There was another action instituted by Mr. Barnes against these people.

Mr. FARRIS: There was a notice in the discovery to produce all the books in this action.

Mr. ST. JOHN: My friend can serve all the notices he likes, but we don't have to bring any here just because he asks for them. He must relate to the matters before the court, but still I am not—

THE COURT: There is a way to get at it, issue a subpoena duces tecum.

Mr. ST. JOHN: I have no objection to bringing them here as far as that goes.

THE COURT: If they are pertinent to any issue—it would be properly, secondary evidence.

Mr. ST. JOHN: Well, surely—

THE COURT: He is not bound to put them in even if they are in issue, but the result of not producing them if they were pertinent to the issues, it would be secondary evidence.

Mr. ST. JOHN: My point is they don't relate to any issues.

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mination—  
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THE COURT: I am not deciding that. You are not producing them under that notice at any rate.

Mr. ST. JOHN: No.

Mr. FARRIS: My friend says he will produce them, does he?

Mr. ST. JOHN: Well, I will consider that. I haven't got them here now, I will consider having them brought here.

Mr. DAVIS: If there is any information in connection with this that my friend wants, if he gives the details we will give them to him.

Mr. FARRIS: I am asking my friend for the production of the books that show the records of the stock transactions in connection with the Alamo Gold Mines mining shares that were sold and the commissions that were earned in connection therewith. 10

Mr. DAVIS: All right, you will get them—anything you want.

Mr. WALKEM: I have asked for this stuff for months.

THE COURT: What issue is that under, Mr. Farris?

Mr. FARRIS: My lord, it is a very important relationship.

THE COURT: I want to see the issues if I can.

Mr. FARRIS: What I am trying to find out from this witness, I have given up hope of trying to do it from the books, is the amount of shares that this plaintiff has in the Alamo Gold Mines Limited. 20

THE COURT: Well, is it material to the issue?

Mr. FARRIS: Yes, my lord, it is material in this way—

THE COURT: In what way?

Mr. FARRIS: I am not able to figure out whether this witness or the Plaintiff Company has shares in the Alamo Gold Mines to sell to Mr. Langer.

THE COURT: Well, is that put in issue now, at all?

Mr. DAVIS: No.

Mr. FARRIS: It is a very important matter—

Mr. ST. JOHN: No, it is not raised at all.

Mr. DAVIS: There is no doubt my friend can cross-examine, and the object is, I presume to show that McTavish Brothers got away with some shares by way of commission or otherwise. Now, that we will clear up in re-examination, but we will bring any books about it; but there is no relevancy about what shares are held by the McTavish Brothers. If for instance, we were suing for certain shares that we sold to Langer, if they had set up that we didn't own any shares and couldn't turn them over, then it would be relevant; but they don't. On the contrary they turned these shares over and the share register shows what shares they owned. 30

THE COURT: I appreciate that. I have not read the pleadings, but it struck me that it is along similar lines of the cross-examination of Mr. Langer, and that shows the transaction. 40

Mr. FARRIS: Q. Mr. McTavish, do you agree with that statement of Mr. Davis that the share register shows the shares which you own?—A. Partly.

Q. Partly. What do you mean by that answer?—A. There is no share register of any company whose stock is active that properly sets forth the ownership of its shares.

Q. You mean that an active company—that it may be possible that shares are out that have not come in, have not been registered?—A. Yes.

Q. Yes, but so far as you are concerned, the shares which you own, did you keep a record of the shares which you sold. When I say you, I mean the Plaintiff Company?—A. I don't understand your question, Mr. Farris.

Q. Did you keep a record of the shares which your company sold?—A. Yes, yes.

Q. Yes, so that whether the company was active, or inactive, there should be a full record of the shares which you sold?—A. Yes.

Q. Yes, and the sharebook of the Alamo—

THE COURT : You mean as a company, not you individually, but the company.

MR. FARRIS : Yes, I put it that way, as the Plaintiff company.

Q. So that the books of the Alamo Gold Mines Limited, its share register will show how many shares McTavish Brothers Limited sold, won't it?—A. Yes.

Q. Yes; to that extent it is accurate?—A. The share register is always kept up to date.

20 Q. Yes.

THE COURT : Q. The stock certificate book would be a good way, wouldn't it?—A. It should be, my lord.

MR. FARRIS : Now, I would like to have the share certificate books?

THE COURT : That is not it, is it?

MR. ST. JOHN : Yes, that is the share register.

MR. FARRIS : Yes, that is what they call the stock ledger.

THE COURT : I thought you said certificate book.

MR. FARRIS : No, this is the book I want, this is the share account. It is called her stock ledger, Alamo Gold Mines Limited, and that will be  
30 Exhibit 8.

Q. How many shares in all has McTavish Brothers Limited sold to Langer?—A. One million shares.

Q. What?—A. One million shares.

Q. One million shares. That is 750,000 being this transaction of the 17th of November, 1927?—A. Yes.

Q. And prior to that there were—?—A. 250,000.

Q. 250,000 shares. Do you remember the dates when these shares had been sold to Mr. Langer?—A. No.

Q. I am producing to you Exhibit 8, and I am opening it to the  
40 McTavish Brothers Limited account. (*Handing book to witness.*) Now, will you tell me from that record, Mr. McTavish, how many shares prior to November 17th, 1927, were issued by McTavish Brothers Limited to Langer?—A. Prior to November—

Q. The 17th, 1927?—A. How many were issued previous to that?

Q. Yes?—A. No record here of any.

Q. No record there of any?—A. No.

Q. I see. Now, will you turn to Charles McTavish's account?—A. Yes.

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Q. I think that is the other way—one page?—A. Yes.

Q. How many shares were issued to Langer out of that account prior to November 17th?—A. Apparently not.

Q. I think there was 50,000?—A. Oh, yes, there is one here—J. F. Langer, 50,000.

Q. Yes. The others are shares in that account which were issued to Langer on account of the company?—A. Yes, presumably so.

Q. Presumably so. All right, now then?—A. No, I wouldn't say that, there is another item here of 250,000 shares. It strikes me that that would be—

Q. Don't lose that place, please?—A. That would be the original sale of 250,000 shares to Mr. Langer which he got out of.

Q. I see, that would be a personal sale then?—A. Yes.

Q. Yes, 250,000 shares. Now, how many shares were issued to Langer by McTavish Brothers Limited in this transaction of the 17th November?—A. November 16th, there appears to have been issued to Langer 425,000 shares from McTavish Brothers.

Q. Now, can you tell me where the balance of 750,000 came from. I might save you a little time on that, turn up to the account of Mr. Thomas?—A. The account of Mr. Thomas?

Q. Yes. Does that throw any light on the question?—A. George H. Thomas.

Q. Right at the end of his accounts—November 17?—A. Yes, there is one item here of 100,000, and another fifty.

Q. Yes, what is the date of that?—A. November 17th.

Q. November 17th, 1927, issued to whom?—A. To George H. Thomas. You see the other was issued on November 16th. These are the ones he demanded. He demanded another 150,000 shares.

Q. Then in other words these are the shares that went to Langer, a portion of the shares?—A. Yes.

Q. —from Thomas, 150,000?—A. From Thomas' account.

Q. Yes. Now, then, will you turn to Barnes' account?—A. Yes.

Q. That will be in the front of the book more?—A. Yes.

Q. And we find that there was 175,000 on that date issued from Barnes' account?—A. Yes.

Q. That makes 750,000 shares?—A. I didn't total it.

Q. Now, do you know how it comes about that of the 750,000 shares which McTavish Brothers Limited are selling to Langer, that 175,000 come out of Barnes' account, and 150,000 out of Thomas?—A. Yes.

Q. Yes, will you tell us about that?—A. These shares were given to us by Mr. Barnes and by Mr. Thomas.

Q. When you say given, you mean without consideration?—A. No.

Q. Was there anything paid for them?—A. There was nothing paid for them except services.

Q. Nothing paid for them. What services did you render Mr. Barnes for these shares?—A. When Mr. Barnes got his stock, he was to render certain services for that. He never did that. He got paid for what he did,

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and it was suggested that he should turn this stock—these certificates—these shares back to us, a portion of them, because we were doing the work that he was supposed to have done.

Q. What was that work?—A. Helping to carry on. He was to help with the sales of stock.

Q. Selling shares in the company and getting commission for them, is that right?—A. Partly, yes.

Q. Yes, now what was the commission that you got for these sales?—A. 25 per cent. in cash and 25 in stock.

10 Q. Yes, so that any sales that you made of the shares set aside for the company, on the moneys taken in you got 25 per cent. of it?—A. If we made a sale.

Q. If you made a sale?—A. Yes.

Q. And you got 25 per cent. more in stock as well?—A. If we made the sale.

Q. If you made the sale?—A. Yes.

Q. Yes, and that was part of the work which you were doing in carrying on, was making these sales?—A. Yes.

20 Q. Yes, and it is the record of these sales and of the commissions that you have got that I have asked you about already. So that we now have, without any cash consideration whatever, that you and your brother, either individually or in the name of the Company, received 1,200,000 shares from this company?—A. Yes.

Q. Yes. In addition to that you say you had a gift from Mr. Barnes of how many shares?—A. 180,000.

Q. 180,000; and you had a gift from Mr. Thomas of how many shares?—A. 180,000.

Q. Of 180,000, in addition to that you sold shares of the company for which you received in money 25 per cent. of the sale?—A. Yes.

30 Q. Of which you can't give me any record of how much that is?—A. I can't myself.

Q. No, and in addition to that you got a further commission of 25 per cent. of the amount of the stock that you sold?—A. Yes.

Q. Yes. Now, are you familiar or do you know anything about any letters that were written by your brother Peter to Barnes in regard to this gift?—A. I don't recall now, but I know he had many conversations with Mr. Barnes about it.

Mr. FARRIS : I have here a letter of the 4th of February, 1927.

Mr. DAVIS : All right.

40 Mr. FARRIS : Q. Look at that letter, please. (*Handing document to witness.*) That is your brother's signature?—A. No.

Q. What?—A. It is not.

Q. Well, whose signature is it?—A. I don't know.

Q. You don't know whose signature it is?—A. P. D. McTavish per S.

Q. Who is? Who is S.?—A. Per Smith.

Mr. ST. JOHN : Very likely it is Smith anyway.

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Mr. FARRIS: Now, hold on. Surely this man knows whose signature that is.

THE WITNESS: Whose signature it is——

Mr. FARRIS: Q. Do you know who wrote that signature there?—

A. No, it says per S. I presume it is Miss Smith.

Q. Well, you presume?—A. Yes.

Q. Mr. Smith was kind enough to enlighten you on that. You had no idea before that who wrote it?—A. What?

Q. What?—A. I had no idea before that?

Q. Before you heard Mr. St. John say, did you know who wrote that signature?—A. No, it hadn't occurred to me. 10

Q. It hadn't occurred to you?—A. No.

Q. Who is this lady?—A. It is our stenographer.

Q. How long has she been with you?—A. About five years.

Q. Is she with you now?—A. Yes.

Q. Does she ever sign letters that are dictated?—A. Apparently she does.

Q. Is that the first time you have ever heard of it happening?—A. No.

Q. Well, I asked you a question, did she ever sign letters to your knowledge that had been dictated?—A. To my knowledge—yes, sure I do, certainly. 20

Q. Yes?—A. Certainly.

Q. Why couldn't you have?—A. I said so, too.

Q. Quite a common thing, is it, in your firm?—A. No.

Q. How many times has it happened?—A. Oh, I couldn't tell you.

Q. When I showed you that letter, Mr. McTavish, had you the least doubt in your mind that that letter was signed by your brother?—A. I don't know why you are making all the fuss about it.

Q. Well, you may find out later; in the meantime answer the question?—A. I had—I had no—— 30

Q. I say when I handed you that letter and you handed it back to me as if trying to brush off——?—A. Listen——

Q. Had you any knowledge who wrote that letter?—A. Listen, you handed that letter to me and asked me if that was my brother's signature and I said, no.

Q. Yes?—A. Yes.

Q. And I asked you whose it was?—A. Well, I had a look at it and I handed it over to Mr. St. John.

Q. Did you have at that time any idea whose it was?—A. It hadn't occurred to me, I told you that already. 40

Mr. FARRIS: I show you that letter, Mr. Foreman. (*Showing letter to jury.*) Now, we will read the letter. "David Barnes, Esq., Manhattan Apartments, Seattle, Washington, February 14th, 1927." (*Reading.*) (*Document marked Exhibit No. 92.*)

Q. George being Thomas?—A. Yes.

Mr. FARRIS: "Trusting that you may have no serious difficulty as the result of your operation and that you and Code will be able to get this

matter fixed up after your recovery, we remain, very truly yours, McTavish Brothers Limited, per P. D. McTavish, per S."

Then there was a letter a few days later than that. The other is dated the 24th of February, 1927. I am producing a letter of February 24th, 1927. (*Handing document to counsel.*)

Mr. DAVIS: Have you the enclosure?

Mr. FARRIS: I don't know. I am really more interested in the other part of it.

Mr. DAVIS: The only thing, to understand the letter, we ought to have the enclosure as well.

Mr. WALKEM: I will file that; I have got it some place.

Mr. FARRIS: I can go on with the examination in the meantime.

Q. (*Handing document to witness.*) The initials P. D. are on that document, Mr. McTavish. Do you know whose writing that is?—A. That is my brother's.

Q. Yes, and there is some pencil—a postscript on the letter?—A. That is my brother's writing.

Q. That is in your brother's writing, that is in your brother Peter's?—A. Yes.

20 (*Letter and enclosure marked Exhibit No. 93.*)

Mr. FARRIS: Letter of February 24th from P. D. McTavish Brothers Limited per P.D. (*Reading letter.*) Now, I will read the whole thing before I examine you on that. This was the accompanying letter of Code. This apparently was also dictated by Peter McTavish. (*Reading.*)

Q. Now, these 180,000 shares that this letter exhibit 93 refers to that Dave Barnes had turned back or agreed to turn back to your firm—your company, it was out of these 180,000 shares that Barnes signed off 150, or 170, which was it—175,000 to Langer in this deal that you are not suing for?—A. Yes.

30 Q. And in addition to getting this 180,000 from Barnes, you also got the same amount from Thomas?—A. Yes.

Q. On the same terms?—A. Yes.

Q. But you never did give back to Barnes the hunk that you refer to here?—A. I don't know anything about that, but you will notice that Code didn't—

Q. I see, unless he got them both to come through he wasn't to get his hunk back—that is right. So now we have this interesting analysis, Mr. McTavish, do you recall how much money in cash you got from Langer for shares prior to this November deal?—A. Cash and property, it was 40 roughly, \$32,000.

Q. Well, it was more than that, wasn't it?—A. I don't think so.

THE COURT: You said Barnes; you meant Langer?

Mr. FARRIS: I thought I corrected it, my lord—Mr. Langer.

THE WITNESS: That was payment for that 250,000 shares.

Mr. FARRIS: Q. For the 250,000 shares, yes. Now, I think we can check up accurately how much it was.

Mr. St. JOHN: Well, the particulars have been given.

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Mr. FARRIS : *Q.* Now, I find in our claim the payment of the sum of \$35,927.50, being the amount paid by the defendant to the plaintiff as aforesaid. Is that right?—*A.* I never checked that up. I didn't think it was that much.

*Q.* That is admitted as correct?

Mr. WALKER : Yes.

Mr. FARRIS : *Q.* Well, I might suggest to you that that is the correct amount, that that is approximately \$36,000; and then on this deal of November 17th you got \$5,000 in cash;—*A.* Yes.

*Q.* And you got a note for \$10,000 more?—*A.* Yes.

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*Q.* Which you discounted?—*A.* Yes.

*Q.* And got the money for?—*A.* Got \$9,000.

*Q.* Well, yes, Mr. Langer had to pay the full ten on it?—*A.* I presume so.

*Q.* So that makes, in round figures, \$51,000 that Mr. Langer has paid you already on shares?—*A.* Yes.

*Q.* \$51,000. In addition to that, he has paid to the Alamo Company \$28,660?—*A.* Yes.

*Q.* On the shares which were set aside when purchased that way?—*A.* Yes.

*Q.* Yes. Now, the original deal of November 17th, was \$93,750?— 20

*A.* Yes.

*Q.* Of which you have been paid——?—*A.* 93 or 92.

*Q.* 93, I should think—\$93,750. I am taking that from your statement?—*A.* I thought it was 92.

*Q.* Of which you have been paid \$15,000?—*A.* Yes.

*Q.* You are suing them for the balance of \$78,750?—*A.* Yes.

*Q.* The shares being at the rate of 12½ cents per share?—*A.* Yes.

*Q.* And of those shares 175,000 have been turned over from Barnes?—

*A.* Presumably so.

*Q.* And 150,000 from Thomas which at the rate of 12½ cents a share 30 comes to \$40,625?—*A.* I didn't figure it out.

*Q.* Yes. So we find, Mr. McTavish, of this \$78,750 which you are suing for, \$40,625 is on the shares which Barnes and Thomas have turned over?—*A.* Presumably so.

*Q.* Presumably, yes; that is over half of the balance. And these are shares which you say, and your brother says, in February of 1927 were given to you by Barnes and Thomas?—*A.* Yes.

*Q.* Yes; and at that time you had told—or your brother, the other member of this company, had told Mr. Barnes that your shares had been so reduced that if Langer dropped out you would practically have no 40 interest in the company?—*A.* I don't understand your question.

*Q.* Where is that letter, we can make it plainer from that letter? I say prior—just prior to getting these shares from Thomas and Code—which is over fifty per cent. of your present claim to-day—you had written this letter to Mr. Barnes, or your brother had, in which he had made this statement: "We note that you have had a talk with Code relative to Alamo stock. You can readily understand that as we have had to carry

on for about two years our shares have been dwindling. When checking the matter up recently we were shocked to find that we had consumed nearly 300,000 shares. In addition to this, of course, we must carry on for some time. In fact, if Mr. Langer decides to drop the Alamo after April we would then have reduced our holdings to such an extent that we would be little interested in the future of the Company. At the same time, as you can understand, we must carry on, in view of the fact that we have interested so many people in the enterprise."

10 There is the point I mentioned: "In fact, if Mr. Langer decides to drop the Alamo after April we would then have reduced our holdings to such an extent that we would be little interested in the future of the Company."

Now, I want you to turn up your stock book again, Mr. McTavish. Turn up the account of McTavish Brothers Limited, please. This is the stock book—leave it where it is. This is Charles McTavish?—A. I am sorry, it is on this other page.

Q. Now, you have before you the stock ledger of McTavish Brothers Limited. That shows how many shares issued to McTavish Brothers Limited?—A. Issued to McTavish Brothers?

20 Q. Yes?—A. 603,995 is brought forward there.

Q. Roughly speaking, 600,000 shares?—A. Yes.

Q. All right. Now, will you turn to July, 1927. It is the last item on the account?—A. The last item?

Q. Yes, have you got that?—A. The last item in this account is November—

Q. No, no; prior to that, on the other side—in the other column on that last page it is?—A. On this side here?

Q. Yes?—A. July 3rd.

30 Q. July 3rd. Now, that shows on July 3rd, 1927, how many shares were in the name of McTavish Brothers Limited. Will you tell the jury how many?—A. It shows 600,000 shares, all but five.

Q. Yes, being the—?—A. Being the original—

Q. Five qualifying shares of the directors?—A. Yes.

Q. Now, then, on the 14th February, 1927, were there any less, according to that record?—A. On the 14th February?

Q. 1927?—A. 1927?

Q. That is the time you saw him?—A. I don't see anything here about the 14th February.

40 Q. No. I say there is nothing to indicate that any shares had come into the company between the 14th February and July 3rd, is there?—A. No.

Q. No. So that if your book is correct, on the 14th February McTavish Brothers Limited had registered in its name 600,000 shares, less five?—A. On July 3rd.

Q. On February 14th, the day this letter was written?—A. February 14th, 1927?

Q. 1927, still that same year?—A. No.

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*continued.*

Q. What?—A. That letter—

Q. Do you mean to tell me that they didn't have 595,000 shares on February 14th?—A. It is transferred here on July 3rd, 1927.

Q. Transferred; what is the transfer?—A. Well, this date here is July 3rd, 1927, that was six months prior to this.

Q. Yes. What is this word here?—A. "Forward".

Q. Forward. Yes, that means carried forward?—A. Yes.

Q. Yes. So that on July 3rd, 1927, there was no entry of shares given at that time. It is carried forward, the amount still on hand, wasn't it?  
—A. Yes.

10

Q. 599,995 shares?—A. Yes.

Q. No, so that wasn't true, if this book is correct, that on the 14th day of February, 1927, you still had that 599,995 shares?—A. I don't know, Mr. Farris.

Q. You don't know?—A. No, I didn't keep this book.

Q. Do you mean to say that you can't read the records in that book?

—A. I can read the records, yes.

Q. Yes. Now, this book begins at page—I don't know the page, but it is number—it is sheet No. 2, Account McTavish. McTavish Brothers Limited, 308 London Building, and it shows in May—May of what year?  
—A. Back further there.

20

Q. That must have been at the time—it shows transfer of shares from Code to you, doesn't it—McTavish Brothers Limited?—A. Yes.

Q. Yes. It shows that at that period 603,995 shares had been issued to McTavish Brothers Limited?—A. Yes.

Q. Yes. Now, on the other side we find that up till July 3rd, 1927, the only shares that had been issued against that account was—who was this fellow?—A. Graw.

Q. A. D. Graw, 2,000 shares?—A. Yes.

Q. And again, another 2,000?—A. Yes.

30

Q. So that as against that 600, odd thousand shares—603,000, the only shares that had been taken away from this record, was 4,000 shares, leaving a balance of 599,995?—A. Yes.

Q. Then I say to you, Mr. McTavish, that according to the records of that book, on the 14th day of February when your brother was checking up the record of your sales, that that book shows that McTavish Brothers Limited had 599,995 shares?—A. That is what I told you before, Mr. Farris, that this book and no other stock register shows the proper ownership of shares—

Q. Mr. McTavish, I asked you afterwards——?—A. All right, all right. 40

Q. Mr. McTavish, listen to me.—A. Yes?

Q. Do you recall me asking you if you correctly entered in that book all the issuances of shares that you made?—A. Yes. All the stock was held in the names of these five people. When the stock was sold it was taken away from—not necessarily from any one of them, but we have on record—we have in our office all the balance of the stock that we are supposed to have, regardless of where we show shares in this book. We

still have on record some hundreds of thousands of shares for Mr. Langer. It doesn't make any difference whose name it is in.

Q. Mr. McTavish—A. Yes?

Q. You sold 750,000 shares to Mr. Langer, didn't you?—A. Yes.

Q. Whose shares were they?—A. Whose shares were they?

Q. Yes?—A. They were our shares.

Q. They were your shares?—A. Or the shares under our control.

Q. Yes. What do you mean by under your control?—A. Shares of C. H. McTavish.

10 Q. Yes. All right, then. Now, then, 425,000 of these shares were issued from McTavish Brothers Limited?—A. Yes.

Q. Do you suggest they didn't belong to McTavish Brothers Limited?—A. No.

Q. What?—A. I didn't suggest that.

Q. You didn't suggest that?—A. I didn't suggest anything.

Q. Yes. Well, you may have to before we get through, you know.

Were they McTavish Brothers Limited shares?—A. According to this record, they were.

Q. Were you selling any shares that you didn't own?—A. No, sir.

20 Q. No. You were selling 420,000 shares, I suppose, of the amount you got from Thomas and Barnes, were you not?—A. Yes.

Q. Now, I ask you, you issued in the name of McTavish Brothers Limited 425,000 shares to Langer November, 1927, do those shares belong to McTavish Brothers Limited?—A. According to this record, they did.

Q. I ask you if they did, to your knowledge?—A. To my knowledge?

Q. Yes?—A. I couldn't say they did to my knowledge.

Q. Have you some doubt whether you sold these shares or not?—A. I told you before, Mr. Farris, that we had the stock in our control, it didn't matter—

30 Q. That is all—

Mr. DAVIS: Let him finish?—A. And it didn't—

Mr. FARRIS: Q. All right?—A. It didn't matter whose name it stood in, it was a question of keeping the stocks and everything balanced.

Q. You mean it didn't matter whether it was in your name or your brother's?—A. It didn't matter whether—it was in McTavishes control, to keep the balance correct.

Q. Did you think these were your own?—A. Those that Thomas—

Q. They were not your own?—A. They were ours, yes.

40 Q. Did you have any right to sell any that Thomas turned in, that 180,000?—A. No, sir, we hadn't.

Q. Did you have any right to sell what Barnes turned in?—A. We certainly had not.

Q. No. Had you any right to sell Code's shares?—A. No, sir.

Q. Then I say to you when you sold 250,000 shares to Langer—225,000, I think—250,000, I think—225,000, I think, came out of Barnes and Thomas' portion—A. 360,000.

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mination—  
*continued.*

Q. The other 425,000 came out of McTavish Brothers Limited?—  
A. Apparently, according to this record.

Q. Yes. Were you purporting to sell anybody's shares except your own?—A. No, sir, we were not.

Q. No. All right. Then you must have 425,000 shares at least that you owned at that time?—A. Yes.

Q. Yes. You wouldn't say that you owned the shares that you had agreed to turn over to the Company, would you?—A. No, sir.

Q. No; 425,000, and how do you justify the statement that was made to Mr. Barnes in order to get him to give up 150,000 shares?—A. I didn't make the statement. 10

Q. Aren't you standing behind that statement?—A. I am standing behind it, yes.

Q. Then how do you justify it?—A. I didn't make it.

Q. You say you are standing behind it?—A. Yes.

Q. Well, then, if you are standing behind it, are you standing behind it without justifying it?—A. I don't suppose I have to justify it to stand behind it.

Q. I see. You stand behind it whether it can be justified or not?—  
A. I would have if my brother made it. 20

Q. Anyway, we get this interesting analysis from the facts, we have got here, Mr. McTavish, that you got—you and your brother, for your own use, 600,000 shares in the Alamo for which you paid nothing?—A. Yes.

Q. In addition to that, you got 360,000 more from Barnes and Thomas?—A. Yes.

Q. For which you paid nothing?—A. Yes.

Q. In addition to that, you sold shares for which you received 25 per cent. commission in cash and another 25 per cent. commission in shares?—A. Yes.

Q. Yes. You have already received from Mr. Langer out of those shares for which you paid nothing, in round figures, \$51,000?—A. Yes, yes. 30

Q. Yes, and the claim you are now suing for, \$78,000 for, is from shares turned over to you by Barnes and Thomas for which you paid nothing?—A. Yes.

Q. And after that letter of February 14th, in which your brother said that they had to do this because you had disposed of so many shares that you soon would lose interest in the whole matter?—A. Is that a question or a statement?

Q. I say that is the situation, is it not?—A. Presumably so.

Q. In addition to that, up to date I have been unable to get from you, Mr. McTavish, any statement of how many shares you sold or the amount of commission you received?—A. I couldn't give you that. 40

Q. No?—A. We had instructions from the guardians of this stock to sell so many shares at a certain price, and so many at another price, and so many at a further price, and turn the proceeds over to the Company. That was all done in accordance with our instructions. Whatever details are missing on that I don't know. The Company got all the money that

they were supposed to get under our instructions. The money was all properly spent and the vouchers for it all turned in.

*Q.* Now, you told us that shares were kept in the name of your nominee?—*A.* Yes.

*Q.* Who is your brother, Charles?—*A.* Yes.

*Q.* How many shares were turned over to him?—*A.* 600,000.

*Q.* 600,000 shares?—*A.* Yes.

*Q.* Why were they turned over to him?—*A.* Well, I didn't want to tell you that. If you must know, my brother was four years overseas and he got badly broken up in health, and he had to go down South on account of his health. He was ordered down there by the doctor, and we more or less had to look after him, and we presumed that the stock was more or less valuable and we turned it over to him and to my mother—for him and my mother. She was there with him.

*Q.* I see. So what you say is that this was because your brother had been overseas, and out of the goodness of your heart you turned over to him 600,000 of these shares?—*A.* Yes.

*Mr. DAVIS:* And the mother.

*Mr. FARRIS:* And the mother.

20 *Q.* They were to have the beneficial ownership of these shares?—*A.* Yes.

*Q.* We were checking up this morning, Mr. McTavish, how much you have got out of this—you and your brother, and we find that you got \$51,000. You had 499,995 shares still in the ledger to the account of your company, and you had been able to donate to your brother and mother another 600,000 shares. How much of this \$51,000 did you apply on your judgments that were against you?—*A.* We didn't apply any of it.

*Q.* What?—*A.* We didn't apply any of it.

*Q.* You have heard the little expression, that a man ought to be just before he is generous?—*A.* Yes.

30 *Q.* You donated 600,000 of these shares?—*A.* Yes.

*Q.* And kept \$51,000?—*A.* It wasn't our money to apply.

*Q.* It wasn't your money to apply?—*A.* No, it wasn't our money to apply.

*Q.* What wasn't your money to apply?—*A.* The \$51,000.

*Q.* It was not?—*A.* We didn't get \$51,000, you know. Some of that was real estate.

*Q.* Oh, yes, some of it was real estate; but if it wasn't your money, whose was it?—*A.* McTavish Brothers, C. H. McTavish, and my mother Margaret McTavish.

40 *Q.* Well, it all comes down to the same thing, that you either—  
*A.* Our creditors—

*Q.* —had the money or donated the money to your family?—*A.* Our creditors were on perfectly friendly terms with us, and they know pretty well what we are doing. We meet them from time to time and they know just what we are doing.

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*Q.* Before I ask that question I will come back to that other transaction. You and your brother, in the name of McTavish Limited or your nominees, received 1,200,000 shares?—*A.* Yes.

*Q.* You have donated to your brother and mother 600,000 shares. Those appear in the name of Charles McTavish?—*A.* Yes.

*Q.* In addition to that you have issued on the 17th November, 1927, 425,000 shares?—*A.* Not in addition to that.

*Q.* Not in addition to that?—*A.* No, not in addition to that. Mr. Farris, I told you before that you can't tell the ownership of shares in a register—now, let me tell you this, these share certificates, the million and a half, were put into envelopes and kept in our office. The million and a half that were set aside for the Company's use was there also; they were kept absolutely separate. When we wanted to sell some of the Company's shares, we simply took some of these certificates out of there, it didn't matter which ones we took, they might be certificates in anybody's name, so that the book there would not necessarily show the proper standing of the shares—

*Q.* Mr. McTavish, would you kindly tell me, if I was representing Mr. Barnes and came into your office, how would I find out how Mr. Barnes stood?—*A.* Mr. Barnes can find out in one minute by coming into our office.

*Q.* Well, if that is so you can tell me in at least two minutes—*A.* Now, I will tell you how we do that. There is the certificates there, there is the envelope there with Mr. Barnes certificates in it.

*Q.* With Mr. Barnes certificates in it?—*A.* Yes.

*Q.* Yes?—*A.* He can come there any time.

*Q.* How many are in his—how many certificates are there?—*A.* I couldn't tell you offhand, but they are the shares—all that is coming to Mr. Barnes is in that envelope, the same as Mr. Thomas, the same as Mr. Code.

*Q.* These certificates are there?—*A.* They are all there.

*Q.* Now, can you produce these certificates?—*A.* Yes, sir.

*Q.* Have you got them here today?—*A.* No, sir.

*Q.* What?—*A.* No.

*Q.* You can produce them in the morning?—*A.* Yes.

MR. DAVIS: What certificates are those?

THE WITNESS: Mr. Barnes' certificates.

MR. DAVIS: Do you want them?

MR. FARRIS: I want Mr. Barnes', and Mr. Code and Mr. Thomas' certificates, which he has.

THE WITNESS: Yes.

MR. FARRIS: *Q.* They show how many shares were sold?—*A.* Yes.

*Q.* And what is left is his?—*A.* Absolutely.

*Q.* So that anything that disappeared from his group of shares, shows how many he has distributed—?—*A.* There has nothing disappeared.

*Q.* Well, I mean disappeared, they are not in that envelope?—*A.* No; all right.

Q. No. If they have gone out of that envelope it means that he has sold his?—A. Yes, or disposed of them.

Q. So what is left in Mr. Barnes' envelope, for instance, will tell how many shares he still has?—A. Yes, sir.

Q. And that would be all he would have?—A. That is all.

Q. I want no mistake about that, because—I am going over that again. You have in your office, you say, an envelope which originally held all Mr. Barnes' certificates?—A. Yes, sir.

Q. Yes?—A. His 300,000.

10 Q. His 300,000?—A. Yes.

Q. What became of his other 300,000?—A. They were endorsed by him and turned over to us to be used for the Company's purposes.

Q. For the Company's purposes?—A. Yes.

Q. And where did you hold them?—A. We held them in our office.

Q. Yes. In anybody's name?—A. No, they were not—they were just left as they were endorsed.

Q. Just left as they were. Now, what record have you of those?—

A. What record have we of those?

Q. Yes?—A. Well, any that were left, the certificates would be there.

20 Q. What record have you to show where the monies went that came in from them?—A. I told you this morning that we got instructions from the holders of these certificates to sell that stock at a certain price and turn the money over to the Company. That was done, and the money has all been properly accounted for.

Q. Now, I ask you this question, as you sold these shares and turned the money over to the Company what record have you there in the Company's books, or in the plaintiff's books, to show how much money was received, and what was done with it?—A. No, I haven't got—I didn't keep those books. I told you that this morning.

30 Q. You are one of the responsible heads in this thing.

Mr. DAVIS: Let him answer.

A. I don't know the details of these books, and I can't speak accurately of these details. I know what was done.

Mr. FARRIS: Q. Is there anything in your books, either in the Alamo Company's books or the McTavish Company's books, to show where a single cent of that money went?—A. Yes.

Q. Where is it?—A. I might let you look that up; you are a better bookkeeper than I am. Every cent was turned over properly.

Q. Yes. What books do they appear in?—A. I couldn't tell you.

40 Q. Who of you two, you or your brother, took the responsible part of keeping track of the books?—A. My brother.

Q. Your brother. All right. We will leave it for him. Now, coming along to the representation of facts: You told my friend Mr. Davis this morning—Mr. St. John, rather, that you believed the reports that you received from Mr. McGuigan and—what was the other man's name? Jackson?—A. Jackson.

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*continued.*

Q. That is true, I take it?—A. I had no reason for not believing them.

Q. Anyhow, you have gone so far in your discovery as to say you still believe the gold is there?—A. I still believe that there is foundation for these reports.

Q. Yes. So that being so, when you were trying to induce Mr. Langer to come into this Company, you had every confidence that the statements in these reports were true?—A. How did you put that?

Q. I say, that when you were trying to induce Mr. Langer to buy shares in the Alamo you had every confidence in the fact that these statements were true?—A. When I was trying to induce Mr. Langer— 10

Q. Yes, answer the question?—A. That is not right.

Q. Well, then, you say no to that?—A. I don't say no to it. The question is misleading. When I was talking to Mr. Langer about putting his money in here, we were not considering the Alamo at all, it didn't enter into this discussion at all. The whole proposition was framed on the Evans.

Q. All right, I will accept your statement, I will take that as your proposition now that you are going to stand or fall on, that at the time you were dealing with Mr. Langer—?—A. Yes. 20

Q. You were not considering the Alamo at all?—A. We had simply—

Q. The whole proposition was the Evans?—A. We simply discussed it, and he left it, and the whole discussion was centred round the Evans' property.

Q. Now, to understand that, did you put it this way, that the Evans' was much more problematical than the Alamo?—A. No; the Evans could be seen, Mr. Farris, and the other one could not.

Q. Do I understand that your position was that you made no representations in regard to the Alamo?—A. I made no representations in regard to the Alamo, we gave him— 30

Q. As far as you know, your brother did not?

Mr. DAVIS: Let him answer.

A. We gave him these reports and told him that he could read them just the same as we did. We didn't know anything about it, we told him we didn't know Jackson or McGuigan, but they looked like reasonable reports made at different times.

Mr. FARRIS: Q. Of course, you were pretty careful in this business in making sure that you wanted him to understand that you took no responsibility for these reports?—A. I was taking no responsibility for what was in the reports. 40

Q. So far as you know neither yourself nor your brother assumed any responsibility in regard to these reports?—A. No, we did not.

Q. Either to Langer or anybody else?—A. Neither to Langer nor anybody else.

Q. Neither to Langer nor anybody else?—A. Neither to Langer nor anybody else.

Q. Either verbally or in writing?—A. No, sir.

Q. Now, I have here a letter from your brother—no, I beg your pardon, this is another one of these “per” letters?—A. That is the same letter.

Mr. DAVIS: That is the one you showed him before?

THE WITNESS: That is the same letter.

Mr. DAVIS: That is the one you cross-examined on before.

Mr. FARRIS: I am sorry—they were both together. This is signed by P. D.

THE COURT: This other one must be in as an exhibit.

10 Mr. DAVIS: Yes, it is 92.

Mr. FARRIS: Yes, my friend picked up the other one by mistake.

Mr. ST. JOHN: Where does this appear in your affidavit of documents?

Mr. FARRIS: Oh, it does not, that came at a subsequent time from— that wasn't in our possession at all. It was a letter to Dr. Manchester.

Q. You might look at that, Mr. McTavish (*handing document to witness*). Just look at the signature first, will you, please?—A. Yes.

Q. That is your brother's signature?—A. Yes.

Q. That is a letter dated April 21st, 1925?—A. Yes.

20 Q. Now, if you wish to read it before I examine you on it I have no objections, or we will read it together, just as you like. Possibly we can read it together and save time.—A. All right.

Q. Who was Mr. Manchester?—A. A man in Westminster.

Q. He was—you were trying to interest him in this mine?—A. Presumably.

Q. And he bought a lot of shares in this mine, didn't he?—A. I couldn't tell you.

30 Q. “Dear Sir: We have organized Alamo Gold Mines Limited for the purpose of acquiring and operating the Alamo Mine in Grant County, Eastern Oregon. This property is well developed, having over 6,000 feet of work done on it. The engineers' report shows over \$2,000,000 of ore blocked out besides large bodies in sight. Our Company is organized for 3,000,000 shares (non-assessable) par value \$1. The owners have given a clear deed (Patent) to the property for half the shares, the remaining half being set aside for purpose of financing. A mill of 30 tons capacity is being installed at once and will be added to from time to time as conditions warrant. It is the purpose of the Directors to increase the output as rapidly as possible, consistent with good mining. The management of the mine will be in the competent hands of Mr. George H. Thomas, Mining Engineer, Seattle, who has had large and successful experience in mining in the West, while the milling will be under the supervision of Mr. David Barnes, Mining Engineer, also of Seattle, who is one of the best known mining and mill men in the Pacific North-West.” Was that true?—A. We believed it was at that time.

40 Q. Yes. “The affairs of the company will be handled from this office, under the present direction of my brother as President, and myself as Secretary. The Company's property has fine ore bodies averaging \$12 per

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ton, which can be mined very cheaply, as it is a gravity proposition." Would you consider that a representation of fact?

"The Company's property has fine ore bodies averaging \$12 per ton, which can be mined very cheaply, as it is a gravity proposition."—A. It appears to be according to the Engineer's report—

Q. Oh, yes, I understand that reference to the Engineer's I don't suppose any representation would ever be based on anything else; but I am directing both yourself and his lordship and the jury to this paragraph?—  
A. Yes.

Q. "The Company's property has fine ore bodies averaging \$12 per ton, which can be mined very cheaply as it is a gravity proposition."—  
A. According to the engineer's report it averages \$2,000,000—totals \$2,000,000—\$12 ore.

Q. Yes. "Engineers' estimate the cost of mining and milling at not more than \$1.50 to \$2 or less."—A. Yes.

Q. "We have ample water and timber, excellent transportation, electric power available if desired from a company less than one mile distant, favourable climatic conditions, competent and experienced management, and by no means of least importance, is the fact that the Company has a clear deed to the property, so that you will be buying an interest in a bona fide property of excellent merit, which can never be taken from the Company for non-payment or any other reason. Truly, this is the cleanest, safest proposition we have ever seen, and has the greatest possibilities for immediate and future returns. As we are offering only a small block of shares at 25 cents, we trust you will see the advisability of acting promptly."—A. Yes.

Q. And I suggest that he did act promptly and took some, is that right?—A. He didn't act promptly.

Mr. FARRIS: Well, he came through in the end.

(*Document marked Exhibit No. 94.*)

Q. Now, here is a document—I was under the impression, I am not clear, I thought the whole subject was—anyway, this came from Dr. Manchester?

Mr. DAVIS: How do we know that?

Mr. FARRIS: What?

Mr. DAVIS: How do we know where it came from?

Mr. FARRIS: Well, I am just stating that, that is where we got it, but I am going to ask the witness about it.

Mr. ST. JOHN: What is the date of that letter, Exhibit 94?

THE REGISTRAR: The 21st April, 1925.

Mr. FARRIS: Q. Will you look at that, Mr. McTavish. (*Handing document to witness.*)—A. Yes.

Q. I presume you recognize that?—A. Yes.

Q. Some of your literature?—A. Yes.

Q. You recognize that, do you?—A. Yes.

Q. Do you remember what year that was gotten out?—A. No, I don't.

Q. Well, I am suggesting to you, and I don't want to deceive you because I may be quite wrong, Mr. McTavish, but I got this impression, and it may help you, and if it does not, why, don't be deceived by it; but my impression was that Dr. Manchester brought that along with this letter. Now, I may be entirely wrong about that. What would you suggest?—  
A. I would suggest that he did not.

Q. I see. All right. Now, can you say——?—A. If you got it that way, with that letter, I would say that he got—came into possession of it after that.

10 Q. Yes. In other words, how long after, could you say?—A. I couldn't say, but I know that was prepared by myself.

Q. This was?—A. Largely by myself.

Q. I see?—A. Long after that.

Q. And it was prepared and circulated amongst prospective purchasers of shares?—A. Yes.

Mr. FARRIS: I would ask to have this marked.

(Document marked Exhibit No. 95.)

Q. I am going to read, Mr. McTavish—I will read it from my brief, because I don't think we need to go into it all. This was addressed as a  
20 little circular about the Alamo Mine. It is headed "Information Regarding the Alamo Mine, Owned by the Alamo Gold Mines Limited. Head Office, 308 London Building, Vancouver, B.C. Development work all done." I think I would like for you to have that in your hand while I read.

Mr. DAVIS: Read it all.

Mr. FARRIS: Yes, I will read the whole bunch of it.

Mr. DAVIS: Yes, I haven't seen it.

Mr. FARRIS: There is a lot of stuff that goes off at a tangent, but however, I will read it all.

Mr. DAVIS: Well, read it all.

30 Mr. FARRIS: Q. "Development work all done. Over 5,000 feet of development work has been done on this property, showing up huge ore bodies of good value. Therefore, no money is required for development work." There is no word in there about engineers, is there, so far?—A. No.

Q. No. You see, I want to keep that engineers in mind, because I want to read that perhaps later—oh, yes, but you see right in the start of your writ it refers to engineers?—A. Well, I couldn't say; I never saw that.

Q. Mr. McTavish, I asked you if you made any such representations to anyone else and you said no?—A. Yes.

40 Q. Now we are analysing some of your literature that you yourself prepared?—A. Yes.

Q. You wouldn't be any more cautious with Mr. Langer than you would in what you sent broadcast to the world, would you?—A. We didn't broadcast that all around over the world.

Q. Well, what did you do, this is just what you thought of the value, is that it?—A. I told you what we did, since you have asked me the

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question, we immediately acquired the Evans' property, that reference wasn't in that, anyhow.

Q. I see; but why did you prepare this?—A. Prepared to send out, obviously.

Q. To send out?—A. Yes.

Q. You had meant to send it out, but you prepared it, didn't you?—  
A. Yes.

Q. Now, I ask you if you would be any more cautious in what you said to Mr. Langer than you would be in what you put in that document?—

A. Quite likely I would.

Q. Quite likely you would, all right. Now we will examine this document with interest. "Development work all done: Over 5,000 feet of development work has been done on this property, showing up huge ore bodies of good value. Therefore no money is required for development work." That referred to the Alamo Mine, Mr. McTavish?—A. Yes.

Q. "Location and Working Conditions: The property is beautifully located on an auto highway in Eastern Oregon, in one of the best known mining areas in America. The climate is ideal, permitting work to be carried on the year round without interruption. Water and Timber Great Essential for Mining: There is an abundance of water and timber for all mining purposes, and, best of all, there is a large body of free-milling gold ore that can be mined and milled for much less than the usual transportation charges paid by companies handling complex ores." Still no engineer?—  
A. No.

Q. "Title in First Class Shape: The Company has title to the property, free of all encumbrance. Abundance of Power: There is a power company's line within a mile of the property, insuring plenty of power at a minimum cost. What a Shrewd Banker says about Mining——" Now, Mr. Davis, here are two paragraphs about some other mine, I don't think we want that.

Mr. DAVIS: All right, leave it out.

Mr. FARRIS: Q. Then we go on, after this long quotation about this kind of mine: "Recent Figures Disclosed by the Census show that:— Farming produces annually per capita \$297, forest industries produce annually per capita \$425, manufacturing produces annually per capita \$764, mining (gold, silver, copper, lead and zinc) produces annually per capita \$1,910"—A. No, wait a minute now—you mean \$1,000.

Q. I corrected myself, \$1,000—A. \$1,000.

Q. Yes, that is right. "What a Banking Journal Says: The National Banker, in a recent issue, makes the unequivocal statement that the combined dividends paid by the gold and silver companies of the United States are greater than the combined dividends paid by all railroads in the United States."—A. Made by all the banks.

Q. What?—A. Made by all the banks in the United States.

Q. "By all the banks," is it. I have got railroads here. "By all the banks of the United States"?—A. Yes.

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Q. All right; thank you. That was a slip—it must be railroads.—A. You missed out something there.

Q. Perhaps the stenographer left it out. Will you read it as it is there, then I will see whether the stenographer has missed it on the notes?—

A. “The National Banker, in a recent issue, makes the unequivocal statement that the combined dividends paid by the gold and silver companies of the United States are greater than the combined dividends paid by all the banks in the United States; that the combined dividends paid by the copper companies of the United States are greater than the combined  
10 dividends paid by all the railroads of the United States.”

THE COURT: Q. One line?—A. Yes.

Mr. FARRIS: Q. Yes, “That 52 per cent. of the freight handled by these same railroads is either ore or some commodity connected with the mining and milling of ore.”—A. Yes.

Q. Although this stuff is not very material, I will read it now as it is: “Fine Showing, but Let us Make it Better this Year: In a year which was generally marked by business depression, it is a remarkable fact that the mineral industry of British Columbia closes 1924 with the greatest  
20 production in history, a total of \$35,494,492 ”—A. \$35,000,000.

Q. What?—A. \$35,000,000.

Q. Yes. “Having been taken from the metal mines of the Province last year.” So this letter was evidently written in 1924?—A. I think it was written sometime in 1925. It was written just before we got the Evans’ property.

Q. That would make it about May, 1925, or early in June?—A. Sometime about the 1st June, I would imagine, because we got the Evans’ property, I think—

Q. The 15th of June, is my recollection, you signed that agreement?—  
A. Yes, I think so.

30 Q. “This would mean over \$100,000 of new wealth taken from the earth every working day of the year. There are many other properties like the Premier just awaiting attention: According to a report appearing in the ‘Alaska Weekly,’ the Premier mine in December, 1924, declared a quarterly dividend of \$500,000. This company began paying dividends in December, 1921, and since that time has paid to shareholders the huge sum of \$7,140,625. As the Company is capitalized at \$5,000,000, the above figures represent total payments to shareholders amounting to—” —A. 146.

Q. Yes. “146 per cent. within a period of less than four years. The company has large ore reserves to work on for years to come.”—A. That is  
40 the Premier.

Q. Yes. “Immediate results—” now we are getting back to our own mine—“The Alamo Mine, having large bodies of ore blocked out, is in a position to commence production immediately upon installation of a mine”—A. Of a mill.

Q. “Of a mill. Mill to be installed at once: As a mill is being installed at once this property will be actually producing profits at an early date. Two of the best known mining engineers in the West will have charge of

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mining and milling operations.”—A. Well, this must have been written in 1926.

Q. “Early dividends. As all development is already completed on the Alamo Mine and large bodies of good ore are now blocked out”—I will read that again; I want to get that right. “As all development is already completed on the Alamo Mine and large bodies of good ore are now blocked out, it is not too much to expect that this company will be paying dividends long before most others have completed their necessary development work.”—A. Yes.

Q. “Your opportunity: Rarely is such a mining opportunity as this offered to the public, and we strongly urge upon you the advisability of procuring a block of shares in Alamo Gold Mines Limited. We own and are now offering for sale a small block of shares. See us for further particulars before price advances. McTavish Brothers Limited, 308 London Building, Vancouver, B.C.” 10

Now there is not a word from start to finish about engineers’ reports, is there?—A. No.

Q. No?—A. We didn’t use that pamphlet, Mr. Farris.

Q. Mr. McTavish—?—A. That was—

Mr. DAVIS: Wait; he has not finished. 20

Mr. FARRIS: Q. Do you suggest that you didn’t use it because the statements were not true?—A. We didn’t use it.

Q. Do you suggest that, that the reason you didn’t use it is because the statements were not true?

Mr. DAVIS: Let him finish his answers.

A. We didn’t use it because we acquired the Evans’ property, and these statements would not apply to it. It may have been on account of the other, I can’t remember.

Mr. FARRIS: Q. You sent some of them out? You sent some of them out?—A. We may have sent a few. 30

Q. And you sent them out for the purpose of inducing men to buy shares in this company?—A. Precisely.

Q. Yes?—A. Yes.

Q. And you made the statement in this document in at least three places—I will go over them again so there will be no mistake—to go over it again: “Over 5,000 feet of development work has been done on this property, showing up huge ore bodies of good value.”—A. Yes.

Q. Again: “Immediate Results. The Alamo Mine, having large bodies of ore blocked out”—not that some engineer says so, but that you say so—“is in a position to commence production immediately upon installation of a mill.” And again: “As all development is already completed on the Alamo Mine and large bodies of good ore are now blocked out, it is not too much to expect that this company will be paying dividends long before most others have completed their necessary development work.” That was your literature, Mr. McTavish?—A. Yes, I presume we had Mr. Barnes’ report at that time, we could not find the statements in the other two. 40

Q. I see; and you don't in any shape or form, in this literature which you sent out to your investors, state that you were basing this on some kind of engineer's report?—A. No. Did you say in this—?

Q. Now, I have another letter—A. Mr. Farris, did you say in this particular document or in other things?

Q. In that particular document. Yes, I want that marked as an Exhibit. Now, the next one I am producing is of a man by the name of Hollingsworth. That too is not in our affidavit.

10 That is your signature, Mr. McTavish, is it? (*Handing document to witness*)?—A. Yes.

Mr. FARRIS: I tender this as the next exhibit.  
(*Document marked Exhibit No. 96.*)

Mr. ST. JOHN: What is the date of it?

Mr. FARRIS: This is a letter of McTavish Brothers Limited, per D. N. McTavish, June 9th, 1927.

Q. Now, this is two years later—more than two years later than the last letter we read, and it is written to Mr. O. R. Hollingsworth of Bellingham, Washington: "Dear Mr. Hollingsworth"—he is another prospective purchaser of yours?—A. No, he is not, not ours.

20 Q. He bought a little stock, didn't he?—A. Not from us.

Q. Who was he buying it from?—A. Mr. Code. We had nothing to do with the sale of it—Mr. Barnes, I should say.

Q. "We are glad indeed that you enjoyed your little holiday up the Island and hope you may soon come again. In the meantime we thought you might like to know just what is doing on the property. Mr. Langer was particularly keen to get on with the construction of the mill and thought it advisable to turn all the crew on to the Alamo tunnels so as to get them cleaned out and thus hurry things along, as the men could go back to the Evans property and finish drifting for the vein any time after the work is  
30 finished on the Alamo. I might tell you frankly that he is becoming more and more interested in this property"—June 8th 1927—"We had a two hours conversation with him on Saturday morning and he requested that we get the lowest possible price on 20 of the Denver Quartz mills. He felt that if he took twenty of them, which would constitute a 2,000-ton mill, that he would buy them very much cheaper than if he only bought two to use in this first unit. In asking for this information he told us to tell them that if they gave him the right price he would undertake to buy twenty of them between now and the end of next year. This is just an indication of what is going on in his mind, and I think you can look for tremendous  
40 activity at the Alamo during the early summer. It is not possible to have something spectacular happen every few days on a large proposition like this, but we feel that the information herein contained will be sufficiently gratifying to you to know that everything is going forward in a perfectly satisfactory manner. With kindest personal regards to yourself and Mr. White. Very truly yours."

Now, the other letter should have gone in perhaps first chronologically. This is a letter by McTavish Brothers Limited, per P. D. McTavish, per S.

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(*Handing document to witness.*) We won't have any trouble now to locate that signature, Mr. McTavish. Do you recognize it?—*A.* Yes.

*Q.* Who wrote it?—*A.* Apparently Miss Smith.

*Q.* Miss Smith?—*A.* She signed it, rather. I suppose my brother wrote it.

*Q.* What?—*A.* Miss Smith signed it.

*Q.* Well, I am not suggesting how he should sign. Attached to that letter, Mr. McTavish, is this letter, and I will read it, what it says: "May 27, Dear Mr. Hollingsworth" (*reading letter*). Now attached is a copy of an enclosure with this letter. This is not a printed document like the other one, it is type-written, is it not? Have you ever seen one of these before?—*A.* I don't recall it. 10

*Q.* You don't recall it. Can you say whether you had anything to do with its preparation?—*A.* I don't think I had. Do you want me to read it over?

*Q.* Well, if you have nothing to do with it I would prefer to leave it for your brother, unless you think you recall?—*A.* It has nothing to do with Hollingsworth buying stock, anyway. He bought his stock long before that from Mr. Code.

*Q.* Mr. McTavish, this document purports to be a memorandum—*A.* Yes. 20

*Q.* —that was gotten out in regard to this question. If you say you know nothing about it or had nothing to do with it, I will leave it at that?—*A.* I don't say I had nothing to do with it; I will say I didn't prepare it—

*Q.* Do you know anything about it?—*A.* I don't remember seeing it before.

*Q.* Well, just read the first three or four paragraphs, it won't take you very long—see if there is any chance you recall it?—*A.* I don't think I prepared this, I don't remember, after reading.

Mr. DAVIS: The other McTavish will be in the box. 30

Mr. FARRIS: Yes, well, perhaps we might mark it for identification in the meantime.

Mr. DAVIS: Well, if you undertake to ask him about it, why, that is all right.

Mr. FARRIS: Yes, all right. We are not undertaking—

Mr. DAVIS: Well, I don't want it to go in without the explanation that will come from the man who wrote it.

Mr. FARRIS: Well, I am rather keen to have it go in.

*Q.* Now, there is a document already gone in, Exhibit 22, that I am rather interested in. Attached to Exhibit 22, as part of it, is something from the Western Canadian Mining News (*handing document to witness*). Do you know anything about that?—*A.* Yes. 40

*Q.* It is the clipping I am more interested in.—*A.* Yes.

*Q.* Yes, I see that you sent this—let me see, now, that went to Mr. Langer on the 24th February, 1927, by your brother?—*A.* Yes.

*Q.* And the note is as follows: "The attached clipping will interest you"?—*A.* This was prepared at—largely at Mr. Langer's suggestion.

Q. Mr. Langer, but who prepared it?—A. I don't know. I didn't.

Q. Who gave the information that is in it?—A. I didn't.

Q. Well, who did Mr. Langer suggest that it be prepared by?—A. He made that suggestion in our office.

Q. Yes, he suggested it to you, that an interview should be prepared for this paper?—A. He suggested that he was quite willing to have the information appear connecting his name with the proposition.

Q. I see, as a result of this, this interview was given out of your office?—A. I presume so. I didn't give it.

10 Q. Whether it was made by your brother you don't know?—A. It may have been he; it wasn't me.

Q. You are sure it wasn't you?—A. Yes.

Q. Well, it is in as an exhibit, anyway. I want to read one paragraph of this—I don't think it has been read before. It is interesting in relation to Mr. McTavish's statement. This is the second paragraph: "Operations are conducted by the Alamo Gold Mines Limited, organized by McTavish Brothers. The property consists of two groups, on one of which a considerable amount of work was done some years ago. Three tunnels were driven, and these are being cleaned out. The lowest, which gives  
20 a depth of over 700 feet on a very large vein, shows that the vein widens with depth to 30 feet, and that the values are consistent throughout. These average from \$10 to \$15. Other veins are yet to be developed. The second group, known as the Evans, is about a mile distant, and has a 300-foot face of gold showings, with two veins, where everything is in shape for quick production."

So you see, Mr. McTavish, that as late as February 25th, 1927—now, you had owned the Evans property for over a year then—upwards of a year—so far as the public were concerned, you were advertising the Alamo Mine as well as the Evans, were you not?—A. As far as the public  
30 were concerned?

Q. Yes, in the statement that emanated from your office?—A. You can put it that way if you want to.

Q. Yes. You see, you told us a little while ago that as far as Mr. Langer was concerned you only had interviews about the Evans?—A. Sure.

Q. Now, I am trying——?—A. Our contract shows that, Mr. Farris, our contract shows it was prepared for handling the Evans.

Q. I am directing your attention here, that in all this material that I have since produced, the Alamo Mine and the fact that it has proven  
40 ore blocked out, is emphasised in your literature?—A. That is not our literature.

Q. It emanated from your office?—A. No, it sifted through the report of some reporter—through the brain of some reporter.

Q. I think you told me just after lunch that all you did about the Alamo was to give him the engineers' reports?—A. Yes.

Q. And I think you told my friend, Mr. St. John, before the holidays that when going down on the train you gave him the engineers' reports,

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and that he looked at them and said he didn't want to be bothered with them?—A. Correct.

Q. Was through, or something like that?—A. Yes, he wanted to make his own impression—get his own impressions first.

Q. Now, there are two or three other letters that I would like to refer to under this heading. There is a letter, September 10th, 1926, McTavish Brothers to David Barnes. This letter is in the affidavit of documents, Mr. Davis, probably you have seen it. That is your brother's signature (*handing document to witness*)?—A. Yes.

Mr. FARRIS: I tender that letter as an exhibit. (*Document marked Exhibit No. 97.*) 10

Q. This is a letter dated September 10th, 1926, from McTavish Brothers Limited, per P.D., written to David Barnes as "Dear Dave": "Just a hurried note to find out if it would be possible to get enough amalgam" (*reading letter*). Then there is a P.S.—I don't know that it adds anything, but I had better read it. "It is just possible that we may wire you during the next few days to the effect that we will be taking down a very important prospect, with a view to having him invest a considerable sum of money. We shall probably go by train, and it will be necessary therefore for you to meet us in Baker with the car. Meanwhile you might figure out the estimated costs of installing a new 100-ton unit complete, together with the cost of erecting necessary building for carrying on the winter's work." I suppose that prospect was Mr. Langer?—A. I don't know. 20

Q. You don't know?—A. What was the date?

Q. September 10th, 1926?—A. I presume. It is about the date he went down.

Q. That would be likely Mr. Langer?—A. That is about the date he went down, yes.

Q. Now, the next letter is September 28th to Barnes, per—it is signed by both Donald and Peter. The original signature of "Don" is yours, Mr. McTavish (*handing document to witness*)?—A. Yes. 30

Q. And the postscript is by your brother?—A. Yes.

Mr. FARRIS: I tender this as the next exhibit. (*Document marked Exhibit No. 98.*)

Mr. FARRIS: Letter from McTavish Brothers, letter from "Don" to Barnes, "Dear Dave"—this is September 28th, 1926 (*reading letter*).

Q. Now, the next letter is November 18th. This seems to be a letter from your brother—we might as well get them all in at once (*handing document to witness*)?—A. Yes. (*Document marked Exhibit No. 99.*) 40

Mr. FARRIS: November 18th (*reading letter*).

Q. By the way, what else had Mr. Barnes to write to you about at that time except the affairs of this company?—A. We were interested in the Banner property at that time.

Q. Well, was that supposed to be taken in with the same company?—A. No.

Q. Never was?—A. No. It was suggested before this was, you see.

Q. When did you get your interest in the Banner property?—A. I couldn't tell you the exact date.

Q. You are not saying that you had it in November, 1926?—A. I think we had. We may not, though. Of course, there were other reasons—we didn't want this mail all clogged up with things outside of the matters in hand.

Mr. FARRIS : Now, the rest of this letter I will read, Mr. Davis, if you want it read.

Mr. DAVIS : I might want it; I don't know.

10 Mr. FARRIS : There is a postscript that I won't read.

Mr. DAVIS : Better read it all, I suppose.

Mr. FARRIS : "We are very glad indeed to learn that you are getting things properly in shape" (*reading balance of letter*).

Q. Evidently you wrote the letter. "Be sure and make daily measurements when you get under way and send along report once or twice weekly as weather will permit. If snow is bad send a wire at least once a week. Langer is feeling fine and we want to keep him that way"?—A. Precisely.

Q. And I guess you did. Now, there is a letter of November 25th, and I think that is all these letters that I will bother with now. This letter is by your brother (*handing document to witness*)?—A. Yes.

Mr. FARRIS : "Dear Dave"—November 25th, 1926 (*reading letter*). (*Document marked Exhibit No. 100.*)

Q. "We do not wish him to have the slightest excuse to kick"?—A. That is correct.

Q. "Under the circumstances, therefore, we suggest that you drive up here on Saturday" (*reading balance of letter*). I gather, Mr. McTavish, from that letter and the one I have just read before—the first letter says Mr. Langer is in good humour and you want to keep him that way. In this letter you say he has not been kicking, "but we do not wish him to have the slightest excuse to kick"—you wanted to keep him in good humour?—A. Mr. Langer had laid down a specific amount of work to be done every week.

Q. Just listen to my question now. I am leading up to it. I say, so anxious were you to keep him in good humour and to keep him feeling that way—

Mr. DAVIS : Well, he was answering that, and you stopped him.

Mr. FARRIS : No, I haven't put my question yet.

Mr. DAVIS : Well, you might wait for him to give the answer.

40 Mr. FARRIS : No, I am not finished. I have to contend with both of you now on this question—

Mr. DAVIS : I will keep very quiet.

Mr. FARRIS : Oh, I don't say you are not.

Q. I say, so anxious were you to keep him in good humour and feeling that way and not kicking, that your brother, the other member of your firm, writes down to Barnes and tells him to push on with his trip and come

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to Vancouver quick, so that he will be able to fool Langer as to how long Barnes was away from the mine?—*A.* Precisely, that is what is on there.

THE COURT: On the kind of principle that it does not pay to tell the truth sometimes?—*A.* Yes, I presume so.

*Q.* There is a story written about it?—*A.* I didn't write the letter.

Mr. FARRIS: *Q.* Now, you know this young man, Mr. Kerr, who was the secretary of Macaulay, Nichol's firm?—*A.* Bookkeeper.

*Q.* I thought he told us he was the secretary of that company?—*A.* He kept the books, I think.

*Q.* Oh, he does keep the books?—*A.* Yes. 10

*Q.* You do know that?—*A.* I have seen him at them.

*Q.* Yes. Well, let us hope that he does it well?—*A.* I presume he does.

*Q.* Yes. He is also secretary of that company?—*A.* He may be.

*Q.* He may be, yes. So that we may call him, as he called himself, both secretary and bookkeeper of Macaulay Nichol's firm?—*A.* Yes, you may.

*Q.* Yes. I am directing your attention to what he said in his examination, I have a transcript here, at page two. Now, this seems to be a discussion between you—McTavish Brothers and Mr. Kerr—at luncheon. "Having drawn your attention to the date, the 7th February, 1927, you recall there was an agreement?—*A.* I do. 20

*Q.* With that suggested to your mind, you were going to tell of some interview with McTavish Brothers. I think you had lunch with them one day?—*A.* Yes, I had lunch with them one day, at which time the agreement was discussed, the terms of the agreement." Do you recall that luncheon?—*A.* Yes, sir.

*Q.* "Yes, the McTavish Brothers practically the whole of the time at that lunch, which lasted anywhere from an hour to an hour and a half, enlarged on the property and explained to me that there was a mine there with"—it has "without," but I think that must be "with"—with about 200,000 tons of ore blocked out, and it would mean a large fortune for Mr. Langer as well as themselves. *Q.* Anything about the value?—*A.* They told me the values were there, anything from \$10 to \$18 per ton.—*Q.* Did you make any inquiries from them as to how it came this was left?—*A.* I asked out of curiosity how it was that there was a mine standing there with the ore ready to be taken out, and that no one ever done it. They explained that the mine had stood there about 20 years, unwanted, and it was because of the lack of finances and that mining had a black eye and that no one was willing to put money in it; that the tunnel was blocked up and that it required money to get into it." Is that statement correct?—*A.* It is not. 30 40

*Q.* You deny that statement?—*A.* I deny that statement.

*Q.* Yes?—*A.* We went there to discuss with him the terms that had been agreed upon, not to sell Mr. Kerr a mine. Do you suppose we are going to waste our time trying to sell Mr. Kerr a mine when we had made a deal with Mr. Langer?

Q. You knew who Mr. Kerr represented, didn't you?—A. We certainly did.

Q. Yes, and you were discussing with him what terms——A. Just the terms.

Q. The terms?—A. The terms—not the terms, but to get it licked into shape. He represented himself as being a Scottish solicitor, and we were not trying to sell him; it is obvious we were not going to waste our time telling him all that truck.

Q. I see; but you say that inasmuch as Langer had already agreed to  
10 purchase, that you wouldn't waste your time on his representative talking about the qualities and the quantities of the mine?—A. Mr. Kerr was in a great hurry, in spite of the fact that he says he had—we were there an hour or an hour and a half—we were not there that long, because he didn't have time, he is working for Macaulay, Nicolls, and he just had a lunch hour off, and we had to hurry through with the thing.

Q. How long would you say you were there?—A. We were there less than an hour. I wouldn't say just how long, but we were certainly less than an hour.

Q. Well, you can say a lot in an hour?—A. We had to say a lot——

Q. Mr. Kerr suggests that you could say quite a lot in an hour?—A. Well  
20 —I can say something else.

Q. All right, we have your word against his. Now, I want to direct your attention to some phases of your relationship to Mr. Barnes. You seemed to have a very high opinion of Mr. Barnes for a long time?—A. Do you want me to answer that?

Q. Yes, that is a question?—A. We took him at his own estimate of himself to a large extent.

Q. I see?—A. He gave me one reference, a man I went to see Mr. Martin, in Seattle.

Q. When did you go to see him?—A. When we first met Mr. Barnes.  
30

Q. Yes, who is Mr. Martin?—A. He is a solicitor in Seattle. Mr. Barnes had worked for him.

Q. Well, at a later date you began to lose confidence in Mr. Barnes?—  
A. Yes, sir.

Q. Yes, now, it is significant, or it may be significant that at a later date Mr. Barnes was losing confidence in this mine. Is that so?—A. You say it is significant?

Q. I say it may be?—A. It might be.

Q. When did you begin to lose confidence in Mr. Barnes?—A. I would  
40 say particularly in the spring of 1927.

Q. What?—A. Particularly in the spring of '27.

Q. Well, beginning about when—when you got down there or before?  
—A. I couldn't say—of course, we hadn't discovered before this that he wasn't a mining—an underground man. His time had been all put in largely in mills.

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*Q.* When had you discovered that?—*A.* A year or two before that when Mr. Langer came down there he wanted to discharge him and get somebody else.

*Q.* On which trip?—*A.* Oh, I wouldn't say it was just the day he was there, but about that time.

*Q.* On the first trip?—*A.* No, he criticized him——

*Q.* I want to know definitely?—*A.* Well, it was just about the time negotiations were on, Mr. Farris, in the fall.

*Q.* Of 1926?—*A.* I beg your pardon?

*Q.* 1927?—*A.* 1926. 10

*Q.* 1926?—*A.* Yes.

*Q.* In the fall of 1926 you say Mr. Langer wanted to fire Mr. Barnes?—*A.* Yes.

*Q.* Well, I would have thought anything that Mr. Langer said would have pretty near gone about that time?—*A.* Well, he discussed firing him and he wanted——

*Q.* Was that the time——

Mr. DAVIS: Let him answer. Please let him answer?—*A.* We pointed out to Mr. Langer that he was recommended to us as a very high class mill man, and that since we were only going to drive that 800 feet tunnel it was not a serious thing, and Mr. Barnes could do it as well as anybody else, and then we would have him on hand next spring to take charge of any milling operations; so Mr. Langer agreed to that. 20

Mr. FARRIS: *Q.* Well, then later on then you turned around and put him at underground work?—*A.* No, we put him at underground work right then.

*Q.* Right then?—*A.* At that time.

*Q.* And you kept him at that until he left next summer?—*A.* There was only that one tunnel to drive, that is the one I am speaking of.

*Q.* In the Evans or the Alamo?—*A.* In the Evans. 30

*Q.* No particular tunnels in the Alamo?—*A.* No, you see, he only cleaned that out, Mr. Farris.

*Q.* But wasn't that underground work?—*A.* No—well, it is not the same class of work.

*Q.* It is not the same class of work, and yet he had been spending time on the Alamo working and cleaning it out, how long?—*A.* Well, several weeks, I couldn't say just how long.

*Q.* Well, when was it you say that Langer called him a dirty swine?—*A.* He called him that so many times I couldn't tell you.

*Q.* Well, when did he begin calling him that?—*A.* The first time he called him that was when he found the salary that he was getting, that would be the fall of 1926. 40

*Q.* That would be in the fall of 1926?—*A.* Yes.

*Q.* What objection had he for the salary?—*A.* He thought it was too much for the work he was doing, considering he was getting some stock.

*Q.* Getting some stock, and he well knew how much stock Mr. Barnes was getting?—*A.* Yes.

Q. And knew that he got it for nothing?—A. Absolutely, that was all discussed in Mr. Baird's office.

Q. And you say that he—

Mr. DAVIS: Q. When Mr. Langer was there?—A. When Mr. Langer was there, yes.

Mr. FARRIS: Q. You say that in the fall of 1926 Mr. Langer was referring to Barnes as a dirty swine?—A. He was.

Q. And Langer was from that time on putting up all the money that financed this mine?—A. Yes.

10 Q. Yes, and Barnes continued in the employment of the Company until the summer of 1927?—A. Yes.

Q. And then—A. Mr. Langer looked at that—said that he could make so many feet a day on that tunnel. Mr. Barnes was instructed that unless he got so many feet a day done on that tunnel he could expect to have some trouble on his hands.

Q. And when he did leave in August of 1927, nearly a year afterwards, Mr. Langer was in the Old Country?—A. In the Old Country or on his way back, I don't know just where he was.

20 Q. Yes, he was out of this country anyway. And had Mr. Langer been down to the mine—how many times in the meantime?—A. I think he had been down there three times altogether.

Q. Yes?

Mr. DAVIS: What does "altogether" mean?

Mr. FARRIS: I beg your pardon?

Mr. DAVIS: What does "altogether" mean?

Mr. FARRIS: I mean—

Mr. DAVIS: You said "in the meantime," and he said "altogether."

30 Mr. FARRIS: I mean from the time he started to call Mr. Barnes a dirty swine until he went to the Old Country, how many times had he been down there?—A. Well, Mr. Barnes—Mr. Langer had been down three times, and I can't just fix when he started, but I mean that taking up to that date—he was down first in September, 1926, and he was down early in November in 1926, and he was down again in November, 1927.

Mr. DAVIS: Q. So "altogether" means "all the time"?—A. On these occasions.

Mr. FARRIS: Q. Now, I see in this Exhibit 22, which is an interview that was obtained out of your office, in February of 1927 this statement is made about this man Barnes:

40 "Dave Barnes, one of the best known gold operators on this part of the Coast, is in charge of the practical end."

A. That is in 1926?

Q. That is in February, 1927?—A. Yes.

Mr. DAVIS: What letter is that?

THE WITNESS: That is not a letter at all.

Mr. FARRIS: That is the interview.

THE WITNESS: That is his interview in the paper.

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Mr. FARRIS : It emanated from McTavish Brothers' office.

Mr. DAVIS : Oh, yes, that is in '27, yes, that is right.

Mr. FARRIS : *Q.* Now, I refer to your discovery, which was last May, question 331.

*“ Q.* Barnes was the first manager of the mine and he stayed there until about August, 1927?—*A.* Yes.

*Q.* And why did he leave?—*A.* You will have to ask him.

*Q.* You don't know?—*A.* No.

*Q.* And Fellows took his place?—*A.* Yes.”

Are those answers correct?—*A.* They are correct. 10

*Q.* You don't know why he left?—*A.* I beg your pardon?

*Q.* You don't know why he was leaving?—*A.* He never told me why he was leaving. He had been telling everybody he was going—told me that he was going to leave. When I asked him if he was serious about it he said if he could get a holiday it would be all right.

*Q.* Now, it would be interesting to compare that with your letter of August 13th, 1927. This is in as Exhibit 24, the letter of August 13th, 1927, written to Langer in the Old Country by yourself?—*A.* Yes.

*Q.* Now, then, having heard that story, let us read :

“ When I reach camp I heard some intimation to the effect that Mr. Barnes had expressed dissatisfaction. I excused him on the ground that since his operation last spring he had been anything but well. However, knowing your feelings in the matter I made up my mind that if he gave me an opportunity there was only one thing that I would do. After being there for some days I asked him if he was sincere in his statements he had made regarding his desire to get away. He said he was. I presume he expected that I would try to persuade him to stay on, but, I simply informed him that if a man had gotten himself into that frame of mind then of course there was no use arguing with him and asked him when he would be prepared to leave. He then said that he did not wish to leave us in the lurch and that if he got reasonable holidays it might be all right.” 20 30

*A.* Yes.

*Q.* “ However, I paid no attention to this remark and told him he did not need to worry about that as I had already spoken to Mr. Fellows and arranged with him to carry on until you returned. Mr. Barnes then suggested that he would carry on until the 15th, so by the time you receive this letter the work will be going on under new management.”

Now, Mr. Barnes tells us that at that time and prior to that time he had been advising you that the mine was no good?—*A.* Which mine? 40

*Q.* The Alamo?—*A.* He never did.

*Q.* And that he wanted to get away from there because he felt that his time was wasted?—*A.* That is absolutely false. He came up here in August saying what a fine property the Alamo was with that big vein, the Evans cut right across it. He was in no position, Mr. Farris, to give an

opinion on the Alamo, he had never been into the tunnels and he had never taken a sample.

Q. Now, there is a letter that you wrote on the 4th of November, 1927—a letter to Fellows?

Mr. FARRIS: I suppose Mr. St. John will have that. Will you let me have that, Mr. St. John?

Mr. ST. JOHN: Yes, what is the date of it?

Mr. FARRIS: It is a letter of November 7th, 1927. First, I want November 4th letter from McTavish Brothers to Fellows.

10 Mr. ST. JOHN: I have a copy here. I suppose Mr. Fellows has the original. (*Producing document.*)

Mr. FARRIS: Q. This apparently was written by you, Mr. McTavish. (*Handing document to witness.*) A. Apparently.

Mr. FARRIS: I tender this as an exhibit. (*Document marked Exhibit No. 101.*)

Mr. FARRIS: (*Reading letter.*)

Q. Is that what he had always thought about the glory hole?—A. No, it is not.

Q. You don't seem to dispute it, in his letter?—A. What he said—  
20 he said, he came into the office and said it just confirmed what he had always thought.

Q. "I wish you would give this very serious thought and let us know what you honestly think about it. We have not heard anything from my brother since he left here excepting that he got to Arlington the second night. I trust the weather held out until after he got those people out of the country and that his people were all properly satisfied with the Evans.

Very truly yours,

McTavish Brothers, per D. N."

That is yours. Now, was your brother down there at that time?—A. No,  
30 he was down there immediately after I was there.

Q. But on this date, November 4th, where would he be?—A. I couldn't tell you—he would be on his road, somewhere on his way.

Q. On his way from what—on his way back?—A. Well, I couldn't tell you that.

Q. Well, the answer comes to this, you were telling Mr. Barnes all the way that it was very unfortunate these samples turned out, and it was hard to do anything with Mr. Langer.

Now, on the 7th another answer comes from Mr. Fellows. He had just apparently got your letter of the 4th. (*Handing document to witness.*)?—  
40 A. That is Mr. Fellows' letter?

Q. Yes. I can read it from my copy:

"Granite, Oregon, November 7."

(*Reading letter.*)

Now, apparently he had just left there—your brother?—A. Apparently.



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Q. So that your brother would be there when this letter came in on the 4th—or written on the 4th?—A. He had just left. (*Document marked Exhibit No. 102.*)

Q. (*Continuing reading of letter.*) Of course, it was expected that the money would come from Mr. Langer?—A. Yes.

Q. Now, this letter I think is in. This is a telegram of November 15th from Fellows to McTavish Brothers—November 15th. First we had this letter from you to him on the 4th, it gets there when your brother is down there; then his letter back on the 7th, saying he had found some good looking cores. Now, on the 15th this wire comes. (*Reading.*) On the same date he writes you a letter—I don't know whether that letter is in or not. 10

Mr. FARRIS: November 15th, is that letter in, Mr. St. John?

Mr. ST. JOHN: I think that is in, Mr. Farris, yes.

Mr. FARRIS: Then I want to read this letter:

“The situation here has been rather hard to handle due to the fact the mine looks so blue, but breaking in to that 5 feet of quartz in the lower tunnel at Ruby Creek and getting in to the ore at Alamo has put a different light on the subject. A miner's mind runs along about like this, when pay day fails to come the 10th and the mine shows no ore he feels that the whole thing is about to blow up which has been the case a good many times in this very district and he can see his money going up in smoke, so they get together in the bunk house, and say nothing here and we are going to hold the sack. But get in to quartz changes them and they see a chance of the property making good. 20

I believe I can keep them satisfied until Saturday the 19th.”

This was written on the 15th of November, the day before you made the contract with Langer.

“— and surely by that time you will have the money here.

The ore in the Alamo looks very good, I am sending out 10 samples from the lower and upper tunnel and two samples from the 5 feet of quartz at Ruby Creek. 30

Mr. Davidson wants to take his car out in the morning so will let him take the sample to the assayer.”

These are the samples that on the 21st you got the wire that they assayed nothing. That is right, is it not?—A. I presume so.

Mr. ST. JOHN: I put in the telegram this morning.

THE COURT: The telegram is in.

Mr. ST. JOHN: It went in as 72 this morning. We held it out and kept a number for it. 40

THE COURT: This letter of November 15th is Exhibit 103. (*Document marked Exhibit No. 103.*)

Mr. WALKEM: What about the telegram?

Mr. ST. JOHN: Yes, Exhibit 72.

Mr. FARRIS: Well, the letter is in now.

Mr. ST. JOHN : Yes.

Mr. FARRIS : And the next one I am putting in is November 16th. This is a telegram that didn't go in. This is the same day that he got Langer into this agreement—from Sumpter, Oregon.

THE COURT : This is another telegram.

Mr. FARRIS : Yes, my lord, the following day, the 16th :

“ Total width 10 feet—(*Reading telegram.*) (*Document marked Exhibit No. 104.*)

Q. Now, on the 17th you wrote to—no, just a minute. On the 18th you wrote to Fellows. That one was on the 16th—the telegram on the 16th, and on the 18th—

THE COURT : Mr. Farris, the deal was put through on the 16th and 17th.

Mr. FARRIS : Yes, my lord, the telegram came in just before the deal of the 16th. Now, on the 18th you wrote to Fellows. I would like that letter, Mr. St. John. (*Document produced by Mr. St. John.*)

Q. (*Handing document to witness.*)—A. Yes. (*Document marked Exhibit No. 105.*)

Mr. FARRIS : “ Dear Mr. Fellows.” (*Reading letter.*)

Q. Now, then, coming back to that paragraph : “ Your telegrams were rather providential as they came at a time when the information was a real help at this end.” And it was a real help, Mr. McTavish?—A. Just in the middle of these negotiations.

Q. I say—A. You are suggesting that Mr. Fellows knew something. Mr. Fellows had absolutely no knowledge that we were dealing with Mr. Langer or anyone at all.

Q. I made no suggestions?—A. You were, that is my inference, reading it.

THE COURT : Well, then, it is in the air, that is all.

Mr. DAVIS : The tone of voice is a suggestion.

THE COURT : Yes, and the way he looked at him.

Mr. FARRIS : I will have to have something done with my tone of voice. I hope the jury won't—

Mr. DAVIS : An operation on the tonsils, like Barnes.

THE COURT : He has answered the question, that it providentially came just when the deal was on, he answered you, and it helped the deal.

THE WITNESS : Yes, there is no question.

THE COURT : In the transaction.

THE WITNESS : Yes, it came in just at that time.

Mr. FARRIS : Q. Yes, just got up there at the psychological moment?—  
40 A. Well, he happened to hit that ore just at that time and he wired us, but he had no knowledge that we had the deal on with Mr. Langer for our stock.

Q. Then, on the 19th, the day after, instead of wiring you as he told you he would—this would be Saturday, he writes you : “ Gentlemen, please find assay certificate.” (*Reading letter.*) Then, on the 21st comes a telegram—

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Mr. FARRIS : Are these in? If they are not in, I want them put in.

Mr. DAVIS : They are in, I think.

Mr. FARRIS : "Ore body met in Ruby Creek tunnel." (*Reading telegram.*) And a second telegram on the same date—"I have Number 2 tunnel cleaned out." That was rather sad, owing to the glowing reports on the 16th, Mr. McTavish. Did you tell Mr. Kerr that Barnes had stolen the radio?—A. Did I tell Mr. Kerr?

Q. Yes?—A. I may have. I wouldn't tell him he had stolen it. I told him he had sold it.

Q. Well, you might have inferred that he had sold it illegally and put the money in his own pocket, didn't you?—A. He didn't get paid for it. 10

Q. I say you meant Mr. Kerr to infer——A. Absolutely.

Q. That Barnes had sold the thing?—A. And intended to put the money——

Q. Intended to keep the money?—A. Absolutely.

Q. In other words, whether he had sold it or not, that he intended to sell it?—A. That was his intention, yes.

Q. That is what you wanted him to understand.

Mr. DAVIS : Q. The money being got from Barnes?—A. I beg your pardon? 20

Q. The money being got by Barnes?—A. Naturally.

Q. Yes?—A. I got there before payday and stopped him paying the money over to him.

Mr. FARRIS : There was an exhibit put in, the number I don't remember. We had quite an argument over it, my friend Mr. Davis had a collection of letters from Barnes. Mr. Barnes was in the box, and I think my friend will pardon me—I want to recall the jury's mind, and your lordship to that incident, because we have had several days go by. Mr. Barnes was in the box Mr. Davis was cross-examining Mr. Barnes about whether or not during the summer months or Spring of 1927 he sent any reports up here about this mine being no good, and your lordship will recall that Mr. Barnes explained that Mr. McTavish came down there in June and that no reports went after that; but Mr. Davis pursued this rather strongly and then produced a group of letters which purported to be all the letters between Barnes and the McTavish Brothers, and after some dickering back and forth, and considering it at lunch time, these letters were put in as one group to show the letters that had passed between Barnes and McTavish Brothers. Now I intend to prove that. 30

THE COURT : I think the way it came out was that Mr. Davis said you might look over them, he did not want to encumber the record.

Mr. FARRIS : Yes, I would look at them and then Mr. Davis might agree, that is right. That is the point that he was confronting Mr. Barnes with, that he hadn't sent any letters from the mine, that was the express statement. 40

THE COURT : Well, the idea that was in the air was that this important vein had been opened and he hadn't reported it.

Mr. FARRIS : He hadn't reported it.

THE COURT : Yes, the condition of the mine.

Mr. FARRIS : And these letters were——

THE COURT : The idea was that he did not adopt this system that he had been told.

Mr. FARRIS : That was the situation.

Q. Now, will you take the file, Mr. McTavish. (*Handing document to witness.*) Had you anything to do with that file before. Do you know anything about it?—A. I have seen it occasionally.

Q. Yes, well who assembled it and brought it here?—A. I don't know, I didn't.

10 Q. Well, who had anything to do with it?—A. I presume my brother would, I didn't use it.

Q. Well, is that right, because I don't want to waste time if it is? —A. I had nothing to do with it. I had nothing to do with bringing it here.

Mr. DAVIS : Yes, it was P. D. McTavish.

Mr. FARRIS : So if I leave that to him it will come up?

Mr. DAVIS : Yes.

Mr. FARRIS : He will be the man to bring it here, that will save time on that. In the meantime we will leave it to your brother to say what it is.

THE COURT : Note the Exhibit and leave it for reference.

20 Mr. FARRIS : I think it was put in after lunch.

THE COURT : Oh, yes, the numbers were given.

Mr. FARRIS : Yes, my recollection is I was late getting back, and my recollection is my friend Mr. Walkem put it in.

Mr. WALKEM : Yes.

Mr. FARRIS : It is lumped together—all these documents are filed together in one Exhibit.

Q. You had another engineer go down there, Mr. McTavish, and look over this mine as soon as this lawsuit started, didn't you?—A. No.

Q. A man by the name of Arnold?—A. No.

30 Q. Well?—A. Mr. Arnold went down to check up Mr. Langer's engineers, that was all, not to look over the property.

Q. Well, who is Mr. Arnold?—A. He is a son of the late W. R. Arnold, a brother of Charles Arnold, Solicitor—nephew.

Q. Well, is he an engineer?—A. No.

Q. Well, how did you come to select him and send him down there? —A. We called up a qualified engineer and he recommended this man and he came over and said that he was a fully qualified engineer. We found out later that he was not.

40 Q. You seem to be unfortunate in having these ——?—A. Well, it is unfortunate.

Q. Anyway you engaged Mr. Arnold to go down with these gentlemen that were called here some time ago—what were their names?—A. Hall and Baker.

Q. Hall and Baker?—A. Yes.

Q. Not to watch the mine, but to watch Hall and Baker, was that the idea?—A. That was the idea, yes.

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mination—  
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Q. And what was the matter, didn't he watch them all right?

—A. Didn't he watch them all right?

Q. Yes?—A. I presume he did; I wasn't there, I presume he did.

Q. Did you have any complaints about the way he watched them?

—A. No.

Q. As far as you know he did his duty properly, did he?—A. I wouldn't say that.

Q. Well, what was the trouble with him, that is what I am trying to find out?—A. He wasn't any use after he got back here because he wasn't a qualified engineer. 10

Q. Well, how did he need to be a qualified engineer in order to watch these two fellows?—A. His evidence wouldn't be any good.

Q. What is that?—A. His evidence wouldn't be any good.

Q. Why not?—A. Because he is not a qualified engineer.

Q. Well, was there anything about his evidence that wasn't satisfactory?

—A. No, he was sent down there to watch these men taking samples and get a line on each sample that was taken, and he apparently did that.

Q. And he got that done?—A. Yes.

Q. Now the man wouldn't have to have a certificate from an engineering association to do that, would he?—A. No. 20

Q. No. He got the samples and he turned them in to you, did he?  
—A. Yes.

Q. And you had them assayed?—A. No.

Q. Didn't you?—A. No.

Q. Didn't bother assaying them?—A. Didn't bother assaying them.

Q. Never assayed them?—A. No.

Q. You were not interested in them then?—A. We were not.

Q. And then he wanted to be paid for his services?—A. Yes.

Q. And you wouldn't pay him?—A. We did pay him.

Q. Well, but he sued you?—A. Yes. 30

Q. He sued you?—A. Yes. Mr. Farris, that boy, he was at that time 22 years of age and unqualified, and he put in a bill for over \$1,000.00 for that trip. Now do you think there is any sense in that. We arranged with him to pay him \$50.00 for the trip and \$12.50 a day for his time when down, and he paid that plus his expenses. We never questioned his expenses, a bill which has been tremendously padded. Do you think he was worth \$1,000.00 to go down there and do that, him or anybody else —

Mr. DAVIS : It is more than \$1,000.00.

THE COURT : Well, lawyers might make it more than that.

Mr. FARRIS : I never sued a man in my life. 40

THE WITNESS : We paid him exactly what we agreed to pay him, which was a very large amount.

THE COURT : Q. Well, that is enough, I think. You paid him \$50.00?  
—A. We paid him—paid the costs, away over \$500.00, to send that boy down there, and the expenses.

Q. You paid him that?—A. We paid him what we agreed to pay him—more than that.

Q. Did he go to court over it?—A. I beg your pardon?

Q. Did he go to court over it?—A. He has gone to court with ———

Q. Oh, it is still pending?—A. He has some claim in there for \$600.00.

THE COURT: Oh, it is still on.

Mr. FARRIS: That has come up since—I heard about it since the adjournment.

THE COURT: Well, he has got another lawsuit on his hands.

Mr. FARRIS: You can understand that when we find this man sending an engineer down there and he is suing him, that I am curious about it.

10 THE COURT: You want to know why he did not produce him.

Mr. FARRIS: Well, the thing becomes a kind of introduction point.

Mr. DAVIS: To point certain suspicions at.

Mr. FARRIS: No, I am just curious. I could imagine the tone of curiosity that there would be in my friend's voice if the question was asked about it.

Q. Now, we want to pass on to another subject, Mr. McTavish, that is the annulment of this contract—alleged annulment. Mr. Langer says that after you got word that there was nothing in this mine, that the assays were no good, that he came over to your office and had a talk with you and  
20 your brother, and that the understanding then was that you expressed regret that you had spent his \$5,000.00, that as far as the deal was concerned it was off?—A. That is not right.

Q. Now you say that there never was such a subject even mentioned?  
—A. I said that the contract—that the contract was never mentioned at that conference.

Q. Contract was never mentioned?—A. Absolutely, it was not ———

Q. Well, if the contract was not mentioned, the suggestion of calling it off was never mentioned?—A. No, it was not discussed at all.

Q. Never discussed at all?—A. Yes, certainly, we were talking seriously  
30 about the other—about the carrying on of the properties, and he never paid off these bills that he was under contract to pay. Now then we were told by Mr. Kerr that some ten days or so—I am not clear whether it was ten days or two weeks—anyway some little time after this conversation on or about the 21st November, that he went to your office and reported, I think, to your brother, that he had been sent over to get this contract and these notes that your firm had agreed with Mr. Langer to give him back, or did you hear about that visit?—A. I heard about it, yes.

Q. And was it told to you by your brother that this fellow Kerr was suggesting that Langer was to get back this note?—A. Yes.

40 Q. And the agreement?—A. Yes.

Q. Yes, so that was the first you heard of it?—A. The first I heard of it.

Q. Yes, and Mr. Kerr says that Peter said at that time, "Well, that is not quite right, he is only to get it back in case McGuigan can't make good on his reports." Now, did Peter report that to you?—A. He certainly did not.

Q. He certainly did not?—A. If he did he is ———

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Evidence.

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Donald N.  
McTavish.  
Cross-exa-  
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Cross-exa-  
mination—  
*continued.*

Q. You never heard of such a suggestion as that?—A. That suggestion was never made by me or by anybody—

Q. I say did you ever hear of it?—A. Nor by anybody in my presence.

Q. Did you ever hear of it, from any quarter until the suit started?—A. Never heard of it until Mr. Langer invented it and told it here.

Q. You may see it is not Mr. Langer who invented it, but it is evident to me Mr. Kerr invented it, according to you?—A. He has got to say what Mr. Langer tells him, according to what he said here.

Q. Now it was about that time—about the very time that Mr. Langer was getting this—or allegedly getting this information from your brother, that your firm was frantically communicating with Mr. McGuigan to see if he could go down to the mine?—A. Do you say frantically? 10

Q. Yes, frantically. You don't like that word. I will take that back, then, we will take that without the emphasis on it—was communicating with Mr. McGuigan?—A. We certainly were, yes.

Q. Yes. Now, we have some very interesting letters between your company and Mr. Langer, Mr. McTavish?—A. And Mr. Langer?

Q. Yes, and Mr. Langer?—A. Yes.

Q. We have a letter of December 8th, 1927, written by Mr. Langer to Mr. McTavish. 20

Mr. FARRIS : Will you produce that letter, Mr. St. John.

Mr. ST. JOHN : I think it is in.

Mr. FARRIS : I beg your pardon. This letter is in, it is Exhibit 25.

Mr. FARRIS : Q. This letter is in. It is Exhibit 25. I want to direct your attention —

THE COURT : Exhibit what is that ?

Mr. FARRIS : Q. I want you to direct your attention that on the 8th of December—we have these dates, on the 21st of November you got the wire from Fellows that everything was no good, that you and Langer agreed that once that wire was received he was brought to your office and you had a conference; we are all agreed that some weeks or ten days afterwards Mr. Kerr came to your office and asked to get back the agreement and notes?—A. Yes. 30

Q. And intimated that was Mr. Langer's understanding of the arrangement with you?—A. Yes.

Q. And also we agree about this time you were writing or writing McGuigan to see if you could get him down to the mine along November and the 1st of December?—A. We were.

Q. Now, we find at the same time, December 8th, Mr. Langer writes this letter. I will not read it all, because it has been read :— 40

“As regards the recent shares transaction, which in view of the present situation you were good enough to say would be called off entirely if Mr. McGuigan could not substantiate his report, I would prefer to have that done now so that I may know definitely where I stand. It may be some considerable time before Mr. McGuigan can visit the mine, and the matter could be reviewed

then. In the meantime it will be obliging if you will return the letter of agreement and my note, and send me certificate for the shares equivalent to the \$5,000 paid you and I shall return you the certificates handed me in connection with the transaction."

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THE COURT: Read that all over again, so we will get it.

1) Mr. FARRIS: "As regards the recent shares transaction which, in view of the present situation, you were good enough to say would be called off entirely if Mr. McGuigan could not substantiate his report, I would prefer to have that done now so that I may know definitely where I stand. It may be some considerable time before Mr. McGuigan can visit the mine, and the matter could be reviewed then. In the meantime it will be obliging if you will return the letter of agreement and my note, and send me certificate for the shares equivalent to the \$5,000 paid you and I shall return you the certificates handed me in connection with the transaction.

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*continued.*

Yours truly,  
J. F. Langer."

THE COURT: That was his proposition at that time.

20 Mr. FARRIS: Q. Now, Mr. Kerr says this letter was written after he returned from his visit to your office and he was the one drafted the letter. This letter came to your office?—A. Yes.

Q. You saw it?—A. Yes.

Q. I suppose you are repudiating it?—A. Mr. Langer, what is it? Three weeks to get that letter out to us, pretty near that, but when the other contract was repudiated he was there early the next morning to get it.

Q. That is rather a clever argument, but it is not an answer to the question I asked you. I said, "I suppose you are repudiating it" and you come back with a counter attack against Mr. Langer?—A. I am not counter attacking at all. I am stating a fact.

30 Q. On the 8th of December, almost immediately, according to our information, after Mr. Kerr had seen your brother, you and your brother received this letter. I say again I suppose you are repudiating it?—A. Repudiating what?

Q. The suggestion that you agreed to give him back the agreement?—A. I don't only repudiate it, but I say it is false.

THE COURT: That is not an answer. What did you do in the way of countering the position made in that letter? What was the answer?—

A. It was my brother who was at the interview. I was not there.

THE COURT: Who is the letter addressed to?

40 Mr. FARRIS: McTavish Brothers, and it came to his attention.

Q. Did you and your brother talk it over? Why didn't you repudiate it? Let us go on. December the 12th, a letter from Miss Guselle, pointing out that you were away and then we go on to January 12th, 1928, and we



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*continued.*

come to Exhibit No. 27. This is a letter by P. D. McTavish. We will see what your brother has to say :—

“ We regret that owing to illness combined with Christmas holidays we have been absent from the Office almost continuously since receipt of your letter of December 8th, addressed to McTavish Brothers Limited. Hence delay in answering.”

Now, we have an answer to this, a letter of nearly two pages?—*A.* Yes.

*Q.* An acknowledgment and in answer to the letter of December 8th?—*A.* It is all acknowledged.

*Q.* Let me see if this is your letter?

Mr. ST. JOHN : This is from the Alamo Company, this letter?

Mr. FARRIS : Yes.

Mr. ST. JOHN : Yes.

Mr. FARRIS : *Q.* Is there any point in that before we go any further?—*A.* We were trying to get Mr.—

*Q.* Is there any point in the fact having written to McTavish Brothers Limited the answer comes from the Alamo Company? Is there any loop-hole in that suggestion?—*A.* There is no loop-hole. It was Mr. Langer's move. He was on the other end of the contract and wanted to get it back. I thought it would be his move to get it back.

THE COURT : *Q.* The sale was made by McTavish Brothers?—*A.* Yes.

Mr. FARRIS : *Q.* With the McTavish Brothers. Mr. Langer stated his understanding of what you agreed about giving back the shares in the letter, that is, on the 8th December, and a month and four days later, as Mr. St. John points out, a letter of the Alamo Company is sent by one of the McTavishes?—*A.* Yes.

*Q.* That is the first time that the McTavishes put their names to Langer in the name of the Alamo Company?—*A.* On any other occasion we could get in touch with him and have him talk to us. He would not come to us.

THE COURT : *Q.* Mr. Farris is trying to get you to express why you wrote in the Alamo Company's name. When a question is asked by counsel, give a responsive answer. Do not answer about something else that is not material. Don't you see the point?—*A.* Yes, just why it was written by the Alamo Company?

*Q.* Yes, instead of McTavish Brothers.—*A.* I think the letter, if you will read it, refers altogether to Alamo business.

Mr. FARRIS : *Q.* And every letter for a year that McTavish Brothers wrote, that had any dealings with Langer regarding the Alamo business, was written in the name of the McTavish Brothers?—*A.* That may be quite so.

THE COURT : Perhaps we may judge it better by reading the whole letter?—*A.* I did not write it at all. My brother wrote it.

Mr. FARRIS : *Q.* I have read the first paragraph :—

“ Answering your question regarding the purchase of mill and engine, we wish to say that the factory prices of the mill, feeder, and engine, amount to \$2855. To this was added \$645 being approxi-

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mately the amount paid for duty on the engine and for freight. This brings the total up to \$3500. It was arranged with you that the Banner Mining Company pay practically the original cost price for these things providing the purchase price was paid out of production—this in view of the fact that if the amount was paid in cash the price would naturally have to be reduced to that of second hand articles. Under the circumstances therefore, the money from this source is not available at this time for the purpose of meeting the Company's present pressing needs.

10 "Needless to say your letter is a distinct surprise to us in view of the fact that it constitutes a repudiation of your contract with the Alamo Gold Mines Limited. This action on your part as you know seriously embarrasses the company at this time in view of the probability of liens for past due wages and supplies being served on us and because of the fact that your contract makes it impossible for the company to finance elsewhere. We shall prepare and forward to you at once a statement of amount still due by you under your contract for work authorized by you up to November 22nd, being date you authorized us to stop work pending visit to the property

20 of Mr. McGuigan.

"The recent purchase of shares by you is a transaction between yourself on the one part and McTavish Brothers and their associates on the other, and we feel therefore must of necessity be kept separate and apart from the transaction between yourself and the Alamo Gold Mines Limited. Yours truly, Alamo Gold Mines Limited, per P. D. McTavish."

I suggest to you, Mr. McTavish, I make this suggestion, that the only reason in the world this letter was written by the Alamo Company instead of all your other letters dealing with the Alamo concern, was to give you

30 the opportunity to make that statement and to avoid the issue in the last paragraph?—A. You may make all the suggestions you like. It does not alter the facts.

Q. I am giving you the opportunity to explain it. I am telling you that when I am addressing the jury I propose to make that suggestion, and if there is any suggestion you can make otherwise, now is the time to do it.

THE COURT: Q. Do you appreciate that?—A. I don't.

Mr. FARRIS: I will put it again.

Q. On the 8th December a letter was written to McTavish Brothers, putting to you straight that you had agreed, that you, McTavish Brothers,

40 had agreed with him to call off the deal if the McGuigan report could not be substantiated. That was the 8th December, and on the 12th January a letter comes from another company, the Alamo Company. It is the first time in all this trial we have had a letter from you to Langer signed by the Alamo Company. All the Alamo business so far as you were concerned was written in the name of the McTavish Brothers?—A. Yes.

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McTavish.  
Cross-exa-  
mination—  
*continued.*

*Q.* I suggest to you that the reason you changed that for the first time is so that you can put in this paragraph :—

“ The recent purchase of shares by you is a transaction between yourself on the one part and McTavish Brothers and their associates on the other, and we feel therefore must of necessity be kept separate and apart from the transaction between yourself and the Alamo Gold Mines Limited ” ?

*A.* Quite true. He had our reply regarding that.

THE COURT : *Q.* Where is it ?—*A.* It was given to Mr. Kerr.

Mr. FARRIS : *Q.* And after Mr. Kerr had got his reply from you and reported it to Langer, you got that letter of the 8th December ?—*A.* He was a long time sending it. 10

*Q.* And on the 8th December, having got the letter, you dodged the issue by that paragraph in your letter of the 12th January ?—*A.* We are not dodging anything.

*Q.* Now, two days after we get a letter from Mr. Langer by McTavish Brothers, to Langer from McTavish Brothers. That letter is not in, is it ?

THE REGISTRAR : What is the date ?

Mr. FARRIS : January 14th.

Mr. DAVIS : I think it is in. 20

Mr. ST. JOHN : Yes, it is Exhibit 75.

Mr. FARRIS : *Q.* “ You will recall that under agreement dated June 17th we agreed to accept this lot——” This is re Lot 5, Block 351, D.L. 526. “ ——we agree to accept this Lot as part payment for certain shares of Alamo Gold Mines Limited delivered to you. We have a probable deal pending for this lot at the present time and would therefore respectfully request that you execute deed in our favour under the terms of said agreement of June 17th. Thanking you for giving this matter your immediate attention, we remain, Very truly yours, McTavish Brothers Limited, 30

per P. D. McTavish.”

At a later date you got that deed ?—*A.* Yes.

*Q.* We have it chronologically. He wrote you on December 8th telling you what he understood the promise was, and on January 12th he writes a letter from the Alamo Company sidestepping on the ground that it is between McTavish Brothers and him ?—*A.* Sidestepping nothing.

*Q.* And two days later he writes this letter ?

THE COURT : You can read those two letters together.

Mr. FARRIS : *Q.* They are in the name of McTavish Brothers and you do not make any reference there to December 8th. You write him to get the deed for the June 17th transaction ?—*A.* That is right. 40

*Q.* Then you go along to January 23rd, and you write Exhibit 76 :—

“ In negotiating for sale of lot on Granville Street, we find ourselves at a disadvantage endeavouring to dispose of a single lot, as most parties require greater frontage. We therefore respectfully

request that you let us have deed to lots 3 and 4, B. 351, D.L. 526, purchased from you under terms of agreement of November 17th last. An early compliance will greatly oblige. Yours truly, McTavish Brothers Limited, per P. D. McTavish."

So we find on January 23rd you were back to the old agreement without the least reference to that letter of January 7th or 8th?—A. Yes.

Q. In the meantime, it became quite clear that Mr. McGuigan, for the time being at any rate, was not going down to the mine?—A. He could not get down, and could not see the mine if he did.

10 Q. It became quite clear for the time being that he was not going down?—A. Yes.

Q. Had you known at that time he was a scissors-grinder?—A. Yes.

Q. When had you known that first?—A. He runs a small machine shop and does all sorts of odd jobs.

Q. When did you find that out?—A. I think I found that out in Mr. Langer's house when he was down there.

Q. You are suggesting that you told that to Mr. Langer?—A. No, I never used the expression. He never used the expression.

Q. What expression did he use?—A. I could not tell you.

20 THE COURT: Q. Grinder of scissors? Well, he did go down after that? Mr. FARRIS: No, he never went down.

A. He never got down, my lord.

Q. You never asked him to go down again?—A. Those letters show that we asked him to go quite frequently.

Q. I understand then that it is clear that during this period, November and December, the time Mr. Langer suggests you were to give this back, and McGuigan, you were importuning Mr. McGuigan to go down. Now, I ask after that did you ever ask Mr. McGuigan to go down?—A. No.

Q. Although you brought him down here for this trial?—A. Yes.

30 Q. Now, then, there is two letters of February 17th. One of them was put in as Exhibit 77, and the other was not put in. I think that we had better have both of them put in. Mr. St. John, will you let me have the other one?

Mr. ST. JOHN: What is that?

Mr. FARRIS: February 17th there are two letters. One is Exhibit 77 and the other did not go in. The one that did not go in was the Alamo Company to Langer.

Mr. DAVIS: I think you will find all those are in. What is the date?

40 Mr. FARRIS: The important one of the 17th February, the Alamo to Langer. One is in and the other is not. The McTavish Brothers' letter is in, and the Alamo letter is not in.

Q. I will read the McTavish letter, which is Exhibit 77:

"On the 23rd of January we wrote you regarding deed to be delivered to us in accordance with our agreement with you. While Mr. Kerr has telephoned us with regard to this matter we have not yet received the deed. We have allowed the matter to drift because

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Cross-exa-  
mination—  
*continued.*

the writer's brother has been absent from the city and he himself has been prevented putting in much time at the office owing to illness. We are now requiring the deed and would therefore respectfully request that you arrange to have it delivered forthwith."

And on the 20th February, 1928, Mr. Langer writes as follows :

" I am in receipt of your letter of the 17th inst. Needless to say, I am surprised at its contents in view of the fact that you had already called the deal off until such time as Mr. McGuigan could substantiate his report. I have also been waiting for you to call, as promised several times after receipt of your first letter, but for some reason best known to yourselves you have avoided doing so. In view of the cancellation of the agreement, and of the reports of your own engineer that the veins were barren as shown by the assays which he took, and being absolutely satisfied that the property was misrepresented I took advantage of an opportunity, some time prior to the receipt of your first letter, to sell the two lots. Mr. McGuigan had had plenty of time to make his visit to the property but apparently is disinclined to do so—he has not been there even yet. Yours truly, J. F. Langer."

A. That statement is quite untrue. 20

THE COURT : Is that letter in yet ?

Mr. FARRIS : Yes, it is Exhibit 78.

Mr. DAVIS : You say there is this other one of February 17th ?

Mr. ST. JOHN : I cannot find that.

Mr. DAVIS : Read it into the notes. We are content that you should.

Mr. FARRIS : It is very short. Do you want it in ? I don't want to leave it out, because it might be suggested that it be from the Alamo Company.

" We wrote you on January 23rd enclosing statement showing amount still due for work authorized by you under agreement with this Company. Our accounts are pressing and we request a cheque at once. We have not yet received your remittance and must respectfully urge upon you the necessity of having the matter cleared up at an early date, as our creditors are naturally getting anxious. Yours truly, Alamo Gold Mines Limited, per P. D. McTavish."

The next letter I want to put in is February 29th, McTavish Brothers to Langer.

THE COURT : There must be two letters for that date ?

Mr. DAVIS : The 29th February.

Mr. FARRIS : A letter from P. D. McTavish for McTavish Brothers. 40

Mr. ST. JOHN : Here it is. I have a copy of it. Haven't you got the original ?

Mr. FARRIS : We are just looking for it.

Mr. ST. JOHN : It must be in.

Mr. WALKER : Here it is, February 29th.

Mr. FARRIS : Yes, this is the letter, February 29th, 1928, is a letter from McTavish Brothers, per P. D. McTavish.

10       “ Owing to the writer’s continued indisposition and the fact that his brother has been absent from the city, your letter of February 20th still remains unanswered, but it shall receive our prompt attention upon the return of our Mr. D. N. McTavish to the city. Meanwhile we beg to remind you that in accordance with terms of your agreement of November 17th last you are to give us a note for \$10,000 at three months covering payment due June 1st next. We accordingly enclose note herewith and would respectfully request that you sign and send to us by return mail. Thanking you for giving this matter your prompt attention, we remain, Very truly yours, McTavish Brothers Limited, per P. D. McTavish.”

And the form of note is attached?—A. That is all right. (*Letter referred to marked Exhibit 106.*)

20       Q. In reply to that, on the 26th March you got a lawyer’s letter. I point out Mr McTavish, that from the 8th December, 1927, until and inclusive of the 29th February, while by inference I see in the two last letters you are harkening back to the agreement of November 17th, in not a single one of these letters have you explicitly repudiated Mr. Langer’s suggestion that he had an agreement with you and that you had called off that deal?

Mr. ST. JOHN : I do not think that is a fair statement of the facts. The letters show themselves. They call on him to carry out the contract.

Mr. FARRIS : I quite agree.

THE COURT : Mr. Farris, what will you find in the letter excepting the inference to be drawn from the letter? You do not know.

30       Mr. FARRIS : Q. I point out that although in the last two letters you want him to pay up on the agreement of November 17th, in not one of these letters written by the Alamo Company or the McTavish Brothers is there a single word that you repudiate the suggestions in the letter of December 8th.—A. Not in those letters. It was repudiated to Mr. Kerr.

Q. And the point is, Mr. McTavish, that I want to impress on you that it was after you say you repudiated to Mr. Kerr that that letter of December 8th was written, and when you got that letter you knew Mr. Kerr had not correctly reported you, or Mr. Langer was deliberately ignoring that refutation?—A. I don’t just get your question?

Q. You told me the reason you did not write repudiating it was that you had repudiated verbally to Mr. Kerr?—A. Yes.

40       Q. I now point out to you that this letter of December 8th was written after Mr. Kerr had seen you?—A. Yes.

Q. And when you got his letter of December 8th clearly stating that he understood his agreement to be that if McGuigan’s report did not stand up that the deal was off, that you then knew either one of two things, that Kerr had not correctly reported what you had repudiated, or that Langer was

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deliberately ignoring it and trying to get himself on record?—*A.* Yes, he was trying to treat that agreement as a scrap of paper.

*Q.* And from that day to this, until you issued your writ, you never wrote and told him?—*A.* We were trying all the time to get him to come in the office to pay up the bill he agreed to pay.

*Q.* You were trying to get a little more out of him?—*A.* He told the people down there that he would pay all the bills, to rush the work, on November 1st. He never paid any of them yet. He was keeping away from us because we were wanting him to discuss the question intelligently.

*Q.* Unfortunately, the only letter of that kind on record is that you were keeping away from him?—*A.* Yes, written with a purpose, obviously. 10

*Q.* And you did not have the forethought to write him and correct him on that?—*A.* There was no use doing anything like that.

*Q.* Nothing like that occurred to you?—*A.* No.

*Q.* When this deal was made on November 17th you got a note from Mr. Langer. You got \$5,000 in cash?—*A.* Yes.

*Q.* And a note for \$10,000?—*A.* Yes.

*Q.* Payable how long after date?—*A.* Three months, about three months and one half months.

*Q.* With interest?—*A.* No interest until maturity. 20

*Q.* You discounted that note?—*A.* Yes.

*Q.* On what date?—*A.* I could not give you the date, but somewhere along about the 20th December, I think.

*Q.* That would be about 12 days after you got his letter of December 8th?—*A.* Yes.

*Q.* About 12 days after you discounted his note?—*A.* Yes.

*Q.* How much did you get for it?—*A.* \$9,000. We took that note to several people. One of them was Mr. George Harrison, who was manager of the Union Bank when he settled with him for 50 cents on the dollar, and he refused. Naturally we could not understand why the note was not 30 favourably received in different places.

*Q.* You did not know anything about that?—*A.* We never learned about it until afterwards, until here the other day. They just quietly said they would not handle it.

*Q.* You knew Mr. Langer was good?—*A.* How do you mean, good?

*Q.* Was good for that note, for \$10,000 in cash?—*A.* I presumed he was.

*Q.* That was the 12th; that was a month after the note was written, and it had only two months to go?—*A.* Only two months.

*Q.* You knew in less than two months. You told me that you cashed it about the 17th December?—*A.* Yes. 40

*Q.* That would be practically two months, or three days of grace, two months and three days that note had to go, and it called for \$10,000?—*A.* Yes, but in the meantime we had to pay up the bills that he repudiated.

*Q.* And you took \$9,000 for it?—*A.* Yes.

*Q.* How much did you have to use for that purpose?—*A.* Paid something in the neighbourhood of \$4,000.

Q. Do you mean to tell me at the ordinary bank rate you could not raise \$4,000 on that note?—A. No, we tried several banks and they would not touch it.

Q. For \$4,000?—A. We did not ask for \$4,000. They would not touch it at all.

Q. Who cashed it?—A. Mr. Tom.

Q. Give me the names of people who would not cash it? George Harrison was one?—A. Yes. The Bank of Toronto was another; and it was taken——

10 Q. Did you take it to the manager of the Bank of Toronto?—A. I did not take it. It was taken by our bookkeeper.

Q. Now there is just one other subject matter I want to go into with you. It is the question of the original deal between the Company and Code, the result of which 3,000,000 shares were paid to Code for this mine?—A. Yes.

Q. When was it decided that the total share capital of the Company would be turned over to Code for the mine?—A. Prior to the incorporation.

Q. Yes, and the incorporation was what date? Does the prospectus show that?

Mr. ST. JOHN : March 17th, 1925.

20 Mr. WALKEM : The certificate of incorporation is in the minute book.

Mr. FARRIS : March 17th.

Q. How long prior to the incorporation?—A. It could not have been very long, because the negotiations were pending.

Q. It was decided first that the capital would be \$3,000,000?—A. Yes.

Q. And all of the capital of this company would be turned over to Code for the Mine?—A. Yes.

Q. At the same time, it was decided that each of you, you and your brother, Thomas, and Barnes, would get 600,000 shares of this 3,000,000?—A. Yes.

30 Q. That was all arranged before the company was incorporated?—A. Yes.

Q. And as soon as it was incorporated you five became directors of the company?—A. Yes.

Q. And you five as directors then made the agreement with Code by which he was to get the 3,000,000 shares?—A. I presume so.

Q. And part of that deal was that each of you out of that 3,000,000 would receive 600,000 shares?—A. No, McTavish Brothers were to receive 1,300,000.

40 Q. But that was without any consideration, other than what you told us early in the afternoon?—A. Yes.

Q. When was it that was agreed, that half of these shares should be made available for the company?—A. When we discussed taking up the Evans' property.

Q. It was agreed that these shares would be put in the name of a trustee?—A. Yes.

Q. And that the shares would be sold and the proceeds go in the treasury of the Alamo Gold Mines Limited?—A. Yes.

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Cross-exa-  
mination—  
*continued.*



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McTavish.  
Cross-exa-  
mination—  
*continued.*

Q. To be applied by that Company in carrying on development and other work in the operation of this mine?—A. Yes.

Q. And that was entered into by an agreement of March, 1925. Was that put in?

Mr. WALKEM: I think it is.

Mr. ST. JOHN: Exhibit 5.

Mr. FARRIS: Q. What day in March was that agreement entered into, Mr. McTavish?—A. Let me see the agreement, please.

Q. That agreement was not entered into in March. Why wasn't it dated in March?—A. Isn't it dated at all?

Q. It is dated the blank day of March. It is drawn by Noble and St. John?—A. I don't know why that was, unless it was that the stenographer had been making all these papers in connection with this company out in March and put it on there. This was a subsequent agreement.

Q. All right. This agreement makes a provision by which these shares will be put in the name of the trustee, half of the capital of this Company to be put in the name of a trustee for the benefit of the Alamo Gold Mines Limited?—A. Yes.

Q. You say although it purports to be on a blank day of March, 1925, that it was not entered into until when?—A. Until we proceeded to take up the Alamo.

Mr. DAVIS: Q. The Alamo or the Evans?—A. The Evans, I should say.

Mr. FARRIS: Q. When was that?—A. That would be some time early in June.

Q. Now, we have an agreement by which that was done the 15th June. I wonder if that is it?

Mr. WALKEM: I think that date is agreed to.

Mr. FARRIS: It is common ground, the 15th of June is the date the agreement was entered into.

Q. How long before was it that negotiations were going on? I want to get some idea when it was done?—A. I could not tell; not very long.

Q. We have your examination for discovery if your memory is not good. I will have to go back to that to save time. If you can do it now it would be better?—A. I could not tell you how long the negotiations lasted.

Q. A month?—A. I would think so.

Q. A week?—A. More than that.

Q. Two weeks?—A. I could not say; probably more than that. I could not tell when the negotiations took place.

Q. Surely we can get the continuity of the thing. Who started the negotiations?—A. George Thomas, or Barnes.

Q. Who was he negotiating with?—A. He was negotiating with the Alamo Gold Mines at this end, and Evans at the other end.

Q. Evans was the owner then?—A. Yes.

Q. And Evans was right there where the Alamo Gold Mine is at Baker?—A. Yes.

Q. So the only negotiating was between you five directors and Evans?  
—A. Yes.

Q. And you or some of your men were down there on the ground?—  
A. Yes.

Q. It was a question of getting Evans' price?—A. Yes.

Q. And considering it and deciding whether to accept it or not?  
—A. Yes.

Q. Did you have an option beforehand, or did you just make a straight  
agreement?—A. I don't remember. I think Thomas had an option for a  
10 few days to enable him to put it before the Company.

Q. For how many days would you think that would be?—A. I could  
not tell you.

Q. What is the least time that the negotiations were on? Would you  
say a week?—A. No, I think it would take more than a week.

Q. What would you say the most would be, a month?—A. Yes,  
probably a month. I don't think it would take a month.

Q. We will get the two extremes. You say that it would be more than  
a week. What do you say the maximum would be, two weeks, three  
weeks, a month, anything you like? I give you all the latitude you want,  
20 as long as I get you somewhere within reason?—A. I cannot tell you how long  
it took. It was not very long.

Q. Would it possibly be a month?—A. It might have been.

Q. Possibly six weeks?—A. I would not say that.

Q. Possibly two months?—A. No, I don't think it would extend that  
long.

Q. It would not extend that long?—A. No.

Q. What is the longest you say it would extend?—A. I would not say.

Q. I suppose you did not decide on any other scheme until it was  
definitely decided you were going to take the Evans?—A. No.

Q. That would be pretty nearly the date of the agreement?—A. It  
30 would be very near the date of the agreement.

Q. Whether you were dickering back and forward with Evans for  
weeks or months it was not until you got the thing in definite shape to get  
going to take it that you made this new agreement?—A. Yes, it would  
be about that time.

Q. So if we have agreed that the definite agreement was made on  
the 15th June, then it was only a few days before that you decided on this  
"blow-back," if I can use that expression, on the part of these shares?

A. I presume so. The record is there and speaks for itself.

Q. What record is there?—A. Here is a record that says it was done  
40 in March. You have repudiated this record, and I am not trying to get  
another one.

THE COURT: It is not in the minute book?

Mr. WALKEM: No.

Mr. FARRIS: Q. We have another record showing on the 15th June  
you closed this deal with Evans?—A. Yes.

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mination—  
*continued.*

Q. Is that the record you are talking about?—A. The record I am talking about.

Q. Yes, you said the records will show? I want to know the records which will show this record in writing?—A. I could not tell you if it is not in the minutes. I have nothing to pick that date when we started negotiating.

Q. Will you agree with me you did not decide to turn back the shares until you were certain to take the Evans' property? I don't care which way you answer it, as long as you answer it?—A. Yes, that is the time—

THE COURT: He wants to know what depends on the other.

Mr. FARRIS: Q. That is what I want, if there is no other I want you to say?—A. We are dealing with two properties. We were dealing with the Black Jack and the Evans, and it had relation to those two deals. 10

Q. It is right, that it was not until you decided to take the Evans' property you decided to take back these shares?—A. I could not say definitely.

Q. Will you say that it was in connection with this deal?—A. No. I could not say whether we were dealing with the Black Jack or the Evans first.

Q. Which did come first?

Mr. WALKER: Q. The Black Jack was not taken over until December? —A. Later on. 20

Mr. FARRIS: Q. Does that help any?—A. No.

Q. If the Black Jack was not taken over until December did you postpone the consideration for the 300,000 shares operating until you took over the Black Jack?—A. Until I took over the Black Jack?

Q. Yes?—A. No, prior to that, although the Black Jack may have been discussed prior to that.

Q. Was it in connection with any mine whatever that you considered the question of turning back 300,000 shares apiece?—A. Yes.

Q. What mine?—A. Presumably the Evans. 30

Q. Did you decide to do it before you decided to take the Evans?—A. We had.

Q. What is that?—A. We would have to. We had no way of raising funds.

Q. Did you decide to turn back the 300,000 shares apiece as part of the scheme to acquire the Evans?—A. Acquiring the Evans was only part of the scheme.

Q. What was the other part?—A. To carry on the work on the Evans.

Q. Then did you decide to turn back the 300,000 shares as part of the scheme of acquiring and operating the Evans?—A. Yes. 40

Q. And it was not until you had decided to acquire and operate the Evans, that you decided to turn back the shares, is that right?—A. I do not understand you.

Q. Well, I do not know; I may be stupid?—A. Maybe I am.

Q. I am trying to make it as plain as I can. Would you mind reading the question. (*Reporter reads questions: "And it was not until you had*

decided to acquire and operate the Evans that you decided to turn back the shares, is that right?")?—A. Yes.

Q. That is definite, isn't it?—A. Yes.

Q. It has taken you a long time to get it so that it is definite?—A. Yes.

Q. Now, I want to refer to some documents.

THE COURT: You will not be able to get through, anyway. You will take some time?

Mr. FARRIS: I will be half an hour yet.

THE COURT: Now, there is a prospect of getting through in two days.

10 Mr. FARRIS: We were in hopes of finishing Friday. Have you other witnesses?

Mr. ST. JOHN: Fellows, and Mr. P. D. McTavish.

THE COURT: I am going to leave it to the jury whether we will sit Saturday or Monday. We are not going to get through tomorrow. Talk it over and I will see tomorrow as to whether it will be Saturday or Monday.

Mr. DAVIS: Monday perhaps would be better?

THE COURT: I do not know. However, you may think it over and decide tomorrow. We will adjourn until ten o'clock tomorrow.

(Court thereupon adjourned until December 28, 1928.)

20 December 28th, 1928.

(Court resumed pursuant to adjournment.)

Q. You told me yesterday, Mr. McTavish, that you can show by some envelopes in your office—

Mr. ST. JOHN: We have the envelopes here, and it might save time if I found them for you.

Mr. FARRIS: Will it take long to get them?

Mr. ST. JOHN: No. It might save some time.

RE-DIRECT EXAMINATION BY MR. ST. JOHN.

30 Q. With reference to the shares to your brother, was there any other consideration than that which you have mentioned?—A. Yes. Just after the War started, subsequent to the beginning of the War, he borrowed \$20,000.

Q. That's all.

(Witness aside.)

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Re-examination.

## No. 29.

## Evidence of Peter Duncan McTavish.

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tion.

PETER DUNCAN MCTAVISH, a witness on behalf of the Plaintiff, recalled in rebuttal, testified further as follows:—

## DIRECT EXAMINATION BY MR. ST. JOHN.

Q. Mr. McTavish, what is your relationship to the Plaintiff Company?—

A. President.

Q. And have been president at all times material to this action?—

A. Yes.

Q. And what is your connection with the Alamo?—A. I am secretary. 10

Q. And have been at all material times?—A. Yes.

Q. Now, you may sit down, witness. You were one of the promoters of the Alamo Gold Mines Limited?—A. Yes.

Q. You might just tell us briefly as to your connection with the organization of that company?—A. Mr. Barnes came to us with the reports, which have been discussed so much here, and we were very much interested, of course, about these reports, and, as a result of that, of the reports, we became interested and he and Thomas and Code made a proposition to us that we join them in the company—

Q. You might—well, just go on;—A. The original men had no experi- 20  
ence in operating, and the company was to be incorporated and shares divided equally. That was done. Now, this started in sometime, as nearly as I can recollect, about January, 1925; it might have been a little earlier or a little later—I don't just remember—but in the meantime, along in February or March we had gone along sufficiently with our plans, and instructed Mr. St. John to go ahead with the incorporation of the company, and that was completed and the certificate issued on the 17th March. Simultaneously with that legal work being done, we were carrying out our plans, just as I suggested, that the stock of the company would be divided, and each would take his own stock McTavish to take 8,000, and the 30  
others each their proportion. Now, just about that time—there was a letter introduced here from that gentleman, Dr. Manchester.

Q. Just before we come to that, Code conveyed the mine in question, that is the Alamo Mine, to the company?—A. Yes.

Q. I am producing this conveyance. Is that it?—A. Yes.

Mr. ST. JOHN: I will put that in. (*Document produced marked Exhibit No. 107.*)

Q. And then, pursuant to this conveyance, allotment was made of the stock?—A. Yes.

Q. And the stock was distributed in what way?—A. As set out. 40

Q. How was it done?—A. According to the certificates.

Q. Yes?—A. At one point I found myself not only secretary of the company but also trustee for 3,000,000 shares of stock, a million and a half issue to the promoters, if you like to so call them, and a million and a half—first of all, 3,000,000 shares, and they were all issued, and later on we

decided to operate, and those shares were split, half to be held by the shareholders and the other half to be held in trust for the benefit of the company.

Q. You call those pool shares?—A. Pool shares.

Q. Now, 300,000 shares were issued as fully paid?—A. They were all issued as fully paid.

Q. 3,000,000 I mean?—A. Yes.

Q. And entries were made of the purchasers of these shares?—A. Yes.

Q. That is set out in this Exhibit 8 that has been filed in this action?—A. Yes.

10 Q. By the way, you had charge, had you not, of the books of the company?—A. Yes.

Q. And supervised the making of those entries?—A. Yes.

Q. Now, you were going to speak about the re-issuing of the pool shares?—A. Well, may I say something?

Q. Yes?—A. Our agreement that we made, the five of us, provided that there should be a trustee appointed, to be arranged later on that a trustee was to be appointed.

Mr. ST. JOHN: Let me see Exhibit 5, please.

THE WITNESS: And—

20 Mr. ST. JOHN: Just a minute. At this stage, I will read the clause referring to that. This is the agreement dated the blank day of March, in which Code was the party of the first part, McTavish Brothers Ltd., of the second part, Barnes of the third, and Thomas of the fourth part, and paragraph 2 says, "The stock certificates covering the said shares are to be endorsed in blank and deposited with a trustee to be nominated in writing by the parties hereto or a majority of thereof."

Q. By the way, was a trustee ever nominated as provided in that paragraph?—A. No.

30 Q. Why not?—A. Because of the expense involved. We brought the matter up on different occasions, but Barnes and Code and Thomas also were perfectly satisfied with the way we were going on, and, anyhow, they agreed not to go to that expense. Money was always an important matter. Now, when I found myself with 3,000,000 shares of stock in my custody, I did not like the situation at all, because a trustee should have been appointed. However, in anticipation of a trustee being appointed, I took the various certificates, first the escrow certificates, and I got five envelopes like this (*producing*). The certificates were small, this size of certificate, and I got five certificates—

40 Q. Five envelopes?—A. Five envelopes, and put the certificates of each man in the envelope, with the numbers and the number of the certificate and "These Shares to be held by the Trustee until February 11th, 1926, or later if so agreed by the majority of the Parties directly interested."

Q. You are speaking now of the private shares?—A. The private. Then I got another bunch of envelopes and I took the stock and treated that similarly, except that I put here the number of the certificate and the number of the shares and the date on which it would be presumably taken out, and here a place for remarks or to whom delivered. That, I expected,

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was going into the Toronto General Trust Company, and it was for their guidance, but I found myself with these four envelopes containing all these certificates, and we never could get the others to agree to appointing a trustee. I was not altogether averse to holding them, but I did not want all this responsibility, and, while I never anticipated any trouble from them, I made the strongest effort to keep them in perfect order, and I think, in spite of our friend here, the certificates can all be accounted for right up to the last share.

Q. Now, you say then that the pool shares were put in a separate series of envelopes?—A. Yes. 10

Q. Giving the individual names of the owners?—A. Yes.

Q. And kept separate from their private shares?—A. Yes.

Q. These pool shares, of course, have not been disputed?—A. No.

Q. Now, so much for the organization of the company.

Mr. FARRIS : Will you let me see those envelopes ?

Mr. ST. JOHN : Yes.

THE WITNESS : This is an extra one I brought around to show you.

Mr. ST. JOHN : Q. Now coming to the dealings with the Evans' property first, you have heard the evidence?—A. Yes. Later on—

Q. About what time was that?—A. Well, the deal was closed on the 20 15th June.

Mr. FARRIS : Q. What year?—A. 1925. There was a 30-day option, and we had it under consideration for perhaps a month before that, 60 days before June—I think April 15th.

Mr. ST. JOHN : Q. Who brought the property to your attention?—A. George Thomas.

Q. And this purchase, I understand, was for cash, that is, by money payable by instalments?—A. Yes.

Q. Now, what was done with regard to that? What was decided to be done?—A. Mr. Thomas and Mr. Barnes were very much impressed with 30 the Evans' property, and they recommended that we put a small mill there and get started, and we laid our plans then for getting that mill.

Q. Yes;—A. May I go back just a bit? As the spring approached, prior to getting this property or knowing anything about that—this Manchester letter has come up here, and I want to explain that situation to the jury. As spring came on, along about the 1st April—now, understand up to this time my brother and I had never been on this property. We had Thomas's evidence and Mr. Barnes', and he always represented himself to us as an accredited engineer and said that he had attended 40 school—we found that he had attended one term and never passed any exams—we took him at his face value and believed him and relied on him. He and Thomas and a man named Sauterberg, who is a contractor in Seattle, a very fine man, and a man who has had 20 or 30 years of practical experience in mining. They were all very much interested. Mr. Barnes' report here says on the Alamo—it is here as an exhibit—that his information on the outside leads him to state emphatically that the Jackson and McGuigan reports would be verified, or something to that effect. Now, in the earlier

stages we were to house the company, that is to look after the office end of it. Mr. Barnes was to act as a sort of consulting engineer; I believe he is qualified as that, and Mr. Thomas expected to be cruising about and selling properties—

10 Q. You mean in connection with this compayn?—A. In connection with this company, yes. Now, as spring came on, as Spring came on, Mr. Thomas and Mr. Barnes got the idea of operating, and they were quite sure that they could go to the Alamo Mines, and by this time we had no word of the Evans' property whatever, we could go to the Alamo Mine, because  
 20 of their own investigations and the investigations in the reports of McGuigan and Jackson, and start a small mill working there, and get into immediate production. Now, Mr. Code was going to sell stock at that time. Mr. Code had not an office. He is a stock and bond salesman and follows the plan, I believe, of taking a bond issue, a local bond issue, and going to that place and working there in conjunction with the local firm or local bank that is handling that issue, so he maintains no office of his own. Well, he said, we would have to provide him, he would have to have some printed matter, so that he could show his prospective clients that there was a head office of this company, and we prepared that circular which was put in here yesterday by Manchester. A large proportion of the information in that came from  
 30 Mr. Barnes and Mr. Code, but the information contained on the first page of that, wherein we state, very foolishly, I admit now, because we relied upon Mr. Barnes, and he was not to be relied upon with reference to things of that kind. We made those statements in good faith on those reports, and by several parties who had been at the mine. Then, before these were used at all, the Evans' property came up, and all our attention was directed to the Evans' property. The Alamo property went absolutely out of consideration, out of the company's consideration. It was there and we would go, sometime, when we had the time and the money, we would go and open it  
 40 up, when we had the time and the money to do it. In the meantime, we visited the mine and we saw how thoroughly impractical it was to take this old mine and clean out these tunnels and get into production, as these engineers had led us to believe. We came back here and we took—we had about 3,000 of those circulars and we jumped the whole thing. We did not use these circulars. Now, Dr. Manchester was not fair—I won't say he was not honest, but he was certainly misleading. He came to our office some time later. Dr. Manchester was one of the first men we spoke to about the Alamo, and we offered him stock in the early stages before any campaign was started anywhere at ten cents a share. He bought his stock,  
 10,000 shares, at ten cents a share, and no mention was ever made of 25 cent stock. Dr. Manchester is a man who, over a period of years, has had a certain amount of connection with mines and mining, and he was in our office one day. We were not discussing the Alamo property, the Alamo Mine, I took Dr. Manchester down later on and showed him the Evans' property; we never even stopped the car at the Alamo, went right on to the Evans' property and spent the whole day there taking samples, and he was impressed, as anybody would have to be impressed, with the Evans' property.

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Notwithstanding what Mr. Langer and Mr. Barnes said, if we had had a real engineer, we would not have wasted that money. Mr. Langer's mining experience told him that he should go in on that. Mr. Barnes opposed it. Why, we don't know. If he had not done that, we would likely have had the mine there to-day. He went in between the two and got lost, threw up his hands and ran away. That is practically what happened, because he did not have the mining experience or intelligence to know where he was going. Now, with regard to Dr. Manchester, he went over this and came back, and he put in \$1,000.

Q. Referring to Exhibit 95—?—A. This is the circular—oh, yes, 10  
I was speaking about how he came to get this. He never got that circular. It was never discussed with him in relation to purchasing stock. The Alamo Mine was in the earlier stages, when we were contemplating the construction of a mill on the Alamo, but when he bought, which was months after that, we got on the Evans' property and it was some time, some months after that, that he was in our office and we were discussing mining in general and we told him about the information we had received, I think it was newspaper cutting, regarding the comparative amount of money made by dividends paid by mines, railroads and banks, as read in that circular yesterday. We gave him that; it had no reference whatever to the other. If we had 20  
known there was going to be a lawsuit, we would have drawn our pencil through all that, but he knew all about that. We took it for granted that he was not—

Q. At any rate, he was not interested in the Alamo property?—A. No.

Q. Well, now, that will be sufficient on that?—A. Yes. At this time, by this time, Mr. Barnes and Mr. Thomas and Mr. Code were as much interested in other things. It was a responsibility shifted into our office, and what really happened was they went away and left us, and we had to do the whole thing. That was the reason why they volunteered to kick 30  
back, according to the expression used by my friend, Mr. Farris, these three hundred thousand—six hundred thousand shares. They went away and left their responsibilities, and the whole work came back on our shoulders, and, in course of time, we were doing the whole work, attending to the property and doing the whole thing, and they realised that, that that was not fair and it was not the original—

Q. You are speaking of the year 1925?—A. Well, 1925—yes, subsequent, it would be about '26 or '27, and we had for two years carried the whole thing.

Q. What was done in '25? Did you sell any stock in '25?—A. No, we did not sell any stock. None of them ever raised any money. 40

Q. Now, come along to the Spring of 1926 when Barnes was down to the property?—A. Yes.

Q. Material had been purchased in the meantime?—A. Material was purchased in the previous fall. Now, wait just a moment while I just explain this to the jury. During that period before we got the Evans' property, there was a considerable amount of discussion about starting on the Alamo property. As I said a moment ago, they were, the engineers were sure

they could go in there and start, so we said, "All right, we will start, and we will raise the money." Mr. Code was going to sell the stock, and we were going to assist if it was necessary. My brother went to Victoria on or about that time, say, at the beginning of April, and interviewed R. P. Clark & Company with regard to the entire proposition and entered into a tentative arrangement, which was never actually closed up, to sell stock at 25 cents a share. These plans were not completed, but while these plans were being considered, we had arranged that we would sell enough stock, we would arrange to sell stock at ten cents a share to pay the preliminary expenses, amounting to some \$3,000. Subsequent to Dr. Manchester taking that ten cent stock, I wrote him that letter which said that we were about to sell at 25 cents, because that plan had been decided upon. Now, the whole plan changed almost immediately after that, because we got the Evans' property and because Mr. Code did not want to sell any more, and we made an arrangement subsequent to that with Mr. Howard, who is in the interior of British Columbia, to do practically all the selling at a price of 12½, so 25 cents never was effective.

Q. I see. That is sufficient about that. Now, come to 1926?—A. Yes, 1926. We put a mill up in a manner criticized severely by Mr. Langer.

20 Q. Now, come to the negotiations; tell us about them?—A. Mr. Howard in the meantime had been selling some shares for us. He knew Mr. Langer. As I remember, he discussed the purchase of shares with him. The work being carried on at the time would cost \$4,000 or \$5,000, and Mr. Howard suggested to Mr. Langer that he buy that stock, which was selling at that time at 25 cents. He went over to the Evans and the—may I see that exhibit—both of them. They have been so misleading—

Q. Exhibit 18?—A. —and I want to straighten it out. Have you—there is another one there, too. There is the original of this, Mr. Allen, a pencilled sketch of that. Now, Mr. Howard interested Mr. Langer to such an extent that he said he was interested, but not in a \$5,000 investment, 30 but if we could show him a \$50,000 investment he would be interested. We said, "Why, by all means, we will contemplate putting in a 50 or 100-ton mill and let Mr. Langer finance the 50-ton mill." We had had figures from Mr. Barnes and we estimated somewhere about \$35,000, to put in a 50-ton mill.

Q. And you went to see Mr. Langer?—A. Now, then, we reported that to Mr. Langer, arranged for an interview, and we went to see Mr. Langer at his house. Now, this very much abused little document here, which Mr. Walkem has jiggled up, he even went so far as to get figures to make a big splurge of this thing, and as a matter of fact, that was only discussed 40 two or three minutes with Mr. Langer, just only explained what it was. We said to Mr. Langer, "This is a sketch prepared by an engineer to illustrate as nearly as possible the probable work done in this old Alamo Mine, according to McGuigan and Jackson's reports, but as far as we are concerned, we don't know Mr. Jackson; we don't know that there ever was such an engineer, but we are credibly informed there was. We had only had the word of Mr. McGuigan. Mr. Thomas says he is a good man, that

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he is an honest old gentleman, and would impress you as a man who would be truthful." You, gentlemen of the jury, have heard him here and can form your own conclusions. Now, we said, "As far as this is concerned, for better or for worse, for better or for worse, there it is. We have a clear title to it, but our time is entirely taken up with the Evans." And for four months that Alamo property was never mentioned again either by Mr. Langer or ourselves. Our entire proposition with him—

Q. From what time?—A. September, October, November and December, and even so it came up accidentally or incidentally in our office one day and I will touch on that presently. 10

Q. What year?—A. That would be 1926, the fall of 1926.

Q. Now, you interviewed Mr. Langer at his house, you say. What happened after?—A. We then went on to the Evans, and as a result of that interview, in less than a week, Mr. Langer arranged a visit, of which you have heard, with my brother, and went down and examined the Evans—not this property at all. He did not even stop the automobile on his way in. On the way out he got out at one side of the mine—

Q. You were not there, were you?—A. No, but I have heard this discussed so often with my brother that—

Q. You can only speak of your own knowledge. What happened? 20  
They came back?—A. They came back, and the report which I got from my brother was to the effect—

Q. Just say what took place as the result of that?—A. Well, as a result—I was not down there, so I don't know.

Q. Just a minute, Mr. McTavish. Are there any further details of the interview you had with Mr. Langer? What took place? How long were you at his place at that time?—A. We were likely an hour and a half or two hours.

Q. Give in detail all that took place there?—A. Well, what took place was that we discussed the Evans' property. It was—we explained 30  
as nearly as we could that it was a large, free milling deposit going up the hillside; it was as near as we could make out two to three hundred feet wide, and that every place that we had panned it, it panned splendidly in gold, and we believed it lent itself to a large steam-shovel operating proposition of a free milling nature, which is the cheapest kind of mining. Mr. Langer explained, different to the line he is endeavouring to take just now, he explained for forty years he had been mining on the Rand, interested in mining or connected with mining, and that when he got to San Francisco he took a course as an assayer and was a fully qualified assayer; he had done assaying for people, and he led us to believe that during that forty years 40  
he was more or less associated with mining. When we were discussing mining with Mr. Langer we felt we were talking to a man who knew infinitely more about it than we did, and we were endeavouring to discuss it in an intelligent way. I said to Mr. Langer, "Mr. Langer, we suggest"—or one of us did—"you get your engineer and go down there." "Oh," he said, "I would not be bothered with an engineer. Why," he said, "when I was in South Africa, we called them surveyors, but in this country

they get a degree and they call themselves engineers and presume to give advice." He said, "They are only qualified mine surveyors." He said, "No, I rely entirely on my own judgment," and he went down by himself, without an engineer, and did his own investigating, and we were still more impressed with his experience, to think that he would do this. He came back, he and my brother came back, and the negotiations were started. He said, "What you want is not a 50-ton mill, but a 1,000-ton mill on this property," and I think he was right at that. He said, "We will start, we will arrange a deal on the basis of a 1,000-ton mill; we should start with  
 10 not less than 200 tons and gradually work it up until it was, until it got to be a 1,000-ton plant." With that in view, we started to negotiate. This was sometime in September.

Q. You started in right away?—A. Well, as a result of his first visit, there were three or four or five different contracts, because every time we drafted a contract Mr. Langer wanted something more. We started off first to sell him 250,000 shares at 15 cents; they were selling them for 25 cents, to get the money to put in a 50- or 100-ton mill. After his visit he junked that altogether and he started in, commenced with 1,000,000 shares, and then next, as I recall it, was, that was all the shares the company had  
 20 available, and the next thing was a draft agreement where he requested that we increase the capital of the company another 1,000,000, making it four million. He said, "I want more shares." It was perfectly natural—as he said the other day, our necessity was his opportunity, or words to that effect. When we got all through, he wanted more shares, and the result was that ultimately we had a company of five million shares, and Mr. Langer had 2,750,000 provided for that he would ultimately get when he had completed his contract.

Q. You are referring now to the agreement of February 7th?—A. That is the contract with the Alamo Company. There had never been any  
 30 thought of selling Mr. Langer shares —

Q. Now, during these months, were there any further discussions as to the amounts?—A. Oh, constantly, constantly. Now, in the meantime, before that contract was finally completed, we said, "If we don't get this amount settled up pretty soon he will have the whole thing," and we made every effort to get it signed up, and it was finally signed up, the Alamo contract, sometime in February. Now, in the meantime, he said one day to us—it was mentioned in that contract of opening up the Alamo—just before that contract was signed up, maybe two or three weeks, or a month,  
 40 he was in our office one day and he said to us, "Why don't you open up that old Alamo Mine?" Now, that was the first time that it ever came up in all those months; it was never under consideration. Here is a property that, according to his statement, 194,000 tons of ore in it, and he is trying to make you believe now that he was going to put 1,000-ton mill, which would have 194 days' run—a ridiculous thing. Now he is trying to make you believe that he entered into a contract to put a 1,000-ton mill on a property for six months run—perfectly ridiculous. The fact of the matter is, it was never considered. He said, "Why don't you open up that old

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Alamo?" We said, "For two reasons; first, we haven't got the money, and secondly, we have our hands full where we are. The Evans is a very big proposition and we think we ought to do that before we do the other." He said, "What does it cost?" We said that Mr. Barnes had stated that it will cost \$1,500 to \$2,000 to clear out the lower tunnel. He could not tell until he went into it. He said, "Go ahead; I will put up the money." The last draft of the contract was made and that was inserted in that contract, that he was to open up the Alamo, open up the Alamo, and that became part of the last draft of the contract. Now, we were going along getting data. I went down in February, I think, to California, in 1927 10 I think this would be, and inspected mills and so on, and we had Mr. Barnes come up here once or twice to go over the mill situation. Mr. Langer had been educated in South Africa to this old stamp mill. And then the practical side of this mining thing began to appeal to all of us. Now, understand the Evans' property is upstream from the old Alamo; the old Alamo is downstream, just a gentle grade, perhaps one per cent, I don't know—just a gentle grade.

Q. Was there any discussion during these months as to where the mill was to be placed?—A. Yes, I was just coming to that. We began— 20 Mr. — in view of the fact that we had in contemplation the opening of the old mine, then the question of where to locate the mill came up. If there was ore in the old mine—and I want to get this before the jury—he said, "Why don't you open up that old mine?" as I said a moment ago, and repeat it now. "Of course," he said, "mind you, I don't think there is a thing in it," and he kind of laughed about it, and if he said that once he said that a dozen times, that he did not believe there was anything in it, and then a dozen times at least we went over McGuigan's report, Jackson's report on that old mine, and the probabilities of it, and we could only come to one conclusion on these reports, that they were right, as 30 they were written by intelligent, honest men, and that in all probability they were right, and we might get down and find out as soon as we could. He says that we said there was two million tons of ore in that mine; for a mining man of forty years' experience, a thing like that is absolutely ridiculous. Now the question came up, where had we better place the mill? If we got into the old mine and found that there was ore there, as seemed very probable from the reports, it would be well—they were about a mile apart, these two properties, it would be well to have the mill somewhere half-way between, because gravity would take the load down from the Evans' property instead of taking the ore upgrade from the Alamo. We tried, therefore, to hurry up the opening of that mine, and, as it was brought 40 out here, there was very bad weather, we had a very rainy spring, and the mine was full of sand and that kind of thing, so Mr. Barnes could not get at that property in that cold weather around about March or April. One day Mr. Langer was in our office and we were going over these things —

Q. When was this?—A. This would be along about the 1st May.

Q. What year?—A. In 1927. So I then presented to Mr. Langer this sketch.

Q. That is Exhibit 38?—A. I want the jury to see that. Show it to the jury. That is the sketch—may I see that blueprint again, Mr. Allen?—this is supposed to be —

Q. To make the notes intelligible that is Exhibit —?—A. Exhibit 18. Exhibit 18 is a sketch. It is not a map; it was never intended to be a map, just a sketch. This is a vertical rise here and it goes mostly all the way through, and this is a cross-section showing it. So one day, along about May —

Q. Now, where did you get this?—A. Well, that comes in in just a 10 minute.

Q. Yes?—A. One day he was in there and I opened up an old file that I had from Mr. Code, that I had got out, and I threw that over the desk to Mr. Langer. He looked at it and said, "Where did you get this?" —the sketch.

Q. Which sketch are you referring to?—A. The one the jury has, that sketch. He looked it over and he was intensely interested at once. He said, "Where did you get this?" And I said, "It was handed to us with a lot of junk by Mr. Code in the early stages, before the Company was incorporated." He said, "This is very interesting, very important. 20 Why have I never seen this before?" We said, "Well, you will observe, Mr. Langer, it is not signed. We weren't presenting to you any unsigned documents." That was not signed, and, for that reason, we never presented it to him. He said "This is quite obviously the work of a mining engineer," and we said "Yes". We agreed. We agreed. "We agree with you, but, at the same time, it is not signed, and it is not, in our opinion, reliable, but, now that you are going down there to open up that old property, we think you ought to see it." He wanted blueprints made of it right away, which we did, and this was given to him, but that came up at a later 30 stage. Now, just about this time, Mr. Langer began to talk about going to England. We were hoping to get the mine opened up, but that was impossible owing to the severity of the spring. Now, in the meantime, in February, when Mr. Langer got this contract with the Alamo Company finally signed up, and had made sure of ultimately securing 2,750,000 shares of stock, the suggestion was that he would like to round that out to 3,000,000 shares and we arranged to sell him 250,000 shares of stock.

Q. That is still in January?—A. 250,000 shares of stock, at 12½ cents.

Q. That is the sale of the 14th January, 1927?—A. Yes—no, not January, was it? It was the sale of 250,000 shares.

Q. There was an exchange of letters and the contract was settled up 40 later?—A. That's it.

Q. Which was handed back. At any rate, the contract provided for the sale of 250,000 shares; that was of the plaintiff's shares?—A. That had nothing to do with the Company. That was a private sale from McTavish Brothers Company, Limited, to Mr. Langer.

Q. Yes. That is the first sale made of private stock?—A. Yes. The agreement made was that we were—the amount was \$31,250.00. He was to pay us a quarter. The Company got \$812.50, which he paid, and the

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balance one, two and three months. The next payment came due, as I recall it, on March 1st, but anyway, that is immaterial. Mr. Langer, in the meantime, was in California on an inspection, inspecting mills, and also had gone to Chicago via New York, to meet the manager of his English business. He came back some time about the 10th of March, and he wired us that he was coming and that he would arrange things when he got here. We took that to mean both for the Alamo Company and in connection with this sale. When he got back here, among other things, we had a long discussion, and he said, "Now, Mr. McTavish, I have got some bad news for you; I have just been down to meet my London Manager, and I have found things are in very bad shape. My son——" well, he had told us previously about him managing his business——"has made away with or absconded with £25,000, \$125,000.00." Now, he said, "That has temporarily embarrassed me for money and the position is this, that if I pay you the balance of this contract, I can pay you this contract if you wish, but if I do——"

Q. Which contract?—A. The sale of shares from McTavish Brothers Limited. "If I pay you that, it will mean that I will have to shut down the mill again. Now, it is for you to say." Well, now we had discussed with Mr. Langer on many occasions our desire to have the thing go on, not only because of himself and the rest, but the smaller shareholders that we had induced to buy shares, and we had a great responsibility. He knew that. I said "Mr. Langer——" believing him then to be a man of his word—— I said "Mr. Langer, if you tell me that in good faith, I will accept your word and we will rescind that contract." This contract had nothing to do with the subsequent one. Mr. Langer was, to use a word of the street, "Johnny on the spot", in our office, I think, the next morning, demanding the return of that contract. As we said we would give it to him, I took it out from the file and handed it to him. We have never seen him since. That was all right; we acted in good faith.

Q. Did he get the shares for the money he paid?—A. We had given him, when he made his first payment, the whole 250,000 shares, and his receipt is in the book there for it.

Mr. ST. JOHN: I think it would save time if my learned friend would admit the receipt of these certificates, to avoid me having to trace them through.

Mr. FARRIS: No, I cannot admit it.

Mr. ST. JOHN: Then I will take the time to go over them, because it is material to our case.

THE WITNESS: There is a receipt in the stub-book.

Mr. FARRIS: I do not think it is material anyway.

Mr. ST. JOHN: Yes, we will have to show that.

Mr. DAVIS: It is material to show the receipt. We have to show that the fully paid certificates, fully paid shares were received. We have shown the form of the certificate.

Mr. ST. JOHN: Q. Well, I understand certificates covering 250,000 shares were delivered to him at the time the contract was made?—A. Yes.

Q. Now, those were certificates—A. May I have the stub books, 13 and 14?

Q. Number 365, 366 and 367.

THE COURT: The price was what?—A. 12½ cents, my lord, as I remember it.

Mr. ST. JOHN: That is set out in the particulars.

THE WITNESS: 367 was 50,000. 367 is a receipt—365, 366, are both receipted by Mr. Langer. 357 he has not receipted.

Q. 367?—A. Yes.

10 Q. Well, is that shown in the register of the shares?—A. It might be.

Q. Just before you leave that, Mr. Langer's signature appears on the receipt stubs for certificates 365 and 366. Is that right?—A. Yes.

Q. I will trace those up in the register here?—A. 365, 366 and 367.

Q. Yes, he is registered—that is Exhibit 8?—A. They are shown here as being transferred to Mr. Langer.

Q. What account is that?—A. Charles H. McTavish, they were delivered from his stock.

Q. Just a moment now, 365 was the transfer of the 250,000 shares?—A. Yes.

20 Q. Now, refer to Mr. Langer's account. Do you find that he is reported as the owner of the 250,000 shares?—A. Yes, they are all here, 365, 366 and 367 in Mr. Langer's account.

Q. Yes, all the certificate numbers are again repeated in his account?—A. Yes.

Q. Under date of September 22nd, 1926?—A. Yes.

Q. And he is registered then as owner of those shares, identifying the numbers which are set out in the columns here?—A. Yes.

30 Q. All right, so much for that. Well, now, when that sale was cancelled, what was done after that?—A. Well, he retained a quarter of them and returned three quarters back to our office and we held those certificates in his name and subsequently gave them out from time to time as shares were coming to him. They were private shares we were giving out. They were private shares that were given out from time to time on account of Langer's Alamo contract and that was done to save double transfer fees of 4 cents per hundred for transferring those.

Q. I see. Now, we might as well trace up the rest of those sales while we are at it. The next sale comes along on the 17th of June?—A. I had not finished with that yet.

40 Q. All right?—A. Now, this sale was rescinded. We had heard varied reports about Mr. Langer at this time, and Mr. Langer came into our office, I don't think it was a week after, and he had told us that he could not pay this money and he was just aglow with the wonderful deal he had just made. He had just purchased 40 per cent. of stock of the Revenue Mining Company for \$100,000.00, paying \$10,000 cash and \$10,000.00 a month for nine months. In other words, we were forced to the conclusion that he deliberately lied to us in order to get us to rescind that contract so that he could go ahead and make another deal which was more favourable to him. Some people

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from Detroit, Bush or his associates, had entered into a contract with the Revenue Mining Company to buy these properties at \$2,000,000, and he figured after they paid all their obligations, his net profit on the deal would be \$600,000.00, and he was willing to lie out of our contract to get in on that.

Q. Now, the next sale set out in the particulars furnished by the Defendant, is the 17th of June, 125,000 shares?—A. Yes, Mr. Langer was constantly wanting more stock. He started in with 250,000 shares, then we had to increase it to half a million, make it three quarters, and it was two million and three quarters before we got through, and then he made this purchase. 10

Q. That was 125,000 shares at 16c., \$10,250, the property in block 351, \$5,000 in cash on the 17th June, and \$2,500 in July, 1927?—A. He made two subsequent purchases, and the balance of that—

Q. We might get these by the dates. There was 125,000?—A. Yes, 125,000.

Q. And on the 17th June did you get delivery of the land, this lot in Block 351?—A. We did after. We did in February of this year, I think it was.

Q. Yes. Well, that is already in. We have got the conveyance in the latter part of January, 1928?—A. Or February of this year.

Q. And then the balance of the cash that is referred to there was paid?—A. Yes.

Q. Were certificates delivered to him covering the sale?—A. Oh, yes.

Q. I will have to trace those up.—A. You have got them there, Mr. St. John.

Q. At any rate, fully paid certificates were issued to him?—A. Yes.

Q. And he was credited in the register?—A. Yes.

Q. Look at his account. You will find them there?—A. Well, I don't know that I can trace them out here. There is nearly a million shares. I don't know that I can trace them. What time was that? 30

Q. That was June, 1927?—A. June, 1927.

Q. Yes?—A. Yes, June 17th there was a certificate for 25,000 and another for 100,000. That's it.

Q. What numbers are those certificates?—A. Oh, that is July 11th.

Q. It is the same sale?—A. Yes.

Q. What are the numbers of the certificates?—A. 518 and 539.

Q. And have you the stubs there?—A. Yes.

Q. Just find them?—A. May I have the other book, please, Mr. Allen?

Q. 424?—A. Yes, that is Mr. Langer, and he has receipted for it, 25,000 shares on the 20th June, which is made out— 40

Q. Is that 518?—A. 518, 25,000.

Q. Yes. You got his receipt for them?—A. Yes.

Q. Now, 424?—A. Yes, there is his general receipt here for several and that is one of them.

Q. 424, I understand that is one for 125,000, which has been delivered and handed back?—A. Yes.

- Q. Now, you gave it to him again in carrying out the second sale?—  
 A. Yes.
- Q. Now, the third sale of July 12th, 62,500, 12½c. a share?—A. July 12.  
 Q. Yes, payable \$4,000, by delivery of a certain block?—A. Yes.  
 Q. \$500 on the 4th July, \$2,000 on the 9th September, and \$2,427.50  
 on the 9th October. Now you got the land?—A. Yes.  
 Q. And the money was paid to you?—A. Yes.  
 Q. Now, look at 547 and 548?—A. Yes, 547 and 548, here is  
 Mr. Langer's signature per R. Kerr.
- 10 Q. Is that Kerr's signature?—A. Well, I presume it is.  
 Q. That is 547?—A. 547.  
 Q. For how many shares?—A. 50,000 shares.  
 Q. 548?—A. 548 is 125,000 shares—no, 12,500, that is right.  
 Q. That is right?—A. And one receipt covers them.  
 Q. Trace them into the register?—A. In Mr. Langer's name?  
 Q. Yes?—A. 547, 548, here they are.  
 Q. In his account those shares are mentioned?—A. Yes.  
 Q. Now, while we are at this deal of November 17th, you might get the  
 certificates for those there. The stubs first. 587?—A. 587.
- 20 Q. How many shares?—A. 100,000.  
 Q. Give us the name?—A. Langer, and he has receipted for it.  
 Q. And 588?—A. 100,000 receipted by him.  
 Q. 589?—A. 589, 100,000, he has receipted for them.  
 Q. 590?—A. 100,000, and he has receipted for them.  
 Q. 591?—A. 100,000; he has receipted for them.  
 Q. 592?—A. 592, 50,000, he has receipted for them.  
 Q. 593?—A. 25,000, he has receipted for them.  
 Q. 594?—A. 25,000, he has receipted for them.  
 Q. 595?—A. 595, 100,000. He has receipted for them.  
 Q. 596?—A. 50,000. He has receipted for them.
- 30 Q. Will you trace these into the share register now?—A. 587, 88, 89,  
 90, to 95, 96—1, 2, 3, 4, 5, 6—750,000, they are all here.  
 Q. Who is registered as the owner of those?—A. He is registered as at  
 November 16th for 600,000, and November 17th for the extra 150,000.  
 Q. Well, now, we have dealt with the sale of the private shares. Now,  
 what further negotiations did you have with the defendant?—A. Sometime  
 in June, as I recall it, he sent his bookkeeper or his financial adviser, to our  
 office and asked for a list of the shareholders. We gave it to him. When  
 the deal with Mr. Langer was closed, the Alamo deal—you will recall the  
 Alamo deal?
- 40 Q. Of February 7th?—A. The original Alamo contract with the  
 Alamo Company.  
 Q. That is February 7th, 1927?—A. '27, yes. We met in the office  
 of Mr. Langer's lawyer, Mr. W. J. Baird, at that time; Mr. St. John, our  
 solicitor, was there, my brother and myself. We took with us that morning,  
 I did, as secretary, the minute book with all the contracts of the company,  
 such as we expected financiers would require to see, and we went very

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fully into all the details of the transactions. Mr. Langer knew that we were all——

*Q.* Just tell us in detail what was said?—*A.* We explained that—Mr. Baird brought up the question of treasury shares. I said, “I want to make that very clear to you, Mr. Baird, that there are no treasury shares in this company. There are shares held for treasury purposes, but technically there are no treasury shares, because they had all been taken out under our first arrangement.” I explained all that in detail.

*Q.* What did you say?—*A.* Well, we told him that at a certain time that the original company had started off as more or less of a holding company, and later on we decided that the holders of that stock replace it, place it in escrow for the benefit of the company and that that stock, while not actually treasury stock, was held in trust for treasury purposes, and the balance of the stock went to the promoters, and we all got our share. 10

*Q.* Was there any discussion as to the original holders of the stock?—*A.* I don't recall particularly whether—perhaps the contract was there, and the articles. The statement of the prospectus was there. And the property was discussed.

*Q.* Yes?—*A.* Well, the solicitor was thoroughly satisfied with everything. I don't know that there was anything especial. Now, Mr. Kerr came over to our office one day sometime, I think it was in June. 20

*Q.* Before you get to that, was there any other interview with Mr. Langer?—*A.* Yes, there was a subsequent interview, when my brother was not present, but you were, and Mr. Langer.

*Q.* Mr. St. John?—*A.* Mr. St. John and Mr. Langer, Mr. Baird and myself, and it was further discussed at that time.

*Q.* What was the discussion?—*A.* The original ground was covered pretty much. Sometime in June, Mr. Kerr came into our office, and said that Mr. Langer wanted to get a list of the shareholders. We gave it to him. We had a typewritten list of shareholders and we gave him a copy. Immediately Mr. Langer began to grouch because some people had stock that he apparently did not want. 30

*Q.* What did he say about it?—*A.* He just kicked generally and grouched about it. The first thing he said was that “These people had substantial blocks of stock and I am putting up all the money.” We told him that it had all been accounted for, and these people had started off this business, and that they had got their stock in a way which I have explained to you. However, he immediately began to grab for more of that stock. In the first place, the contract with the Alamo required him to put up the money for the work, which was under his direction; he was practically managing the director. He was managing, all the work, under the contract, was under his direction, and he began to quibble about putting up that money. Now, the clause in that contract is perfectly clear; it says he is to put up this money, that the expenditure on the Evans tunnel was to be limited to \$17,000.00. Immediately after Mr. Kerr got that list of shareholders, he came to us, I think, Mr. Kerr came to us, and said “Now, Mr. Langer has put in \$17,000.00; he has spent all he has agreed to, and he won't put up 40

any more money unless he gets more shares." Grab, grab, grab. I read the clause to Mr. Kerr, and I said, "Mr. Kerr, you are a Scottish solicitor, you are a Scottish solicitor——"

Q. Referring to the clause in the agreement?—A. The Alamo agreement which says that he is to put up this money. I said "You are a Scottish solicitor and you have read that." Now, I said, "If the English language means what it says, Mr. Langer is wrong." He says, "Yes, I admit that." "Now," I said, "Where is he going to get the stocks? We have only got roughly 600,000 shares, and if we are going to stay with this thing for 10 years to come, it reduces our proportionate amount. We cannot give him any, and we are quite sure the others won't give him any. He has got all the stock that is in sight, and there is no getting out of that." Well, he was not going to put up any more money. He had us by the throat, as it were, he had all our stock and our prospective increased stock in his possession or his control, and we could do nothing. Now, shortly after that he went to England and he cabled that same condition back from England. However, he had got generous before he went to England; he said that he would put up, just to keep the thing going, he would put up \$1000.00 a month while he was in England. That would be for about three months. 20 Here we had been waiting all through this bad winter and spring for good working weather and when it came, instead of getting busy and doing something, he limited us to \$1000.00 a month, and we had to cut our expenditures accordingly. He reiterated that demand for more stock, notwithstanding his contract, which was not a scrap of paper. It is a contract and it is perfectly clear. He reiterated that by wire from England, and instructed Mr. Kerr not to pay us any money unless we agreed to give him additional stock. He had us over a barrel and he was just going to get all that he could grab. However, when he came back—he came back here sometime in August, and as I stated our position was that we could not do 30 anything with him, or very little, and he was preventing us from doing anything with anybody else. My brother and I talked the thing over, and we said "This certainly looks like an ordinary every-day common freeze-out——"

Q. You can only give evidence of conversations when Mr. Langer was there?—A. Well, we concluded——I see.

Q. Now, when Mr. Langer came back from England, was there any discussion about Barnes?—A. Well, I was just going to deal with the—Mr. Barnes, the first time Mr. Langer went down there he saw the poor miserable workmanship——

40 Q. You were not there?—A. No. All right, I can tell what he talked about after he came back?

Q. Yes?—A. Yes, Mr. Langer discussed it after he came back and ridiculed the installation of that mill. It was a miserable installation, but it was done for temporary purposes. He said that any man that would make an installation like that, does not know his business, and then he kept on and when he found out that Mr. Barnes was getting \$350.00 a month besides the same stock as we were getting, he was more than ever

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Evidence.

No. 29.

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incensed. He did not consider it fair or anything of the sort, from our standpoint, and, as my brother pointed out, he referred to the contemptible swine, the dirty swine; I don't think he ever mentioned the name of Barnes on any occasion when he did not refer to him as a dirty swine. We, on the other hand, were responsible for Mr. Barnes being there, and we felt like defending our position somewhat, and we said, "Now, Mr. Barnes went down there as a mill man, and expected to have the mill running a month or two months after he went there; that is the reason he went there, and that is the salary of a mill man. True, he has been delayed in getting the mill going, but, in view of the fact that we are going to have a large mill there, we think it is advisable to keep him on." He consented to that from time to time; he never really declared we had to fire him, but he was constantly complaining about him. 10

*Q.* Was there any discussion about Barnes' ability?—*A.* I don't think I ever heard any, no. He may have mentioned on one or two occasions—

*Q.* Well, never mind. Come along to these negotiations that you were dealing with.—*A.* We were in that position where we, as I mentioned not long ago, we could not proceed. We could not raise money outside Mr. Langer, and he had us with our backs to the wall, so to speak. So we said to Mr. Kerr, on the occasion of our meeting him, "Now, look here, Mr. Kerr, we have not seen Mr. Langer, but this is what occurs to us: Mr. Langer has really got control of this thing; it is his proposition more than ours, and we cannot go on as we are doing. It is quite evident to us that he wants to get more stock, and we will sell out." Now, understand at that time, as Mr. Barnes said the other day, he would not have taken a dollar a share for his stock at that time, or about that time. Well, that may be a little drastic. We did regard the whole proposition as valuable, as it is today if anybody would go down there and work it as it should be. There is evidence that it is a wonderful property. Now, we could not get along as it was, so we said to Mr. Kerr, we suggested he buy us out. We made the proposal that we would sell him 750,000 shares of stock at 25 cents a share, for cash and the balance out of production at some time in the future. He made a counter proposal something about 10 cents, and we turned that down, and negotiations were off for a few weeks, but they were resumed again, and ultimately we got down to a basis of 12 cents a share. 30

*Q.* And you made the contract?—*A.* Yes. First, Mr. Langer went down to the mine and looked it all over again, and, when he returned from the mine, the contract of November 17th was entered into. During the negotiations just prior to that, sometime about the first week or so in November, there was a discussion about the Alamo mine—not the Evans—and we said "Now, look here, we don't know anything about it, as we said before; let's bring McGuigan down here and we will know." We sent for Mr. McGuigan and he came down. We did not propose what he suggested to you. He came to our office about two o'clock in the afternoon. We could not even recognize him at the train, so we did not go to the train to meet him, and we thought he had not come. He came to our office about 40

two o'clock in the afternoon, and, when he came, we immediately telephoned Mr. Langer at his home, and, fortunately, caught him, and he said that he was busy for the moment but that he could see us about four o'clock. We went up at four o'clock, and this trivial discussion he had, as he said, for a few minutes, lasted from four o'clock to about six-thirty, and at which Mr. McGuigan discussed it very, very fully. About six-thirty Mrs. Langer came in and reminded him that he had a dinner appointment for 6.30, and Mr. McGuigan took the train, as I recollect, that night. There was a practical discussion about the mine by Mr. McGuigan which took place in  
10 Mr. Langer's presence.

*Q.* Now, then, come to the 21st November.—*A.* Yes.

*Q.* Will you tell what took place when you received that wire from Fellows?—*A.* I think it was November 21st we got the wire stating that he had got in; that, of course, was very disappointing. We immediately telephoned Mr. Langer and he came down to the office. He was in the office, I suppose, that day, from an hour to an hour and a half. He stayed there an hour or an hour and a half.

*Q.* What took place?—*A.* Mr. Langer said "The whole thing is a swindle." I was sitting across the desk from Mr. Langer at the moment, and I stood up at once, and I said, "Now, Mr. Langer, by whom?" He said "Oh, not by you gentlemen, no, no, I want to say right here that you have always acted in a most honourable way and upright in all of our transactions." "Well, then," I said, "by whom? By whom?" "Well," he said, "the people who made these reports." I said, "Well, you have met Mr. McGuigan. Now, Mr. McGuigan is an honest man." Yes, yes, he thought he was. I said, "Jackson's report reads like a reasonable report." "Yes, yes." I said "There is not a single person connected with this company that could get a five cent piece out of this thing. Now, our opinion is this, one swallow doesn't make a summer, and a few assays  
20 taken at one part of the mine does not mean that the condition of the mine is not good. Forget about the Alamo and go back to the Evans and start to work. In the meantime, we suggest——" this is important, and I want the jury to get this; there have been so many mis-statements about these things—"We suggest that you get Mr. McGuigan to go over there to the mine, that you meet him there, and you go together to the mine and try to get in to make an inspection." He would not spend another dollar. "Well, now," we said, "You see our position, Mr. Langer, we cannot quit; we have got to go on. If the thing is in good shape we have got to go on. We have got several hundred shareholders including yourself,  
30 and feel, naturally, a great responsibility to all of them, and the thing must go forward. We simply cannot stop. Now, this is apparently working itself out to a large low grade proposition, as we had originally intended. Mr. Langer always said what he wanted was a large low grade proposition that would average three dollars a ton; he was perfectly satisfied because he knew he could mine it and mill it for a dollar, not to exceed two dollars a ton, and, if he could get a thousand tons a day at a dollar profit, he would make a thousand dollars a day, which was good  
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enough for him, and he felt with that larger deposit that would double, to at least two thousand tons a day, and I think that is right. For reasons best known to himself, he has changed his mind. So we said, "Our suggestion is this, that while working out this low grade proposition, which, of necessity, is going to be a longer proposition in the end than anticipated, because obviously you must have large bodies of ore in sight before, while that slower development is going on, let us look around and get a smaller property of higher grade, erect a mill and get into production some place on a smaller scale; that will bring immediate activity, and the money from that will assist in the other work. That is our suggestion." 10  
Well, he didn't know, and the result was that, as my brother stated here, about the rescinding of this contract. We expressed regret at the way things had turned out just there, but that did not mean that the Alamo enterprise was the whole proposition; as a matter of fact, until they started to clean out that tunnel, there wasn't one per cent. of the time or consideration ever given to the old Alamo mine, and the other thing—

Q. What was said, now, if anything, as to the rescission of the contract?

—A. There was not a single word mentioned about that other contract during that interval. It was never mentioned.

Q. Now, deal with the interview with Mr. Kerr on December 8th? 20

—A. Mr. Kerr came into the office. I was alone. He said, "I have come to get the contract." I was quite amazed, because up to that time there had never been any discussion about returning the contract. Mr. Langer, when we rescinded the previous contract for Mr. Langer, the one he has lied about, he was right there the next day to get that contract, and he was not in the office two minutes before he asked for it.

Q. Had you seen him between November 22nd —?—A. We had never seen him since.

Q. Until December 8th?—A. I had never seen him since.

Q. Now, what took place between you and Mr. Kerr?—A. Mr. Kerr 30  
came in and he said that Mr. Langer had sent him over for the contract. I said, "Well, Mr. Kerr, there is some mistake," I said, "We have not agreed to give this contract back to Mr. Langer," and I repeated it. I said "Our suggestion to Mr. Langer is that this is not the time to quit; it is the time for going forward; it is going to take time, this is a big thing, and I suggested to Mr. Langer that we get a smaller property." And Mr. Kerr went out without the contract, naturally. Had there been any question, any promise of rescinding, we would have rescinded, as we did before, but in this case there was not.

Q. He swore that when he went back to the office he drafted that letter 40  
of December 8th?—A. Of December 8th. That whole story is cooked up out of the whole cloth.

THE COURT: Q. Which came first?—A. I think Mr. Kerr came first. Then they added this rider. The reason they did not get the contract was because there was the condition that if Mr. McGuigan went down and could not find ore in the old mine, then we would rescind the contract, was just cooked up afterwards. We tried to get Mr. McGuigan to go down

there. We thought Mr. Langer would be desirous of meeting him there. He was interested, and we might expect he would do that.

Mr. ST. JOHN: Q. Now take the letter of January 12th, 1928, Exhibit 27?—A. There was a question of —

Q. Exhibit 27 is a letter of the Alamo Gold Mines Ltd. to J. F. Langer. You referred to a letter of December 8th?—A. Oh, yes, I see.

Q. Now explain why it was that this letter was written?—A. This is Exhibit 27, about which Mr. Farris made a lot of fuss with my brother yesterday, because we did not previously dispute his letter of the 8th. Now, understand we had two contracts with Mr. Langer. The Alamo Company had one, under which he was to provide money to carry on the work, and McTavish Brothers Limited had a contract to sell shares to him.

Q. Of November 17th?—A. That is November 17th. He was behind, I think, about two months under his contract with the Alamo Company, and, by the way, about the last thing he said to us before he left the office was to wire to Mr. Barnes to find out how much we owed —

Q. On what occasion was that?—A. That was on November 21st, the last day he came to our office. He has not paid them yet. He told Mr. — well, I wasn't there. Now, obviously at this time, what we were concerned about were the back paydays; it was getting on towards Christmas time, and the men wanted their money and we were much more anxious to get this Alamo contract settled up and have him pay his bills, so that we could clean up the obligations down there, and we wrote him this letter about that. At the bottom we said, "The recent purchase of shares by you is a transaction between yourself on the one part and McTavish Brothers and their associates on the other, and we feel therefore must of necessity be kept separate and apart from the transaction between yourself and the Alamo Gold Mines Limited." That is signed by the Alamo Gold Mines Limited. Mr. Farris made a lot of fuss because the Alamo Gold Mines Limited had not written much before that time. As a matter of fact, Mr. Langer paid his bills up to that time. Now, he also went after my brother very strongly on, why didn't we repudiate the letter of December 8th. My brother was perhaps not more than half as much in the office as I was—I am not the office man at all, but I assumed this responsibility and I did my best under the circumstances. That accounts for his not knowing really the circumstances. When I saw what Mr. Langer was trying to frame up, I conceived it as a deliberate frame-up between him and Mr. Kerr, I wrote a letter repudiating the whole thing. But before sending it out I consulted our solicitor about it.

Q. Which solicitor?—A. Mr. St. John. And as result of his advice, this letter was sent and the other one was not sent. Now, I had already repudiated that to Mr. Kerr, and that, we figured, was sufficient repudiation and we wanted to get this other one fixed. So that is the reason that letter of repudiation was not sent, was, as the result of my solicitor's advice.

Q. What do you say as to the suggestion that you verbally guaranteed this Alamo Mine had blocked out 194,000 tons?—A. It is absolutely ridiculous.

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tinued.

Q. Were any statements to that effect ever made by you?—A. Never.

Q. Did he ever at any time communicate to you what his opinion was?

—A. He said to us dozens of times, I would say at least a dozen times, "Mind you, I don't believe there is any ore in that mine," repeatedly.

Mr. ST. JOHN: Have you a letter of May 2nd, 1927, a letter to Mr. Langer of May 2nd, 1927, from the Alamo Company. (*Mr. Walkem produces document.*)

Q. This is your signature, is it?—A. My brother's.

Q. Your brother's?—A. Yes.

Mr. ST. JOHN: May 2nd, 1927, it is a letter to J. F. Langer, "Dear Sir: As weather conditions in Eastern Oregon have made it impossible with the term specified to carry out the terms of our agreement made with you for certain development on our property, we hereby agree to extend the terms and conditions thereof for two months. In consideration of this extension, it is understood that you are to take care of the monthly payments of \$500 each, due on the Evans' property during the period of this extension." That is signed by the Alamo Company. (*Letter produced marked Exhibit No. 108.*) 10

Q. Now, this is dealing with the extension of option set out in the agreement of February 7th?—A. What I call the Alamo agreement. 20

Q. The Alamo agreement. That agreement provides by April 1st he was to announce his decision as to taking it up?—A. Yes.

Q. And what have you to say as to the extension of option from then on?—A. Well, we took it for granted, because he was paying and carrying on, and so was consenting to the extension.

THE COURT: Q. Was the work continued?—A. Yes, up to that time, sometime in May, I think, 1927, started to clean out old tunnels in May or June.

Q. With how large a crew?—A. I think two men, two or three men. It was a very slow job because of the wretched condition of the mine. 30  
Mr. Fellows can tell you more about that. He will be on the stand.

Q. How long since it had been operated?—A. So far as we knew, 20 years. The reports showed about 1905 and 1906, I understand.

Mr. ST. JOHN: Q. Do you remember a meeting of the Alamo Company held on July 2nd, 1926?—A. Yes. He spoke in the same spirit about the property that is the Evans' property; the Alamo was not mentioned at all as far as I can remember.

Q. What did he say about the Evans?—A. He explained that, he spoke during two three hours, and the sum total of what he said was it was an excellent property, a vast deposit going out for 2,200 feet, and he made, on different occasions, the statement that he considered it a greater mine than the Premier. 40

Q. Now, then, the Lindgren report that is in there as exhibit, as part of Exhibit 32, is a copy, is it not, of what is set out in this volume that we have here, in the 22nd Annual Report, the 22nd Annual Geological Report?—A. Yes.

Q. You compared that?—A. I compared that.

Q. You say that is a copy?—A. Yes.

Q. At page 689?—A. Yes.

THE COURT: Is that in?

THE WITNESS: The extract is in as an exhibit.

Mr. ST. JOHN: The extract is in, yes. I was just showing that the extract is an exact copy.

Q. Now, with respect to the monies that were received from the sale of the shares?—A. Yes.

Q. Is that all perfectly accounted for?—A. Yes, it is.

10 Q. And, as mentioned by your brother, those shares were sold under the directions of certain parties concerned?—A. The instructions are there, signed by the five parties concerned.

Q. Now, about that report that was published, that is Exhibit — ?—

A. We had never been in the habit of rushing into print ourselves, but Mr. Bennett, of the Western Mining News, was up to see us on different occasions, and we never gave him anything. After Mr. Langer came in, we asked him about it, and he said it would be quite all right to give them a report about his coming into the company. The reporter, as I recall it, came to the office and we never saw it before it went to press; the first we saw of  
20 it was when we got the paper.

Q. You sent a copy of that to Mr. Langer?—A. We sent a copy immediately to Mr. Langer. It was a bit garbled, but reporters sometimes get the notes mixed up. We had nothing to do with it. We did not direct it. We did not see it before it went to press.

Q. This telegram of November 16th, addressed to you, was that shown Mr. Langer?—A. Yes.

Q. Was it shown to him before the deal was concluded?—A. I think probably—November 16th—the first deal was concluded on the 15th, on the night of the 15th, and the next day we made the contract and dated it the  
30 16th. We made a special effort to have everything of importance, whether good, bad or indifferent, communicated to Mr. Langer at once. Every letter that came in, a copy was immediately made and mailed to him. If a wire came in, or an important letter, we tried to get him by phone and read it to him, and then a copy was put into the mail. We suggested that so that he, in order that he would be apprised from day to day what was doing at the mine, that we ought to have a daily report, and we made up that daily report form of the Alamo Mine—

Q. The Alamo Mine?—A. I mean the Evans Mine, and that report came generally once a week, because in the winter time mail facilities are  
40 not awfully good. We instructed Mr. Barnes, if he could not get a report out by mail, to telephone it by wire.

Q. Was any information ever received from anybody that was not sent forward?—A. Never.

Q. Or that was ever concealed?—A. Never.

Q. You were making known to him everything in connection with the mine?—A. Yes. Mr. Barnes, when he got lost in the wilderness there and did not know where to go, was wanting Mr. Langer to go down and show him

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what to do in the Evans tunnel. When he got lost there, he did say that there was nothing in that tunnel, but we never thought—he did not need to tell us that. Mr. Langer knew it and we all knew it.

*Q.* There is the suggestion by the defendant that you endeavoured to keep information back?—*A.* That is not true.

*Q.* You did nothing to try and conceal anything in any way?—*A.* No, no. I was present in our office when Mr. Langer came in, about July, my brother had returned from crawling into the second tunnel in the old Alamo Mine and had heard him tell Mr. Langer exactly what he has stated here, something to the effect that he and Fellows and Barnes had got in there, and Barnes said it did not look good to him, or something to that effect. The whole thing was casual. No man could go into 5000 feet of an old mine and express an opinion, or anything approaching an opinion. It was ridiculous. It was just casual, and Mr. Langer took it in the same casual way, as far as I understand.

10

Cross-exa-  
mination.

CROSS-EXAMINATION BY MR. FARRIS.

*Q.* You put in this morning some envelopes. May I see them? Are there two sets?—*A.* There are two sets.

*Q.* Have I them both here?—*A.* You have three, Barnes, Code and Thomas, and I brought the other as a sample.

20

*Q.* Well, now there are three sets here?—*A.* Yes. May I show you? Those are marked this way—

*Q.* So this means that those are Code's shares?—*A.* No, just private shares.

*Q.* Mr. Code still has 250,000 shares?—*A.* May I see the envelope just a moment. Here is Mr. Code's receipt for the other 50,000.

*Q.* He has 250,000 shares, and the next one is Mr. Barnes and there are the number, 125,000 shares?—*A.* Should be 120. May I see those certificates? 125, Mr. Farris; there's five extra there.

*Q.* 125, and there are 130 in there?—*A.* No, 125 are in here; there should be only 120.

30

*Q.* And 125 makes 300,000?—*A.* Yes, and Thomas's.

*Q.* The other one—how many are there in there?—*A.* I think there is 120,000 here. There should be, 25, 50, 100,000 and 20,000, earmarked for Mr. John F. Langer.

*Q.* How many are there?—*A.* 120,000.

*Q.* Then I understand, if I am right, in addition to that, in addition to those of the five directors of the company, each of the five directors set aside 300,000 shares apiece, that is really in trust. In the agreement which is dated March, 1925, it is provided that a trustee should be appointed to handle those shares?—*A.* Yes.

40

*Q.* That trustee, you say, was not appointed?—*A.* No.

*Q.* But you became more or less a trustee?—*A.* It was imposed upon me. I assumed the responsibility.

Q. And, as such trustee, you have kept records of the shares?—A. I have.

Q. And they have been sold, I understand, have they?—A. Yes.

Q. And the proceeds have gone to the company?—A. Yes.

Q. How many shares have been sold?—A. The auditor's statement will show that: I could not remember.

Mr. ST. JOHN: The report is in.

Mr. FARRIS: Q. Now, Mr. Davis has referred to a receipt, which is a document filed in an action—not in this action, but in an action of David Barnes against the Alamo Gold Mines Limited, of which you were the secretary?—A. Yes.

Q. And this purports, Mr. McTavish, to show that one million and a half shares were disposed of, that is, trust shares?—A. Yes.

Q. Where did you get the information from?—A. What do you mean?

Q. What do you think I mean?—A. Information—

Q. I have been discussing with you the question of how the trust shares had been disposed of. Is that clear?—A. Yes.

Q. I asked you where did you get the information as to how the trust shares had been disposed of?—A. There was, since you mention, 20 pages of my examination, I presume—

Q. Please don't make a speech. Answer the question. We have listened to speeches all morning?—A. I cannot answer without.

Q. Well, go ahead and make a speech?—A. And I can't make a speech. Do you want any information?

Q. Please answer the question?—A. Repeat your question.

Q. Where did you get this information?—A. At the time that I found myself responsible for those shares—put it that way—in the first place, we had no bookkeeper in our office—

Q. You had what?—A. We had no bookkeeper in our office. I arranged these envelopes with the certificates preparatory to placing them in escrow with the Toronto General Trust —

Q. Mr. McTavish, I did not ask you for a history of your life. I asked you if you prepared this document?—A. Now, I have got to tell the jury this. I have got to tell the jury this thing properly. Do you want information, or don't you?

Q. Answer my question. Where did you get this information?—A. That was from the auditor's reports, as near as I can recollect.

Q. What auditor's report? Where is the report?—A. It is here, I think.

Q. Let me see it.

Mr. ST. JOHN: Exhibits 15 and 16.

Mr. FARRIS: Q. Show me the page where the information is contained in this report?—A. (*Witness indicates.*)

Q. Where did you get your information, where did you go to get your information that David Barnes had been given 2,500 shares?—A. That involves an explanation.

Q. In other words, you had no document to go to?—A. No.

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Q. So that you simply had this in your mind, in your memory, had you?—A. More than that.

Q. Well, what else did you have besides your memory, I am asking now?—A. At what time? Put it that way.

Q. On the 28th day of May, 1928, you supplied the information that David Barnes had been given 2,500 shares. Now, I ask you if, on the 28th day of last May, you, who were trustee of these shares, and you told my friend Mr. St. John, in opening, that for that reason you took particular pains about them—A. I did.

Q. I ask you to tell me what document you had in your possession from which you got that information?—A. Well, there is a certificate here, for one thing, and the share register—there it is. 10

Q. You go back to the share register now?—A. Yes.

Q. Do you stand by this share register?—A. Absolutely.

Q. Absolutely?—A. Yes.

Q. That simplifies it. Now, from that share register, can you get any information as to the particulars which are in this document, Exhibit 6?—A. Do you want that speech now?

Q. I want information?—A. I will give you the information.

Q. You heard the statement by your brother yesterday as to the disposition of the 500,000 odd thousand shares, approximately 600,000 shares?—A. I did. 20

Q. Do you adhere to that?—A. Yes.

Q. It might be interesting to go on and see what you said about that on discovery, Mr. McTavish. You said this:—

Question 384, "How did he," that is Charles—"How did he (Charles) get 600,000 shares in his name?—A. They were issued at the beginning, instead of being issued in the name of McTavish Brothers Limited, they were issued in his name. They are still held in the office endorsed by him. 30

Q. What was the object of using his name?—A. Oh, nothing special.

Q. So that he never then did purchase any shares at all?—A. No, never purchased any.

Q. You just simply used his name?—A. Just used his name, that's all."

A. That is all quite true. I agree with what my brother said.

Q. That is on the 28th of May.

"Q. You simply just used his name?—A. Just used his name, that's all. Q. And can you suggest any reason why you used his name?—A. Nothing special. Q. Apparently those 600,000 shares were part of the surrendered shares that you put in his name?—A. If they were, they are in the office. Q. You see how important it is for me to know how many you have in the office?—A. We can't account for them. Q. I want to see those share certificates, not just 40

a pencil figure. You haven't given me yet any reason why those share certificates were put in his name?—*A.* There is no special reason. *Q.* There must be some reason; why didn't you put them in my name, if there is no reason for it? Why did you choose his name?—*A.* I don't recall at the moment just why it was done, it doesn't make any difference. *Q.* Well, that may be . . .”

Now, you tell me that you agree with your brother's statement?—*A.* Yes.

*Q.* And those were turned over as a present to your brother?—*A.* As a present.

10 *Q.* And this morning, we heard, in addition to that, your brother—you owed your brother \$20,000.00?—*A.* \$20,000.00. We did not want to tell—

*Q.* Now, Mr. McTavish—*A.* Just a moment. We did not want, at that time, to bring out the fact that my brother was—that my brother loaned me this money.

*Q.* Your brother seemed very anxious yesterday to bring it out?—*A.* You were very anxious to get it out. You were trying to cast an insinuation on the fact of that being in my brother's name.

20 *Q.* Now, Mr. McTavish, 600,000 shares had gone to your brother, and what shares had you left to sell to Mr. Langer?—*A.* My brother—my mother—my brother, at least, endorsed those shares and immediately sent them back for us to use as best we could, and we had 600,000 shares all endorsed in our office, and I would be delighted to hand them over now to Mr. Langer.

*Q.* Well, as I understand it, you got 1,200,000 shares to start with?—*A.* Yes.

*Q.* 600,000 of those became trust shares?—*A.* Yes.

*Q.* So that you entirely divested yourselves, you and your brother, of every single share?—*A.* We did not have anything to divest ourselves of.

30 *Q.* I say, from the very start McTavish Brothers Limited, from the date of that document, March 1925, McTavish Brothers Limited, nor Donald McTavish, nor Peter McTavish, had a single share in the Alamo Gold Mines Limited? Is that right?—*A.* Correct.

*Q.* So that when in May last you told my friend Mr. Walkem that there was no reason at all why you put them into your brother's name, when you told him you did not know why it was done, the fact is that so important was that transaction that it divested you and your company of every share that you had?—*A.* On the contrary, it was so unimportant that it did not make one particle of difference to the Company. That is  
40 what I tried to get over.

*Q.* I know, but this question:—

“There must be some reason; why didn't you put them in my name . . .?—*A.* I don't know just what was done; it does not make any difference, anyway.”

*A.* That is correct.

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*Q.* And yet, Mr. McTavish, that act of yours deprived you and your brother and your company of the beneficial interest of every share in the Company?—*A.* Not at all.

*Q.* Not at all?—*A.* Not at all.

*Q.* Don't quibble over it?—*A.* I am not quibbling one bit.

*Q.* What shares did you have left?—*A.* The Company, as such, had none left.

*Q.* What shares had Peter McTavish left?—*A.* None.

*Q.* What shares had Duncan McTavish left?—*A.* None. We controlled others, of course, on behalf of our mother. 10

*Q.* Did you have a judgment against you at that time?—*A.* I had.

*Q.* For about how much?—*A.* One for—

*Q.* Give us them in round figures?—*A.* Twenty or twenty-five thousand dollars. I never ran away from it.

*Q.* You told your creditors that you made a family present of all your interests in the shares?—*A.* If our creditors would take those shares, we would give them to them, but it happened to be a bank.

*Q.* Were those shares which you donated to your family?—*A.* We did not donate them to our family at all. I will just correct that.

*Q.* You did not donate them. What word would you use?—*A.* I 20 owed him \$20,000.00. Do you call that a donation?

*Q.* I asked you this morning if it was a present to your brother and you said yes?—*A.* As far as our brother is concerned that is quite true.

*Q.* Now, you received on account of these shares that went to your brother from Mr. Langer \$51,000.00 or thereabouts.

*Q.* Did you ever report that to your creditors?—*A.* No.

*Q.* So that this gift to your brother had a string on it; although you gave it to him you got the money?—*A.* There was no string on it.

*Q.* Did you use the money?—*A.* I used the money.

*Q.* So that I presume you were in this fortunate position, where your 30 creditors were in an unfortunate position, that if they should have gone after this money, it belonged to your brother and your mother?—*A.* It belonged to our business.

*Q.* It belonged to your brother and your mother?—*A.* It belonged to our business.

*Q.* Didn't this belong to your brother and your mother?—*A.* Yes.

*Q.* And if any creditor had gone after this money, it was your mother's and your brother's?—*A.* We had not thought about that, but I suppose a legal mind would. We have never really taken that attitude. We are not running away from creditors; we are on perfectly friendly relations 40 with them.

*Q.* Now you have before you the share register. In July, 1927, how many shares appeared in the name of McTavish Brothers Limited?—*A.* July 1927? 599,995 shares.

*Q.* Those trust shares I understand?—*A.* Those were—yes, those belonged to the company.

*Q.* Belonged to the company?—*A.* The original amount.

Q. Those are the trust shares?—A. No, that is not exactly right. Do you want that speech now, or will you wait for it? I have got to explain to the jury exactly the situation here.

THE COURT: The jury might think you are evading the question?—

A. I am very sorry to create that impression because I am really not, my lord.

Mr. FARRIS: Q. Now, Mr. McTavish, you have told me that the beneficial interest in those 600,000 shares went to your brother and to your mother?—A. Yes.

10 Q. And those 600,000 shares—will you turn up your brother's account there, just on the next page—back one page. That shows how many shares went to your brother. It is clear that it was in 1925 Code transferred to your brother more or less 600,000 shares?—A. Yes.

Q. And there still remains in your brother's name how many of those shares?—A. At this present time?

Q. As shown in that book?—A. At September 6th there were 265,000.

Q. That is the same date as far as that goes?—A. I am not just sure.

20 Q. Well, look at it. Those are your brother's shares?—A. No, those are not.

Q. I see. Those are not your brother's shares. Whose shares are they?—A. Those shares are at the present time, as I recollect it, being held to reimburse Mr. Langer on his Alamo contract, should he go on and perform it.

Q. I will put it this way, those shares in your brother Charles' name are shares that you have told us you had turned over to him for some money loaned?—A. This book, as I explained, does not necessarily indicate the ownership of the shares. That is the whole thing in a nutshell.

30 Q. You say—I thought I had got you to say that that book correctly represented the thing?—A. This book is right as far as transfers are concerned. That is what it is, transfers.

Q. Now I got from you that away back in the Spring of 1925 you transferred approximately 600,000 shares to your brother Charles and that that was entered into the transfer book. Those are not the shares that you gave to your brother?—A. Those are the shares that we gave to him, Yes.

Q. Those were the shares that were given to him—keep that book open, please?—A. They may have been used by Mr. Langer or the company.

40 Q. Now, just a moment. Step by step. We have there in Charles McTavish's account, we have a whole batch of shares from Code to Charles McTavish?—A. Yes.

Q. And now you agree with me that those shares which were transferred by Code to Charles McTavish were transferred at your direction?—A. Yes.

Q. And they were shares that you gave to your brother for his use and for your mother's use?—A. Yes.

Q. And that transaction was recorded in the share register book?—A. Yes.

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mination—  
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Q. And I ask you if it was not true that those shares you put into Charles McTavish's name are shares which you beneficially gave to him?—

A. Those actual shares, do you mean or that number of shares?

Q. Those actual shares?—A. The trouble is, Mr. Farris—

Q. Just answer the question?—A. —you are confusing shares and certificates. We kept our records through certificates, but that did not always show the ownership here. We always kept the certificates. We always had certificates to cover the company's obligation.

Q. Isn't it true that those specific shares were endorsed over to Charles McTavish by Code?—A. They were not endorsed over; they 10  
were issued direct.

Q. They were issued direct?—A. Yes.

Q. And with those numbers on and the records of those were kept in this account in the name of Charles McTavish?—A. Absolutely.

Q. The shares with those numbers on were the ones that went to Charles McTavish at your direction?—A. Yes, that is right.

Q. As your gift to him?—A. Yes.

Q. Now, I say isn't it equally true when you turned back to McTavish Brothers Limited, that you have a record there of some other 600,000 shares in the name of McTavish Brothers Limited?—A. Yes. 20

Q. And are those the shares that you hold as trustee?—A. Yes.

Q. They are?—A. Not exactly those same shares, those numbers.

Q. What other shares would there be when we have had it once that the numbers on them that are in your brother's name—what other shares could there be except those that are there? You have admitted 200,000 shares, 600,000 of those shares were numbered and in Charles McTavish's name on that record, so whatever is in that book in Charles McTavish's name, it leaves another 600,000, doesn't it?—A. Yes.

Q. And there is another 600,000 in the name of McTavish Brothers?—  
A. Those are the same, but not exactly those certificates. The number of shares is right. 30

Q. Now, I find that in this McTavish Brothers Account it also has a record of W. B. Code, transfer of those shares to McTavish Brothers Limited away back in 1925 to the extent of 603,995 shares. Here, as against that, there was a transfer of 4,000 shares to one—Prow, is his name? I am not concerned with that. I see there is a transfer, D. McTavish to Peter McTavish of 1,000 shares and I see that on November 16th, 1927, 425,000 shares were transferred to J. F. Langer in this account?—A. Yes.

Q. So that, as far as your stock ledger is concerned—before I come to that—for that transfer of those shares, you received this agreement or letter of November 17th, \$5,000.00 in cash and a note for \$10,000.00, which you discounted?—A. Yes, partly. 40

Q. And you applied that money to your own purposes, that is, the Company, being McTavish Brothers Limited?—A. Yes.

Q. And, as far as this stock register is concerned, the shares that went to Langer for that money were shares that you were holding in trust for

the Alamo Company?—A. No, not all the shares. All the shares were being held under contract with Mr. Langer.

Q. The Alamo Company's 1,500,000 shares had all been disposed of?—A. 1,500,000 shares, about 618,000, I think, had been disposed of prior to Mr. Langer's coming in.

Q. Well, anyway, the Alamo Company had 1,500,000 shares to start with?—A. Yes.

Q. I say at this date, November 17th, 1927, all that million and a half shares had been disposed of?—A. No, that is not exactly right, Mr. Farris.

10 There had been 750,000 shares set aside for Mr. Langer under his contract, and there was a residue of 750,000 issued.

Q. With that exception?—A. Yes.

Q. Then, if we turn to your brother's account, we find the number of shares that you still have?—A. I think that is correct.

Q. Then, I say, if we take it at, say November 1st, 1927, and return to this share register and take the number of shares appearing in the name of McTavish Brothers Limited, and take the number of shares appearing in your brother's name, we find the total number of shares beneficially held by the McTavish's—?—A. What do you mean by "beneficially"?

20 Q. That you owned and had the right to use?—A. Not the right to use. The shares here are, at the present time, being held for Mr. Langer's account. They happen to be in his name. We did not always transfer them from this or that place. 269,000 shares in my brother's name are actually endorsed in our office for Mr. Langer.

Q. Well, then, the only shares that you have which really belong to your brother now, are the ones that appear in the name of McTavish Brothers Limited?—A. I think McTavish Brothers Limited are all, I think—

Q. We are talking now about the 1st November, 1927?—A. Yes.

30 Q. November 1st, 1927?—A. What is your question?

Q. I say that all the shares appearing in the name of McTavish Brothers Limited as of the 1st November, 1927, belonged to your brother?—A. Those appearing here belonged to my brother. My brother and my mother still really own those shares. It does not matter whether they are in his name or any other name.

Q. Now, when I say your brother, I mean your brother and mother?—A. Yes.

Q. And your brother was holding his in trust for the company?—A. No, I did not tell you anything of the sort. I beg your pardon.

40 Q. What I am leading up to, Mr. McTavish, as between your two accounts, your brother's and yours, on the 1st day of November, 1927, there was at least 599,000 shares available?—A. There is no change in that except this—

Q. With the exception of those 1,500 shares. If you like I will go back to July?—A. 499—

Q. No, that is a transfer. Here is the point, you see, on July 3rd, 1927—?—A. Yes.

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Q. There are 599,995 shares?—A. Yes.

Q. Now, I was making allowance for the fact that you utilised the two accounts as one?—A. Yes.

Q. The fact is that, taking Charles McTavish account and McTavish Brothers' account—your brother's, your mother's, the company's and yours, there are 499,000 shares?—A. Yes.

Q. Still belonging to McTavishes?—A. Yes.

Q. Apart from any trust or anything else?—A. Yes, and deduct from that, Mr. Farris, the original sale of 250,000 shares.

Q. 250,000 shares to whom?—A. To Mr. Langer. He had already 10 purchased 250,000 shares.

Q. From McTavish Brothers?—A. Yes.

Q. Where does that appear?—A. The certificates were all ready.

Q. In the share register?—A. I will have to go back to Mr. Langer's account.

Q. It should appear in your account?—A. Not necessarily.

Q. Mr. McTavish, when your brother was in the box yesterday, you heard me read from a letter which you wrote to David Barnes on February 14th, 1927. Some other matters are referred to in this letter and then you say this: "Re Shares. We note that you have had a talk 20 with Code relative to Alamo Stock. You can readily understand that as we have had to carry on for about two years our shares have been dwindling. When checking the matter up recently, we were shocked to find that we had consumed nearly 300,000 shares. In addition to this, of course, we must carry on for some time. In fact if Mr. Langer decides to drop the Alamo after April, we would then have reduced our holdings to such an extent that we would be little interested in the future of the company. At the same time, as you can understand, we must carry on in view of the fact that we have interested so many people in the enterprise. Under 30 the circumstances therefore we feel it is only reasonable that we should have a substantial interest, and the sooner it is fixed up the better. While we have consumed approximately 300,000 shares, we must, as stated above, continue to carry on so that it would take approximately 400,000 shares to square us away. We do not wish to be unreasonable however," and so on.

And on the 24th February, ten days later you acknowledge to Mr. Barnes that he has come through with 180,000 shares. What I draw your attention to is this, Mr. McTavish, that to induce Mr. Barnes to give to you 180,000 shares, which, by the way, are part of the shares that you are now seeking from Mr. Langer in the suit—to induce him to give you 40 these shares, you make this statement: "When checking the matter up recently, we were shocked to find that we had consumed nearly 300,000 shares." What did you mean by that statement?—A. That letter is the one you were referring to as being signed by the stenographer, was it not?

Q. I believe it was, yes?—A. Yes, I dictated that letter.

Q. Yes?—A. But the stenographer sent it out. Had I looked that over I would have corrected what I had already stated to Mr. Barnes. Mr. Barnes and Mr. Code and ourselves had discussed this thing repeatedly. We had consumed the equivalent of the shares. We had not disposed of the shares. It was because—

Q. Now, let us take this thing one by one. Now, the first thing you tell us is that although you dictated this letter you would not have sent it?—A. Without that correction.

Q. If you had read it over?—A. Yes.

10 Q. Yes, it would have joined this document produced by Dr. Manchester, and this letter that we heard about this morning that was not sent. Well, now, what is wrong with this statement. Apparently I wasted a lot of time this morning pinning you down to how many shares you had?—A. It indicated that we had disposed of the shares; as a matter of fact we had not.

Q. Yes, well, possibly without having the benefit of the long cross-examination you might not have changed this letter?—A. No, not at all.

Q. Well, if you hadn't used the shares, what had you used as the equivalent of it?—A. Cash.

20 Q. Cash. Was it at this period that the shares were sold for 25 cents?—A. 1927, is that?

Q. This is February, 1927?—A. Yes, that is—about that time they were sold at 25 cents.

Q. Yes?—A. Most of the shares had been sold at 12½ and we computed on that basis.

Q. You had sold shares on behalf of the company?—A. Yes.

Q. And received a commission for them?—A. Yes.

Q. 25 per cent. in cash, and 25 per cent. in shares?—A. Yes.

30 Q. Making 50 per cent. in all. The equivalent of 300,000 shares at 25 cents would be \$75,000?—A. I figured that out with Mr. Thomas and Mr. Code, we figured up on the basis at which practically all the shares up to that time had been sold—twelve and a half cents a share.

Q. Now, I want to read you again, Mr. McTavish, now you say that it was not the shares you were taking, it was the equivalent in cash?—A. Yes.

Q. "You can readily understand that as we have had to carry on for about two years, our shares have been dwindling."?—A. Yes.

Q. Now, when you dictated that language there couldn't have been very much confusion in your mind?—A. No.

40 Q. "Our shares have been dwindling." "We were shocked when checking the matter up recently." You say now you take this back?—A. We had taken that all up with Mr. Barnes and Mr. Code—

Q. You say "We were shocked"?—A. I am talking of the writing of that letter.

Q. Were you shocked?—A. Were we?

Q. "To find that we had consumed nearly 300,000 shares." Then you go on, because one might select one place—you go on to state that if

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mination—  
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Mr. Langer dropped out that you won't have enough shares to keep you interested. And then you go on in the next paragraph: "While we have consumed approximately 300,000 shares, we must, as stated above, continue to carry on, so that it would take approximately 400,000 shares to square us away?"—A. It would, yes.

Q. Anyway, that is your explanation now?—A. Yes.

Q. That inasmuch as you didn't see the letter afterwards you didn't correct it?—A. Well—we went over that work with Mr. Barnes and Mr. Code. It was the equivalent not the shares themselves.

Q. The facts are these, however, Mr. McTavish, that we will have to all agree on, that this letter was sent——?—A. Yes. 10

Q. ——to Barnes?—A. It was.

Q. That Mr. Barnes didn't turn over the shares before this letter was sent?—A. Yes.

Q. And almost immediately after Mr. Barnes got this letter he not only turned over 180,000 of his own shares, but he got Thomas to turn over an equal amount?—A. No, Thomas didn't turn over his for some time afterwards.

Q. Well anyway he got Thomas to do it?—A. No, I think not. I think that Thomas came to us and agreed with us. 20

Q. Let us see what was in this other letter. I think I won't bother with this point any more than the postscript—letter of the 24th February, "Have since received your note returning over 180,000 shares. If the others do as well as you we shall see that you get a reasonable 'hunk' of this back, but say nothing of this to George or Code."

Now, I interpret that to mean this, you want to see if I am right, that you were getting Barnes not only to turn over his, but to use his influence and the fact that he turned them over to get the other two to do the same?—A. No, they were each pleased to turn over about the same. It was a matter between them. We had nothing to do with it—with making that alteration. Each was willing that the other should turn over his stock. Mr. Barnes had stated to us that he would turn over 100,000 shares. They felt that they should do more than that. And this—if Code and Thomas and Barnes each turned in 180,000 shares, then the position would be, Code and Barnes were away from the Company, if Barnes was the one still to continue in charge of the mill he would be entitled to more than them. I used the word "hunk" because it is a word that Mr. Barnes—Mr. Barnes was frequently using himself. 30

Q. But you didn't want him to say anything to Code or Thomas about it. Now, coming back to this 300,000 shares, what you say is that if you had it to do over again—if you had time to read the letter you would have changed it to the equivalent of 300,000 shares?—A. That was what was discussed with these men. 40

Q. How much would that be in money?—A. At the rate of 12½ cents, or \$21,000 or \$22,000 less commissions.

Q. \$37,000.00, you are suggesting that that was money you had put into the company?—A. Yes, up to that time.

Q. It is very interesting to look at the ledger of the company in that connection. That is Exhibit 7?—A. Which company are you referring to?

Q. The Alamo?—A. Well, I mean the other company.

Q. What other company?—A. McTavish Brothers.

Q. McTavish Brothers?—A. Yes.

Q. That certainly is a surprise?—A. McTavish Brothers were devoting time—

10 Q. You were speaking of the Alamo all the way?—A. McTavish Brothers were devoting their time almost exclusively to the Alamo business at that time.

Q. So what I understand you to say now is, not that you had contributed any money to the Alamo Company—A. No, no.

Q. Because you had got the letter of the Alamo Company here?—A. Yes.

Q. But that when you are saying that you were shocked about the way the shares were dwindling, that all you meant was that McTavish Brothers Limited had been giving their time to the Alamo business?—A. And spending their money.

20 Q. And that was the same thing as the equivalent of shares contributed?—A. No, it was spending money, it was costing us \$1000.00 a month and more to carry on, and we got nothing from the company, unless we used it through the shares.

Q. It was costing you what?—A. \$1000.00 a month.

Q. To do what?—A. To carry on our business—run our office and run our homes.

Q. Yes, and all your business was selling Alamo Gold Mine shares?—A. Yes.

Q. For which you already named the commission you were receiving?—A. Or the salesman.

30 Q. Or the salesman?—A. Yes.

Q. And you were receiving a share even when the salesman was doing it?—A. I beg your pardon?

Q. I say you were receiving a share even when the salesman was making the sales?—A. Sometimes, not always. In most cases it was—

Q. In addition—

Mr. DAVIS: Q. What is that?—A. In most cases we didn't.

Mr. FARRIS: Q. In addition to these sales that you were making—your salesmen were working on a commission?—A. Yes.

40 Q. Yes, in addition to these sales that you were making, what staff did you have in your office?—A. Most of the time, a book-keeper and a stenographer.

Q. Yes, most of the time?—A. Yes.

Q. The rest of the time you didn't have a bookkeeper?—A. No, we did soon after this company got going.

Q. Was the bookkeeper also the bookkeeper for the Alamo Company?—A. Yes.

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Q. And was paid by the Alamo Company?—A. No, he was not, we paid that ourselves.

Q. You have got no record here for that item?—A. Never charged a cent for rent or bookkeeping to the Alamo Company, McTavish Brothers paid it ever since the inception of the company.

Q. Yes. All right. How long have you had your stenographer. How long have you kept a stenographer in your office?—A. About four years, I think—five years.

Q. What?—A. About five years.

Q. About five years. So you had a stenographer before this business started?—A. Yes. 10

Q. Yes. How long had you had a bookkeeper?—A. I can't tell you exactly, but it is about three years, I think?

Q. About three years?—A. Yes—two years and a half or three years.

Q. Now, what have you been paying your bookkeeper?—A. \$200.00 a month.

Q. \$200.00 a month. What is the bookkeeper's name?—A. Guselle.

Q. It is interesting in view of all that to read just a little bit of your discovery, Mr. McTavish, and I won't delay his lordship very long with this.

THE COURT: I do not want to stop you, but you are going pretty far afield, you know, as I said this morning when you discussed different incidents. 20

Mr. FARRIS: I don't know, my lord, I might check up—I wasn't very long with this witness this morning. It was about 40 minutes—was all I was.

THE COURT: I wish, if possible, to get the jury to appreciate the evidence, but there are certain issues raised this morning that I allowed.

Mr. FARRIS: The evidence, my lord, in this case—got from Mr. Langer, questions which were asked by my friend, the issues are very close to credibility—very largely. 30

THE COURT: There is no question about that, but with a proper question, I say I allowed it.

Mr. FARRIS: It is on that very largely that I must cross-examine this man.

THE COURT: Of course if he gives you an answer on a collateral issue you are bound by it.

Mr. FARRIS: I am bound by that, but this morning I was trying to get down—

THE COURT: Of course, if it is on the issues you can show he is wrong, that is different. 40

Mr. FARRIS: You see what I am trying—of course if he is switching

Mr. DAVIS: I don't think that you should make an address to the jury at the present time—

Mr. FARRIS: I have a right to explain my position.

Mr. DAVIS : But you have no right to say that the witness is switching anything—commenting on the witness, comments on the witness are not to be made now.

Mr. FARRIS : Perhaps not, I shouldn't say that, I am certainly going to say it later.

Mr. DAVIS : Oh, that is all right, I am prepared for that.

THE COURT : You will have time for that later, that is the reason I do not want it dragged in now.

Mr. FARRIS : What I was going to say—I won't bother with it, my  
10 friend was perhaps right in his suggestion.

Mr. DAVIS : What question is that?

Mr. FARRIS : 313, just to get the context :—

“ Now, I presume exactly the same remarks apply to the sale of the shares at 12½ and 25 cents?—A. Yes, applications were taken for a lot of them, but only by the salesmen, and then not always by them.

Q. And you have no vouchers or anything at all to substantiate your statement that you sold that number of shares at 12½?—

A. No, it was a statement made up for the auditor about June,  
20 1926.

Q. How did you make it up, what from?—A. I had certain data at that time.

Q. What did you do, destroy it since then?—A. Only a few bits of paper.

Q. They are lost?—A. Oh, absolutely—just desk memo.

Q. And these shares which you sold at 25 cents, you say the same remarks apply to that, there are no vouchers or receipts or anything to show that. Now, shares issued in payment of commission, what does that mean, 165,368?—A. That is the commission  
30 we would have.

Q. Your commission of 25 per cent.?—A. Yes.

Q. In stock?—A. Yes.

Q. The other 25 per cent. commission you took in cash?—  
A. That was deducted at the time.

Q. So these receipts are not, less that cash commission?—  
A. Yes.

Q. And that went to McTavish Brothers Limited?—A. Or the agents who sold, it is mostly the agents, they were nearly all sales made by agents.

40 Q. Who were your principal agents?—A. A man named Welch ”

and so on.

Q. I suppose you still adhere to those answers, Mr. McTavish?—  
A. Yes, as far as I know.

Q. And then you tell us it was costing you \$1000.00 a month to run the affairs of these companies, that you were paying a bookkeeper, who presumably was doing nothing else, \$200.00 a month.

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Q. And that all you had to show for those matters was a few slips of paper or desk memos?—A. That thousand dollars includes our living expenses.

Q. Well, now, are you shocked to find that the equivalent of your shares had been dwindling to the extent of 300,000 shares because that you were living during this time?—A. Because what?

Mr. FARRIS: Now I will ask Mr. Allen to produce me—or let me have Exhibit 66. Would you mind handing that to the witness.

Q. Now, you will recall what that is, Mr. McTavish?—A. I do.

Q. This purports to be, as I understand, all the letters and telegrams passing between Barnes and you. When I say you, I mean you either individually or as a company?—A. Yes. 10

Q. Is that right?

Mr. ST. JOHN: Is that something that was already filed?—A. And other things relating to the Banner—but anything relating to the Banner itself was always put in this file.

Mr. FARRIS: Q. Either the Banner or Alamo?—A. The Alamo—just the Alamo.

Q. Yes?—A. Anything—

Q. Have you got a file for the Banner?—A. Absolutely. 20

Q. Another file for the Banner?—A. Yes.

Q. Were they always kept separately?—A. The stenographer did all the filing.

Q. Well, how would you do when you had a letter that was relating to both of them?—A. It was pretty hard to do that—Mr. Barnes had a bad habit of doing that. In that event it would go in the file, I suppose—although the stenographer did that—to which it most properly belonged.

Mr. DAVIS: Q. Well, that was done by the stenographer apparently?—A. Oh, done—all the filing was done by the stenographer. We never looked at it. 30

Mr. FARRIS: Q. Now, I have a letter that is in, Mr. McTavish, I don't know the exhibit number, but it was filed yesterday as November 25th, 1926, letter from McTavish Brothers Limited per P. D. McTavish to David Barnes.—A. What year is that, Mr. Farris?

Q. November 25th, 1926.

Mr. ST. JOHN: Exhibit 100.

Mr. FARRIS: Q. Will you see if that letter is in that file?—A. November 26th—

Q. The 25th, 1926?—A. November 1926—November 25th.

Mr. ST. JOHN: I think it is here. 40

THE WITNESS: Is it there?

THE REGISTRAR: Yes.

Mr. FARRIS: Certainly it is there, but I want the record—a copy of it should be in that file?—A. Oh, a copy of that?

Q. Certainly?—A. Oh, I see.

Q. You wouldn't have the originals of the letters you send out of your office, would you?—A. No, '26, November?

Q. The 25th, 1926?—A. It doesn't seem to be here, Mr.—November—

Q. The 25th, 1926?—A. No, I don't seem to see a copy here.

Q. I might say both Mr. Walkem and I went through and we couldn't find it?—A. No, I can't see it here.

Q. You don't see anything there?—A. No.

Mr. ST. JOHN : It may be in the Banner file.

THE WITNESS : It may be in the Banner file, but it is hardly likely.

Mr. FARRIS : Q. The letter was read yesterday and it is the letter in which you very ingenuously instructed Mr. Langer so that he would not have the slightest kick?—A. Mr. Langer? Instructed Mr. Barnes.

Q. Instructed Mr. Barnes?—A. Yes.

Q. So that Mr. Langer would not have the slightest kick, that he should arrange his trip so that Langer would think he had gone back to the mine when he was, in fact, in Seattle?—A. Oh, yes, I remember that.

Q. Now that letter is not here, is it?—A. Is that the one you mean?

Q. That is the letter?

Mr. DAVIS : Hunt it up.

A. It doesn't appear to be here—the copy.

Q. That is produced and filed possibly?—A. Yes.

Mr. FARRIS : Q. I mean the copy that would be in that file. I am checking the correctness of this file that was splashed around here as proof that Mr. Barnes had never sent any telegrams up here?—A. I have never seen that file after it was taken away from our office to the court house some time ago when this action started long ago and I have never seen it since. I had nothing to do with the keeping of it.

THE COURT : Q. How do you account for it—it is slipshod work of the stenographer?—A. Well, I don't know, I am sure.

Mr. DAVIS : Well, you think there is nothing with regard to the Banner—this is only the Alamo file?

THE COURT : Oh, I see, that does not refer to any in particular.

Mr. DAVIS : It does not refer to any mine at all, that is the thing.

THE WITNESS : Not only that, we had another file of McTavish Brothers Limited, this would probably be McTavish Brothers Limited.

THE COURT : All right.

THE WITNESS : We had three different files, the Alamo, the Banner and McTavish Brothers Limited.

Mr. DAVIS : Q. Is there a third file?—A. There is a third file, McTavish Brothers Limited.

THE COURT : Q. It would be more likely than that?—A. I think so, possibly.

Mr. FARRIS : Well, let me see that one of February 22nd.

Q. Would you look at that February 22nd, 1927, and see if there is a copy of that letter there. I am not sure whether I have got my references right on this or not?—A. February 22nd?

Q. Yes?—A. If these are in order it is not here.

Mr. ST. JOHN : What exhibit is that?

Mr. FARRIS : This is not in.

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Mr. DAVIS : Better go all through and see.

Mr. St. JOHN : I will bring all the other files up, Mr. Farris.

Mr. FARRIS : What I am doing this for is very obvious, that the suggestion was made, now we have got all the letters that are in this file that Mr. Barnes sent or received, therefore it shows that nothing was ever sent by him complaining about the condition of this mine.

THE WITNESS : It is an absolute fact.

Mr. FARRIS : I am going through this, my lord, trying to find—

THE COURT : Is that sent by Barnes ?

Mr. FARRIS : I beg pardon ?

THE COURT : Is that sent by Barnes, or sent to Barnes ?

Mr. FARRIS : Both, it was to show both. Now naturally we haven't got—we can check up all that was sent by Barnes.

THE COURT : You intend to use this argument, that that would be a matter of such importance he would have written about it, is that the idea ?

Mr. FARRIS : No, my lord, I don't know whether he did or not.

THE COURT : No, but I say it was intended—

Mr. FARRIS : Mr. Davis emphasized that very much, and so I want to emphasize that, but he repeatedly presented to our vision this file which was going to settle that question.

Mr. DAVIS : It would show all the letters from Barnes.

THE COURT : I do not think Barnes ever said he did write anything about the condition, it was all verbal.

Mr. DAVIS : He admitted he did not.

Mr. FARRIS : It was verbal to a certain stage, whether there was anything before that or not it was not clear ; it might have been—

Mr. DAVIS : I think he said he did not, but however—

Mr. FARRIS : This file is supposed to show—now we can't check up all the things Barnes sent because Barnes didn't keep a record, but Barnes does happen to have in existence all the letters he received, and I am suggesting that this file would not be a bit more accurate on letters received or letters sent, and we have a check on the others—on the letters that he received, and we checked that side, and they are not in this file.

THE COURT : Now is that clearly the Alamo, that letter that you are holding, or does it cover other stuff, or is it just general ?

Mr. FARRIS : I have not seen this since we made that up. This is a letter of February 22nd from P. D. McTavish : " Dear Dave " (*reading*). It is clearly the Alamo. " We note that you had an interview with George (*reading*). Signed " P.D. " That is your signature, Mr. McTavish ?—A. Yes.

Q. And so it is evident that is not in that file ?—A. Well, this is clearly—it does not belong to that file. It was a private letter, apparently.

Mr. FARRIS : I put that in. (*Document marked Exhibit No. 109.*)

Mr. DAVIS : The other one is as much Banner as that—Banner is referred to there twice.

Mr. FARRIS : Banner may be referred to, but it is clearly an Alamo letter.

THE WITNESS : Yes, it is a personal letter, nothing to do with—

Q. Do you say that letter is not a business letter?—A. That letter had to do with affairs between Code, Thomas, Barnes and ourselves—nothing to do with the Alamo at all.

Mr. ST. JOHN : Here it is.

THE WITNESS : Out of place, is it?

Mr. ST. JOHN : Yes, here it is—here is the letter you are talking about—right here in the file, Mr. Farris.

Mr. FARRIS : Was it in its order.

10 Mr. ST. JOHN : Yes, right here in its right place.

Mr. FARRIS : Then that is not the letter I refer to. I wasn't sure, because my notes say—I wasn't able to check it and I only asked Mr. McTavish—I asked him if that was the letter.

Mr. ST. JOHN : I will tell you how that occurred, your lordship, we had several letters here that related to the other action, and when these were put in the file the other day—you remember, Mr. Walkem,—we put these in, but they have been put back in their proper place.

THE COURT : What stage is the other action in?

Mr. ST. JOHN : Well, just the pleadings in, my lord.

20 Mr. FARRIS : Well, there has been some discovery.

Mr. ST. JOHN : Well, some discovery. Anyhow that letter is here.

Mr. FARRIS : Now, see if this one is there, Mr. St. John, please. You might see if either of these are there (*handing documents to Mr. St. John*).

Q. Now, there is a document—I want to put this in anyway, and after checking it it wasn't in that file, it may be because it may be another place and we couldn't locate it. This is a document that was sent, wasn't it, Mr. McTavish. (*Handing document to witness.*)

Mr. ST. JOHN : What do you take is the date of that—7th April?

Mr. FARRIS : Q. What is the date of that, Mr. McTavish?—A. That is 30 the 7th of the 4th—I think in the States they put the month—no, the day, that would be the 7th of April.

Mr. ST. JOHN : Q. The 7th of April?—A. The 7th of April, I think.

Mr. DAVIS : The 7th of April or the 4th of July?—A. It may be the 4th of July, because obviously in April they couldn't get into the tunnel. It refers to the tunnel.

Mr. FARRIS : Well, then, it is the 4th of July?—A. It may be the 4th July.

Mr. FARRIS : Well, I want to put that in.

Q. Now, do you remember this—did you sign this “McTavish 40 Brothers”?—A. I don't recall that.

Mr. DAVIS : Better read it and see.

Mr. FARRIS : Well, I thought he had read it. (*Handing document to witness.*)—A. No, I haven't read it all, I was looking at the date. Yes, I remember that letter.

Q. You sent it personally, did you?—A. I think I sent that myself, yes.

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Mr. FARRIS : This is to David Barnes, Granite, Oregon. "Do you think it will be possible for Langer to inspect tunnel?" (*Reading document.*) (*Document marked Exhibit No. 110.*)

THE COURT : Does it mention a tunnel that is to be inspected?—A. No, it says "tunnel"—the old Alamo mine is the one referred to.

Q. You cleaned out?—A. They were trying to clean out to look at it.

Q. So that he could look at it?—A. Yes, before he went to England, my lord.

Mr. FARRIS : This other one is July 2nd or 3rd, it may be, 1927, "Langer leaving next week for England." (*Reading.*) (*Document marked Exhibit No. 111.*) 10

Mr. FARRIS : Are either of these telegrams in the file, Mr. St. John?

Mr. ST. JOHN : I don't see them here.

Mr. FARRIS : Q. Now, I have here another letter, Mr. McTavish, that was signed by your—

THE COURT : Mr. Farris, what do you make the date of that one you just put in—the last?

Mr. FARRIS : The last one that I put in I couldn't figure what it was.

THE COURT : Because if it is the 2nd—

Mr. FARRIS : One would think that it should have followed the first one. 20

THE COURT : It does not, in reading it, does it?

Mr. FARRIS : Yes, its context suggests it is a later telegram. I think it is, but—

THE COURT : If it is July 2nd—that is the reason I was asking you. It may be important later on.

Mr. FARRIS : I don't know how you can—there is no way that you can check up on that, is there, Mr. McTavish?—A. Unless it is in the file; sometimes at night we would go to the telegraph office and send a wire, or phone it from the house, and in that way we didn't always have a copy of the wire we sent out. 30

Q. Now, I am producing another letter of yours signed by your stenographer. (*Handing document to witness.*) That is evidently your letter?—A. Yes.

Q. So you must remember that one?—A. Yes.

Mr. DAVIS : What is the date of that?

Mr. FARRIS : Q. You remember the letter?—A. May 23rd—I remember that letter, yes.

Q. And just look at the document that is with it?—A. It is not signed.

Q. No, it is just attached?—A. Do you want me to read it—

Q. No, I just want you to check up if that is the document that was sent out?—A. Well, I don't know that I can identify it. 40

Mr. DAVIS : Q. Read it through. Either identify it or say you can't, one or the other, but you will have to read it in order to be able to do it?—A. I don't think I wrote that.

Mr. FARRIS : Q. What is that?—A. I don't think I wrote that.

Q. You don't think you wrote that—?—A. No—dictated it either.

Q. You dictated this letter?—A. This letter, yes, I dictated that, and I sent something along with it, but I don't think I sent that.

Q. If you didn't send that what would it be that you did send?—

A. Something rather different, I think.

Mr. FARRIS: I want to tender the letter and I am going to ask to have the document marked for identification, my lord. The letter is May 23rd, 1927, O. R. Hollingsworth, Bellingham. (*Reading.*)

Mr. DAVIS: One moment, I don't know that this is going in.

Mr. FARRIS: I say I am only asking to mark it for identification.

10 Mr. DAVIS: But you are reading the letter?

Mr. FARRIS: Well, he has sworn to the letter as being his own.

Mr. DAVIS: Well, probably a letter signed by him, but it may be found the letter is not admissible.

THE WITNESS: We never sold any stock or had any dealings with Mr. Hollingsworth, this stock being sold by—in connection with the Alamo.

Mr. DAVIS: There was a Hollingsworth letter here yesterday. Is this the same one?

Mr. FARRIS: Yes. It may be there may be two, but this is the one we had.

20 Mr. DAVIS: There was one filed, I think.

Mr. WALKEM: Yes, there was one filed, and this is the second one.

Mr. ST. JOHN: What is 96?

THE REGISTRAR: 96, letter of the 9th June, 1927.

Mr. FARRIS: This one was produced and Mr. McTavish couldn't identify it, so we had to hold it.

Mr. DAVIS: Oh, I see. Well, I object to that in any way, shape or manner. It appeared from the cross-examination of the other McTavish yesterday that the shares that were sold to Mr. Hollingsworth were sold by Code, not by the McTavishes at all, therefore I submit that in giving the widest latitude to my friend, a letter to Hollingsworth with reference to—  
30 assuming that it was with reference to the mine, on the extract that is put in, that it cannot possibly be admissible here.

Mr. FARRIS: I have a document here, my lord, which, if proved, contains certain admissions which are material to this case—certain statements of fact material to this case, and I am cross-examining this witness in regard to the issues that are involved.

Mr. ST. JOHN: How are they material?

Mr. FARRIS: Well, if you want me to tell them so that the jury will get the benefit of it, I will do it.

40 THE COURT: Would it not be better to submit the letter to me?

Mr. DAVIS: I am quite content, my lord, bearing in mind that the evidence yesterday showed that the shares that were sold to this man were not sold by McTavish Brothers at all, but by Code.

THE WITNESS: Personal shares, had nothing to do with the company.

Mr. FARRIS: It makes no difference to my statement, if this man has made statements of fact to other people that are material in the issues in this case, I am entitled to get them before the jury.

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Mr. DAVIS : I submit not.

THE COURT : I am reading Lord Ray's well-known remarks in the case of the Continental Smelter, and I think there is a great deal in Mr. Davis' contention. If you are alleging fraud—

Mr. FARRIS : No, I am not alleging that, I am familiar with that rule.

THE COURT : This is referring to the particular discussion.

Mr. FARRIS : No, I am not talking about fraud at all now, I am asking about representations of fact.

THE COURT : Made by your client, which influenced him in his course of conduct. 10

Mr. FARRIS : No, my lord, what I am doing now is this, the document contains certain allegations of fact which are material issues in this case.

Mr. DAVIS : It does not contain—perhaps it would be better for your lordship to look at the letter. It purports to be a document containing certain statements with reference to the Alamo Mine. The witness has already said—doesn't know that he dictated it, doesn't think he did, but assuming that he did, the evidence yesterday showed that was sent to a man who already had shares, not for the purpose of selling shares at all, but he had shares and these shares had been bought from Code. Now, how in the world can that have any bearing here, either by way of credibility or anything else? 20

Mr. FARRIS : My friend would not perhaps have made the same argument if he had read the paragraph in this document that I am concerned with. I will let him read it. I have checked it with red ink. (*Handing document to counsel.*)

Mr. DAVIS : I don't see anything there that varies what I said at all in the slightest.

THE COURT : Let me see it.

Mr. DAVIS : I have not objected to any of this matter, because the minute I object it is going to be suggested that I am afraid of something, but surely there must be a limit. 30

THE COURT : I know, Mr. Davis, that is the trouble.

Mr. FARRIS : My lord, as far as this proposition is concerned, I understand—I am suggesting the position, I submit, and I think I am right, that that document is material in this case and properly admissible, not as showing some acts of fraud at all, but as concerning the admission of fact involved in this case.

THE COURT : Yes, but Mr. Farris, you are in this difficulty. Suppose he made a certain mis-statement to somebody else, your client cannot get the advantage of that. 40

Mr. FARRIS : Well, there is this, for instance, I might give an illustration, if for instance that document said that he sold this mine to this company for half the capital stock, surely a statement like that would be admissible.

THE COURT : Why?

Mr. FARRIS : That is an admission of fact as to the shares in this case, did they sell it for half the capital stock?

THE COURT : It does not prove it. It might well be contended that it said what was untrue.

Mr. FARRIS : My lord, an admission by a party to an action is always admissible against them, it may not be proof, we are not concerned with proof, we are concerned with material evidence, an admission by a party to an action is always material evidence.

THE COURT : Yes.

Mr. FARRIS : So long as it is an admission as to a relevant issue in the case.

10 THE COURT : With this qualification, that in a case of this kind, it has got to be an admission that has some effect upon the parties complaining.

Mr. FARRIS : Well, my lord, I submit if you will read paragraph 2 of the attached document that it makes admissions of fact as to issues directly involved in this case.

THE COURT : Do I understand you, Mr. Davis, that, even admitting that the document attached was sent with the letter, that it is of no effect ?

Mr. DAVIS : Yes, but he first has to get over the fact that he has not proved that that is the document.

Mr. FARRIS : I was in the process of trying to do that.

20 Mr. DAVIS : The witness has already given his answer on that.

THE COURT : I know, but of course as far as this letter itself why I do not see anything in the letter, it is a question of the document attached that you are insisting upon—

Mr. FARRIS : Yes, my lord.

THE COURT : Well, would it not be better before you go on, to prove that the document attached was sent ?

Mr. FARRIS : I was in the process of doing that.

Mr. DAVIS : I objected—

THE COURT : No, you dealt with that.

30 Mr. FARRIS : Now, I was trying to prove side by side, but the first proposition is the proof of the letter.

THE COURT : Well, I want that proved first.

Mr. FARRIS : Well, that is what I was stopped in doing.

Mr. DAVIS : No, he had already got his answer.

THE COURT : I thought he said—he refused to admit that he had sent the document attached.

Mr. DAVIS : Yes, that is what I say. Now let us again ask him.

Mr. FARRIS : Just wait, what was happening, I started to read the letter, I said I would not put the document in unless I could make further  
40 proof of it. I was reading the letter when my friend said he objected to the letter being read.

Mr. DAVIS : Yes.

Mr. FARRIS : That is what happened.

Mr. DAVIS : Certainly, my friend had already got the statement from the witness that he could not identify the document. That being so—

THE COURT : That is the attached document. There is the difference, he admits that the letter is in his handwriting.

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Mr. DAVIS : Oh, undoubtedly, but the document he does not identify.

THE COURT : We will mark it for identification, the document attached and then we will go on.

Mr. FARRIS : I submit that I am entitled to have the letter itself put in.

THE COURT : Yes, but not with the attachment.

Mr. FARRIS : All I asked for was the attached document to be marked for identification.

THE COURT : Let it be marked and then go on, and I will rule upon it later.

Mr. DAVIS : Unless the document that my friend is referring to goes in, the letter itself—the letter standing by itself surely is not relevant. There is nothing in it that affects this case, it cannot possibly be. 10

THE COURT : Unless he undertakes later on to prove something else. It is perfectly neutral, there is nothing in it at all.

Mr. DAVIS : My lord, we will save time, if my friend wants it that way, the letter by itself, we have no objection to its going in, it cannot affect this case, it has got nothing to do with it.

THE COURT : All the letter would show, if it went in as evidence, would show that he sent Hollingsworth some documents, that is all.

Mr. DAVIS : Yes. 20

Mr. FARRIS : This document which I now tender as an exhibit is the letter of May 23rd, 1927, signed by McTavish Brothers Limited per P. D. McTavish per S. written to Mr. O. R. Hollingsworth of Bellingham. I asked it to be marked as an exhibit—what is the number ?

THE COURT : 112. (*Document marked Exhibit No. 112.*)

Mr. FARRIS : Q. Now, in this letter, Mr. McTavish—I was about to read it to you—“ In accordance with a recent promise made, we enclose herewith copy of sketch containing data regarding the affairs of Alamo Gold Mines Limited which we trust will be of service to you.” That is about a year and a half ago, this letter was written. Now, you did send that—sent to Mr. Hollingsworth at that time some typewritten documents, didn't you ?—A. I presume so. 30

Q. Yes, you presume so ?—A. Yes, I think I did.

Q. Yes, prepared by whom ?—A. It was probably dictated by myself.

Q. Probably dictated by yourself ?—A. Yes.

Q. Yes, for what purpose ?—A. Merely to give him some of the facts connected with the company.

Q. Yes, and I understand as far as you know you are not prepared to say whether this document was it.

Mr. DAVIS : That is not a sketch anyway ?—A. I mean,—well, that is— 40

Mr. FARRIS : I don't think my friend should interrupt.

Mr. DAVIS : Well, but surely—

Mr. FARRIS : He has stated as a sketch—he has stated it as a sketch.

Mr. DAVIS : Oh, well.

The WITNESS : No, I don't—I don't think that that—that I dictated that.

Mr. FARRIS: Now, Mr. Walkem has made a very nice suggestion to me, Mr. McTavish: Probably we can identify it by the typewriter or by the paper?—A. It might be.

Q. I want to know if you will say that that is not a document that you sent?—A. I don't think it is.

Q. Will you swear it is not?—A. I will swear that I don't believe it is.

Q. What do you base that on?—A. The information contained in it.

10 Q. What information was in the document that you sent to Mr. Hollingsworth?—A. I don't recall it.

Q. You don't recall?—A. I don't recall it at all.

Mr. ST. JOHN: Your lordship, the statement in the letter is "We enclose herewith copy of sketch containing data——" not necessarily a letter, my lord.

Mr. FARRIS: Mr. Davis has already suggested that.

Mr. ST. JOHN: Copy of sketch.

THE COURT: He seems to agree with Mr. Farris' statement that it was a typewritten document.

THE WITNESS: It may have been——

20 THE COURT: That is getting away from the idea of the sketch.

THE WITNESS: I beg pardon.

Mr. FARRIS: No, I quite see it may not.

THE WITNESS: It may not be a sketch.

Mr. FARRIS: My lord, we will accept that suggestion now. Now I want to know from him——

Mr. DAVIS: It corresponds to the sketch——

Mr. FARRIS: Q. I want to know from you, Mr. McTavish, whether you are suggesting, now that the suggestion has been made by counsel, that you think it was a sketch sent with the letter?—A. I don't recall at all. I think it was written, but it may have been a sketch.  
30 Mr. Hollingsworth interviewed us with Mr. White on several occasions——

THE COURT: Q. What was he doing for you, was he a salesman?—A. No, no. No, he and this banker and some others had bought some stock and they came up to get information and we tried to give them such information as we——in concrete form. They themselves had come—I think they had some associates with them in Bellingham, and he was here that they might have something concrete for their associates.

Q. What were their holdings at that time?—A. Oh, not very much. I think they had an option on 3,000 shares.

40 Mr. FARRIS: Q. Now, I have here some bulletins—we got these, I understand—these are from yourselves.

Mr. WALKEM: These have been identified by my friend.

Mr. FARRIS: Q. You recognise those? (*Handing documents to witness.*)  
—A. Yes, that looks like one of the bulletins that went out.

Q. It is one of the bulletins sent out by your company—from your office?—A. I presume so.

Q. Yes, November 10th, 1927.

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Mr. ST. JOHN : Why not use the ones you have already marked ?

Mr. FARRIS : Do you think you put in any bulletin ?

Mr. WALKEM : You haven't marked any before, I think.

Mr. ST. JOHN : You did on the other examination.

Mr. FARRIS : These are the ones.

Mr. ST. JOHN : I have got them here. We had a file of them here—  
here it is, it is one of the examinations for discovery.

Mr. WALKEM : We don't want all these little things.

Mr. ST. JOHN : We know these are authentic, that is all, we know  
these are authentic bulletins. 10

Mr. DAVIS : They are the ones we know are correct.

Mr. WALKEM : All right, I compared them with these. They are the  
same that you have in your own file, exactly.

Mr. DAVIS : I don't know whether it is the same or not, I wish to save  
confusion, while we have these others that we know are our bulletins.

D. N. MCTAVISH : That is different paper by an inch.

Mr. DAVIS : That may be a point well taken.

Mr. FARRIS : I am more concerned with the type than the length of  
the paper.

Q. You made these bulletins, were they printed or were they typed ? 20  
—A. They were mimeographed.

Q. Were they typed in the first place ?—A. Yes.

Q. I don't know much about mimeographing, do they reproduce the  
typing ?—A. Rather crudely, but pretty well too. They make a master  
sheet first.

Q. Who prepared these bulletins ?—A. My brother and myself—  
mostly myself.

Q. Would you say that was one of the original bulletins that you sent  
out. (*Handing document to witness*) ?—A. Is there a copy there—without  
reading it over. If there is a copy there that is one of them. 30

Q. That is one of them ?—A. I wouldn't say that is the paper.

Mr. ST. JOHN : Well, we will have to compare them then.

Mr. DAVIS : Compare them. There is no use assuming that.

Mr. FARRIS : Q. You agree that is one of yours ?—A. Yes, I think  
that is one of the bulletins.

Mr. FARRIS : I will ask to have that one marked.

Mr. ST. JOHN : Which one is that ?

Mr. FARRIS : " Our last bulletin " is the wording on it.

Mr. ST. JOHN : November 10th ?

Mr. FARRIS : Yes. What number is that ? 40

Mr. ST. JOHN : November 10th, 1927. It hasn't got a number here.  
(*Document marked Exhibit No. 113.*)

Mr. FARRIS : If you sent a typewritten document to Mr. Hollingsworth  
it would only be a typewritten document, it would not be a mimeographed  
one, would it ?—A. Yes.

Q. That is right. Would you keep a record in your office of such  
a document ?—A. Not necessarily.

Q. I should think that would be a very important document to keep a record of. Would you keep a record of that letter?—A. Which letter?

Q. This one to Mr. Hollingsworth?—A. We would have a copy of the letter, yes.

Q. Do you mean to say that in taking a copy of that letter you would not have a copy——?—A. We might.

Q. ——of a typewritten document which you dictated at the same time?—A. We might, but I doubt it.

Q. Why not?—A. Well, it is not an important thing—if we dictated anything like this, the chances are that the occasion came for sending it to somebody else and we would send out a copy, we would not necessarily keep a copy of that.

Q. That is to say you might send it to other people as well as Mr. Hollingsworth?—A. If the occasion arose.

Q. Well, then, it would be very important to keep a copy so you might later on have one on hand for that purpose?—A. If we intended using it any time, which we didn't.

Q. So far as this document is concerned, Mr. McTavish, I understand that the reason you say you don't think you sent it is that it contained statements that are not true, is that right?—A. Statements that I am quite sure we would not make and send out in that way.

Mr. FARRIS: I will ask to have this marked for identification, my lord.

THE COURT: Put it on each page. (*Document marked "C" for identification.*)

Mr. FARRIS: Mr. Allen, will you let me have the document of April 21st, 1925, letter to Dr. Manchester—put in yesterday afternoon.

Mr. ST. JOHN: Exhibit 94.

Mr. FARRIS: Q. Exhibit 94, signed by you. (*Handing document to witness*)?—A. Yes, that is my signature.

Q. You may keep it if you wish. This letter was written on April 21st, 1925. "We have organized Alamo Gold Mines Limited for the purpose of acquiring and operating the Alamo Mine in Grant County, Eastern Oregon." This is a letter to Dr. Manchester. Is that statement true?—A. What is your question?

Q. That first statement, true?—A. April 21st "We have organized"—I explained to the jury this morning about that time——

Q. What?—A. I explained to the jury this morning that about that time we considered operating the Alamo just before we got the Evans.

Q. Yes: "This property is well developed, having over 6,000 feet of work done on it. The Engineers' report shows over \$2,000,000 of ore blocked out besides large bodies in sight." Is that a true statement?—A. The engineers' report show that.

Q. Yes. "Our company is organized for 3,000,000 shares (non-assessable) par value \$1.00. The owners have given a clear deed (Patent) to the property for half the shares"?—A. Yes——

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mination—  
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Q. "the remaining half being set aside for purpose of financing"—  
A. By this time the half had been returned, I didn't go into detail with him because that is the state of the facts.

Q. That is on the 21st April, 1925, Mr. McTavish?—A. Yes.

Q. Yes: "A mill of 30 tons capacity is being installed at once and will be added to from time to time as conditions warrant. It is the purpose of the Directors to increase the output as rapidly as possible consistent with good mining"—A. That is Mr. Barnes' plan.

Q. Yes, so that we now have it that on the 21st April the directors of the company were planning to operate the Alamo Mine?—A. Yes. 10

Q. And to put a mill in it?—A. Yes.

Q. And that arrangement was made as early as the 21st of March to set aside half the shares to the company?—A. The 21st April.

Q. The 21st April, yes?—A. Yes, the 21st April.

Q. The purchase of the Evans property had not been then thought of?—A. It was coming in just about that time.

Q. Well now we know, Mr. McTavish that you purchased the Evans property—it was completed on the 15th of July.

Mr. ST. JOHN: June?—A. Of June.

Mr. FARRIS: Q. Of July?—A. I beg your pardon, June, wasn't it? 20

THE COURT: June, I think.

Mr. FARRIS: Q. June, was it?—A. June.

Q. The 15th of June?—A. And we had an option for 30 days, and there had been negotiations before that.

Q. And I have your discovery here in which you stated to Mr. Walkem that negotiations had been on for two or three—what is it, about three weeks, wasn't it, or four weeks before that?—A. For the option.

Q. All right, I will just see about that. I have your discovery again, question 81: "Q. How approximate would you say, within two or three days?—A. No, I would not say that, because there was negotiations going on for the Evans property for probably two or three weeks, you see." 30

Q. Was it actually acquired, the Evans property, when you entered into this arrangement that each party was to turn back 300,000?—A. It may have been when we got the option signed. There was an option before that.

Q. Have you got the option?—A. No, I have not.

Mr. ST. JOHN: What part is that, please?

Mr. FARRIS: "Q. What became of it?—A. I don't know. That was in the name of George Thomas.

Q. How long was the option for?—A. I am not sure whether it was 15 or 30 days. 40

Q. I see, so that the furthest back that would take you would be the middle of May?—A. Yes.

Q. And you say you might have agreed between you to turn back these shares sometime after the middle of May?—A. Yes.

Q. That would be the earliest stage you would fix, is it?—A. Yes."

So now you suggest—or now that you are confronted with this letter of the 21st April, you admit that it was prior to April 21st, at least, that you agreed to turn back these shares?—*A.* Yes, for the operating of the old Alamo.

*Q.* And that you contemplated at that time operating the Alamo Mine?—*A.* At which time?

*Q.* When you wrote this letter of the 21st April?—*A.* April 21st, yes, it was abandoned—the whole plan was abandoned.

*Q.* Now, when did you get your certificate authorizing you to do  
10 business?—*A.* The 5th of May.

*Q.* The 5th of May?—*A.* Yes.

*Q.* And before you got that you had to arrange with the Registrar of Joint Stock Companies as to the minimum allotment for which you could do business, didn't you?—*A.* You are getting into Mr. St. John's realm, I really don't know anything about that.

*Q.* Do you recall swearing to an affidavit and so forth with the Registrar, setting out the—identifying the prospectus?—*A.* Yes.

*Q.* Yes, I have here a certified copy from the Registrar, see if this is correct now. (*Reading.*)

20 And that was sworn to, Mr. McTavish, on the 4th day of May?—*A.* Yes.

*Q.* 1925?—*A.* The shares we were selling to Dr. Manchester—we could sell some of our private shares before that was arranged.

*Q.* So that to check up on the history of this—I think I will complete it on this phase of it—we find that there is a document on record the blank day of March, 1925, in which each of the directors agrees to surrender 300,000 shares. Is that right?—*A.* Yes.

*Q.* And you signed that?—*A.* Yes.

*Q.* Yes?—*A.* Not in March.

30 *Q.* You stated in your discovery that the arrangement to surrender the shares was not made until you decided to take over the Evans property?—*A.* Yes.

*Q.* Yes, and your brother said the same yesterday?—Yes.

*Q.* Yes, you didn't take over the Evans property until the 15th of June?—*A.* Well, we planned for it before that.

*Q.* I say you didn't take it over until the 15th of June?—*A.* We didn't close the deal until June.

*Q.* You stated in your discovery a period before that, you had been negotiating for it?—*A.* Yes.

40 *Q.* Yes. Now you said that the reason you intended to surrender the shares was because you intended to operate on the Alamo itself?—*A.* There was—no, there was at one time a suggestion that that be done, but it was never carried into effect.

*Q.* Yes, but I say was it because of that suggestion that you decided to surrender your shares?—*A.* Surrender—

*Q.* That had nothing to do with it?—*A.* I am not sure about that, this was a suggestion—there were several different suggestions made from

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mination—  
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time to time, and at one time one—as I stated to the jury this morning—we went to Victoria with a view of selling shares there for the purpose of operating the Alamo. Just about that time we got the other property.

Q. I understood you to state this morning—I may have been wrong, it was certainly my impression—that in view of this Manchester letter you wanted to make it clear that you decided to surrender the shares you were getting to put a mill on the Alamo?—A. There was a suggestion at that time that it would be done, just exactly when, I don't recall.

Q. There never was a suggestion of any kind, of that nature until you had seen this letter yesterday, was there, Mr. McTavish?—A. How do you mean? 10

Q. I say all through your examination for discovery there never was a suggestion that the shares were being surrendered because you intended operating the Alamo Mine?—A. As a matter of fact it was so little considered it had escaped my memory absolutely.

Q. I am producing to you a letter that you wrote to David Barnes on February 24th, 1927. (*Handing document to witness.*)

Mr. ST. JOHN: Is that an exhibit?

Mr. FARRIS: No, it is not in yet.?—A. Shall I read it?

Q. There is a lot of it that we need not read because it is not very— 20 there are some things about it that are interesting.

Mr. FARRIS: I tender that as an exhibit. (*Document marked Exhibit No. 114.*)

Mr. DAVIS: Will you let us see that. It was not produced, was it?

Mr. FARRIS: No, these are letters that came with Mr. Barnes' file. Mr. Walkem says it has been produced.

Mr. ST. JOHN: In your affidavit.

Mr. WALKEM: All the Barnes' file was produced.

Mr. FARRIS: It was produced in the Barnes action, I suppose?

Mr. WALKEM: Yes. 30

Mr. FARRIS: What I want to read, Mr. Davis, particularly is to show the relationship between Barnes and the McTavishes as late as the 24th February.

Mr. DAVIS: What page?

Mr. FARRIS: Mere—beginning at the 4th paragraph, "You will see from the above this contract constitutes a heavy obligation" and then going on.

THE WITNESS: That has to do with the Banner.

Mr. DAVIS: Oh, you have it there?

Mr. FARRIS: Yes, if you will give that to Mr. McTavish. 40

Mr. DAVIS: Yes. (*Handing document to witness.*)

THE WITNESS: Page 2.

Mr. FARRIS: Q. "You will see from the above that the Banner contract constitutes a very heavy obligation and one which we greatly desire to get from under. Having started the thing, however, and having sold about \$25,000 worth of stock we have no option but to go forward. In filing documents at Victoria, it is very desirable to keep your name and ours out of it and we had been trying to arrive at some scheme whereby

neither your name nor our own would appear at Victoria, as anything registered there becomes a permanent record and can always be dug up and thrown at you at some future time, should anything go amiss. We finally arranged with George to have his contract signed not by you and ourselves but by a dummy. This man was selected with great care, his name is Spaulding. He is an electrical engineer and had charge of our garage in Calgary for three years. We know him intimately and he is absolutely trustworthy. He has consented to take on the responsibility with George in return for a few thousand shares of stock, providing of course, we give him our personal guarantee that he will not be injured by so doing. George has consented to this arrangement in view of the fact that McTavish Brothers Limited are guaranteeing to him all payments under the agreement between himself and Spaulding. Under this arrangement only Spaulding's name will appear at Victoria or elsewhere."

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What objection had you to your own name appearing at Victoria, Mr. McTavish?—*A.* And Mr. Barnes' too; I have never been anxious to have my own name appear in records of that kind.

*Q.* What is that?—*A.* I have never been anxious to have my name appear in records of that kind.

*Q.* That is the only answer you want to make on that?—*A.* There is no reason for it except that.

*Q.* When would you say that Mr. Langer first started to call Mr. Barnes this name you referred to this morning—dirty swine, or something of that kind?—*A.* Miserable swine—I can't remember the time when he didn't, after his first visit up to the mine.

*Q.* After his first visit, that would be in the summer—the fall of 1926?—*A.* Yes, sometime about that. I wouldn't say it was after the first, but it was early in my association.

*Q.* He had no use for him from that time on?—*A.* Very little.

*Q.* Although you say that Mr. Langer was from that time on putting up practically all the money that financed the company?—*A.* Yes, he had—Mr. Barnes, after the meeting that I referred to this morning, had convinced Mr. Langer that he really understood milling.

*Q.* And that he hadn't convinced him he didn't—that he didn't understand it?—*A.* No, mining, not milling—oh, the installation, yes he wasn't pleased with that installation.

Mr. FARRIS: That is all.

RE-DIRECT EXAMINATION BY MR. ST. JOHN.

Re-exa-  
mination.

*Q.* Mr. McTavish, just one or two questions as to the way you handled what we will call the pool shares that were to be sold for the company's purposes, and the private shares, just explain briefly?—*A.* Well, as I explained here, we had them all in envelopes. The 600,000 shares of McTavish Brothers was in an envelope, the 600,000 shares of Charles McTavish were also in an envelope in our vault endorsed to be used if necessary. We didn't always take from—we didn't always take from this or that envelope, it depended. For instance, if we wanted a certificate of 100,000 and there wasn't one in McTavish Brothers' file, we would take it out of the other.



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The thing being, to keep absolutely accurate track of the shares in both cases; which we did always.

*Q.* Yes, well, were the pool shares separated from the other shares, I mean the certificate?—*A.* Oh, yes.

*Q.* Were the pool shares——?—*A.* Yes.

*Q.* The 1,200,000 were kept by themselves?—*A.* They were kept by themselves, this 600,000 to McTavish Brothers Limited came in when we got to selling the private stock to Mr. Langer, there was a mingling of shares from there, it was rather mixed up, the certificates—the shares are all there but we always kept sufficient certificates in the envelopes to still meet whatever obligations either the company or the private individuals had coming to them. 10

*Q.* Yes, was there a separate account kept in the share register as to the pool shares?—*A.* In the share register?

*Q.* Yes, this Exhibit——?—*A.* No, this is——

*Q.* Yes, check that up there?—*A.* This is the share register required by the Government.

*Q.* Well, yes, was there a separate account kept in that book of the 1,200,000 shares?—*A.* No, none whatever.

*Q.* That were in the pool, as we call it. Could you tell by looking at any particular account whether the shares dealt with in that account——?—*A.* Oh, no. 20

*Q.* ——belonged to the pool shares or otherwise?—*A.* This register—showing in whose name the certificates stand.

*Q.* Yes, I see?—*A.* But it does not necessarily show the ownership. I might buy ten shares C.P.R. to-day and not register it till dividend time, I might keep it for 60 days and sell it.

*Q.* At any rate it was possible at all times for you to clearly deal with the certificates?—*A.* Absolutely, we had them there all the time, and we have to-day. 30

*Q.* Now, as between the account of McTavish Brothers Limited and the account of Charles H. McTavish, could you tell which of those belonged to the pool or not?—*A.* No, not necessarily. It was largely a family affair, and as long as—from either of these pouches, the 600,000 shares were for the company's purpose, that is all that mattered.

*Q.* The 1,200,000 shares were to McTavish Brothers or their nominees?—*A.* Yes.

*Q.* That is the original distribution?—*A.* Yes.

*Q.* And of those how much have been devoted to the pool itself?—*A.* 600,000. 40

*Q.* And the other 600,000 have got to be dealt with as between your company and your brother?—*A.* Yes.

*Q.* Now, another matter I want you to explain a little further is, some suggestion that no proper account was kept of the pool shares that you did sell. What do you say as to that? Tell us what you did?—*A.* What, the pool shares that we did sell?

*Q.* Yes, that you sold for the company, what do you say?—*A.* Well, you mean from this record here?

Q. I mean the 1,200,000 shares that you had sold for the company's purposes?—A. We sold them—

Q. What record was kept of these?—A. We sold them—now, you mean what plan we evolved?

Q. Tell me what you did?—A. When this had gone on a certain distance and I saw that the sales were going—that we would probably have to take care of these sales, I followed the plan that I thought would absolutely take care of them. I got application forms, which would be an original—

10 Q. They were printed?—A. They were printed application forms which would show the original entry as I thought from each shareholder; then the cash account would show the balance, and the share record I thought would do the rest. Well, now, I worked that out myself. I see now it would have been better to have an auditor do it, perhaps for me; and we found that it didn't work out just right, for this reason, some people wouldn't sign the application, some would pay cash and they wouldn't sign the application, others would sign an application pay a little bit and never pay any more, so that the thing didn't work out just as we expected it.

Q. Yes, did you keep track of the number of pool shares that were sold?—A. Yes, we did.

20 Q. And of the amount of money you received?—A. Yes, we did, kept all that—

Q. And they were sold at the price fixed by the committee?—A. Absolutely.

30 Q. And money turned in to the company?—A. To the auditor, and he made up a statement, that is when the first auditor's report was made, and I had at that time the data in hand myself, in spite of these applications that were—that were not on hand, and from that I made up a statement and gave it to the auditor; it checked up exactly with the money that had been received, and that went into the statement, and thereafter we did it that way. Of course, after that the stock was sold at 25 cents and there was no trouble.

Q. Now, there has been some talk about commissions you received. You were entitled, I understand, according to the resolution passed by the committee having charge of the sale of these pool shares, to charge a 25 per cent. cash commission and a 25 per cent. share commission?—A. Yes.

Q. Now, did you receive all of that?—A. No, we rarely have received any cash, and many times none of the share commission as well.

Q. Now, you entered into contracts with the defendant Langer to sell him a million shares?—A. Yes.

40 Q. Well, now, how did you have a million shares of private stock to sell?—A. We had 600,000 shares on hand belonging to our brother and mother, we had received 360,000 shares from Barnes and Thomas, and we had—the rest would be commission.

Mr. ST. JOHN: That is all.

(Witness aside.)

Mr. ST. JOHN: I call Mr. Fellows.

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Duncan  
McTavish.  
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mination—  
*continued.*

## No. 30.

## Evidence of Walter C. Fellows.

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tion.

WALTER C. FELLOWS, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:—

## DIRECT EXAMINATION BY MR. ST. JOHN.

*Q.* You are a registered mining engineer in the State of Oregon, I understand, Mr. Fellows?—*A.* Yes.

*Q.* And what experience have you had as an engineer?—*A.* Well, practising since 1900.

*Q.* Yes?—*A.* I started first with the Du Boise Stoker Engineering Works in 1900. I worked four years for them, starting first apprentice engineer and worked up to field engineer. My duties were making examinations when we had field work to do, working in the assay office, working in the drafting department. 10

*Q.* What country was this?—*A.* I started in Colorado, finished with them in Arizona. In 19— I don't know whether it was late in 1903 or the first part of 1904, Du Boise Stoker died. I worked at a mine with Leeman, Marvín County, Arizona, when changing the system from shrinkage stope to square stope mining, and when Mr. Stoker died the Leeman Company offered me a position as underground superintendent. I was underground superintendent with the Leeman mine under Mr. C. B. Leeman until—I think the early part of 1925. 20

*Q.* Was that a large operation?—*A.* Yes, sir. In 1925 I went to the Tom Hood Company, as superintendent of the Tom Hood mine, sunk the first shaft in the Tom Hood, and produced the first bullion. From that Tom Hood deal a consolidation was made and they took in a lot of other properties, and then I went—I joined the engineering force of Agerler Carnes & White. They were mining operators, had properties in Arizona, California, Nevada, Mexico and some rock asphalt deposits in Kentucky.

*Q.* Well, then, well just to generalize it, you conducted mining operations as superintendent and engineer for how long?—*A.* Well, since about 1904. 30

*Q.* 1904, and you also, I believe, acted as assayer for the Bureau of Mines in the State of Oregon?—*A.* Yes, sir, I was assayer of the Oregon Bureau of Mines—member of the Commission, I should say, of the Bureau of Mines from 1912 to 1922.

*Q.* What were your duties there?—*A.* To direct the work of the Commission.

*Q.* What was that?—*A.* Well, it was to make examinations and foster and help the mining industry of the State of Oregon.

*Q.* I see?—*A.* And to give advice to—I think some of our reports that are made by the Bureau of Mines would perhaps show. Some of these reports are detailed and some are preliminary reports, another thing was to go and make reports on properties that were abandoned or were caved. 40

*Q.* Did you ever have anything to do with this Alamo Mine?—*A.* I think in 1913 or 1914 the Bureau of Mines had a field truck in the field, and

our camp was at the old Alamo Mine. No attempt was made to report on the Alamo property for the reason that the tunnels were caved—the portals of the tunnel were caved. We had a report by Waldemar Lindgren, of the United States Geological Survey which referred to the Alamo Mine, and we copied, I think, one paragraph and put it in the State Bulletin.

Q. Now, when did you first begin to work for the Alamo Company?—

A. Oh, I think the first thing I did for the Alamo Company was in the early part of May, 1927.

Q. What was that?—A. I made a survey of the lower tunnel.

10 Q. Mr. Barnes was superintendent there at that time?—A. Yes, sir.

Q. And you surveyed the lower tunnel of that mine?—A. Of the—I think that is called the—

Q. We have been calling it the Evans on this trial, you had better stick to that name?—A. Of the Evans.

Q. Of the Evans property; and then you came back into the employ of the Alamo Company on the 15th of August, 1927?—A. Yes.

Q. What was the condition of the Alamo Mine at that time?—A. Well, there was a small shaft, this is the Evans claim, about 40 feet deep, and under that there was a cross cut tunnel some 160 feet in length, and then  
20 this lower tunnel, which was, as I remember it, something between 800 and 900 feet in length.

Q. Yes?—A. The shaft was—and the vein at this cross cut tunnel—the 160 foot tunnel was cross cut and the bottom of the tunnel was cross cut; no drifting was done on the vein at any point.

Q. Well, now, to come to the Alamo, what we call the Alamo Mine, what was the condition of that when you took charge?—A. The Alamo Mine, the upper tunnel had been opened—that is the second tunnel. There are three tunnels at the Alamo. The second tunnel had been opened, but it was closed when I went back there in August. I don't recall just the date in  
30 August that I went up to the tunnel, but I think some place between the 15th of August and the 1st of September. That had caved and closed again.

Q. That is the Number 2 tunnel?—A. The Number 2 tunnel. The Number 3 tunnel was in about 60 or 65 feet, to where the teams were brought, and some mud and stuff on the track, then for 1200 feet the tunnel was filled with slime and mud—oh, it started in probably at four inches deep and gradually raised up till it filled the entire tunnel; and then we got four ton of "T" rails and started cleaning this out. In at a point 1200 feet there is an andecite dyke that—

Q. That is what we call the porphyry dyke?—A. Yes, the porphyry is  
40 there, that is a term that covers different forms; andecite is the part of the porphyry formation.

Q. I see?—A. This andecite dyke was disintegrated, it was in the form of this sticky mud. We put in some very heavy timbers and put bridges on the tops and sides, started to drive through this closed condition. It was quite a difficult job, there was a great deal of water back of it; and we not only had to protect the sides and tops, but we had to protect the face as well with a brace portion—it would run.

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*Q.* Yes?—*A.* And then went about twelve feet getting through that andecite dyke, and then we came on to a ledge. The ledge at that point is probably half argillite and half quartz. The quartz portions of the ledge stood up quite well, but the argillite was caved badly. We replaced lots of the timber. The timber had been put in a number of years ago, and while it appeared to be good, it had dried and rotted, that is to say, the state would look perfect, but it would not hold it in the wet, it was unsafe. So we changed a great many of the posts and caps, and re-timbered, I think about 50 or 60 feet.

*Q.* This work on the lower tunnel that you are describing, opening it up, took some considerable time, didn't it?—*A.* Yes, it took— 10

*Q.* When was it finally opened up sufficiently for a sample?—*A.* I think about the 15th of November—14th or 15th, I don't recall just—

*Q.* And you had been working steadily on that ever since you went in the first time?—*A.* Yes.

*Q.* Now, what was the condition of the Number 1 tunnel on the Alamo when you went there?—*A.* The Number 1 tunnel was caved.

*Q.* Had it ever been opened before?—*A.* No.

*Q.* Now, had you ever been on the Alamo property before you went there on the 15th of August?—*A.* Yes, I had been on the property. 20

*Q.* Well, do you remember the occasion when Mr. McTavish and Mr. Barnes were there?—*A.* Yes.

*Q.* What do you remember about that?—*A.* I believe that—I had been up to Greenhorn doing some work, and we had gone in there with the car in snowy conditions, and we went out down to the railroad and came back up to the Alamo, took my car in for the first trip, and I got to the Alamo Mine. Mr. D. N. McTavish and Mr. Barnes were there and they had—I think just gotten a hole there, so that they could get into the property at the tunnel in the Alamo. And I believe—I wouldn't say whether it was Mr. Barnes or Mr. McTavish, asked me to join them and we would go up and 30 have a look at the tunnel.

*Q.* What did you do?—*A.* We went up to the tunnel and crawled in, and we finally came in at a point, I should say 200 feet or so of the cross-cut, because the vein—what purported to be a vein, and there are three ways that you can go from that point. And Mr. Barnes said "This doesn't look good to me, it looks like they were gophering or coyoting," or some such term as that he used. We went on in then and I climbed up in the stope and I had the apparatus with a small bucket on and I took two or three grab samples from these stopes and put them in the buckets, and we went on over to where there was a raise from the lower tunnel to the upper 40 tunnel. In there we took the cover off—this raise was to permit the air—if they wished to get the air through there, to take off that cover. In there we took the cover off so that the air would circulate through the mine.

*Q.* That would permit the air to circulate down through Number 3 tunnel as well?—*A.* Yes, it was raised from Number 3 up to Number 2.

Q. Well, after you got that tunnel opened up finally about the 15th November, you took samples, and these are all referred to here in the reports we have got here already?—A. Yes.

Q. We have got that. Now, speaking of the Evans property, what did you do on it after you went in on August 15th?—A. Mr. Barnes was driving the drift—had cross cut through the dyke in the 160 foot tunnel and was driving a drift on the vein north on the other side of the dyke. I continued that work.

Q. Yes?—A. I think I continued that drift in there some 40 or 50 feet—40 odd feet, or 50 feet, I don't know which now.

Q. And what else did you do?—A. I also cross cut through the dyke on the lower tunnel level, drifting at the point of the vein and out on that level, out 100 feet, and didn't find the vein, and finally cross cut and picked up the vein.

Q. And what else was done?—A. I went up on to the property known as the glory hole; and I first started to carry on some tests there by screening. The weather turned very stormy, and it was cold and froze the surface up so that I was unable to screen.

Q. What do you mean by screening—what was the object of that?—  
20 A. Well, I had an idea that it was possible to work that property on a screening proposition, that is to say, the quartz is rejected and the fines is taken for milling dirt; and I started in to make a series of tests by screening, taking the fines, and rejecting the quartz. I never got very far with that. It turned stormy, and finally froze up the entire surface so that I could not carry right through.

Q. That was from the glory hole deposit, I understand?—A. Yes, that is from the glory hole.

Q. You might explain the nature of the mineralization of that glory hole deposit?—A. Well, the glory hole deposit is a sheer zone. It is  
30 between more or less irregular walls of argillite. The values in the glory hole deposit are not in the sheer rock, but are in the replacement. As the deposit is sheered it has got cracks and seams, it is also cross-fractured—These places are filled with replacement of hematite, oxide of iron; the values are carried solely in the replacement. The glory hole is a good property, in horizontal length it is about 30 feet, and then it is cut up at both sides and at the end. Probably the total depth is not more than 20 feet.

Q. Is that at the foot of the hole?—A. At the foot of the hole, no.

Q. Yes?—A. The majority of the values that I found at the glory hole  
40 are from cross-fracture. The material is sheer and it is fractured, and it is ground up and there is a very heavy deposit of hematite material right at that point. That portion that gives up the most gold is probably a foot and a half in width. Well, then we started to tunnel at the base of the hole. This glory hole deposit is probably something in the neighbourhood of 2000 feet long, probably at its greatest width is about 300 feet, probably at its narrowest point somewhere in the neighbourhood of 100 feet. I panned across the bottom of the area. It comes down to the creek level. I panned across

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this area, spent quite a little time until I found the heaviest concentrates of gold, which was at or near the middle of this deposit, and I started a tunnel with the idea of driving it into the canyone about 300 feet, cross-cutting this deposit to determine what amount of material was sheer and fractured and what amount of the replacement could be screened out for car loading. I only got this tunnel in about 20 feet or a little more—just into the solid cut when the work was stopped.

*Q.* You didn't explain exactly what you meant by screening the stuff, so the jury will—at least the jury are not familiar with the question, so we will all understand?—*A.* Deposits of this kind have been worked in the United States by a method of blasting the material and putting it all through a trommel. The trommel is revolved for screening. The fine parts of the material go through the holes in the trommel and the coarse part goes down through the trommel and generally on to a conveyor belt, which is rejected and thrown in the waste pile. In a number of cases it is necessary that the rock be crushed again. It is again put through the crusher and crushed and the same operation, it goes through the trommel screen. 10

*Q.* What is the purpose of that operation?—*A.* What is what?

*Q.* The purpose?—*A.* The purpose of that operation is to get the material that carries the value and reject the material that does not carry the value. 20

*Q.* In other words the values would be in the fine material that goes through the screen?—*A.* The values are in replacement, and the replacement is fine material.

*Q.* Is that an expensive operation?—*A.* No, it is a very cheap operation.

*Q.* What would the cost be to run through that stuff?—*A.* Well, it would depend on the amount of material and the manner in which it was mined. The glory hole deposit is an ideal site for a steam shovel operation, and I should think that a grade of ore could be produced there, that is the fines screened and milled, not to exceed \$2.00 or probably \$2.50 a ton, for an operation, say up to two or three hundred or 400 tons, it could probably be done for less; but speaking of 100 ton operation or a 200 ton operation, I should think around \$2.50 a ton, it could be handled. 30

*Q.* That is \$2.50 a ton on the stuff taken out of the hole?—*A.* Yes.

*Q.* Yes, having regard to all your examinations of the Evans, what would your opinion be of the property as an engineer?—*A.* Well, there is not sufficient work done on the Evans proper to give any more than an opinion. The shaft on the Evans property is down, I think, in the neighbourhood of 40 feet. I would say, if you say \$4. ore is commercial (and that would depend wholly upon the size of the operation)—\$4.00 ore is commercial if the operation is, say 100, tons, it would not be commercial on an operation of 15 or 20 tons; but if you say \$4.00 ore is commercial, all the ore from this little surface shaft is of a commercial grade. The tunnel that cuts this vein about 70 feet deep I believe is in the neighbourhood of 6 or \$7.00. There is no drifting done on the vein. This type of vein 40

is similar to the veins that have produced more in our country—there is a property called the Red Boy with the same geological conditions as that on the Evans property. This property is about two miles north; and probably nearer—close to the same kind of structure as this property. The vein is a north and south vein, and it is going up east and west of the porphyry dyke. At the point the porphyry dyke cuts the vein the values are very much heightened. The Red Boy mine made a little more than a million dollars on the south side of the dyke. There never was any ore of commercial value on the north side of the dyke. I had occasion to make  
 10 a very extended examination of that property. The Bureau of Mines will have my examination of that property.

Mr. FARRIS : *Q.* Of which property?—*A.* The Red Boy.

Mr. ST. JOHN : *Q.* The Red Boy?—*A.* They also have a property up there called Bonanza, and the condition there is similar on the Bonanza, it is a vein cut right back—there never was any ore of commercial value facing the north side of the dyke. All the ore bodies proved have been on the south side of the dyke.

*Q.* Now, this shaft and these two tunnels, are they constructed with reference to the glory hole deposit?—*A.* No.

20 *Q.* Are they a separate vein entirely?—*A.* A separate vein entirely. They are two distinct propositions.

*Q.* Now, go on, you are giving the condition of the mine, you have dealt now with—?—*A.* Now, the mine has not been very well opened up. If the drifting had been done on the vein—there is a lot of work done there, if the drifting had been done on the vein to have proved whether or not there was a mine, where the lower tunnel is driven—

*Q.* What you mean is that the 800 foot tunnel was cross-cut through barren rock to the intersecting vein, whereas it might have been driven on the face all the way?—*A.* Yes.

30 *Q.* That is the idea?—*A.* Yes.

*Q.* I see, well, go ahead?—*A.* The lower tunnel starts at an acute angle to this porphyritic dyke, goes in about 12 feet and then follows down the porphyry dyke to the point where the vein should have been. It occupies—it consists of a triangle in the country rock, and the other side of the triangle would have been on the vein.

*Q.* Yes?—*A.* The Glory hole deposit, as I have stated, is over 2000 feet long, and this width of 25, or 35, or 40 feet of work is necessary for anyone to say whether the deposit is important.

*Q.* Well, is it worth while spending money on?—*A.* It absolutely is.

40 *Q.* You were at the mine when Mr. Langer visited it about the 1st November, 1927?—*A.* I met Mr. Langer and Mr. McTavish at Baker.

*Q.* Yes. Well, what was done?—*A.* We left Baker in the morning in my car and drove over to the mine. I think we got there—

Mr. FARRIS : *Q.* What date was this?

Mr. ST. JOHN : November 1st?

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A. November 1st. We left Baker in the morning and got over to the mine, I think, around ten or 10 : 30, and we went up to the glory hole deposit before lunch.

Mr. FARRIS : I am sorry, I didn't catch—I didn't hear him say who was with him.

Mr. ST. JOHN : Q. This would be D. N. McTavish and Langer and yourself?—A. Yes.

Q. Yes?—A. I think we done some panning and took some samples there before lunch.

Q. That is, at the glory hole?—A. At the glory hole, and then after 10  
lunch we went back up and we went across the creek and up on the south side, which made a kind of continuation of that glory hole deposit. It is a very raw surface and it is not definite so that you can't say whether it is—

Q. I see?—A. Then in the afternoon we went down to the Alamo tunnel. We were cleaning out the Alamo tunnel at that time.

Q. Yes. What was done there?—A. Well, we went in as far as we could go, we were in against the cave, in I think about 1,350 or 1,400 feet.

Q. I see. Did you have any conversation with Mr. Langer that day of any importance?—A. Yes, I had—Mr. Langer rode in the front seat 20  
with me from Baker to the mine, and I talked more or less with him all through the day. We went back to Baker that night. Mr. McTavish and Mr. Langer came through the tunnel together, after we came up from the tunnel—I think Mrs. Barnes came into the car. Mr. D. N. McTavish talked to Mrs. Barnes, and I talked to Mr. Langer from, I think, somewhere around seven o'clock till train time. I think train time was about eight o'clock. I sat in the hotel and talked with Mr. Langer.

Q. What did he say?—A. Well, he talked of—the conversation, I think he told me something of his experience on the Rand. He told me 30  
that he had built some cyaniding plants on the Rand, also that he had acquired a tailings dump, or a mine dump, and that he could have had his choice of mine dumps out there, but he took this dump because he had some assays made, which were not made by a reliable assayer. He told me then that he took a course in assaying—I don't know that he told me where he took it, he told me he took a course in assaying. He also told me something of his operations in England—his building program. Also referred to Mr. McGuigan, Mr. McGuigan's report. One thing he said that I remember very well, he said, "See if you can verify this report, or see if it is a washout." The term washout impressed me, because I had 40  
never heard it used before in connection with mining property. He said, Mr. McGuigan made that report, and McGuigan did this work, and he is a man who should know.

Q. Did you have any knowledge that there was a deal on between McTavish Brothers and the Defendant, Langer?—A. No, I had no knowledge of that.

Q. At any time before November 17th?—A. No, sir.

Q. You did receive that blueprint, Exhibit 19, did you? Did you ever see anything like that (*handing document to witness*)?—A. Yes, that—when Mr. Langer and Mr. McTavish were down there on the 1st November I believe that Langer said to McTavish something about that blueprint, and I said that I didn't have a blueprint, and he said to Mr. McTavish, "Well, send this to Mr. Fellows as soon as you get back." So the following—I think the 5th, or 6th, or 7th, I don't remember, this copy of the blueprint, together with McGuigan's report, reached me at the mine.

Q. Would that be of any assistance to you in your work?—A. Well —  
10 Q. Is that —?—A. It just simply showed the part that the report claimed was an ore body. My investigation of this was that it was not commercial, anyway.

Q. Now, have you a knowledge of assaying and sampling yourself? —A. Well, I registered in the State of Oregon as a professional engineer, my qualification before the State Board of Engineering entitles me to practise all branches of engineering—of mining engineering in the State of Oregon. I qualified before the State Board.

Q. Would that include assaying?—A. Yes, sir.

Q. Did the Defendant, Langer, mention Barnes at all in his conversation  
20 with you?—A. Well, I don't just recall what was said about Barnes. Mr. Langer criticised Mr. Barnes something about—I think his words were that if he had known—if Barnes had told him how wet it was and how the condition was he wouldn't have had him go on, stay on in there, trying to open that upper tunnel when the conditions were so adverse to doing it.

Q. That is in the Alamo?—A. Yes, and I think two or three other little criticisms of Mr. Barnes, I don't just recall what they were.

Mr. FARRIS: Q. This is in November you are referring to, is it? —A. Yes, that was in November.

Mr. ST. JOHN: Q. Did you have more than one interview with  
30 Mr. Barnes after you left—after you made your survey in May up to the time he left the mine?—A. Oh, yes, I made that survey in May, and then Mr. Barnes had me go up to start some work in the Banner property in—I think I went up there on the 1st June. I took two miners and myself and went up there on the 1st June, and I saw Mr. Barnes—I didn't get through in June because transportation was pretty bad from June till the 1st July, but I believe we broke through the morning of the 1st July with the car, came up to Greenhorn, brought some powder up to the camp. After the road was opened I was back and forth and saw Mr. Barnes and talked with him quite frequently.

40 Q. You have heard said here that Mr. Barnes sometime before the 15th of August in 1927 expressed an opinion on these mines, that they were no good, or something to that effect. Now, I ask you as an engineer, would he know, to give an opinion, such an opinion on these mines when he left there?—A. Well, the only thing I can testify about that would be my opinion.

Q. Well, give us your opinion?—A. No, I don't think it was.

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*Q.* Well, give us your grounds for that, first, with reference to the Alamo?—*A.* First—the only evidence anyone could give an opinion on the Alamo, the Alamo property would have to be opened up so you could get in there and sample it. It wasn't on the 15th of August.

*Q.* What about the Evans?—*A.* Second, on the Evans there is insufficient work done on the vein—insufficient drifting on the vein for anybody to give an opinion, that is, a modified opinion as to the property having any value.

*Q.* Did he ever give such an opinion to you at any time as to either of these mines?—*A.* Well, I think the only thing I discussed with Mr. Barnes was that the vein did not exist on the lower tunnel. 10

*Q.* I see.—*A.* That he put it—I think he advanced that argument to me one time, that the vein didn't go down.

*Q.* But you found the vein afterwards?—*A.* Well, I found what I think is the vein.

Mr. FARRIS : *Q.* That is the lower tunnel of the Alamo, you mean — ?  
—*A.* Yes, at the lower tunnel on the Evans.

*Q.* On the Evans.

Mr. ST. JOHN : *Q.* Now, Mr. Barnes in his evidence states that he told you that the mine was no good, do you remember that? What do you say as to that? What is your explanation? 20

THE COURT : He does not know you are asking him a question.

Mr. ST. JOHN : Yes, I am asking, what did he say as to that, did he ever tell you that?—*A.* Well, I don't recall of Mr. Barnes ever coming to make the statement to me that the mine was no good. We discussed that mine and other mines, but I don't ever recall of Mr. Barnes making the statement that the mine was no good.

*Q.* Well, he says on the other hand that you said yourself you would not give six bits for the whole mine?—*A.* I believe that I made the remark that I would not give any six bits—that is, not for the veins on the north side of the dyke. I did make that remark. I recall it very plainly. 30

*Q.* Well, would that be a condemnation of the mine?—*A.* If there is ore showing on the Evans' property it is on the south side of the dyke; but I never expressed an opinion on the glory hole, nor I never expressed an opinion on the Alamo property until after I had completed that examination. The opinion that I had on the Alamo when I went to work up there was the good report by Waldemar Lindgren, who is considered in the United States the highest authority on mineral deposits.

*Q.* Now, what was the result of your investigations of the Alamo mine, what did you find there when you finally sampled?—*A.* The result of my investigations of the Alamo Mine was that an ore body as shown by this plan—cross-section plan— 40

*Q.* That is, Exhibit 19?—*A.* And the report —

*Q.* Yes?—*A.* —could not be verified. My samples show ore to be less than a dollar a ton value.

*Q.* Of course, you have never been in the upper tunnel?—*A.* No, never been in the upper tunnel—

THE COURT: Just a moment. Gentlemen of the Jury, have you thought over what you are going to do with reference to this case the balance of the time? It is not probable we will get through to-morrow—in the morning at any rate—but I did have in mind that perhaps, while we might finish by to-morrow morning, we have got the matter of the questions to be arranged, which you need not wait for, and then we can go right on on Monday with the argument.

Mr. ST. JOHN: This is the last witness, I am just practically through now.

10 Mr. FARRIS: The only evidence we will have in addition, my lord, there is one witness I want to ask—I couldn't call him to-night, because he is not here—I want to call Mr. Hollingsworth. His evidence could not take more than ten minutes.

THE COURT: Is he here to-night?

Mr. FARRIS: No, he is not here.

Mr. DAVIS: Well, there will be an argument before Mr. Hollingsworth is called.

THE COURT: Well, I want to be sure on Monday.

Mr. FARRIS: I am telling your lordship that the only evidence I have  
20 to offer —

THE COURT: Well, I want to leave to-morrow free, but I am doubtful.

Mr. FARRIS: The only evidence I have to offer in rebuttal is this witness, and he cannot take more than ten minutes. I have very little to ask Mr. Fellows, and then we will have perhaps an argument between my friend and myself about the admissibility of the Hollingsworth evidence.

Mr. DAVIS: Well, that won't take very long.

Mr. FARRIS: That will only take a few minutes. If it is not taken, that is the evidence; if it is taken it won't take ten minutes to complete it, because it is only to identify that document, and then it is over. There  
30 is no reason why we could not finish everything on Monday. If we can't finish, we can finish to-morrow morning.

THE COURT: No, I do not think you understood me. If you wanted to clean up everything to-morrow morning, that means everything, and then start on Monday morning with the argument—at least, your addresses.

Mr. DAVIS: Well, from what Mr. Farris says there is no question but that we will finish everything in the way of evidence—everything outside of the addresses.

THE COURT: Well, you will not be through for some time to-night?

40 Mr. FARRIS: We won't be very long with this witness.

Mr. DAVIS: He says he will be through in ten minutes.

THE COURT: Well, that ten minutes may be stretched.

Mr. ST. JOHN: Q. Did you have any discussion with Mr. Langer on his visit to the mine in November, 1927, as to the accounts of the Alamo Company?—A. Well, I had a discussion with Mr. Langer and Mr. McTavish both. When Mr. Barnes left there he didn't turn me over any money, so I went down there and had the matter taken up—I didn't have any

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money, Mr. Barnes didn't leave any, and of course at that time this was in correspondence with Mr. D. N. McTavish—I had never met Mr. P. D. McTavish up to this time—and I finally got some money; but the money came kind of slow. When Mr. Langer and Mr. McTavish were down there they were urging me to open up the mine, clean up this tunnel, and I said, "Where is this money coming from, how are these payrolls going to be met?" Mr. Langer said, "You can look to me for the payroll." This was all that was said about money.

CROSS-EXAMINATION BY MR. FARRIS.

Q. Let me see—is that a plan of the Alamo? It is, is it not?—A. It is 10  
a cross-section.

Q. Well, that is a little confusing to me. This is not very accurate, Mr. Fellows, but it will do for what I want (*handing document to witness*). No. 3 Tunnel is along—is the lower tunnel?—A. Yes, sir.

Q. That apparently did go in—that is the only tunnel that goes in at 1200 or 1500 feet?—A. Yes, that is the only one.

Q. If you are talking about going into this tunnel, or into this mine 1,200 feet, we would naturally be talking about No. 3 Tunnel?—A. Yes.

Q. And that 1,200 feet or thereabouts should bring you to the porphyry dyke?—A. Yes, it does bring you to the porphyry dyke. 20

Q. Now, when you got in on this No. 3 Tunnel to the porphyry dyke you could form a pretty good idea of whether the mine was no good or not?—A. Oh, no, absolutely not,—when you get to the porphyry dyke you haven't come to the vein. The porphyry dyke—you get the porphyry dyke before you come to the vein.

Q. Well, how far is the vein from the porphyry dyke?—A. Just on the other side.

Q. How many feet?—A. Well, it commences at the—this is the tunnel—you get the impression from this blue print that this is a right angled tunnel to the vein. 30

Q. Yes?—A. Which is not the case; the tunnel is driven at an acute angle to the vein. The tunnel goes in this way and the vein goes off at an angle this way.

Q. Well, when you get this tunnel opened up all the way you have got into the vein then, don't you, or where the vein is supposed to be?—A. On November 1st I was through the porphyry dyke and in there from about 60 or 70 feet on the vein with Mr. Langer and Mr. McTavish.

Q. Well, I say you would get on the vein then?—A. Yes, we got on the vein then.

Q. You took samples from it?—A. We gave—I think I gave them 40  
two samples.

Q. And they were no good, that is to say, they didn't contain commercial ore, did they?—A. Well, I don't know that I ever saw the result of these samples. I believe that they wrote me that the samples were very low.

Q. Yes. Those samples had to be sent—where were they sent to be assayed?—A. These samples were sent to Baker—Baker, Oregon. Baker is about 55 miles from the Alamo Mine, the stage line runs from the town of Granite, which is about nine miles from the Alamo Mine over to the narrow gauge road at Sumpter. From Sumpter the narrow gauge road runs to Baker, some distance of 30 miles.

Mr. FARRIS: I think I have kept within my ten minutes, my lord.

THE COURT: Certainly you should get the medal all right. It is the shortest time on record, I might say, when counsel state that they would take ten minutes and do not take half an hour. Well, shall we say Monday morning. I would say tomorrow, only it means Saturday afternoon; I think we want to have two days. It is a question, gentlemen, whether it would be well to take tomorrow as well as Monday. However, I do not want to be too firm about the matter.

THE FOREMAN: Should we take tomorrow morning, up to noon?

THE COURT: That would not be any advantage, as if we take tomorrow we will take the whole day and go through the case; otherwise we will go to Monday. Counsel seems to desire Monday, does that suit you, gentlemen? I suppose really you would be better off—it would not be so long. All right, Monday morning at ten o'clock.

(Adjourned to 31st December, 1928.)

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(Court resumed pursuant to adjournment.)

THE COURT: Proceed.

Mr. FARRIS: My lord, I wish to call Mr. Hollingsworth to prove that the document which I submitted to McTavish on Friday was the document enclosed in that letter sent by Mr. Peter McTavish to Mr. Hollingsworth.

THE COURT: I understand that counsel have already agreed that as far as the admission of this evidence is concerned it would be better to have the argument in the absence of the jury.

Mr. FARRIS: My friend suggested, and I thought it would be better.

THE COURT: I want the record.

Mr. FARRIS: Yes, I consent to that.

THE COURT: Well, I would probably have ordered it anyway.

Mr. FARRIS: Now, I base that application on two grounds, my lord; First, that in all cases, whether it is strictly rebuttal or what it is, that it is always in your lordship's discretion. That is not my strongest ground but it is ample, if your lordship would act

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on it. But I refer to Phipson, which has one reference to it —I have the 9th Edition of Phipson.

THE COURT: What edition have you got?

Mr. FARRIS: The 9th.

THE COURT: Yes, page.

Mr. FARRIS: Page 440, it is dealing with reply and rebuttal. (Reading). On that the only observation I wish to make is this, Mr. Hollingsworth is a man living in the United States, we might have brought him and put this evidence in affirmatively. I was entitled, I think, to rely on the pleadings that Mr. McTavish would admit this document. He has not done so, and I think your lordship in your discretion might well allow him to be called on that ground if no other. But I think, my lord, in addition to that—

THE COURT: What is the name—Hollingsworth?

Mr. FARRIS: Hollingsworth. I think your lordship might well feel that it is in the interests of justice that that evidence should be before the court. That is all I wish to say on that phase of it. Now, the other one, I think, as a matter of right, I am entitled to call this evidence. I refer your lordship to the Evidence Act, which is Chapter 82 of the Revised Statutes of British Columbia, 1924, Section 17. I will give your lordship the reference to Phipson on that, but I read the section first. (Reading.) Phipson at page 480, my lord.

Mr. FARRIS: I first cite at the top of the page. "If the inconsistent statement is in writing—" It shows their English section is the same as ours—"every witness upon cross-examination in any civil or criminal proceeding may be asked whether he has made a former statement relative to the subject matter of the case, and inconsistent with his present testimony, and if he does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement". Now, it goes on, "If the inconsistent statement is in writing, it need not be shown to the witness, nor proved in the first instance, nor can the witness demand this before answering, but where the intention is to contradict him by writing his attention must first be called to the parts that are to be used for that purpose; provided always that it shall be competent before the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make use of it for the purpose of the trial as he shall think fit (28 & 29 Vict. c. 18, s. 5 extending C. L. Pr. Act, 1854, s. 24, which was repealed by St. L. Rev. 1892; as to the old rule by which the cross-examining party had to produce the document as his own evidence and have it read, before founding any questions to the witness upon it, a practice which was fatal to effective cross-examination)."

What I submit, my lord, is that this document which I submit to Mr. McTavish, contains statements made by him, because there was some document prepared, and whether he prepared this document—he did send

the letter and adopted this aside statement, which contains a statement directly opposite the statement he now makes in the witness-box. It is further than I need to go. I did not have to show the document. I could have asked him or read certain extracts from it, and instead of that I submit the whole document and he reads it entirely through. He admits the letter was his, and that gives the date and place of the letter, which this document accompanying was given to him.

THE COURT: You will have to make the point clearer to me. I would want to know whether this is a relevant matter.

10 Mr. FARRIS: It is the most relevant matter.

THE COURT: In this litigation?

Mr. FARRIS: Without any question.

THE COURT: It occurred to me the other day that would be the point.

Mr. FARRIS: Let me read this paragraph. One of the issues in this case is that this mine was sold by Code; one of the allegations in our case is that this mine was sold by Code to the Alamo Gold Mines Limited for half its capital stock, and that this transaction in which the whole of the capital stock was turned over to Code was really a 20 camouflage, and that the actual consideration in that transaction was 1,550,000 shares, and not three million, and that is one of the issues that must go to the jury in this case. Here is what this document says: "The owner of the above property would not sell, but sought our engineers because of their long acquaintance with freegold-mining propositions and offered to turn over the clear deed of the property in return for half the stock of the company to be organized. As an examination of the property and the several engineers' reports were highly satisfactory, the engineers were very keen to go ahead on the basis offered by the owners . . . and attend to the management of the affairs."

30 That is a straight statement that that was the transaction that occurred, and that is what Barnes said did happen.

Mr. DAVIS: Paragraph 23 of the Defence, I presume, is what it is raised under.

THE COURT: Dealing with the question of whether this evidence applies to a relevant issue, then what issue do you say?

Mr. FARRIS: My friend has just directed my attention; it is Paragraph 23 of the Statement of Defence. (*Reading Paragraph 23.*)

THE COURT: It occurs to me that that is so much a question of law that it is not for the jury to pass upon.

40 Mr. FARRIS: No, it is a straight issue of fact. The question in this pleading, if there is any question as to the pleading, it should have been settled, if they wanted to strike them out, but the question, I say that on these issues raised in these pleadings, and the evidence adduced on them, we are entitled to a finding from the jury.

Mr. ST. JOHN: That is an issue of law.

Mr. FARRIS: Based on an issue of fact.

THE COURT: How are we going to instruct the jury on that issue?

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Mr. FARRIS: I think it is the simplest thing in the world. I have a question to submit, which I say should be put, and it is this: Was the true consideration of the transfer by W. B. Code for the Alamo Mine 350,000 or 1,500,000 shares?

THE COURT: Assuming that is the fact, do you say that as a matter of law he would receive the shares, shares that were valueless?

Mr. FARRIS: I do not say that they were valueless, but I say that they were not fully paid up and non-assessable shares.

THE COURT: Isn't that a question of law?

Mr. FARRIS: It cannot be settled until the issue goes to the jury on the original fact. Here is what Barnes has sworn to. He swears that he is one of the original directors and was present at the time and right at the start the contract was that the consideration for this deal was 1,500,000 shares. McTavish goes in the box and says that a subsequent issue was raised a month afterwards. He says that they decided a month after to change the original deal. 10

THE COURT: Supposing the whole consideration for the owner was 350,000, and they saw fit to give back—

Mr. FARRIS: It would be much more difficult to attack.

THE COURT: It would be much more a question of law. 20

Mr. FARRIS: I say if as a fact these parties at the start said, "We will put this through for half of the shares." There would be no other reason for camouflaging and making it look as if they were giving all the shares. Our position is very much stronger.

THE COURT: And that comes back to the question of fact as to whether it was originally intended, or afterwards.

Mr. FARRIS: Yes, Barnes decided one way and McTavish the other way. Here is the letter of P. D. McTavish's that that is the fact, what Barnes has sworn to. It is a material issue on a contradictory statement as to what was said before and what is said now, and I have directed his attention to the matter. A witness—he could not admit it, but he denied it, and the man to whom he sent the document is now here to swear to it. 30

Mr. DAVIS: Entirely apart from the question suggesting as to this being a question of law, assuming that the statement in the second paragraph is a statement which is material, that is, one raised in the issues that are set out in the pleading, then the question is whether at this statement the evidence can be admitted. My learned friend is not pressing it on the ground of cross-examination as to credibility, so I will not deal with that at all, but assuming it is evidence which would have gone to show that one of the issues of fact should be decided in favour of the defendant, the question is, can that evidence be put in at the present time? 40

Now, my learned friend has referred first to section 17 of the Evidence Act, which deals, as I submit, with an entirely different thing. It has nothing whatever to do with the question of rebuttal evidence or splitting the case, as it is usually called, or anything of that sort. It deals with cases such as this. A witness goes in the box, he is called for the plaintiff, we will say, and before that time he has given a statement to the defendant as to

the facts of the case. He is cross-examined, and instead of admitting that he has given that statement before, he denies it. That being so, a witness can be called to show that he has made the admission at a prior time, and it does not matter whether it is in writing or verbal. That has nothing to do with this question of rebuttal evidence and does not purport to deal with it, and where Phipson deals with it he does not deal with it for a moment on that basis. So my learned friend must get back to the rules on rebuttal evidence, and where it is allowed in, and he referred to the statement of Phipson that the judge has a discretion. It is quite true, but it is a discretion based upon the authorities and not a discretion to admit in any case rebuttal evidence because there are a number of cases where new trials are granted because of evidence being improperly admitted in that way, but it is a discretion to be exercised in accordance with the rules laid down. There are various circumstances under which the judge would properly admit rebuttal evidence, but what ground is there made for anything of that sort here? We will assume, to put it in the simplest form, we will assume that the Plaintiffs, one of the McTavishes, whichever one it was that was in the box last, had made to someone a statement that the consideration for the transfer of the property was one-half of the capital stock. Now, on the issue that is raised in Paragraph 23, evidence could have been given originally and in my learned friend's case of that statement. My learned friend has spoken of it as an admission. If it is in reality an admission, it could be proved in a statement by the Plaintiff too, whether it is the opposite party, or any other party, that a certain thing was so. That is evidence which can go in to prove the issue here that the true consideration was one million and a half shares. That being so, the ordinary principles of practice apply, that that evidence must be given in chief. He cannot split his case, and he gave his evidence with reference to that point, and he did not choose as he could have done to prove that letter originally.

THE COURT: Do you draw a distinction between a trial before a jury and a trial before a judge alone?

MR. DAVIS: Yes, the authorities show that.

THE COURT: You know what was decided in the *Wood v. Malkin* case?

MR. DAVIS: There there was no jury. That is the distinction between the trial with a jury and the trial without a jury.

THE COURT: Those have reference to questions which are opinions?

MR. DAVIS: Yes, the one I think of is one of opinion, but the principle is largely the same as to the effect upon the mind of the jury. There is no doubt as to the rule in that connection, and I will refer only to one authority, where the matter was gone into very fully. It was before the full court of Manitoba, where the judgment was delivered by Mr. Justice Killam, *Harvey vs. C.P.R.*, 3 Man.L.R., page 266. "A Plaintiff is not allowed to present evidence . . . ought to have proven."

Now, assuming that that was the only issue in the case, and my learned friend gives certain evidence on it as he did here, and then in reply he wishes to give this further evidence. Now, I submit that he cannot do it. There

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is no difference whether there is one issue or 20 issues. There happens to be a number of issues here, but it applies equally to all of them. The rule is founded on many reasons. For instance, here, the Plaintiff is put in a very awkward position. He is asked about a letter of this sort, written a long long time ago, and he is not in a position to have the matter looked up and gone into. It is signed by a typewriter. A statement is put in to start with which looks as if it had been made up by someone who is not the Plaintiff at all, wherever it came from. It refers to, and it has a statement in it on the second page, that a tunnel should be completed by the end of April, when the letter is dated the 23rd May, showing that something is wrong clearly, and there is no opportunity of clearing all that up, as there would be had it been put in in the original case, but that is only one of many reasons why the rule has been established. The rule has been established and in existence, and clearly here we fall within it. Supposing it had been a statement instead of a letter written, it had been a statement by one of the McTavishes to the effect that the true consideration was 1,500,000 shares. My learned friend does not choose to prove that originally as he could have done in this case. But instead he chooses to cross-examine and the statement is denied, and then my learned friend wants to come in and give evidence which he should have given originally, and on that this submission is made. I submit that it is contrary to the rule and that Section 17 of the Evidence Act has not anything to do with it, and does not deal with a case of rebuttal evidence at all. 10

Mr. FARRIS: My friend has simply passed by what is in dispute. There is nothing in the statute or in the logic of the situation that for certain reasons you cannot put it in as rebuttal that therefore you could not put it in reply. If my friend is right, then this statute only applies to the cross-examination of the Plaintiff's witnesses. If my friend is right, you cannot contradict a Defendant's witnesses as to previous statements, because it must be material evidence, and material evidence should have gone in in the first place, and therefore the statute only applied to the Plaintiff's witnesses and not the Defendant's. It seems to me there is no logic in that situation. 20

THE COURT: This is an application to admit the evidence of R. Hollingsworth, presumably with the object of proving that a certain letter was received by him, which contains as well a sketch relating to the property in question. I would have no difficulty in determining the application if the trial was held before me without a jury, but one should be very careful in determining as to the admission of evidence at this stage of the trial, where the issues are to be passed upon by a jury. As I understand it, the application is made by the defendant to support the allegation made in Paragraph 23 of his Defence. Shortly put, the pleadings allege that the true consideration for the sale by Code to the Defendant Company was 1,500,000 shares and not 3,000,000 shares, as stated by the Plaintiff during the trial. Without reading his pleadings at length, a portion of it I think will cover the ground, and it is this: 40

"That the said 2,999,995 shares were by resolution of the said directors allotted to the said William B. Code on the 13th day of

March, 1925, and the said 1,500,000 shares were thereupon surrendered to the Company, and the Defendant says that the true consideration for the acquisition of the said property from the said William B. Code was 1,500,000 shares, and that the allotment of the said 2,999,995 shares constituted the issuance of shares by the Company at a discount, which the company had no power to do, and such allotment was therefore ultra vires, and void, and the said shares are in consequence only partly paid, and the 750,000 shares delivered to the Defendant are not fully paid and non-assessable, as represented by the Plaintiff, nor did the Plaintiff under the terms of the said agreement deliver to the Defendant 750,000 fully paid and non-assessable shares of the said Alamo Gold Mines Limited, nor did the Plaintiff have title to the said shares. The Defendant says that he was induced to enter into the said agreement of the 17th day of November, 1927, by the said representation and that the said agreement is void on account of the misrepresentation of the Plaintiff and for failure of consideration."

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I might in passing say no attack is made by the shareholders upon this issuance of shares. However, it is submitted by counsel for the Defendants if the facts alleged are proved they afford a good defence to the action in addition to the other grounds outlined throughout the defence.

Returning to the question as to whether I should allow this evidence now to be given under the ground taken that it is in the interests of justice. That is a very broad principle. Under that you might allow any evidence to be taken at any stage, according to the idea formed by the trial judge, but I take it I would require to be governed by certain rules insofar as the exercise of discretion is concerned. If I were trying the case alone I might allow the evidence and disregard it later on under the *International Cable v. McHart*, but, as you mentioned before, I feel a reluctance pursuing such a course where there is a trial before a jury. I take it the only ground upon which the Defendant can successfully apply is that outlined in his submission that Section 17 of the Evidence Act, coupled with the authorities, support his position. The allegation contained in the pleadings is that notwithstanding the statement made by McTavishes, the true consideration was not as stated by them, but the lesser amount. That position, while it is true, was referred to more or less during the trial, it was not featured to any great extent. I am not saying by that that it was in any way departed from as a ground upon which the Defendants sought to succeed. Barnes in his examination—a witness favourable, at least called by the defence—made a statement in that connection, and there was extra, according to the contention, available, which supports the position then taken by the Defendants through its witness, Barnes. This has always, if I judge the pleadings right, this has always been in the minds of the Defendants, which affords good grounds on the trial and affords a defence. It is thus a portion of the case really to be developed in its entirety during the defence submitted by the Defendant. While having this evidence available, because the letter was produced from the custody of the Defendant, the witness

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who is now sought to be examined was not produced, but the covering letter coupled with this document was held in abeyance until the cross-examination took place of one of the McTavishes. Then it is stated by counsel, he was surprised to find that one of the McTavishes in giving his evidence refused to accede to the proposition that he had forwarded the enclosure while admitting that the letter was his product. I take it from the course pursued the Defendant expected, and now it is sought to show that the failure is the result of introducing the evidence of Hollingsworth to support a position that should have been taken by the Defendant and carried through by producing Hollingsworth as a witness originally. There is no difficulty for a judge, according to the view I took of the authority in the case of *Wood v. Malkin*, in a trial before a judge without a jury, to admit evidence as he may see fit at any stage of the trial. It was happily put by Maule, J., 10

“ Is there any case in which a new trial has been granted on the ground of the admission of evidence in reply? And the counsel answered: ‘ There is no case to the contrary and a general rule should be laid down.’ To which proposition the learned judge said: ‘ It may be that a general rule on the subject would work great injustice.’ ”

The matter was fully considered in that judgment, but as I said before, this is a trial before a jury and I feel in all the circumstances that the evidence now sought to be adduced should not be allowed, and the application is refused. 20

Mr. FARRIS: I wish the jury to know this. We might be left in a false position with the jury.

THE COURT: That is the danger of a jury trial if this is all discussed.

Mr. FARRIS: No, I would like your lordship to state that the application is to admit that evidence.

Mr. DAVIS: I have no objection to that.

THE COURT: That he has offered Hollingsworth as a witness— 30

Mr. DAVIS: They heard the discussion that it was to be argued this morning and I have no objection to your lordship stating that the evidence is ruled out and the trial proceeds.

THE COURT: I think the questions had better be discussed before either of you address the jury.

Mr. FARRIS: Yes, the jury ought to be here.

Mr. DAVIS: No, I think not.

THE COURT: The questions involve questions of law and fact. How would it be to leave the jury out and in the meantime go on with the questions now? 40

Mr. DAVIS: My learned friend says that he has two letters to put in. Perhaps, oh, they will have to be put in while the jury is here.

Mr. FARRIS: There are two letters of McTavishes, one the 8th of October and one the 10th of October, 1927.

Mr. ST. JOHN: McTavish to Langer.

Mr. FARRIS : Yes. I might state to your lordship and it will save time, my friend and Mr. Walkem have considered some phases of this thing and there are a combination of difficulties which I wish to state to the jury which we are not going to press, and that involves the question of the counter-claim as against McTavish Brothers Limited for the payment of \$30,000 or \$40,000 odd dollars for the 250,000 shares which they got and that involves the question of amending the pleadings and going into the warrant which is incidentally a very difficult question of law and nothing much is to be gained on it.

10 THE COURT : I think that is a fair course to pursue. I did not know that and I have prepared what appeared to be cross-examination questions.

Mr. FARRIS : I realized that was going to cause some difficulty and I am sorry I did not tell you before. It is a difficult question of law as well as fact.

THE COURT : Are you going to gain anything by the Alamo matter ?

Mr. FARRIS : There is quite a question of costs there.

Mr. DAVIS : I should have stated at the beginning that we both appear for the Alamo Company as well as the Plaintiff. I think that is patent enough. I mentioned it to my learned friend before I came up that I had omitted that. I overlooked the Alamo Company because they were brought  
20 in at the end. I think I stated that we appeared for the McTavish Brothers.

Mr. ST. JOHN : I have been acting for them throughout.

THE COURT : What about the Alamo claim ? Are you willing to make a sporting proposition and eliminate that altogether and get down to the real issue ?

Mr. DAVIS : Anything that my learned friend is willing to drop we are not only too pleased.

THE COURT : And costs, I suppose ?

Mr. DAVIS : We could not at this stage say anything, but as to a question of settlement, if my learned friend wants to make some settlement we will  
30 consider that. As I understand it my learned friend says that he wants me to say, if he will drop the claim against the Alamo Company we will waive all question of costs. We certainly will not.

Mr. FARRIS : I do not think there is much complication if we go on with that. I think that one question could be asked on that.

THE COURT : Of course, that does not involve any costs as far as the Plaintiff is concerned, the abandoning of this portion of that claim. It is only solicitors' costs, not any counsel fees.

Mr. DAVIS : What is it you are abandoning ?

Mr. FARRIS : We are abandoning the counter-claim against the Plaintiff  
40 Company.

Mr. DAVIS : I think that you said something else about the warrant.

Mr. FARRIS : No, that involves the warrant. We had to bring in the warrant in order to make the counter-claim stand up.

Mr. DAVIS : No, but that warrant standing against McTavishs.

Mr. FARRIS : The counter-claim against them ?

Mr. DAVIS : Yes, is that abandoned ?

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Mr. FARRIS : As against McTavish Brothers Limited. It is not abandoned against the Alamo.

Mr. DAVIS : The question of the warranty has to still go to the jury. We had better have that clear.

Mr. FARRIS : I think so far as the Alamo Company is concerned, I do not think that we have to frame our action for deceit in order to succeed. I think that misrepresentation is sufficient.

THE COURT : That again is a question of law. Can you upon an allegation of innocent misrepresentation recover back money on an executed contract.

10

Mr. FARRIS : Here are the questions we drafted, my lord.

Mr. DAVIS : Before we get to that, in order to make things perfectly clear, is there anything which my learned friend is withdrawing, if so, what?

Mr. FARRIS : I thought I made that clear, the counter-claim against McTavish Brothers.

Mr. DAVIS : And nothing else?

Mr. FARRIS : Nothing else.

Mr. DAVIS : That is clear then.

THE COURT : I do not appreciate the situation. Here you have got this Alamo Mining Company brought in this action for the purpose of claiming from that Company a return of the money paid, isn't that it?

Mr. ST. JOHN : Yes, that is on every ground.

Mr. FARRIS : Let us leave that for the minute.

THE COURT : Because the McTavish's part of it before the jury will be sufficient. Have you framed any questions, Mr. Davis?

Mr. DAVIS : Yes, my lord.

Mr. FARRIS : Has your lordship the questions?

THE COURT : Yes, I have my own here, too.

Mr. FARRIS : Might I explain what I have done in one—

30

THE COURT : Have you a copy?

Mr. FARRIS : Yes, what I have done in one, I have confined my misrepresentation to the property known as the Alamo property proper rather than as to the Evans, except sub-paragraph "B." Well, sub-paragraph "B" refers to the Evans property, so I am simply asking that the jury make the finding as to the Alamo as distinct from the Evans mine.

THE COURT : According to this, Mr. Davis, we will have to hand them the record, which is not the usual practice.

Mr. DAVIS : Yes. We have certain questions.

THE COURT : I do not know how much influence it may have upon the jury. They will read it through and get discussing whether that is covered.

Mr. FARRIS : It might be as well to retype those allegations right in here.

THE COURT : I think that is the fairer way. Now, just a moment. 11 has got the representation, I have the notation, that they were simply innocent misrepresentations.

Mr. FARRIS : 2, I do not think there is very much objection to. 3 is, "Did the Defendant Langer enter into the agreement of November 17th,

1927, with the Plaintiff relying on the said representations of the Plaintiff and believing them to be true? 4. Were the said representations true. 5. Did David Barnes, when manager of the Alamo Gold Mines Limited on or about July or August, 1927, (a) report to the Plaintiff that the properties of the Alamo Company were worthless, possessing no ore of commercial value."

The next one is : " Was this information concealed from the Defendant Langer " ?

10 " 6. Was the Defendant Langer induced to enter into the contract of November 17th, 1927, through the concealment by the Plaintiff of the said Barnes' report ?

" 7. Did the Plaintiff subsequent to the said November seventeenth agree with the said Defendant Langer to rescind and abandon the contract of that date ?

" 8. Was the true consideration for the transfer by Wm. B. Code to the Alamo Gold Mines Ltd. of the Alamo mine, 3,000,000 fully paid and non-assessable shares of the Company or was the true consideration 1,500,000 shares ?

20 " 9. Were shares to the amount of 1,500,000 as referred to in a certain agreement of March, 1927, between Wm B. Code, McTavish Bros. Ltd., David Barnes and George H. Thomas surrendered by the said parties to the Alamo Gold Mines Ltd. ?

" 10. Did the Defendant the Alamo Gold Mines, Ltd., represent to the Defendant Langer, as facts, the representations set out in paragraph eleven except paragraph six and paragraph thirteen of the statement of defence ? "

In that last one there should be that exception that is that paragraph " B " will be inserted from that when we type it out.

30 Mr. DAVIS : The questions that we are asking to have put are as follows : I haven't them typewritten. We made some changes this morning and I have not the re-written copy, but it will only take the stenographer a moment to give them to your lordship.

THE COURT : How am I going to compare them unless I have them. Can't you hand them up ?

Mr. FARRIS : You had better read them first.

THE COURT : This is what I hoped would have been done long before to-day.

Mr. DAVIS : I had these ready for some time.

Mr. FARRIS : Except to change them.

40 Mr. DAVIS : " 1. Did Plaintiffs make to Defendant Langer any representations other than by way of opinion ?

" 2. If so, which of them if any were untrue ?

" 3. Was Langer induced to enter into contracts by reason of such representations ?

" 4. Did Plaintiff enter into a contract of warranty that such statements were true ? "

Mr. FARRIS : That could be eliminated.

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Mr. DAVIS : That means that my learned friend abandons the warranty claim not only against the Alamo Company but also against McTavish's. As I understand the warranty claim is abandoned altogether. Isn't that it? If it is not, then we must have that question.

Mr. FARRIS : It is not a question of the Plaintiff, then it becomes a question of the Defendant Alamo. You might have that question against the Alamo.

Mr. DAVIS : If it is understood that you are abandoning that claim against the Plaintiff we will change it that way.

" 4. Did Defendant Alamo Company enter into contract of 10  
warranty that such statements were true ?

" 5. Did Plaintiffs fraudulently conceal any material facts from  
Defendant Langer ?

" 6. If so, what ? And when ?

" 7. Did Plaintiffs agree with Defendant Langer to cancel  
contract of November 17th, 1927 ? "

It is not in very good shape, but it will do for your lordship in the meantime and I have no doubt that the stenographer can at lunch time, or we can have it copied.

THE COURT : If you have this in a position to go before the jury I 20  
myself in the meantime might have these whipped into shape to submit,  
no matter what you say.

Mr. DAVIS : We know from these questions ; we know what the issues  
are and, after all, we can address the jury.

THE COURT : There is no record kept by the stenographer of the  
addresses by counsel and the consequence is if the case goes to appeal  
it is an undetermined question what the jury were passing upon, except  
that they may have the judge's charge to pass upon. I have to watch  
your addresses coupled with my own ideas of what I am going to say and  
in the result you may feel that you do not get very satisfactory treatment. 30

Mr. DAVIS : You settle the question of what is going to the jury,  
and if you think of any additional questions we ask that the questions  
be put the same as if you were asking for additional directions. There  
is no doubt that we will ever agree.

THE COURT : Do I understand that there is one issue on which you  
both agree, and that is as to whether Barnes told the Plaintiff as to the  
condition of the mine ?

Mr. DAVIS : So far as I am concerned I am willing to address the jury  
and let whatever questions you decide should go to them, but if there is  
something from our standpoint that we think should be asked, we will 40  
ask for.

THE COURT : You both agree that is one of the important issues ?

Mr. FARRIS : Yes.

Mr. DAVIS : Yes.

THE COURT : I think that bearing that in mind and the others that  
came up this morning as to what was to be the true value to be paid for the

mine I think probably we can go on to the jury. I want to treat you both fairly and have you address the jury during the same period.

Mr. FARRIS: I do not think it will make any difference.

THE COURT: Let us proceed then.

(11.05 A.M. JURY RETURN.)

THE COURT: Gentlemen, there has been a discussion as to the admission of certain evidence and I have ruled that it is inadmissible, so we are proceeding with the trial now.

Mr. FARRIS: I think that you should state that it was Mr. Hollingsworth's evidence.

THE COURT: Following up what happened on Friday as to whether Mr. Hollingsworth should be allowed to give evidence and I have ruled against the application. Mr. Farris wants to put in a couple of letters now.

Mr. FARRIS: I am tendering a letter of October 8th, 1927, from McTavish Brothers Limited, per P. D. McTavish, to Langer. (*Letter read and marked Exhibit No. 115.*)

Mr. FARRIS: The next is a letter of October the 10th, 1927. (*Letter read and marked Exhibit No. 116.*)

(11.10 A.M. MR. FARRIS TO THE JURY.) (1 P.M. COURT ADJOURNED UNTIL 2.15 P.M. AND JURY WERE EXCUSED UNTIL 2.30 P.M.)

(2.15 P.M. COURT RESUMED PURSUANT TO ADJOURNMENT.)

THE COURT: Gentlemen, I have tried to fall in with your views as far as I could, but I have found difficulties. I will hand you copies of the questions as I have framed them.

Mr. FARRIS: Is this your draft?

THE COURT: No, that is the result. I have had to change it materially. As to the first question, neither the questions submitted by the Plaintiff nor the Defendant would cover the ground and I propose to adhere to that question as it is. What I am concerned about is what follows from that. The questions submitted by the Defendant practically amount to a resume of the allegations as contained in paragraphs 11, 13 and 16 except paragraph "B" of paragraph 11. Well as I mentioned at the time I am averse to handing the record to a jury and asking and expecting the jury to consider that record and its allegations. After all isn't that the same position with reference to these long paragraphs? They contain many allegations, and shouldn't it be put to the jury instead of having that statement before them.

Mr. FARRIS: I have been more active in this matter than the jury and I could not state them offhand. No jury could do that.

THE COURT: Did you ever hear of a record being handed to a jury and saying to the jury: "Go through all these allegations of misrepresentations and find out which ones are material and which ones are false and then which ones are not matters of opinion?"

Mr. FARRIS: There is no doubt about this, so far as the Defendant's evidence is concerned we have adduced evidence covering all those

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allegations in there, substantially that are in those two paragraphs in the pleadings. Now, that being so the question is not whether we said some of them or not, the question is whether we said them at all.

THE COURT : I have not formed my opinion.

Mr. FARRIS : Otherwise we are asking the jury to do something that they could not do, nor you nor I, and I have argued the question.

THE COURT : In addressing them one could indicate verbally the different allegations contained in the two paragraphs.

Mr. FARRIS : Can you do it from memory ?

THE COURT : No.

Mr. FARRIS : Nobody could. If the jury were turned loose they would get it inaccurately, not because they do not know, but because it is something that they cannot carry in their mind. It is not before them, but if these representations were put in typewriting they could pass an intelligent opinion.

THE COURT : They look an intelligent jury, but they will get in a perfect quagmire and they will get arguing about it. I do not know when they are going to get through. I am trying to keep the jury away from the Barnes incident, what occurred in the summer of 1927. I am going to try to keep the jury's mind directed to a situation before the prospective sale of the shares which are in dispute and what occurred after or during that negotiation for the sale.

Mr. FARRIS : You see Howard, both Howard and Langer have said substantially what is in those paragraphs in the pleadings they have said that it was said to them. There is not any issue as to whether it was all said or two-thirds of it was said. The issue comes were these substantially said as a whole. That seems to be the issue. I think that they should all be put to the jury and they should be asked whether they were all said or not. McTavish's position is that they did not say this at all. They say that they told us something else.

THE COURT : Of course, in your question—

“ Did the Plaintiff McTavish Brothers Limited represent to the Defendant Langer, as facts, the representations set out in paragraph 11 (except paragraph “ B ”) and paragraphs 13 and 16 of the statement of defence.”

It occurred to me that you were taking a very great burden in submitting it in that form, because categorically it means if they cannot all agree that it was said, all those things, they will say no.

Mr. FARRIS : Then why not put it both ways : Did they reiterate it all or —

THE COURT : I put it that way.

Mr. FARRIS : Except that you do not recite what they are.

THE COURT : I can tell them what they are in my instructions. Then “ If the answer be in the affirmative then state which (if any) of such representations were untrue.” What do you say, Mr. Davis ? If Mr. Davis hasn't any view I think the only course is to instruct the jury what they are and then abstract from the records that portion to which it refers

and for their convenience hand them a copy. If you have a copy of the pleadings handy you can cut it out.

Mr. WALKEM : Here is a copy right here, the first page now.

THE COURT : Mr. Farris, as you are the one desirous of having the pleadings before the jury I would ask your assistant counsel to have them taken out and placed on a separate sheet of paper. Have you anything to say as to the balance of the questions? Call the jury. (*Jury called.*)

Mr. DAVIS : I was going to mention one of these other questions, my lord.

10 THE COURT : I asked you.

Mr. DAVIS : I did not hear you, I am sorry.

THE COURT : Do you want the jury excluded?

Mr. DAVIS : This is a question of law and it will not make any difference. In question 9 the word "true" should be left out. It is used twice in that question. It seems to involve a question of law, and as to question 10 my learned friend is not asking to have that question put and I do not think there is any dispute on the evidence as to what actually happened.

THE COURT : Yes, he is asking.

Mr. DAVIS : He asked for 9 and did not ask for 10.

20 Mr. FARRIS : I did not argue it separately. It was in my draft.

Mr. DAVIS : If my learned friend wants 10 in then I think it should be put in a different way, that is, the shares were not surrendered at any time to the Alamo Gold Mines Limited; they were surrendered to the trustee and were to be sold and the proceeds used for the benefit of the Company. With those changes I do not care.

Mr. FARRIS : I am rather inclined to agree with Mr. Davis and Mr. Walkem that possibly 10 is a matter of law and had better just be left out. I understand that Mr. Davis is making that suggestion and I am inclined to agree with it.

30 THE COURT : Then it is out. You mentioned something as to 9.

Mr. DAVIS : The word "true" it seems to involve a question of law.

THE COURT : Then about the words "actual" or "real"?

Mr. DAVIS : Why not leave it simply "consideration." Any other word used seems to suggest something which will be a question of law, that is, that some inference could be drawn which would make the consideration different from what was agreed, whereas what my learned friend wants to get at is what was the actual arrangement made.

Mr. FARRIS : My friend just used the word "actual."

40 THE COURT : There is no virtue in the word "true" then I will scratch it out in both cases then. Now, we have got it. Do you want to say anything, Mr. Farris, to the jury?

Mr. FARRIS : No, my lord, I don't think so. I beg your pardon, I did want to make one or two observations to the jury. I misunderstood what your lordship said.

(2.35 P.M. MR. FARRIS TO THE JURY.)

(2.37 P.M. MR. DAVIS TO THE JURY.)

(3.28 P.M. THE COURT TO THE JURY.)

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THE COURT: Mr. Foreman and gentlemen of the Jury: The Plaintiff Company is seeking to recover \$78,750, a balance alleged to be due on a contract for the purchase of shares of the Alamo Mines Limited. The Defendant Langer resists payment and by way of counter-claim seeks to recover \$15,000 paid under such contract.

In passing I might say that the unfortunate sickness of one of the jury and the subsequent lengthy adjournment has rendered your task more difficult. I am satisfied it has also had the same effect on myself so far as the evidence is concerned. Your task is rendered more difficult, not only by this adjournment, but that it should have taken place this particular season of the year when your mind is engrossed with other matters outside of your business perchance. You must, however, do your duty the best you can under the circumstances. I hope your united recollection may prove sufficient to deal satisfactorily with the evidence of which you are the sole judges. 10

I should add that if in the course of your deliberations you cannot agree upon any portion of your evidence which seems material, then you may have such portions read to you by the stenographer.

You are to give due consideration to the arguments presented by counsel, but as to the evidence you should be guided by your own memory and not the statements of the Court or counsel. 20

I am submitting questions for your consideration, the answers to which should determine liability.

The contract of purchase of these shares is not disputed and the burden thus rests upon the Defendant Langer of showing that the payment of the balance due should not be made. Aside from the alleged abandonment of the contract which I will deal with separately the Defendant seeks to avoid responsibility, shortly stated, upon two grounds, first, on account of misrepresentation which may have been innocent and secondly on account of fraudulent concealment on the part of the Plaintiff. 30

Dealing with the two grounds of defence, the first one is that of misrepresentation which may have been innocent on the part of the Plaintiff and in connection with which I have framed the following question:

Did Plaintiff—you understand the Plaintiff is a company—or its duly authorised agent in that behalf, make representations to the Defendant Langer as facts matters which were material and not matters of opinion? The important point to bear in mind with respect to this question is were these representations made and were they made as being facts and not matters of opinion. This defence might operate aside from the one to which you will give your attention subsequently, that is, the fraudulent concealment on the part of the Plaintiff. Now, in order to judge, not only of this question, but others to which I will presently refer, you must endeavour to bring the whole picture before your minds, the situation of the parties; their knowledge acquired from time to time as to the property that was being dealt with. 40

Referring more particularly to the misrepresentation which is the ground work of the defence, Defendant Langer, through his counsel, does

not contend that this misrepresentation was false to the knowledge of the Plaintiff or its agents, or even that it was made recklessly without regard to whether it was true or false, but the contention made on the part of the Defendant is that they were in fact false representations, and that they were material and not matters of opinion to which I have already referred. Now, in dealing with the parties you also require to deal with the property in coming to a conclusion; the property at first dealt with by promoters was an abandoned mine in the State of Oregon known as the "Alamo." It had not been operated for about twenty years. I think you will have  
 10 no difficulty in determining that all parties were aware of the then condition of the mine so far as operation is concerned. What the Defendant complains of is that statements were made as to the condition of that mine which were not borne out in fact and were not simply concerning matters of which neither the Plaintiff nor any member of the Plaintiff Company had knowledge, but who pretended or claimed to have knowledge. This is the complaint on the part of the Defendant, perhaps, shortly put.

A leading work on this question of misrepresentation says as follows, perhaps dealing more particularly with the question of whether the misrepresentation so stated was relied upon at once; "in considering  
 20 whether the defendant relied on the misrepresentation of the plaintiff, the court will discriminate between such representations as are in conscience a part of the bargain, whether incorporated into the legal contract or not and mere vague commendations, as the holding out of mere hopes or expectations which ought to put the other party on further inquiry; and in judging of this it is important to consider whether the thing stated may lie in the knowledge of the party making the representation, or whether it must lie beyond his knowledge."

Now, I consider, I think I am right in stating that subject to correction, depending upon your memory, that at the inception of the negotiations  
 30 between the Plaintiff and Defendant they only had in mind the then condition of the property known as the Alamo. Although that is a matter, perhaps, of dispute, however, it is for you to pass upon that. Then this work goes on to say this :

" Thus, for instance, with regards to mines, a distinction will be drawn between a specific account of what was to be seen in the mine, and a general description of its prospects and capabilities, which, from the very nature of the property must be problematical and doubtful."

And then, we come to that matter I have already referred to, the  
 40 question of opinion.

" So, again, the misrepresentations relied on must be statements of alleged facts and not mere expressions of opinion."

I do not think I can assist you further in this respect. It is for you to determine, so I will pass on to the next question, but before doing so I think that the only course I can pursue as to these representations after a discussion with counsel is to present to you the different allegations

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contained in paragraphs 11, 13 and 16 of the statement of defence. I will not read them over to you, but will hand them to you for your consideration. I am taking this course somewhat reluctantly, and it would not advance matters if I were to read them to you and trust to your memory, because it would be impossible considering the length of the allegations and the amount of detail for you to carry them in your mind. However, I am adopting this course as the one that to me seems to suit the occasion better than any other that I can think of for the moment.

Assuming that you have these alleged misrepresentations before you I repeat that your duty is to consider whether they were presented to the Defendant as facts and not simply presented as gathered from reports and from other sources to which he had access and that they were not matters of opinion on the part of the Plaintiff. 10

The next question is :

“ If the answer be in the affirmative then state which (if any) of such representations were untrue.”

Then if you have come to the conclusion that these were stated as facts you have next to consider whether they were untrue and then again how many of these misrepresentations, so termed, were untrue.

Then you have this further question to answer : 20

“ Were such representations made with the intention of thereby inducing the Defendant Langer to contract with the Plaintiff for shares in the Alamo Mines Limited ? ”

Now, that is put very broadly in the question and it is not intended to apply because it could not in reason be applicable to the situation as presented when the contract was entered into in November, 1927, except so far as this, if in the meantime these representations were bearing fruit as it were and were operating upon the mind of the Defendant Langer then it might be contended that they should be added to and form a basis on which he the Defendant Langer might seek a rescission of the contract entered into on November 1927. You must remember, however, in the meantime that progress had been made with the work and it will be for you to decide whether that work was not entirely under the control of the Defendant Langer with full knowledge on his part as to the true situation of affairs and the mining operations that were being pursued. And, all the way through the consideration of these questions you have also to bear in mind that the burden of proof so far as the misrepresentations are concerned and the intent on the part of the Plaintiff, lies upon the Defendant. 30

Then I submit for your consideration this question : 40

“ Did such representations induce the Defendant Langer to enter into the agreement of November 17th, 1927, relying on such representations and believing them to be true ? ”

Now, bearing in mind that I have not yet reached the question of fraudulent concealment; I am trying to keep your minds directed to the situation

as it was prior to the alleged fraudulent concealment on the part of the Plaintiff. In answering this question I think you should consider whether when the agreement of November, 1927, was entered into the Defendant Langer was then acting upon the knowledge he had gained in the meantime through the mining operations, his own knowledge of the values to be attached to ore found either in the "Evans" or "Alamo" mine. It is quite apparent, and at this point, of course, you are the judges, that there was nothing operating at all in his mind with respect to the lack of values in the property. He was relying upon the property being one that would produce profits for him should he make the investment as agreed upon. So that you have then in answering this question, I repeat, to determine whether he was relying upon his own judgment acquired in the manner I have indicated or did the previous knowledge imparted to him months before still operate in his mind and induce him to make the purchase of the shares under this agreement?

Then the situation requires to be considered as it stood, say, in the month of November—prior to the 17th day of that month. The Defendant Langer had come back from England and money was being expended for the purpose of determining whether the tunnel then being run upon the property would show good results or not. It was then alleged that during this period, the Plaintiff Company, both its members, because after all it is only a private company—you might call it a partnership—was aware that they were pursuing a fruitless task by running this tunnel. The question submitted by the Defendant and which I am in turn submitting to you in wording that was thought to cover the ground is this with respect to the fraudulent concealment.

"Did David Barnes when manager of the Alamo Gold Mines Limited on or about July or August of 1927 report to the Plaintiff that the properties of the Alamo Company were worthless, possessing no ore of commercial value?"

Now, aside from this question of misrepresentation, innocent though it may be, this involves a direct attack upon the Plaintiff of fraud.

It is my duty to inform you, under the relationship existing between the Plaintiff and Defendant, if they had acquired knowledge of the condition of the mine as outlined in this question then it was their duty to inform Langer to that effect, and furthermore, it was a most fraudulent act on their part to have then negotiated and carried into effect an agreement for the sale of shares in that mining property.

So that I trust, gentlemen, that I have been able, as it were, to segregate your minds between innocent misrepresentation and fraud and the results that follow from each of those situations. It is well known that fraud will vitiate any contract, but to start with when an attack has been made upon a contract that has been fraudulently obtained you must bear in mind that fair dealing is presumed. That is the basis upon which all transactions are carried out. No man is bound to presume fraud and the burden rests upon the party alleging it. The motive may not be material,

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although it has some bearing when you consider whether there is fraud or not. The party alleging fraud, I repeat, must prove it clearly and distinctly, and the only fraud, it was admitted by counsel for the Defendant during the trial, and repeated in his remarks, is that of this alleged concealment of the condition of mine. Lord Watson once said :

“ I know of no case where by implication of law the duty of clearing himself from an imputed fraud rests on the defendant.”

Here the situation is reversed, because the attack is made upon the Plaintiff, but of course those remarks apply.

In this connection, I want to read the remarks of Lord Justice Brett 10 upon fraud :

“ I must confess to such an abhorrence of fraud in business that I am always most unwilling to come to a conclusion that a fraud has been committed, and I have very strong views with regard to what is the legal definition of fraud. It seems to me that no recklessness of speculation, however great, and that no extortion, however enormous, is fraud. It seems to me that no man ought to be found guilty of fraud unless you can say he had a fraudulent mind and an intention to deceive.”

Now, applying the latter portion of that statement to the situation 20 here presented, if either of the McTavishes knew that the mine had proved worthless in the sense indicated by this question then they had a fraudulent mind and an intent to deceive the Defendant. So it is rather discussing the matter in a circle. It comes back to that situation in the end. This is, as you have been quite well aware, the important question in the whole trial. I think it must have struck you many days ago when considering the case that whether Barnes made the statement to either of the McTavishes which he now alleges or did not make it is one for you to pass upon. You are the judges. You have heard the argument presented by able counsel on this point and I do not think it is advisable for me to canvass their 30 remarks. I have already referred to the question of where the onus of proof lies. I will only deal with one phase of it and that is the question of credibility. I often have the difficult problem of solving as to which of two stories I will accept. That burden is shifted from my shoulders to yours in this trial, and you have the onerous task of forming the idea as to which of the two stories you will believe. There is no standard by which I could guide you. You have the right to consider the means of knowledge possessed by a witness in giving his evidence, but here that does not concern you at all, because it is a flat statement on the one side and a contradiction on the other. You have a right to consider the disinterestedness of the parties 40 giving the evidence when honours are about even, if I can use that expression. The McTavishes are stating emphatically that they had no other knowledge, nor did Barnes ever make any such statement. He on his side is just as firm that he did make some other statements—the exact words I am not familiar with, but it amounted at any rate to lack of value in the property. Mr. Barnes, while it is not apparent to you what the nature of the action is

that he has brought against the McTavishes, it came out during the course of the trial that he has commenced litigation with the McTavishes. Then you have to consider when you have witnesses as to what is their standard of integrity. On that, I presume you have no previous knowledge. At any rate you should not bring it to bear, because each case must depend upon the evidence adduced in court. You have a right, of course, to consider the demeanour of the witnesses. That is often commented upon and the question of a new trial coming up they say that the jury had the witnesses before them or the trial judge had and passed upon their demeanour. I perhaps do not give as much weight to that as some judges do. Upon that important question you are the sole judges.

Then if you answer that question in the affirmative the next question is easily answered, because it is this :

“ Then was such report concealed by Plaintiff from Defendant Langer ? ”

There seems to be no contention as to that, the answer to one question answers the other, you might say. The Plaintiff says there was nothing to conceal.

Then the next question is :

20 “ If the answers to the two previous questions be in the affirmative, then was Defendant Langer induced to enter into the contract of 17th November, 1927, through such concealment ? ”

The only point you have to consider is this : Would he outside of any question of value in the property, have made a purchase of these shares ? You should have no difficulty with respect to that question. Then you come to this question of rescission : “ Did Plaintiff subsequent to the said November 17th agree with the Defendant Langer to rescind and abandon the said contract ? ” There again the burden of proof rests upon the Defendant. His contention is that upon the discovery of the lack of value of the mine that the Plaintiffs terming them such agreed to abandon the contract, in other words, that while the contract would have been enforceable on the part of the Defendant Langer had valuable ore been found, that they were satisfied under the circumstances to abandon the benefits they might have gained by the sale of shares in a property which proved valueless. It was to say the least if they did so a very laudable act on their part. They say they made no such agreement to abandon the agreement for the sale of the shares. There is comment upon the fact that a letter was written, to which you have access as well as any other exhibit you need. The Defendant Langer referred to the idea of the contract being called off and asked, if I remember right, that shares should be issued for the money already paid. He was not asking at that time for the return.

40 I do not think I can add anything further on that point. It is a matter for you to determine. You have heard the evidence on both sides. There is this to be said on this point and I cannot refrain from remarking on it, that if they had been taking part in a fraud with respect to concealment you would judge that it was hardly likely for them to become suddenly

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well disposed to forego the benefits of their fraud. However, that is a matter for you to determine.

Then the last question :

“ Was the consideration for the transfer by Wm. B. Code to the Alamo Gold Mines Limited of the Alamo Mine 3,000,000 fully paid and non-assessable shares of the Company or was the consideration 1,500,000 shares ? ”

You have heard some discussion about that and probably it was not featured very much during the trial, so I will try to make it clear to you. The answer to this question desired by the Defendant, if favourable, raises a legal position as to the Defendant, in any event, not having received any value for the money he might be called to pay under the contract. I think, however, that you need not concern yourself with the result that will follow. It is for you to determine between the statements made by the witnesses on behalf of the Defendant, particularly Barnes, and the witnesses on behalf of the Plaintiff whether the real transaction between the parties was a sale of the mine for 3,000,000 shares or a sale for 1,500,000 shares. 10

I refrain from dwelling upon the evidence upon that point, because to be candid with you I do not recollect the details. You will have to use your best judgment and recollection of the matter. 20

Gentlemen, you may retire.

Mr. FARRIS : Before the jury retire I have one or two suggestions. I would ask your lordship on the burden of proof to tell the jury this in regard to the question whether Langer was affected by these representations, assuming they had been made and were put in this language, where a false representation might lie, it is on the party who makes it to show that the other party did not rely upon it. The onus of proof is on him to show that the other party waived it and relied on his own knowledge.

THE COURT : Yes. It is suggested by counsel for the Defendant that I should instruct more particularly as it were that the burden of proof lies, as to whether or no a representation, assuming it to be untrue influenced the party to whom it is made. It is contended on the part of the Defendant as I understand it that this burden of proof does not rest upon the party who is complaining. I do not take that view of the law and I think I can with safety appropriate the wording as to this in “ Fry on Specific Performance.” He refers to a somewhat similar statement made by Jessel, Master of the Rolls, as follows :— 30

“ If it (that is the representation made) is a material representation calculated to induce him (the party resisting performances) to enter into the contract it is an inference of law that he was induced by the representation to enter into it.” 40

Now, in this work, “ Fry on Specific Performance,” the text writer says :—

“ This is probably an erroneous statement ; but the law probably justifies this view that if the representation be of a kind likely to be

influential on the mind, the Court will so hold it on very slight evidence, unless the contrary be satisfactorily shown by evidence or admission. But in every case the question whether or no reliance was placed upon the statement made is a question of fact, and not an inference of law."

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That hardly meets the point you were making, Mr. Farris, but it borders on it. Have you anything to add?

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Mr. FARRIS: I have stated the law as I understand it and I do not suppose I could say anything more.

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10 THE COURT: You have some more points?

Mr. FARRIS: Your lordship I think inadvertently suggested this to the jury in regard to the concealment of the so-called Barnes report; your lordship said the question was whether the McTavishs knew the mine was worthless. I do not think you meant that and it is not a question of whether they knew it was worthless. The thing that was concealed was the fact of Barnes' report.

—continued.

THE COURT: That is quite right.

Mr. FARRIS: And you went so far as to suggest that even though they had those but still hoped the mine may be good, it was their duty to report  
20 to Langer.

THE COURT: Just follow the questions categorically and discard the idea of whether they absolutely knew, but did they get that information?

Mr. FARRIS: Then there was the suggestion as between Barnes and McTavishs that "honours were about even" as interested parties, and it was suggested that Barnes might be interested because he had a lawsuit against McTavishs. I do not think it is a fair inference to suggest that Barnes' evidence in this case would have any effect on his lawsuit, because it cannot be possible to draw the inference as to what Barnes said here about making that statement.

30 THE COURT: It would not come under the category of bias?

Mr. FARRIS: No, interest. There is a great difference in a lawsuit in which you may make \$80,000 from a statement and Barnes was making a statement which cannot affect another lawsuit.

THE COURT: You have also got to bear in mind what is human nature, which means, if feelings are directed one way or the other and on that line you can adopt the view I took that he is interested in the litigation against the Plaintiff in this case.

Mr. FARRIS: The other point is this: In dealing with the question of whether a compromise was made, not a compromise, but a revocation on  
40 or about the 21st of November, your lordship said, referring to that allegation of fraud—I would like for your lordship to make clear that the suggestion that there would not have been a compromise on the 21st of November presupposes that the original position of the McTavishs was fraudulent and that has no weight unless it presupposes the existence of the original fraudulent position.

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THE COURT : I follow. I thought I made that clear. If you find, in other words, the fraudulent concealment it does not follow then that when the situation came up of the abandonment or otherwise that the McTavishs might not then have agreed to abandon the benefits derived from this contract of sale at 12½ cents, but if you have already found and passed upon the question of fraudulent concealment then it is for you to consider whether there is any likelihood of a person having gone that far in dealing with another person of foregoing the benefits of the fraud committed and say, "Well, I have already changed my mind."

THE COURT : Mr. Davis, have you anything? 10

MR. DAVIS : No, my lord.

THE COURT : You may retire. I have the questions here for you and I have these statements made out. You do not want to be encumbered with a lot of exhibits just now.

THE FOREMAN : Regarding the answers, do we have to be unanimous?

THE COURT : Within a limited time.

MR. ST. JOHN : After three hours—

THE COURT : You had better not tell them. Let me see, it is a quarter past four. I will be available at any time within fifteen minutes, if something should arise, and the stenographer will be available in case you should want any of the evidence. We will meet the trouble when it arises. 20

(4.12 p.m. Jury retires.)

(6.47 p.m. Jury returns.)

THE REGISTRAR : Gentlemen of the Jury, have you a verdict?

THE FOREMAN : Yes. (*Hands answers to questions to the Registrar.*)

THE COURT : I think I can appreciate the answers to all these questions, except question 5, and I would ask you to retire and consider that.

(6.52 p.m. Jury retires.)

(6.55 p.m. Jury returns.)

(c) Verdict  
of Jury,  
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ember 1928.

THE COURT : I understand this, you are unanimous in all these answers? 30

THE FOREMAN : Yes.

THE COURT : I may tell you that after three hours, three-quarters of you would be sufficient to bring in a verdict. I did not want you to know in advance.

THE FOREMAN : We are all unanimous.

THE COURT : I will ask the Registrar to read the questions and answers.

THE REGISTRAR : 1. Did Plaintiff, or its agent duly authorized in that behalf, make representations to the Defendant Langer as facts matters which were material and not matters of opinion?

*Answer* : Plaintiff and their agents in our opinion did not make any statements other than those contained in the reports they had on the Alamo property.

2. If the answer be in the affirmative, then state which (if any) of such representations were untrue?

*Answer* : None of them.

3. Were such representations made with the intention of thereby inducing the Defendant Langer to contract with the Plaintiff for shares in the Alamo Mines Limited?

10 *Answer* : Yes.

4. Did such representations induce the Defendant Langer to enter into the agreement of November seventeenth 1927 relying on such representations and believing them to be true?

*Answer* : Yes.

5. Did David Barnes when manager of the Alamo Gold Mines Limited on or about July or August, 1927, report to the Plaintiff that the properties of the Alamo Company were worthless, possessing no ore of commercial value?

*Answer* : Yes.

20 6. If the answer to the last question be in the affirmative then was such report concealed by Plaintiff from Defendant Langer?

*Answer* : Adverse statement not reported—and later good report was reported.

7. If the answers to the two previous questions be in the affirmative then was Defendant Langer induced to enter into the contract of 17th November, 1927, through such concealment?

*Answer* : No. We believe Defendant bought on Fellows' telegram of the 16th November, 1927.

30 8. Did Plaintiff subsequent to the said November seventeenth agree with the Defendant Langer to rescind and abandon the said contract?

*Answer* : No.

9. Was the consideration for the transfer by Wm. B. Code to the Alamo Gold Mines Ltd. of the Alamo mine 3,000,000 fully paid and non-assessable shares of the Company or was the consideration 1,500,000 shares?

*Answer* : Yes, 3,000,000 shares.

THE REGISTRAR : 10. The other question is scratched out, at least the question is not answered.

THE COURT : Do you wish to consider the effect of these answers now or will we adjourn?

40 Mr. DAVIS : We had better work these out afterwards. I think we had better leave the motion on the questions to a later date. It will mean a long argument.

THE COURT : Is there any point on which the jury should be asked to reconsider their answers? At present I see none.

Mr. FARRIS : Would you read the answer to question 7 again, please.

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**THE REGISTRAR :** "No." "We believe Defendant bought on Fellows' telegram of the 16th November, 1927."

**THE COURT :** Well, unless counsel or either of them request that I should detain the jury further they are discharged and we will consider the effect of the questions later on. There will be nothing further, gentlemen. I thank you. I do not know whether there is a provision to this effect, but I think under the circumstances considering your having been drawn as jurymen during this time when we all ought to have more leisure you are released until next year from further service.

**Mr. DAVIS :** We will adjourn until what time ?

10

**THE COURT :** Friday morning.

**Mr. DAVIS :** I think at 11 o'clock. We will be back to normal then.

**THE COURT :** How does Friday morning suit you ?

**Mr. FARRIS :** All right.

(Court adjourned until 4th January, 1929.)

(d) Motion  
for Judg-  
ment,  
4th Janu-  
ary 1929.

4th January, 1929.

(Court resumed pursuant to adjournment.)

**Mr. DAVIS :** I move for judgment on behalf of both the Alamo Company and McTavish Brothers Limited.

(Mr. Davis to the court.)

20

(Mr. Farris to the court.)

**THE COURT :** I am going to tell you what I am going to do. I am going to take the questions submitted by both sides and make them part of the record.

**Mr. FARRIS :** I think this might go on the record that neither yourself nor myself addressed any remarks to the jury on the question of inducement as related to the questions of Barnes' evidence.

**THE COURT :** You will remember, I will not say that I criticized you, but you desire that I should instruct them on that question to some extent and I said at the time that I questioned that my reply to you was exactly responsive to your request. I felt that I was probably getting away from what you were desiring.

**Mr. DAVIS :** I do not want to have my learned friend's statement being taken down as being assented to by me because I would have to give it a good deal more consideration to try and remember what was said on the part of both of us.

QUESTIONS SUBMITTED TO THE JURY BY COUNSEL  
FOR PLAINTIFF.

1. Did plaintiffs make to defendant Langer any representations other than by way of opinion?
2. If so which of them if any were untrue?
3. Was Langer induced to enter into contracts by reason of such representations?
4. Did defendant Alamo Company enter into contract of warranty that such statements were true?
- 10 5. Did plaintiffs fraudulently conceal any material facts from defendant Langer?
6. If so, what? and when?
7. Did plaintiffs agree with defendant Langer to cancel contract of November 17th, 1927?

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(e) Questions submitted to the Jury by Counsel for Plaintiff, 4th January 1929.

QUESTIONS SUBMITTED TO JURY BY COUNSEL  
FOR DEFENDANT LANGER.

- I. Did the plaintiff McTavish Bros. Ltd. represent to the defendant Langer, as facts, the representations set out in paragraph eleven (except paragraph "B") and paragraphs thirteen and sixteen of the statement of defence?

*Answer :*

- II. Were the said representations made to the defendant Langer to induce him to contract with the plaintiff for shares in the Alamo Gold Mines Limited?

*Answer :*

- III. Did the defendant Langer enter into the agreement of November seventeenth 1927 with the plaintiff relying on the said representations of the plaintiff and believing them to be true?

*Answer :*

- 30 IV. Were the said representations true?

*Answer :*

- V. Did David Barnes, when manager of the Alamo Gold Mines Limited, on or about July or August 1927

(a) Report to the plaintiff that the properties of the Alamo Company were worthless, possessing no ore of commercial value?

Was this information concealed from the defendant Langer?

*Answer :*

- 40 VI. Was the defendant Langer induced to enter into the contract of November 17th 1927 through the concealment by the plaintiff of the said Barnes reports?

(f) Questions submitted to the Jury by Counsel for Defendant Langer, 4th January 1929.



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(f) Questions submitted to the Jury by Counsel for Defendant Langer, 4th January 1929—  
*continued.*

*Answer :*

VII. Did the plaintiff subsequent to the said November seventeenth agree with the said defendant Langer to rescind and abandon the contract of that date?

*Answer :*

VIII. Was the true consideration for the transfer by Wm. B. Code to the Alamo Gold Mines Limited of the Alamo mine 3,000,000 fully paid and non-assessable shares of the company or was the true consideration 1,500,000 shares?

*Answer :*

IX. Were shares to the amount of 1,500,000 as referred to in a certain agreement of March 1927 between Wm. B. Code, McTavish Brothers Limited, David Barnes and George H. Thomas surrendered by the said parties to the Alamo Gold Mines Limited?

*Answer :*

X. Did the defendant Alamo Gold Mines Limited represent to the defendant Langer, as facts, the representations set out in paragraph eleven except paragraph six and paragraph thirteen of the statement of defence?

*Answer :*

10

20

#### QUESTIONS ANSWERED BY JURY.

1. Did plaintiff, or its agent duly authorized in that behalf, make representations to the defendant Langer as facts, matters which were material and not matters of opinion?

*Answer :* Plaintiff and their agents in our opinion did not make any statements other than those contained in the reports they had on the Alamo property.

2. If the answer be in the affirmative, then state which (if any) of such representations were untrue?

*Answer :* None of them.

3. Were such representations made with the intention of thereby inducing the defendant Langer to contract with the plaintiff for shares in the Alamo Mines Limited?

*Answer :* Yes.

4. Did such representations induce the defendant Langer to enter into the agreement of November seventeenth 1927 relying on such representations and believing them to be true?

*Answer :* Yes.

5. Did David Barnes when manager of the Alamo Gold Mines Limited on or about July or August 1927, report to the plaintiff that the properties of the Alamo Company were worthless, possessing no ore of commercial value?

*Answer :* Yes.

30

40

(g) Questions answered by Jury, 4th January 1929.

6. If the answer to the last question be in the affirmative then was such report concealed by plaintiff from defendant Langer?

*Answer* : Adverse statement not reported, and later good report was reported.

7. If the answers to the two previous questions be in the affirmative then was defendant Langer induced to enter into the contract of 17th November, 1927 through such concealment?

*Answer* : No. We believe defendant bought on Fellows' telegram of the 16th November 1927.

10 8. Did plaintiff subsequent to the said November seventeenth agree with the defendant Langer to rescind and abandon the said contract?

*Answer* : No.

9. Was the consideration for the transfer by Wm. B. Code to the Alamo Gold Mines Ltd. of the Alamo mine 3,000,000 fully paid and non-assessable shares of the company or was the consideration 1,500,000 shares?

*Answer* : Yes, 3,000,000 shares.

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(g) Ques-  
tions  
answered  
by Jury,  
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*continued.*

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No. 32.

**Reasons for Judgment of Mr. Justice W. A. Macdonald.**

20 THE COURT : Plaintiff moves for judgment upon the findings of the jury. This simply requires that I should interpret and then implement their intent as shown by the answers to the questions submitted. A jury was obtained for that purpose so that it might decide the issues as distinguished from a trial by a judge. Bearing this in mind I see no great difficulty in the matter. The trial was somewhat broken through the illness of one of the jury, but they did not, after they had retired, and during their somewhat lengthy deliberations, express any desire to have any of the evidence read over to them. They had all the exhibits for consideration. During the course of the trial I expressed a wish to have questions for the  
30 jury prepared by counsel before the close of the evidence, especially as the issues raised by the pleadings were varied and intricate. These issues were, however, narrowed, and each side submitted a series of questions for my consideration. In this connection I think it well that the questions so submitted should be filed and form part of the record. I, then, with some changes, and endeavouring to cover the ground desired by counsel, modified the previously prepared questions and submitted ones to the jury, to which no objection was raised. Upon the jury rendering their answers to such questions, the answer applying to question 5 did not, as will be  
40 noticed, appear clear. The jury, at my request, retired and shortly gave an unqualified answer in the affirmative. The balance of the answers seemed unequivocal. Counsel for the Defendant Langer submitted that the answers to questions 5 and 6, coupled with 3 and 4, entitled his client to

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a judgment in his favour. This contention entailed, this morning, considerable discussion and citations of authorities. It also involved consideration of the letter of Barnes of the 6th of August, 1927, subsequent to the unfavourable report so found by the jury, of July, 1927.

This letter, I think, had been overlooked and was not commented on by counsel, but it did not pass unobserved by the jury who had, as I have mentioned, the exhibits before them.

I think, however, that the result, based upon the finding of the jury, turns on the weight to be attached to the answer to question 7; the jury might have simply answered this question in the negative, but they supplemented their finding by, as it were, giving their ground as follows: 10  
“ We believe that Defendant bought on Fellows’ telegram of the 16th of November, 1927.” In other words they find that the concealment of the information that had been received by the Plaintiff in July had no bearing upon the negotiations and purchase of the shares by the Defendant Langer in November following. They apparently concluded that such concealment was not material and did not induce the contract. It follows that the finding of the jury was that there should be no rescission of the contract and that Defendant Langer should stand by and fulfil his bargain for purchase.

The result is the counter-claim against the plaintiffs, and the action, if I can so term it, against the Alamo Mines, are both dismissed with costs. 20

The Plaintiff is entitled to judgment in the amount of its claim, namely \$78,750.00, with costs to be taxed accordingly.

Mr. ST. JOHN: Your Lordship, the costs of two orders were reserved for the trial judge, the first, the order of the 7th of June, 1928, and my learned friend applied for an injunction to prevent interference with the examination of the mine and the costs of that application in so far as they related to the postponement were given to the plaintiff in any event and there was the further order that the costs of and incidental to the application insofar as they related to the injunction were left to be dealt with by the trial judge. 30

THE COURT: They follow, of course.

Mr. ST. JOHN: Then there was the application of the 26th June, 1928, adding the Alamo Gold Mines as a defendant and those costs were reserved for the trial judge.

THE COURT: They follow the event.

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**No. 33.****Judgment.**

BEFORE THE HONOURABLE MR. JUSTICE W. A. MACDONALD.

Friday the 4th day of January, 1929.

THIS ACTION having on the 3rd, 6th, 7th, 10th, 11th, 27th, 28th and 31st days of December, 1928, and on the 4th day of January, 1929, been tried before the Honourable Mr. Justice W. A. Macdonald with a special jury of the County of Vancouver and the jury having found a verdict for the plaintiff and the said Honourable Mr. Justice W. A. Macdonald having

10 ordered that judgment be entered for the plaintiff against the defendant J. F. Langer for the sum of \$78,750.00 and costs of action and that the counterclaim of the defendant J. F. Langer against the plaintiff be dismissed with costs and that the counterclaim of the defendant J. F. Langer against the defendant Alamo Gold Mines Limited be dismissed with costs;

THIS COURT DOTH ADJUDGE that the plaintiff recover against the defendant J. F. Langer the sum of \$78,750.00 and its costs to be taxed;

AND THIS COURT DOTH FURTHER ADJUDGE that the counterclaim of the defendant J. F. Langer against the plaintiff be dismissed with costs to be taxed.

20 AND THIS COURT DOTH FURTHER ADJUDGE that the counterclaim of the defendant J. F. Langer against the defendant Alamo Gold Mines Limited be dismissed with costs to be taxed.

By the Court,

"H. BROWN,"

Dep. District Registrar.

"J. W. De B. F."

Checked

"D. M." "W. A. M." J.

Entered

Jan. 14, 1929.

30 Order Book, Vol. 24, Fol. 142,  
per "D. M."

**No. 34.****Notice of appeal to the Court of Appeal.**

TAKE NOTICE that the defendant J. F. Langer hereby appeals to the Court of Appeal from the judgment of the Honourable Mr. Justice W. A. Macdonald made herein the 4th day of January, 1929.

40 AND FURTHER TAKE NOTICE that the Court of Appeal will be moved on behalf of the said defendant at the sittings of the Court to be held at the City of Vancouver, B.C. on Tuesday, the 5th day of March, 1929, at the hour of 11.00 o'clock in the forenoon, or so soon thereafter as counsel can be heard, by way of an appeal from and to set aside the said judgment

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No. 34.  
Notice of  
appeal to  
the Court of  
Appeal,  
19th January  
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Court of  
Appeal  
of British  
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appeal to  
the Court of  
Appeal,  
19th Janu-  
ary 1929—  
*continued.*

and to enter judgment for the defendant dismissing the plaintiff's action and for judgment for the defendant on his counter-claim, or for an order directing a new trial herein, on the following amongst other grounds :—

1. That the said judgment is against the law.
2. That the said judgment is against the evidence and the weight of evidence.
3. The learned Judge erred in not giving judgment against the plaintiff in favour of the defendant Langer on the questions as answered by the jury.
4. The learned Judge misdirected the jury as to the burden of proof and the inference to be drawn from a proved material misrepresentation. 10
5. The learned Judge should have told the jury that when a misrepresentation is proved and it is of such a nature as would induce a person to enter into a contract or would tend to induce him to do so, or that it would be a part of the inducement to enter into the contract, the inference is if he entered into the contract that he acted on the inducement so held out, unless it is shown that he knew the facts or that he admittedly did not rely on the statement.
6. The learned Judge erred in not admitting the evidence of Hollingsworth under the authority of Section 17 of the Evidence Act. 20
7. The verdict of the jury was perverse and contrary to the evidence as to the answers given to questions 2, 7, 8 and 9.
8. The learned Judge erred in not dismissing the plaintiff's claim and allowing the defendant Langer's counterclaim on the ground of the failure of consideration :—

(1) That there were no shares validly issued which could be transferred to the defendant Langer.

(2) That the shares purchased were in effect the purchase of an interest in a mine represented to contain blocked out and ascertained ore which did not in fact exist. 30

Dated at Vancouver, B.C. this 19th day of January, 1929.

KNOX WALKEM,

Solicitor for defendant J. F. Langer.

To Messrs. St. John, Dixon & Turner,  
Solicitors for plaintiff.

And to The Defendant  
Alamo Gold Mines Limited.

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## No. 35.

## Reasons for Judgment.

## (a) THE CHIEF JUSTICE J. A. MACDONALD.

On November 17th, 1927, the appellant agreed to purchase from the respondents 750,000 shares in the Alamo Gold Mines Limited.

The jury in answer to questions found :

“ 1. Plaintiff and their agents in our opinion did not make statements other than those contained in the reports they had on the Alamo property.

10 4. Q. Did such representations induce the defendant Langer to enter into the agreement of November 17, 1927, relying on such representations and believing them to be true?—A. Yes.

5. Q. Did David Barnes when manager of the Alamo Gold Mines Limited on or about July or August 1927 report to the plaintiffs that the properties of the Alamo Company were worthless, possessing no ore of commercial value?—A. Yes.

6. Q. If the answer to the last question be in the affirmative, then was such report concealed by the plaintiffs from the defendant Langer?—A. Adverse statements not reported, and later good report was reported.

20 7. Q. If the answers to the two previous questions be in the affirmative, then was defendant Langer induced to enter into the contract of 17th November 1927 through such concealment?—A. No—we believe defendant bought on Fellows' telegram of the 16th November 1927.”

In the inception of their dealings in 1926 the respondents, who were the President and Secretary respectively of the Alamo Gold Mines Limited, produced to the appellant two reports, one by W. H. Jackson, the other by J. P. McGuigan, on the mines owned by the company which were  
30 known as the “Alamo Group” and the “Evans Group,” together with certain maps. It is necessary only to refer to one of these, viz., that of McGuigan, dated in 1923, which concerns the work done on the Alamo Group by him as manager prior to its being closed down in 1903. Jackson's was made in 1921 and appears to me to be unimportant.

The appellant by the first answer is found to have relied, when he made his initial venture in 1926, on these reports and maps. The fourth question and answer, and those following, down to the seventh, have created the real difficulty in this appeal.

40 Before the 17th of November, 1927, the appellant had taken up some of the company's shares and had supplied it with money for development purposes but these transactions were distinct from that of the 17th of November, and were induced entirely by McGuigan's report which plaintiffs did not guarantee.

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(a) The  
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donald.

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*continued.*

It appears from the evidence of David Barnes and it was found by the answer to question 5, that Barnes, who was manager of the Company's mines from early in 1926 until the middle of August, 1927, had, in July, 1927, reported to the respondents who were directing the company, that the mines contained no ore of commercial value, and by their answer to question 6 the jury found that the respondents failed to inform the appellants of this report. It was after this adverse report that the sale of the 750,000 shares was negotiated. The evidence of Barnes on this point is most explicit ; that he not only expressed such opinion to the respondents in July, but again told them in October after he had left the company's employ, that McGuigan's report was false and that both groups were practically worthless. 10

That it was the respondents' duty before making the bargain of 17th November, 1927, the one in question here, to have disclosed Barnes' opinion to the appellant, there can, I think, be no doubt. The appellant had relied from the beginning upon McGuigan's report, and when this was declared to be unreliable and false in the opinion of their manager, it was fraud on respondents' part to have "failed to report" that information or opinion to the person to whom they were offering their own shares. Their letter to the appellant, then in England, of the 13th of August, 1927, carefully conceals the only fact which was, as they knew, of vital interest to him, namely, Barnes' falsification of McGuigan's report. His statement that he disliked spending other people's money on a worthless mine, and his asking to be relieved from his employment was suppressed, and not only was the real reason for his resignation not revealed, but a false reason was given for it. 20

Mr. Fellows, the new manager, who took charge of the mine in the middle of August, transmitted, on the 15th of November, this telegram to the respondents :—

" Into ore lower tunnel in Alamo sampling lower and number two tunnel today vein big and looks good Stop got five feet of quartz east cross cut lower tunnel Ruby Creek (Evans Group) taking sample to assayer will try to wire results by Saturday Stop big storm on W. C. Fellows." 30

This is the "good" report referred to in the sixth answer and it was on the faith of this telegram that the jury say appellant entered into the agreement of the 17th of November.

On receipt of this telegram the respondents offered their own shares to the appellant and pressed him to buy at once lest the shares should rise in price by reason of Fellows' report. He thereupon bought the shares for \$93,750.00 without awaiting the report of the assayer of the samples mentioned in the telegram, paying \$5,000.00 in cash and giving his promissory note for \$10,000.00 to cover the next instalment of the purchase money. This promissory note was promptly discounted by respondents and the appellant was obliged to pay it. A few days thereafter the assayer's report came to hand, showing values per ton from a trace up to 44 cents in all 40

metals in the main tunnels, Number 2 and Number 3. McGuigan in his report stated the values in Number 2 tunnel, sampled and panned for gold by himself, to be from \$3 to \$12 per ton.

Now reading the answers to questions 1, 4 and 7, what do they disclose? I think they disclose the jury's opinion that the appellant, relying on the McGuigan report and believing it to be true, coupled with Fellows' telegram, entered into the agreement, and further that his mind would not have been influenced by Barnes' unfavourable opinion had it been disclosed. The latter is an inference from the evidence which I think is wholly unjustified.

10 It was argued that Barnes was in no position to form a useful opinion in July, since only parts of the tunnels in the Alamo had been cleared of debris before he left in August, but even if that were a good excuse for the non-disclosure, which I deny, the evidence does not bear it out. Barnes had cleaned out Number 2 tunnel, as well as a large part of Number 3 tunnel. These were the main tunnels, Number 1 being a surface one of 90 feet. He therefore had the opportunity to sample the ore bodies at least in Number 2 tunnel. It turns out now that his opinion was correct, in fact, that he had formed a very conservative opinion when he said he could find no ore of commercial value there. Moreover, Barnes states that he sampled  
20 extensively the ores on the dumps taken out in the operations carried on by McGuigan prior to 1903, and could find nothing of value therein. Barnes was a shareholder in the Alamo Gold Mines Limited and the fact that he refused longer to be a party to the wasting of money on these mines is significant of his honesty.

I cannot say that there is no evidence upon which a jury is competent to pass, since the question of fraud is one for the jury, but I am driven to the conclusion that they, owing perhaps to the manner in which the questions were framed, were led into grave error. There should be a new trial of both claim and counter-claim. I think the defence that the shares were illegally  
30 issued has not been proven. The jury found this question in respondents' favour, and I cannot say that they were wrong.

Victoria, 4th June, 1929.

J. A. MACDONALD,  
C.J.B.C.

(b) MR. JUSTICE ARCHER MARTIN.

Victoria, 4th June, 1929.

With reluctance I can only reach the conclusion that in order to prevent a miscarriage of justice caused by the indefinite answer of the jury to questions 6 and 7 there must be a new trial, and I express my regret that  
40 when the uncertainty became apparent the long established and proper course of sending the jury back to make their meaning plain before dismissal was not followed, though it has been repeatedly pointed out by this Court, *vide, e.g., Rayfield v. B. C. Electric Ry.* (1909) 15 B.C. 361; *Shearer v. Canadian Collieries Co.* (1914) 19 B.C. 277; and *Dunphy v. B. C. Electric Ry.* (1919) 59 S.C. 263, 269.

ARCHER MARTIN, J.A.

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(c) MR. JUSTICE McPHILLIPS.

McPHILLIPS, J.A. : I am firmly of the opinion that fraud was made out and that the respondent should recover nothing in this action. I have read the careful judgment of my brother M. A. Macdonald, in which he details all the salient facts and circumstances, demonstrating in the completest way that the respondent was fully aware of the report of the valuelessness of the mine and nevertheless sold shares to the appellant withholding that knowledge, and the irony of the situation was that the manager who so reported was actually personally aware of all he reported from actual examination upon the ground, and it was money supplied by the appellant which was defraying the cost of the mining operations at the time the manager made the discovery of the valuelessness of the mine. Further, it was upon the continued representations of the strength of previous mining reports then found to be false that the appellant was induced to buy the shares, the price of which is being sued for in this action, viz., \$78,750.00 for shares in the Alamo Gold Mines Limited—the later information being wholly withheld. The jury unquestionably found fraud, but by a series of questions, in my opinion, became confused. Fraud being found that rightly ended the case, but the learned trial judge proceeded upon the answer to the seventh question. Three of the questions put to the jury and the answers made by the jury particularly requiring attention, are the following :—

“ 5. Q. Did David Barnes when manager of the Alamo Gold Mines Limited on or about July or August 1927, report to the plaintiff that the properties of the Alamo Company were worthless, possessing no ore of commercial value?—A. Yes.

“ 6. Q. If the answer to the last question be in the affirmative then was such report concealed by plaintiff from defendant Langer?—A. Adverse statement not reported, and later good report was reported.

“ 7. Q. If the answers to the two previous questions be in the affirmative then was Defendant Langer induced to enter into the contract of 17th November 1927 through such concealment?—A. No——we believe Defendant bought on Fellows' telegram of the 16th November 1927.”

The telegram of the 16th of November 1927 from Fellows was no representation of the value of the mine that there was any ore of any value therein. It was on this question 7, and the answer thereto that the learned trial judge proceeded and entered judgment for the respondent. In my opinion, fraud being present—the judgment of the learned trial judge should have been for the appellant *non obstante veredicto*. In any case the answer of the jury was perverse, it was plain to demonstration, taking the other answers made by the jury into consideration, that the appellant was induced—by representations made to him by the respondent then known to be false—to enter into the agreement of November 17th, 1927, the subject-matter of this action. I do not intend to further enlarge upon or refer

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to the facts, only doing so to the necessary extent. To implement my view—fraud being present—that should end the action—but two of my brothers are of the view that there should be a new trial—the appeal being heard by four members of this Court—with a division of opinion, it might be doubtful as to the effect and as in my view it would be a clear miscarriage of justice if the judgment of the Court below should stand, I have arrived at the conclusion that a new trial be had.

It may well be that it is a proper case for a new trial, when the judgment of the Supreme Court of Canada in *McPhee v. Esquimalt & Nanaimo Ry. Co.* 10 (1913) 49 S.C.R. 55, is considered. There Mr. Justice Duff said at p. 53 :—

“ By the law of British Columbia, the Court of Appeal in that province has jurisdiction to find upon a relevant question of fact (before it on appeal) in the absence of a finding by a jury or against such a finding where the evidence is of such a character that only one view can reasonably be taken of the effect of that evidence. The power given by O. 58, r. 4—‘ to draw inferences of fact . . . and to make such further or other order as the case may require ’—enables the Court of Appeal to give judgment for one of the parties in circumstances in which the Court of first instance would be powerless, as, for instance, where (there being some evidence for the jury) the only course open to the trial judge would be to give effect to the verdict; while, in the Court of Appeal, judgment might be given for the defendant if the Court is satisfied that it has all the evidence before it that could be obtained and no reasonable view of that evidence could justify a verdict for the plaintiff. The jurisdiction is one which, of course, ought to be and, no doubt, always will be exercised both sparingly and cautiously; *Paquin v. Beauclerk* (1906) A.C. 148, at page 161; and *Skeate v. Slaters*, 30 Times L.R. 290.”

Whilst I am strongly of the view that but one view of the evidence 30 only can be taken, nevertheless owing to the peculiar circumstances of this case, I am disposed to agree with the view of my brothers, that a new trial be had.

I would therefore allow the appeal and direct a new trial.

A. E. McPHILLIPS, J.A.

Victoria, B.C.,  
4th June, 1929.

(d) MR. JUSTICE M. A. MACDONALD.

The fate of this appeal depends upon the interpretation of answers to questions submitted to a special jury. Plaintiff (respondent) sued 40 Defendant (appellant) for \$78,750.00, balance due on a contract contained in a letter dated November 17, 1927, and a memorandum written thereon whereby respondent agreed to sell 750,000 shares in Alamo Gold Mines Limited (in the State of Oregon) for \$93,750.00. The sum of \$5000 was paid upon execution of the agreement and \$10,000 on March 1, 1928. Shortly

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thereafter appellant repudiated liability; hence the action for the balance due. Appellant counter-claims for rescission of the agreement and repayment of the said sum of \$15,000 paid thereunder.

Appellant complains respondent represented that the properties constituting the sole assets of the Alamo Gold Mines Limited were valuable properties; that they were operating that part of it known as the "Evans Group" on which a shaft was sunk and assays showed an average value of \$14 per ton; that ore was being milled from an open cut in the Evans Group (Glory Hole) and the mixture of ore from the Evans shaft and the Glory Hole gave the company a net recovery of \$10 per ton, all of which was untrue. Further representations it was alleged were made in respect to operations on the property twenty years before when a vertical shaft was driven for 730 feet cross-cut by three tunnels, viz., that a vein at the outcrop 20 feet in width showed assays of an average value of from \$8 to \$10 a ton and veins in other tunnels showed higher values. It was said that an average value of \$10 a ton would be shown when the old tunnels were cleaned out. These representations were alleged to be untrue and the properties worthless. 10

The respondent gave appellant a blue print showing a cross section of the Alamo vein and workings with statements thereon as to values taken from reports of earlier operations. It now transpires that the blue print (with its representations) was grossly misleading although respondent did not know it at that time. Representations were made thereon that 194,050 tons of ore had been blocked out in the Alamo mine from which average samplings showed a value of \$10 per ton and that the value of the blocked ore was at least \$8 a ton. These statements were untrue, no such tonnage being blocked out. 20

Early in 1927 before the contract sued upon was entered into, appellant relying on the foregoing representations subscribed and paid for shares in the Alamo Gold Mines Limited to finance operation to the amount of \$28,660.00. He also purchased 250,000 shares from the respondent paying \$35,937.50 therefor. At this time however it was not known that the representations referred to were untrue. By counter-claim appellant also sought repayment of these amounts but I do not think he is entitled to this relief. He also set up a further defence denying respondent's title to the 750,000 shares sold (under the agreement of November 17, 1927) and its authority to dispose of them alleging that they were not fully paid and non-assessable nor properly issued. It will not, I find, be necessary to dispose of this issue. 30

About three weeks before the agreement of November 17, 1927, was executed David Barnes, manager of the Alamo Gold Mines Limited, told respondent that the properties were worthless; that it contained no ore bodies of commercial value and that further work was not justified. Respondent flatly contradicted Barnes' evidence but the jury accepted it. The complaint therefore is that respondent fraudulently concealed this vital information from appellant. Had he been told of the statements made by Barnes he would not, he asserts, have obligated himself in the further sum of \$93,750.00 for the purchase of worthless shares. Shortly after the 40

purchase assays revealed the truth in regard to the value of the property, or its lack of value.

Respondent's defence on the main action is that no representations were made; that McTavish Brothers (sole shareholders in respondent company) simply passed on to appellant information received on blue prints originally prepared by others. "This," they say, "was the information we received—use your own judgment." The fraud alleged centres around events in July or August 1927. One of the McTavish Brothers visited the property at that time. Barnes who was working there as manager for \$350 a month told him as already intimated that the property was worthless—both the Evans and Alamo, and further that he did not believe the representations made in the earlier reports set out in the blue prints referred to. Appellant was then in England. McTavish wrote to him afterwards, viz. : on August 13th 1927, but did not say anything about Barnes' adverse opinion although the letter contained suggestive statement concerning Barnes which would appear to be not without significance. Part of the letter follows :—

"I left shortly after seeing you and drove down to Baker . . . There was no change or no indication to show that there had been any fault or slip. I called in Mr. Fellows the engineer who made the survey of the tunnel and he agreed with Mr. Barnes that the only thing to do was to drive straight ahead. . . . Mr. Barnes succeeded in getting air circulating in the Alamo tunnel and ultimately got in 1200 feet. Here he came to the big porphyry dyke that is mentioned in the reports. This porphyry as you will remember is something like sandy clay and at this point it had caved very badly filling the tunnel for several feet back. It was broken up in very small particles and being wet whenever they attempted to take a shovelful out near the top it would run very energetically right back to the floor of the tunnel. Mr. Fellows suggested that since the weather had turned very hot this might dry out very materially in the next few weeks and he advised giving it a chance. If it is not sufficiently dried out it might be necessary to tunnel around it. It is very encouraging to find that the large porphyry dyke is just as indicated in the various reports. . . . When I reached camp I heard some intimation to the effect that Mr. Barnes had expressed dissatisfaction, excused him on the ground that since his operation last spring he has been anything but well. However, knowing your feelings in the matter I made up my mind that if he gave me any opportunity there was only one thing that I would do. After being there for some days I asked him if he was sincere in the statements he had made regarding his desire to get away. He said he was. I presume he expected that I would try to persuade him to stay on, but I simply informed him that if a man has gotten himself into that frame of mind that of course there was no use arguing with him and asked him when he would be prepared to leave. He then said that he did not wish to leave us in the lurch and that if he got reasonable holidays it might be all right. However, I paid no

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attention to this remark and told him he did not need to worry about that as I had already spoken to Mr. Fellows and arranged with him to carry on until you returned. Mr. Barnes then suggested that he would carry on until the 15th, so by the time you receive this letter the work will be going on under new management. . . . Mr. Barnes will therefore be leaving this work on Monday. He is coming home to Seattle and will then make a trip up here to see us. At that time he will give us a verbal report of what has happened since I left and if there is anything of interest I shall pass it on to you."

(I think McTavish had some information of interest which he might have passed on, assuming of course that the jury came to the right conclusion on that point.) 10

Again he wrote appellant on August 17th, 1927 in part as follows :—

" We have just been favoured with a visit from Mr. Barnes. He reports that Mr. Evans who has been prospecting alongside the Alamo for the last two years, has at last been rewarded in getting the vein for which he was looking. When Mr. Barnes saw the vein just before leaving he had a cross-cut in it for 12 feet and had not yet reached the other side. He describes this as a very rich vein the fine stuff in which carries as much gold as the fine stuff in the 9 feet vein on the Evans, and that when crushed the rock really contains more gold than the fine stuff. In other words, he says that he saw lots of samples that would easily go \$200.00 a ton and intimated that from the surface indications there is a possibility that the vein might go \$50.00 to the ton. I am just passing this information on to you as it came to me. At the same time I have had a letter from Mr. Fellows in which he says that the discovery made by Mr. Evans was undoubtedly very fine. Barnes spent the whole day on the hill and said that he definitely determined that the vein cuts right through our property." 20 30

It was suggested that in any event the Alamo was not sufficiently opened up at that time to enable Barnes to express an opinion; also that he was not competent to do so. Why therefore pay heed to what he said? It would at least be fair to report his opinion for what it was worth with (if it was thought of no value) comments upon it.

Mr. Fellows referred to in the letter quoted—a mining engineer—succeeded Barnes. His investigations finally disclosed the same condition but not at the outset. After doing some work he wired respondent as follows :—

" November 16th 1927. 40

" Total width ten feet. First side solid quartz. Next mixed with country rock. Good wall both sides. Starting drift on quartz today. Stop Sending samples both Ruby Creek and Alamo to assayer today."

This message was referred to in the jury's answers. However, after further work and investigation, he wrote appellant, on November 17th, 1927, saying in part :—

“ Herewith please find assay certificate as you will see the Alamo has no ore of any value.”

Again on November 21st, 1927 he wired respondent as follows :—

“ All of number two tunnel cleaned out can sample all of ore body Stop about three Hundred feet of ore chute on lower tunnel clean one hundred fifty feet on each side of raise the map shows this to be the center of ore chute Stop Impossible to say length of time required to clean out balance stop there is absolutely no commercial ore in either the number two tunnel or the lower tunnel Stop Notwithstanding reports by McGuigan Jackson and others mailed assay certificates Saturday.”

Also on December 6th, 1927 he wrote respondent a letter in which this sentence appears :—

“ It is possible there may be a spot or two that will assay but as for commercial ore there is none.”

The questions submitted to the jury with the answers follow (I omit 20 number 8 as it is no longer material) :—

(1) Q. Did the plaintiff (respondent) or its agent duly authorised in that behalf, make representations to the defendant Langer (appellant) as facts matters which were material and not matters of opinion?—A. Plaintiff and their agents in our opinion did not make any statement other than those contained in the reports they had on the Alamo property.

(2) Q. If the answer be in the affirmative, then state which (if any) of such representations were untrue?—A. None of them.

(3) Q. Were such representations made with the intention of thereby inducing the defendant Langer to contract with the plaintiff for shares in the Alamo Mines Limited?—A. Yes.

(4) Q. Did such representations induce the defendant Langer to enter into the agreement of November 17th, 1927, relying on such representations and believing them to be true?—A. Yes.

(5) Q. Did David Barnes when manager of the Alamo Gold Mines Limited on or about July or August 1927, report to the plaintiff that the properties of the Alamo Company were worthless possessing no ore of commercial value?—A. Yes.

(6) Q. If the answer be in the affirmative then was such report concealed by the plaintiff from defendant Langer?—A. Adverse statement not reported—and later good report was reported.

(7) Q. If the answer to the two previous questions be in the affirmative then was defendant Langer induced to enter into the

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contract of 17th November 1927 through such concealment?—A. No, we believe defendant bought on Fellows' telegram of the 16th November 1927.

(9) Q. Was the consideration for the transfer by William B. Code to the Alamo Gold Mines Limited of the Alamo mine 3,000,000 fully paid and non-assessable shares of the company or was the consideration 1,500,000 shares?—A. Yes, 3,000,000 shares (this answer is of importance only on the other branch of the case).

Taking a general survey the jury by its first answer finds that respondent simply passed on to appellant information contained in statements originally made as a result of operations twenty years before without any knowledge as to whether they were true or not. It follows that in answering the second question the jury do not mean that the mine contained ore bodies and values as set out in these early reports. They mean that it was true such statements appeared and were passed on to appellant. That is the only intelligent explanation of the answer. The answer to number 3 means the representations believed by respondent to be true at that time were intended to induce the contract, while number 4 shows that appellant entered into it relying on said representations. The answers to numbers 5 and 6, should be considered in the light of the charge to the jury on the points involved. His lordship after repeating question 5, said :

“ Now, aside from this question of misrepresentation, innocent though it may be, this involved a direct attack upon the plaintiff of fraud. It is my duty to inform you, *under the relationship existing between the plaintiff and defendant*, if they had acquired knowledge of the condition of the mine as outlined in this question then it was their duty to inform Langer to that effect, and furthermore, it was a most fraudulent act on their part to have then negotiated and carried into effect an agreement for the sale of shares in that mining property.”

With that in mind the jury found that Barnes reported to the respondent as appellant contended. But respondent says it is not fraud to conceal a report honestly believed to be of no value although it later turned out to be true. The issue was as to whether or not Barnes did make this report. Respondent denied it and the trial judge was of the opinion after hearing the evidence that if the report was made it was fraud to conceal it. I think the answer to number 6 may be read as if the word “ yes ” preceded the answer and formed part of it.

The answer to number 7 creates the whole difficulty. The jury should have been asked to elucidate it. I have quoted the telegram of November 16th here referred to. Read literally apart from previous answers it would appear the contract was closed not as a result of fraudulent concealment of a report but by an optimistic telegram from a reliable engineer. Do the jury mean that it was the sole operative inducement—that if respondent had disclosed Barnes' report appellant would treat it as respondent says it should be treated, viz : as the opinion of a man not qualified to judge?

I cannot think so. That telegram standing alone could not possibly be the sole inducing cause. It was the final word in a series of events required to bring about this sale. It could not be the sole reason because the jury in earlier answers point to other representations which brought it about. It must at least mean that appellant bought on this telegram coupled with the representations found in answers to questions 1, 2, 3 and 4.

If as the learned trial judge (who gave judgment on the answers) evidently believed the answer to number 7 is all important, and the answers to 5 and 6 of no vital importance (in view of number 7) in reaching a conclusion, the judgment should not be disturbed. The word "concealed" is used in question number 6. It suggests fraudulent suppression and the trial judge by his charge so regarded it. The result of the jury's finding is that two representations (4 and 7) induced the contract, viz: the blue print and the telegram. Neither one standing alone would do so but because of the information contained in the blue print the telegram of November 16th settled the matter; without the earlier representations it could not do so. What follows? The jury would not be expected to know—it is a legal deduction—that although the answers to 1, 2, 3 and 4 originally show innocent representations their character was entirely changed by the answers given to numbers 5 and 6.

Counsel for appellant put it this way. When blue prints were given containing representations as to value it was an innocent misrepresentation. But when respondent discovered in July or August that these representations innocently made were in fact untrue and suppressed the information received from Barnes showing it, the original representation being a continuing one must be regarded as dishonest. If A and B are interested in a joint venture and A makes representations to B innocently to induce a sale of his interest in the undertaking and before it is entered into finds his representations were untrue but conceals the discovery and B buys on the faith of the original representation the result is the same as if A knew they were false in the first place. The query would arise as to whether or not he was credibly informed on the point. Before he would be bound to apprize B the information would have to be such that an honest man acting reasonably would act upon it. We have no finding as to whether Barnes' opinion—from his position and the work done—was of any value. But we have the Judge's charge on the point and we must view the answer in the light of it. Personally I would experience little difficulty. The manager's exploratory work was not so meagre that he could not express an opinion which at least should seriously be taken into account as between parties standing in such relationship. He was not a qualified engineer but a practical man and he was the manager—their man on the ground. The respondent knew that appellant already invested nearly \$70,000. He was the financial pack-horse for the outfit. To say before loading him with a further liability of over \$90,000 for worthless shares that he should not be told what his own manager reported offends against one's sense of fair and honest dealing, to say the least. This, of course is based on the assumption that the jury found—as we must assume—the facts correctly. If they

*In the  
Court of  
Appeal  
of British  
Columbia.*

No. 35.

Reasons for  
Judgment,  
4th June  
1929.

(d) Mr. Jus-  
tice M. A.  
Macdonald  
—continued.



*In the  
Court of  
Appeal  
of British  
Columbia.*

No. 35.  
Reasons for  
Judgment,  
4th June  
1929.

(d) Mr. Jus-  
tice M. A.  
Macdonald  
—continued.

did not a grave injustice was done respondent. I do not say this to intimate that I disagree with the jury's finding. I do not express an opinion one way or the other on that point.

Surveying therefore the answers in this way I cannot find from the answer to question 7 any implication that the answers to the former questions should be ignored; nor that the end was not attained by the state of facts they disclose. The original representations were a *sine qua non*. To say that the jury in answering number 7 meant the Court to ignore the previous answers is to make an incomplete statement. The train of thought leading to the purchase was started by the blue prints and the information therein contained. Upon the suppression of the Barnes report that information must be regarded as untrue *ab initio*. The telegram was the final inducing element but standing alone it would not induce the contract. That is the effect of the jury's answers. We must assume that the jury were acting seriously under the direction of the Court and because they find that the original representations were a factor I would view it as if they answered number 7 by saying, "no, we believe defendant bought on the representations contained in the blue prints with the alleged facts recorded thereon, and by the telegram of the 16th of November." The element of fraud was interjected into those representations by the answers to 5 and 6 and when it enters as an *inducing element* the contract cannot stand.

I think the appeal should be allowed, and that appellant in addition to rescission of the agreement should recover the \$15,000 paid thereunder.

M. A. MACDONALD, J.A.

Victoria,  
4th June 1929.

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No. 36.

Formal Order.

## COURT OF APPEAL.

Between

McTAVISH BROTHERS LIMITED - - - Plaintiff (*Respondent*)

and

J. F. LANGER - - - Defendant (*Appellant*)

and

ALAMO GOLD MINES LIMITED, added as defendant by way of  
 10 counter-claim - - - Defendant (*Respondent*).

The Honourable THE CHIEF JUSTICE.

The Honourable Mr. JUSTICE MARTIN.

The Honourable Mr. JUSTICE McPHILLIPS.

The Honourable Mr. JUSTICE MACDONALD.

Victoria, B.C., Monday, the 19th day of August 1929.

The appeal of the defendant (appellant) J. F. Langer from the judgment of the Honourable Mr. Justice W. A. Macdonald with a jury dated the 4th day of January 1929 having come on for hearing before this Honourable Court on the 22nd and 25th days of March 1929 in the presence of Mr.  
 20 J. W. De B. Farris, K.C., and Mr. Knox Walkem of counsel for the defendant (appellant) and Mr. C. W. St. John and Mr. W. H. S. Dixon of counsel for the plaintiff and defendant (respondents); Upon reading the appeal book herein, the notice of appeal of the defendant (appellant) dated the 19th day of January 1929, and the Court having directed that judgment herein be reserved :

THIS COURT DOTH ORDER AND ADJUDGE that the said appeal be allowed as against the plaintiff, and that the said judgment, except in so far as it dismisses with costs the counterclaim of the defendant J. F. Langer against the defendant Alamo Gold Mines Limited be set aside, and a new  
 30 trial had between the plaintiff and the defendant J. F. Langer.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the said appeal as against the defendant Alamo Gold Mines Limited be and the same is hereby dismissed.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of the trial as between the plaintiff and the defendant J. F. Langer do abide the result of the new trial.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the defendant J. F. Langer recover from the plaintiff his costs of the said

*In the  
 Court of  
 Appeal  
 of British  
 Columbia.*

No. 36.  
 Formal  
 Order,  
 19th August  
 1929.

*In the Court of Appeal of British Columbia.*

No. 36.  
Formal Order,  
19th August 1929—*continued.*

appeal, and that the same be taxed and paid to the defendant J. F. Langer forthwith after taxation thereof.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the defendant Alamo Gold Mines Limited recover from the defendant J. F. Langer its costs of the said appeal and that the same be taxed and paid to the defendant Alamo Gold Mines Limited forthwith after taxation thereof.

By the Court.

J. F. MATHER,  
Registrar. 10

No. 37.  
Order granting Defendant leave to appeal to His Majesty in Council,  
4th September 1929.

No. 37.

Order granting Defendant leave to appeal to His Majesty in Council.

COURT OF APPEAL.

Between

McTAVISH BROTHERS LIMITED - - - - Plaintiff (*Respondent*)

and

J. F. LANGER - - - - Defendant (*Appellant*)

and

ALAMO GOLD MINES LIMITED, added as defendant by way of counter-claim - - - - Defendant (*Respondent*). 20

The Honourable THE CHIEF JUSTICE.  
The Honourable Mr. JUSTICE McPHILLIPS.  
The Honourable Mr. JUSTICE MACDONALD.

Victoria, B.C., Wednesday the 4th day of September, 1929.

UPON MOTION of the defendant (appellant) J. F. Langer for leave to appeal to His Majesty in Council from the judgment of this Honourable Court dated the 19th day of August 1929, upon hearing Mr. Charles E. Wilson of counsel for the applicant, J. F. Langer, and Mr. C. W. St. John of counsel for the plaintiff (respondent) McTavish Brothers Limited consenting thereto, and upon it appearing that the matter in dispute on the appeal amounts to more than the sum of £500 sterling; 30

THIS COURT DOTH HEREBY GRANT to the defendant (appellant) J. F. Langer leave to appeal from the said judgment to His Majesty in Council upon condition that the said appellant J. F. Langer do within thirty days from the date hereof enter into good and sufficient security to the satisfaction of this Honourable Court in the sum of £500 for the due prosecution

of the appeal and the payment of all such costs as may be payable to the respondent McTavish Brothers Limited in the event of the appellant J. F. Langer not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellant J. F. Langer to pay the respondent McTavish Brothers Limited's costs of the appeal, as the case may be.

*In the Court of Appeal of British Columbia.*

AND THIS COURT DOTH FURTHER ORDER that the re-trial of this action be stayed pending the said appeal.

No. 37.  
Order granting Defendant leave to appeal to His Majesty in Council, 4th September 1929 —continued.

By the Court,  
J. F. MATHER,  
Registrar.

10

No. 38.

Order approving Defendant's security.

COURT OF APPEAL.

Between

McTAVISH BROTHERS LIMITED - - - - Plaintiff (*Respondent*)  
and  
J. F. LANGER - - - - Defendant (*Appellant*)  
and  
20 ALAMO GOLD MINES LIMITED, added as defendant by way of  
counter-claim - - - - Defendant (*Respondent*).

No. 38.  
Order approving Defendant's security, 1st October 1929.

The Honourable THE CHIEF JUSTICE.  
The Honourable Mr. JUSTICE MARTIN.  
The Honourable Mr. JUSTICE GALLIHER.  
The Honourable Mr. JUSTICE MCPHILLIPS.  
The Honourable Mr. JUSTICE MACDONALD.

Vancouver, B.C., Tuesday, the 1st day of October, 1929.

UPON MOTION of the appellant J. F. Langer for an order approving the security entered into by the said appellant pursuant to the order of this Honourable Court dated the 4th day of September 1929; upon hearing 30 Mr. Knox Walkem of counsel for the appellant J. F. Langer and Mr. C. W. St. John of counsel for the respondent McTavish Brothers Limited;

THIS COURT DOTH ORDER that the security entered into by the appellant J. F. Langer pursuant to the order of this Honourable Court dated the 4th day of September 1929, which security consists in the appellant J. F. Langer having deposited the sum of £500 with his solicitors Messrs. Burns, Walkem and Thomson, and they having given their undertaking to the

*In the  
Court of  
Appeal  
of British  
Columbia.*

No. 38.  
Order  
approving  
Defendant's  
security,  
1st October  
1929—con-  
tinued.

solicitors for the respondent McTavish Brothers Limited to hold the same as security for the due prosecution of the appeal, and the payment of all such costs as may be payable to the respondent McTavish Brothers Limited in the event of the appellant J. F. Langer not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellant J. F. Langer to pay the respondent McTavish Brothers Limited's costs of the appeal, as the case may be, be and the same is hereby approved.

By the Court,

H. BROWN,  
Dep. Registrar.

10

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## EXHIBITS.

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**29 and 86.—Report on Alamo Gold Mine by W. H. Jackson, and addition thereto.**

This property is situated in the Alamo District, one half mile from the town of Alamo, in Grant County, Oregon, near the junction of Olive and Clear Creeks, and about one and one half miles south of the Red Boy Mine, a property noted for its regular monthly dividends; and consists of five quartz claims named as follows, to wit: The Alamo, Mammoth, Olympia, June and Gold Queen.

Exhibits.  
—  
29 and 86.  
Report on  
Alamo Gold  
Mine by  
W. H. Jack-  
son,  
26th Janu-  
ary 1921,  
and addi-  
tion thereto,  
dated  
9th Febru-  
ary 1921.

### ACCESSIBILITY.

- 10 The property is easy of access and can be reached at all times of the year by two good wagon roads; one from the town of Whitby, the present terminus of the Sumpter Valley Railroad, a distance of nine miles, and the other from Sumpter, a distance of twenty miles. The Whitney road is not in use at the present time. The Sumpter road is a first class wagon road and leads to within fifty feet of the end line of the Alamo Mine.

### TIMBER.

An abundance of timber is on the property, sufficient for all mining purposes for many years to come.

### WATER.

- 20 Clear Creek passes within a few hundred feet of the north end line of the property and carries sufficient water for mining, milling and power purposes.

Either water or steam power is available and it is left to the management to determine, after a thorough investigation is made, which to adopt for the more economical operation of the mine.

Exhibits.

29 and 86.  
Report on  
Alamo Gold  
Mine by  
W. H. Jack-  
son,  
26th Janu-  
ary 1921,  
and addi-  
tion thereto,  
dated  
9th Febru-  
ary 1921—  
*continued.*

## FORMATION.

The formation is argillite, commonly called slate by miners in this district.

## VEINS.

There are two well defined fissure veins passing through this property, parallel to each other, and about 575 feet apart. One is called the Alamo fissure and the other is called the Gold Queen. The course of these fissures (N. 20 degrees E.) is the same as that of all the most developed and best producing mines in this mineral belt, namely: the Red Boy, Concord, Ibex, Bald Mountain, Belle of Baker, Mammoth, Golconda, E & E, North Pole, and many others of lesser note. They are connected by cross ledges which seem to carry equally as good values as the main fissures, and have a dip to the East of about 30 degrees. 10

The vein matter is composed of quartz and porphyry, very highly oxidized, and carries considerable quantities of free gold. Having had occasion to make examinations of the properties now producing and under development in this district, in their earlier stages of development, I have no hesitancy in saying that the Alamo vein shows equally as good, if not better, results in free gold than any of those that I have examined. It is my opinion that values will continue to improve with added depth, as that has been the general rule with other properties in this district, without exceptions. 20

## PRESENT DEVELOPMENT.

The development work thus far has been confined almost entirely to the Alamo vein, which seems to be the largest and best defined fissure, although the Gold Queen shows good values in free gold in tests made by panning. The development work on the Alamo fissure consists of (1) a cross-cut tunnel which intersects the vein at a depth of 50 feet, (2) a 90 foot drift on the vein from the point of intersection of the cross-cut tunnel, (3) an upraise to the surface from a point in the drift near the intersection of the cross-cut tunnel, (4) a 70 foot winze from a point in the drift near the upraise, and (5) a cross-cut of the ledge at the bottom of the winze. The winze was sunk on the hanging wall of the ledge and follows the dip of the same and the cross cut at the bottom of the winze was driven to the foot wall and shows the vein to be 20 feet wide, the same as above. Numerous surface cuts and pits have been made, exposing the vein for a distance of 750 feet and showing a well defined fissure. 30

## FUTURE DEVELOPMENT.

Exhibits.

As to future development, I can only say that the management have already outlined a system, which, if carried out, will enable the mine to be operated at a minimum cost. Owing to the amount of debris and soil on the north side of the mountain where the veins pass through, it is impossible to find them without first getting solid bedrock and then cross-cutting, if necessary. This work the management is engaged in doing at the present time. One tunnel has been started, 500 feet north of the place where the vein is exposed, and is being driven to intersect the same, which will no doubt be done in a few days work. The tunnel will cut the ore body 300 feet below the upper workings.

29 and 86.  
Report on  
Alamo Gold  
Mine by  
W. H. Jack-  
son,  
26th Janu-  
ary 1921,  
and addi-  
tion thereto,  
dated  
9th Febru-  
ary 1921—  
*continued.*

Another tunnel can be started, after the vein has been encountered in the one now being driven, without doing much dead work, which will give 800 feet of backs at the apex of the mountain where the discoveries were made, and which will allow the ore to be handled by gravitation. The mill can then be placed below the mouth of the tunnel, near the creek, and directly on the county wagon road. This will insure very cheap handling of a large body of ore.

## ORES AND VALUES.

20 A number of tests have been made during the course of development work, both by fire and by panning. These show surface values to be from \$8.00 to \$10.00 per ton in gold with some specimens of coarse free gold. Assays from the first cross-cut tunnel and drift show values of from \$10.00 to \$12.00 per ton in gold and average samples taken from the winze and cross-cut at the bottom of the same gives \$10.00 to \$18.00 per ton in gold.

Estimating the average values of the entire vein at \$8.00 per ton, which is lower than tests indicate, and placing the savings by amalgamation and concentration at 90 per cent. of the values, which can easily be saved in this character of ore, would leave a net saving of \$7.20 per ton.

30 After the mine has been developed as indicated above and equipped with a stamp mill, the ore can be mined and milled at a cost of not to exceed \$1.25 per ton.

When the present tunnel is completed to a point below the upper workings, judging from the size of the vein exposed above, there would be about 25,000 tons of ore in sight, which could be mined at a profit of \$6.00 per ton.

Owing to the limited amount of development work done these estimates may be found to be incorrect and I think they will be so found on account of



Exhibits. —  
29 and 86.  
Report on  
Alamo Gold  
Mine by  
W. H. Jack-  
son,  
26th Janu-  
ary 1921,  
and addi-  
tion thereto,  
dated  
9th Febru-  
ary 1921—  
*continued.*

the universal increase in values with depth, a fact which cannot be disputed since all development has demonstrated its truth in this district.

#### NATURAL ADVANTAGES.

I deem it hardly necessary, in conclusion, to say much of the natural advantages of this property. The four most important things to make a paying mine are combined here, namely: ore, accessibility, timber and water. These, together with good management, will make the Alamo a great mine.

Very respectfully submitted.

(Signed) W. H. JACKSON. 10

To the Alamo Cons. Mining & Milling Co.,  
Spokane, Washington.

Sumpter, Oregon.  
January 26, 1901.\*

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#### Addition to Report of January 26th, 1901.\*

In the foregoing report of January 26th, 1901\*, I spoke of the tunnel being driven on the north side of the mountain 500 feet from the old workings, using these words: "one tunnel has been started 500 feet north of the place where the vein is exposed and is being driven to intersect the same, which will no doubt be done in a few days. This tunnel will cut the ore body 300 feet below the upper workings." I am pleased to report to you at this time that the vein has been cut. The tunnel was run 180 feet, through the deep wash and soil before mentioned and well into the solid formation, then cross-cutting was commenced to the east and after cross-cutting for a distance of twelve feet the vein was encountered and has now been shown to be 30 feet wide at that point, between walls. 20

From tests made the ore shows equally good values to those in the upper workings. A remarkable feature is that so large a body of ore should show such high values in free gold. 30

The cutting of the ledge at this point and finding it well defined and so large, insures the future of the mine. The erection of a mill at an early date will enable the property to be developed without the use of much capital as the product of the mine will pay for its future development and also create a fund for handsome dividends on the capital stock.

The maps herewith enclosed will enable you to understand the situation more fully regarding the plan of development.

Dated Sumpter, Oregon, February 9th, 1901.\*

Very respectfully submitted,

(Signed) W. H. JACKSON.

To the Alamo Con. Mining & Milling Co.,  
Spokane, Spokane County,  
Washington.

Exhibits.

29 and 86  
—continued.

\* In Exhibit 29 the date appears as 1921.

10 30.—Report on the Alamo Mine in the Alamo Mining District, Eastern Oregon, by  
J. P. McGuigan.

I submit this report on the request of Mr. P. J. Jennings, and will say that at the time I quit development work on the Alamo mine, in 1903, there was about 5000 feet of development work done in tunnels, upraises, cross-cuts, etc. This work developed a great amount of ore, very large bodies of low grade 18 to 30 feet in width. At different intervals where I cross-cut the vein, the ore bodies showed values of gold the entire width, averaging \$3.00, \$8.00 and \$17.00 per ton; picked samples running as high as \$40.00 to \$60.00 per ton. There are great masses of ore in #1 and #2 tunnels that prospect freely in the pan and will sample on an average of \$3.00 to \$12.00 per ton. The extent of this ore was never fully determined. #1 tunnel, about 90 feet long, is a cross-cut to the vein, going through a porphyry dyke most of the distance. The porphyry panned well for a distance of ten to twelve feet before cutting the vein and gave me an average of \$8.00 to \$12.00 per ton. A stope on the vein some 60 feet distant from this point, where I was stopping the day I shut the mine down gave me an assay of \$17.00 per ton for a width of 12 feet. This was the width of the face of the stope at that point and no walls in sight. It was a cold blooded sample taken.

30 #3 tunnel is the working tunnel and is a cross-cut to the vein 1250 feet. This tunnel was driven about 350 feet on the vein, cutting a granite formation and showing an immense vein, which was never determined in any way, either in values or size. It was swelling ground and hard to hold and being very busy with the mill and surface work at the time, I quit this tunnel and nothing more was done at this point under my management.

30.  
Report on  
the Alamo  
Gold Mine  
in the  
Alamo  
Mining  
District,  
Eastern  
Oregon,  
by J. P.  
McGuigan,  
29th Octo-  
ber 1923.

Exhibits.  
—  
30.  
Report on  
the Alamo  
Gold Mine  
in the  
Alamo  
Mining  
District,  
Eastern  
Oregon,  
by J. P.  
McGuigan,  
29th Octo-  
ber 1923—  
*continued.*

There was considerable drifting done on the vein in the opposite direction but I am unable to give any details regarding the same as it was contract work and while I saw samples of the ore that were sent to the head office here and which showed good values, I cannot conscientiously give you any data on this development as I did not do the work and was never at the mine after it was done, however I prospected the vein on the surface at those points which always indicated ore and gave up free gold in the pan for a distance of nearly a thousand feet on the surface.

Now in addition to this vein, in driving #3 tunnel I cut three distinct veins which are blind veins and do not show on the surface owing to heavy wash on the surface. They are heavily mineralized and show strong fissures, but were never developed any outside of cutting through them with the tunnel.

In addition to the veins above described on this property there are the Juneau and Gold Queen veins. These show strong on the surface and pan free gold at several points, but were never developed outside of surface cuts.

Respectfully submitted,

Spokane, Wash.

(Signed) J. P. McGUIGAN.

October 29th, 1923.

P.S. I will also say that this ore can be mined and delivered to ore bins in the mill for about 50 cents per ton.

10

20

31.  
Letter,  
J. P. Mc  
Guigan to  
W. B. Code,  
22nd Dec-  
ember 1923.

31.—Letter, J. P. McGuigan to W. B. Code.

Spokane, Wash.

December 22nd, 1923.

Mr. W. B. Code,  
Denver, Col.

Dear Sir,

Yours at hand some time ago. Sorry I had to delay so long in giving you a reply but I have been very busy having had an attack of La Grippe so that I was not in a position to do any writing, however, will try to give you as good a line on the property as is possible. You wanted me to give you an idea of what the mine is worth, now, Mr. Code, I am going to be frank with you regarding the mine, I always believed that property to be one big mine. I sold the mine to the firm of Kellen, Warren and Stewart, who at

30

that time were operating in Sumpter buying the best properties they could secure. Exhibits.

At the time the Alamo mine was only developed to #2 tunnel which gave us an estimated depth of about 200 feet on dip of vein Professor Eberman was their expert and engineer. He spent two weeks sampling the mine and surface and I think you have one of his reports on the Alamo at that time, if not Mr. J. P. Jennings should have as I gave him the last one I had. I sold the mine to these people at that time on the strength of Mr. Eberman's report for \$450,000.00 and drew up the papers and came to  
 10 Spokane where our head office was located. Mr. Kellen came along with me to close the deal but on reading Mr. Eberman's report on the property not one of the Directors would sign the agreement and Mr. Kellen went home a sore man. I went back to go ahead with development work and put up a mill, which I did. Drove #3 tunnel 1250 feet to the vein, made an uprise of 380 feet to #2 tunnel and put on a stamp mill which was not adapted to the ore as it slimed too bad. The gold being light being carried off in slimes. Everyone of the Directors and Stockholders were sore because they were not getting a dividend instead of putting on additional machinery to save the gold. I shut the mine down when I did not get the necessary funds to save  
 20 the values and you can see for yourself the results of that shut down.

The Alamo is a big mine undeveloped and unexperimented but the gold is there and you must know how to save it. About two-thirds of it is light flaky gold and from what I have experimented with in a small way, I would suggest the flotation process. I believe we can save 90 per cent. by flotation.

In addition to this vein, which we call the Alamo vein, in driving #3 which is 380 feet below #2 and a cross-cut to the vein 1,250 feet, I cut three blind veins which showed values on the vein throwing a Hematite that will paint equal to any country railroad station you ever saw and will  
 30 give you an assay of about \$7.00 in gold. These assays I made while running the Alamo ore in the mill, but was not very much interested at the time as I expected to do a more thorough testing and sampling after we got running. There is a big property there to explore and no question about raising the money on this property if you can get your parties interested enough to get them on the Alamo ground after you start to work. The possibilities of getting out ore in large amounts include a porphyry dike 175 feet from the discovery of the vein twenty to thirty feet wide which could be steam-shovelled, this dyke will run \$10.00 or, I will say, mill \$8.00 per ton. This is simply an overflow from the main chute and will  
 40 give you an idea of what to expect in depth.

I would not advise you to try to start any development work on the mine until about the 1st of April. It is an ideal place to mine, no frost to speak of, but the snow is quite deep, the big snowfall being in February and March and breaking up about April 1st. Now, Mr. Code, anything I can do to help you I am willing to do. I am only too glad to give you all the information I can regarding the Alamo and willing to assist you whenever I can be of any assistance to you. I have tried to outline everything that

31.  
 Letter,  
 J. P. Mc  
 Guigan to  
 W. B. Code,  
 22nd Dec-  
 ember 1923  
 —continued.

Exhibits. I think would be of any benefit, however, I am here to give you anything I know regarding the Alamo mine so do not hesitate in writing me for any information you may want to know. I remain,

31.  
Letter,  
J. P. Mc  
Guigan to  
W. B. Code,  
22nd Dec-  
ember 1923  
—continued.

East 503 Sinto Ave.,  
Spokane, Wash.

Yours very respectfully,  
JAMES P. McGUIGAN.

88.  
Letter,  
C. A. Smith  
to W. B.  
Code,  
27th Janu-  
ary 1925.

88.—Letter, C. A. Smith to W. B. Code.

W. B. Code,  
Seattle, Wash.

Cap Boise,  
Jan. 27, 1925.

10

Dear Sir,

I meet P. J. Jennings hear and he told me you one the Alamo Mine. he asked me to write you what I new about it I done the last work on it. I will say this it is the best mine in that field. there are about 175,000 tons of ore block out which will run about \$12.00 per ton. There was a man came from Calo just befor the mine was closed down. Sampled the mine and he told me it was the best mine he ever sampled as a free milling and the mine was worth \$500,000.00 the way she was. I can not think of that man name. But he was a big in mining. Just at that time they was three men that had come from the east to buy the mine but they could not get the stockholder together and if you get that mine open up again you will not have any trouble selling it for big money. I would like to see you and have a talk with you and if you ever come down this way be sure and call on me. I can tell you more about it if I could talk to you then writing.

Hoping this will do you some good.

your  
C. A. SMITH,

Boise. 30

32.  
Excerpt  
from Report  
of Walde-  
mar Lind-  
gren relating  
to Alamo  
Mine.

32.—Excerpt from Report of Waldemar Lindgren relating to Alamo Mine.

EXCERPT FROM REPORT OF WALDEMAR LINDGREN, BOSTON, MASS.

“GOLDBELT OF THE BLUE MOUNTAINS OF OREGON.”

22nd Annual Geological Report, Part II.—Ore and Deposits.

ALAMO MINE.

This is located on the ridge between Oliver and Clear Creek, three-fourths of a mile below the town of Alamo and 650 feet above the latter at a total elevation of 5,550 feet. It was located in 1899 and, as yet, not greatly

developed. The country rock is soft decomposed argillite, in part silicious, the vein strike N. 25 degrees E. and dipped 60 degrees E.S.E.

The general character is of the usual type of comport veins. A maximum width of 20 feet is obtained, and the vein matter being a soft, decomposed mixture of quartz argillite.

On the well-defined hanging wall is a four-foot pay streak panning well in free gold. While the whole width prospects more or less, certain parts outside of the hanging wall also show good values.

On the foot lies a five-inch streak of black, decomposed sulphide.

10 The development consists of a 90-foot cross-cut about 70 feet below this level. The prospect seems promising although it is possible the ore will become more valuable as the workings are deepened.

Exhibits.

32.

Excerpt from Report of Walde-mar Lindgren relating to Alamo Mine—continued.

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3.—(a) Memorandum of Association of Alamo Gold Mines, Limited.

“COMPANIES ACT.”

Chapter 38, Revised Statutes of British Columbia, 1924.

3.—(a).  
Memo-  
randum of  
Association  
of Alamo  
Gold Mines,  
Limited,  
12th March  
1925.

MEMORANDUM OF ASSOCIATION

OF

ALAMO GOLD MINES LIMITED (NON-PERSONAL LIABILITY).

1st. The name of the Company is Alamo Gold Mines Limited (Non-  
20 Personal Liability).

2nd. The registered office of the Company will be situate in the City of Vancouver, Province of British Columbia.

3rd. The objects of the Company are restricted to prospecting for, locating, acquiring, managing, developing, working and selling mines, mineral claims and mining properties and the winning, getting, treating refining and marketing of minerals therefrom and to the exercise of the powers mentioned in sub-section (2) of Section 21, of the Companies Act, being Chapter 38 of the Revised Statutes of British Columbia, 1924.

4th. The liability of the members is limited, and no personal liability  
30 shall attach to any member.

5th. The share capital of the Company is three million dollars (\$3,000,000.00) divided into three million (3,000,000) shares of one dollar (\$1.00) each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association, and we respectively agree to take the number

Exhibits. and class of shares in the capital of the Company set opposite our respective names :

3.—(a).  
Memo-  
randum of  
Association  
of Alamo  
Gold Mines,  
Limited,  
12th March  
1925—con-  
tinued.

Full Names, Addresses and Descriptions of Subscribers.	Number and Class of Shares taken by each Subscriber.	
Russell William Kennedy, Solicitor, 414 Standard Bank Building, 510 West Hastings Street, Vancouver, B.C.	One common share.	
Charles William St. John, Solicitor, 510 West Hastings Street, Vancouver, B.C.	One common share.	10
Bertha Ellen McFarlane, Stenographer, 3608 Ontario Street, Vancouver, B.C.	One common share.	
Ethel Florence Bridge, Stenographer, 1724 Barclay Street, Vancouver, B.C.	One common share.	
James Burrows Noble, Solicitor, 510 West Hastings Street, Vancouver, B.C.	One common share.	20
Total shares taken		

Dated the 12th day of March, A.D. 1925.

WITNESS to the above signatures :

Full name : "John Sutherland Salter."

Address : 805 Hastings Street West, Vancouver, B.C.

Occupation : Accountant.

## 3.—(b) Articles of Association of Alamo Gold Mines, Limited.

*(Extracts.)*

“ COMPANIES ACT.”

Chapter 38, Revised Statutes of British Columbia, 1924.

Exhibits.

3.—(b).

Articles of  
Association  
of Alamo  
Gold Mines,  
Limited,  
12th March  
1925.*(Extracts.)*

## ARTICLES OF ASSOCIATION

OF

## ALAMO GOLD MINES LIMITED (NON-PERSONAL LIABILITY).

1. Subject to the amendments and alterations hereinafter provided, the regulations contained in Table “ A ” in the first schedule of the “ Companies Act,” being Chapter 38 of the Revised Statutes of British Columbia, shall apply to this Company.

10 10. The following clause shall be added to the Articles as No. 105 thereof :

20 “ 105. No director shall be disqualified from acting as such merely by reason of contracting with the Company either as vendor or purchaser or otherwise; nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way personally interested be voided; nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realized by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relations thereby established, provided that the identity of the Director making such contract or arrangement and the nature of his interest be fully disclosed by him to the Company or the person or persons acting on its behalf as soon as the negotiations in reference to the same have been effectuated or to the Directors of this Company before the meeting at which such contract or arrangement is determined or authorized or sanctioned by them, or in the event of any Director acquiring any personal interest in such contract or arrangement made by any other person or company with this Company posterior to its making or acceptance by this Company then that his identity therewith or interest therein as aforesaid be disclosed at the first meeting of the Directors of this Company after such acquisition, and that no Director shall as a Director vote in respect of any contract or arrangement in which he is so interested as aforesaid, and if he do so his vote shall not be counted.”

30 15. The following clause shall be added to the Articles as No. 110 thereof :

“ 110. A resolution assented to and adopted by writing under the hands of all the Directors, though not passed at a Directors’



Exhibits.

meeting shall be of the same force as if it had been duly passed at a Directors' meeting."

3.—(b).

Articles of Association of Alamo Gold Mines, Limited, 12th March 1925—continued.

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Names, Addresses and Descriptions of Subscribers.

---

Russell William Kennedy, Solicitor,  
414 Standard Bank Building, 510 West Hastings Street,  
Vancouver, B.C.

Charles William St. John, Solicitor,  
510 West Hastings Street, Vancouver, B.C.

Bertha Ellen MacFarlane, Stenographer,  
2608 Ontario Street, Vancouver, B.C.

10

Ethel Florence Bridge, Stenographer,  
1724 Barclay Street, Vancouver, B.C.

James Burrows Noble, Solicitor,  
510 W. Hastings Street, Vancouver, B.C.

DATED at the City of Vancouver in the Province of British Columbia this 12th day of March, 1925.

WITNESS as to the above signatures :

John Sutherland Salter,  
805 Hastings Street West, Vancouver, B.C.,  
Accountant.

20

3.—(c).

3.—(c) Balance of Articles of Association of Alamo Gold Mines, Limited.

(Not printed.)

3.—(d).

Certificate of Incorporation of Alamo Gold Mines, Limited, 17th March 1925.

3.—(d) Certificate of Incorporation of Alamo Gold Mines, Limited.

Canada.

Province of British Columbia.

No. 7962.

" COMPANIES ACT."

I HEREBY CERTIFY that " Alamo Gold Mines Limited (Non-Personal Liability) " has this day been incorporated under the " Companies Act," as a Specially Limited Company.

30

The capital of the Company is Three Million Dollars (\$3,000,000.00), divided into Three Million (3,000,000) shares.

The registered office of the Company is situate at Vancouver in the Province of British Columbia.

GIVEN under my hand and seal of office at Victoria, Province of British Columbia, this 17th day of March, one thousand nine hundred and twenty-five.

{ SEAL OF  
REGISTRAR. }

D. G. GARRETT,  
Registrar of Companies.

Exhibits.  
3.—(d).  
Certificate  
of Incorporation of  
Alamo Gold  
Mines,  
Limited,  
17th March  
1925—*continued.*

10

4.—Statement in lieu of Prospectus of Alamo Gold Mines, Limited.

“ COMPANIES ACT.”

STATEMENT IN LIEU OF PROSPECTUS

OF

ALAMO GOLD MINES LIMITED (NON-PERSONAL LIABILITY).

4.  
Statement  
in lieu of  
Prospectus  
of Alamo  
Gold Mines,  
Limited,  
25th March  
1925.

20

30

Information Required to be Stated.	Statement.
(1) Particulars of the plan of operations or business which the Company proposes to carry on, and the place where the operations or business will be carried on.	The Company proposes to purchase the property described in paragraph 4 hereof, but does not intend to carry on mining operations. The Company intends to sell or lease the said property.
(2) Number of (shares) (debentures) (members) which the Company proposes to (issue) (admit) for the purpose of carrying out the objects specified under clause (1)—(a) for cash, (b) for other considerations.	As consideration for the conveyance to the Company of the property referred to in paragraph 4 hereof, the Company proposes to allot to the Vendor 2,999,995 fully-paid shares of the capital stock of the Company.
(3) The amount fixed as the minimum subscription in cash on which the directors may proceed to allotment (admit to membership), with an itemized account showing how that amount is estimated or calculated, and in particular the items	The amount of the minimum subscription has been fixed at nil dollars. The preliminary expenses have been paid by the promoters and no amount has been paid or is to be paid for services rendered or to be rendered in relation to the formation

Exhibits. — 4.	Information Required to be Stated.	Statement.
Statement in lieu of Prospectus of Alamo Gold Mines, Limited, 25th March 1925— <i>continued.</i>	<p>for preliminary expenses, and the amount or estimated amount paid or payable for services rendered or to be rendered in relation to the formation or organization of the Company, or as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any (shares) (debentures) (membership) mentioned in clause (2), or allowed or to be allowed as discount in respect of any debentures (or, in the case of a specially limited company, shares) mentioned in clause (2).</p> <p>(4) Particulars of any property purchased or acquired, or proposed to be purchased or acquired, by the Company which is to be paid for wholly or partly out of the proceeds of the minimum subscription, or by shares (debentures), and the title or interest therein acquired or to be acquired by the Company.</p> <p>(5) Name and address of any vendor of property to the Company, and, in the case of a promoter, the amount paid by him for the property, within the last two preceding years, and the amount (specifying separately the amount (if any) for goodwill) paid or payable in cash,</p>	<p>or organization of the Company or as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares mentioned in clause (2) or allowed or to be allowed as discount in respect of any shares mentioned in clause (2). 10</p> <p>All taxes and other necessary expenses in connection with holding and maintaining of the property, referred to in paragraph (4) hereof, will be paid by the directors.</p> <p>The Company proposes to purchase those mining claims situate in Grant County, State of Oregon, U.S.A., described as Lot 464, consisting of the Gold Queen Lode mining claim in section 23, township 9 South, Range 35, East of the Willamette Meridian, and lot 420 consisting of the Paris, Alamo, Juneau and Gold Queen No. 2, Lode mining claims, being part of sections 22, 23, and 27, in township 9 South, Range 35, East of the Willamette Meridian containing 75.03 acres. For the consideration mentioned in paragraph (2) hereof, the Company receives a Conveyance free from all encumbrances. 20</p> <p>The Vendor of the property to the Company is William B. Code, of St. Charles Hotel, corner Cherry St. and Third Ave., City of Seattle, State of Washington, U.S.A. 40</p>

Information Required to be Stated.	Statement.	Exhibits.
<p>shares, debentures, or otherwise to him for the property.</p>		<p>4. Statement in lieu of Prospectus of Alamo Gold Mines, Limited, 25th March 1925—<i>continued.</i></p>
<p>10 Where there is more than one separate vendor or the Company is a sub-purchaser, the amount so paid or payable to each vendor: Provided that when the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.</p>		
<p>(6) Where debentures are offered for subscription, particulars of the security which has been or will be created for those debentures, specifying the property (if any) comprised in the security and the nature of the Company's title to such property.</p>	<p>No debentures are to be offered for subscription.</p>	
<p>20 (7) Particulars of any services rendered or to be rendered to the Company which have been paid for by the Company or will be paid for by it out of the proceeds of the minimum subscription.</p>	<p>No payments have been made by the Company, or will be made, for such services.</p>	
<p>30 (8) The amount paid or payable to any promoter, with his name and address, and the consideration for any such payment, and the amount in cash which he intends to subscribe or has subscribed for (shares) (debentures) (membership) of the Company or otherwise contribute.</p>	<p>No amount has been paid or is payable to any promoter and no promoter has subscribed or intends to subscribe for shares in the Company or to otherwise contribute thereto.</p>	
<p>(9) Full names, addresses, and occupations of the directors or proposed directors of the Company, and the remuneration paid or payable to them.</p>	<p>The directors of the Company are : William B. Code, St. Charles Hotel, corner Cherry St. and Third Ave., Seattle, Wash. Broker. Donald Neil McTavish, of 308 London Building, 626 Pender St. West, Vancouver, B.C. Broker. Peter Duncan McTavish, of 308</p>	

Exhibits. — 4.	Information Required to be Stated.	Statement.
Statement in lieu of Prospectus of Alamo Gold Mines, Limited, 25th March 1925— <i>continued.</i>	<p>(10) The amounts in cash which each of the said directors has subscribed or intends to subscribe for (shares) (debentures) (membership) of the Company or otherwise contribute.</p> <p>(11) Full particulars of the nature and extent of the interest of every director or proposed director in the promotion of or in the property proposed to be acquired by the Company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise, for services rendered by him or by the firm in connection with the promotion or formation of the Company.</p> <p>(12) Names and addresses of the auditors of the Company (if any).</p> <p>(13) Dates of and parties to every material contract (other than contracts entered into in the ordinary course of the business intended to be</p>	<p>London Building, 626 Pender St. West, Vancouver, B.C. Broker. David Barnes, Vananda, B.C. Mining Engineer. George Hiram Thomas, 910 Dexter Horton Building, Seattle, Wash. Mining Engineer.</p> <p>No remuneration has been paid, or is payable, to the said directors. 10</p> <p>None of the said directors has subscribed or intends to subscribe for shares of the Company.</p> <p>Each of the said directors, Donald Neil McTavish, Peter Duncan McTavish, David Barnes and George Hiram Thomas, is to receive 600,000 of the shares to be allotted to the said William B. Code as mentioned in paragraph (2) hereof. 20</p> <p>No auditors have yet been appointed. 30</p> <p>No material contract has yet been reduced to writing and executed. 40</p>

Information Required to be Stated.	Statement.	Exhibits.
<p>carried on by the Company, or entered into more than two years before the filing of this statement).</p> <p>(14) Time and place at which the contracts or copies thereof may be inspected.</p>	<p>See answer to No. 13.</p>	<p>4. Statement in lieu of Prospectus of Alamo Gold Mines, Limited, 25th March 1925—<i>continued.</i></p>

DATED this 25th day of March, A.D. 1925.

10 WITNESS :

“ Russell William Kennedy,” Solicitor,  
414 Standard Bank Building,  
510 West Hastings Street,  
Vancouver, B.C.

“ DAVID BARNES.”  
“ GEO. H. THOMAS.”  
“ W. B. CODE.”  
“ D. N. McTAVISH.”  
“ P. D. McTAVISH.”

Original Filed and Registered the  
20th day of April, 1925.

H. G. GARRETT,  
Registrar of Companies.

**107.—Conveyance, William B. Code to Alamo Gold Mines, Limited.**

KNOW ALL MEN BY THESE PRESENTS that I, William B. Code, of the City of Seattle, State of Washington, U.S.A., in consideration of one dollar (\$1.00) to me paid by Alamo Gold Mines Limited (Non-Personal Liability) a joint stock Company duly incorporated under the laws of the Province of British Columbia, Dominion of Canada, do hereby grant, bargain, sell and convey unto said Alamo Gold Mines Limited (Non-Personal Liability), its successors and assigns, all the following real property, with the tenements, hereditaments and appurtenances, situated in the County of Grant and State of Oregon, bounded and described as follows: to wit:

Lot four hundred and sixty-four (464) consisting of the Gold Queen Lode mining claim in section twenty-three (23), township nine (9) South, Range thirty-five (35) East of the Willamette Meridian, and Lot four hundred and twenty (420) consisting of the Paris, Alamo, Juneau and Gold Queen No. 2, lode mining claims, being part of sections twenty-two (22), twenty-three (23) and twenty-seven (27) in township nine (9) South, Range thirty-five (35), East of the Willamette Meridian containing 75.03 acres.

TO HAVE AND TO HOLD the above described and granted premises unto the said Alamo Gold Mines Limited (Non-Personal Liability) its successors and assigns forever.

AND I the Grantor above named do covenant to and with the above named grantee its successors and assigns that I am lawfully seized in fee

107.  
Conveyance,  
William B.  
Code to  
Alamo Gold  
Mines,  
Limited,  
30th March  
1925.

Exhibits. —  
107.  
Conveyance,  
William B.  
Code to  
Alamo Gold  
Mines,  
Limited,  
30th March  
1925—con-  
tinued.

simple of the above granted premises, that the above granted premises are free from all incumbrances, and that I will and my heirs, executors and administrators, shall warrant and forever defend the above granted premises, and every part and parcel thereof against the lawful claims and demands of all persons whomsoever.

Witness my hand and seal this 30th day of March 1925.

“ W. B. CODE.”

(SEAL)

Executed in the Presence of  
“ CHAS. W. ST. JOHN,” Solicitor.  
510 West Hastings Street,  
Vancouver, B.C.

10

ENDORSEMENTS ON BACK OF DEED.

Province of British Columbia }  
County of Vancouver } S.S.

BE IT REMEMBERED that on this 30th day of March A.D. 1925 before me the undersigned a Notary Public in and for said County and Province personally appeared the within named William B. Code who is known to me to be the identical individual described in and who executed the within instrument, and acknowledged to me that he executed the same freely and voluntarily. 20

IN TESTIMONY WHEREOF I have hereunto set my hand and seal the day and year last above written.

(SEAL) “ CHAS. W. ST. JOHN,”

A Notary Public in and for the Province of British Columbia.  
My commission is for life.

# 33628 WARRANTY DEED

Wm. B. Code to Alamo Gold Mines Limited N.P.L.

STATE OF OREGON, }  
COUNTY OF GRANT } S.S.

30

I CERTIFY that the within instrument was received for record on the 15th day of October A.D. 1926 at 9.35 o'clock M., and recorded in book 36 on page 530 Record of Deeds of said County.

WITNESS my hand and seal of County affixed.

BESSIE POWELL,  
Recorder of Conveyances.  
By Deputy.

From the office of  
(Compared)  
\$1.00 col.

(Indexed)

40

**5.—Agreement between William B. Code, McTavish Brothers, Limited, David Barnes and George Hiram Thomas.**

Exhibits.

5.

Agreement between William B. Code, McTavish Brothers, Limited, David Barnes and George Hiram Thomas, March 1925.

THIS AGREEMENT made this            day of March, 1925.

Between

WILLIAM B. CODE, Broker of the City of Seattle, State of Washington,  
United States of America,

*Of the First Part,*

and

10    McTAVISH BROTHERS LIMITED, a Joint-Stock Company incorporated  
under the laws of the Province of British Columbia,

*Of the Second Part,*

and

DAVID BARNES, Mining Engineer, of the City of Seattle, aforesaid,

*Of the Third Part,*

and

GEORGE HIRAM THOMAS, Broker, of the City of Seattle, aforesaid,

*Of the Fourth Part.*

20    WHEREAS the parties hereto are respectively the owners of certain fully paid shares of the capital stock of Alamo Gold Mines Limited (Non-Personal Liability), a Joint-Stock Company duly incorporated under the laws of the Province of British Columbia, hereinafter called the Company.

AND WHEREAS the parties hereto have agreed to contribute certain of said shares as hereinafter mentioned, to be sold and the proceeds thereof given to the said Company or applied towards payment of its obligations.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH as follows :

1. The parties hereto hereby agree to contribute to the proposed pool the number of fully paid shares set opposite their respective names, to wit :

	William B. Code - - - - -	300,000 shares
	McTavish Brothers Limited - - - - -	600,000    „
30	David Barnes - - - - -	300,000    „
	George Hiram Thomas - - - - -	300,000    „

2. The stock certificates covering the said shares are to be endorsed in blank and deposited with a trustee to be nominated in writing by the parties hereto, or a majority of thereof.

3. In case of a sale of any said shares the said trustee, upon a written request of the parties hereto or a majority of them, or their duly appointed



Exhibits.  
—  
5.  
Agreement  
between  
William B.  
Code,  
McTavish  
Brothers,  
Limited,  
David  
Barnes and  
George  
Hiram  
Thomas,  
March  
1925—con-  
tinued.

agents in writing, shall deliver to the purchaser of said shares stock certificates covering the number of shares sold. The proceeds of the sale shall be paid direct to the said Alamo Gold Mines Limited (Non-Personal Liability), and it shall not be the duty of the said trustee to receive or pay any of the said moneys.

4. All questions relating to the sale price of shares, the number of shares to be sold, the terms of payment and generally all matters connected with the disposition of said pooled shares and the proceeds of sale thereof shall be determined by the parties hereto or a majority of them, the parties of the first, third and fourth parts each to have one vote and the party of the second part to have two votes. 10

5. Proper records shall be kept of all resolutions and instructions referring to the subject matter of this agreement, and proper accounts shall be kept of all sales of stock.

6. Any of the parties hereto may, by writing, appoint an agent to represent it or him in connection with the matters referred to in this agreement.

7. When, in the opinion of the parties hereto or a majority of them, a sufficient number of shares have been sold to provide for the proper financing of the said Company, they may distribute the unsold balance of said shares among the shareholders of the said Company in proportion to the number of shares then held by them respectively in the said Company, but for the purposes of this clause the shares which form the subject matter of this agreement remaining then unsold, shall not be taken into account, in estimating the number of shares to be transferred to any member. 20

8. Wherever in this agreement a majority of the parties hereto is referred to it means a majority in interest in said shares.

9. The parties hereto agree with one another that they will not, for the period of one year next ensuing after the date of this agreement, sell or otherwise deal with any of the shares of the said Company owned by them respectively without the consent in writing of all of the parties hereto. 30

10. For the purpose of ensuring due performance of the agreement set out in the last preceding paragraph hereof, the parties hereto agree that they will deposit with the said trustee all stock certificates covering shares owned by them respectively, other than the shares mentioned in paragraph one hereof, and that the said trustee shall hold said certificates until the expiration of the said period of one year or until directed to release same or any portion thereof by memorandum in writing signed by all of the parties hereto.

This agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective executors, administrators, successors and assigns. 40

IN WITNESS WHEREOF the said McTavish Brothers Limited has hereunto caused its corporate seal to be affixed attested by the hands of

its proper officers in that behalf, and the other parties hereto have hereunto set their hands and seals. Exhibits.

<p>The Common Seal of McTAVISH }          BROTHERS LIMITED was hereunto }          affixed in the presence of :</p> <p>(SEAL)</p> <p>P. D. McTAVISH, President.          D. N. McTAVISH, Secretary.</p> <p>Signed, Sealed and Delivered by the parties of the first, third, and fourth          10 parts in the presence of :</p> <p>CHAS. W. ST. JOHN          as to WILLIAM B. CODE.</p>	<p>“ W. B. CODE.” (SEAL)          “ DAVID BARNES.”          “ GEORGE HIRAM THOMAS ” (SEAL)</p> <p>(SEAL)</p>	<p>5.          Agreement between William B. Code, McTavish Brothers, Limited, David Barnes and George Hiram Thomas, March 1925—<i>continued.</i></p>
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94.—Letter, McTavish Brothers, Limited, to Dr. George H. Manchester.

McTAVISH BROTHERS, LIMITED,  
 308 London Building,  
 Vancouver, B.C.  
 April 21st, 1925.

DR. GEORGE H. MANCHESTER,  
 Vancouver, B.C.

20 Dear Sir,

We have organized Alamo Gold Mines Limited for the purpose of acquiring and operating the Alamo Mine in Grant County, Eastern Oregon.

This property is well developed, having over 6,000 feet of work done on it. The Engineers' report shows over \$2,000,000 of ore blocked out besides large bodies in sight.

Our Company is organized for 3,000,000 shares (non-assessable) par value \$1.00. The owners have given a clear deed (Patent) to the property for half the shares, the remaining half being set aside for purpose of financing.

30 A mill of 30 tons capacity is being installed at once and will be added to from time to time as conditions warrant. It is the purpose of the Directors to increase the output as rapidly as possible consistent with good mining.

The management of the mine will be in the competent hands of Mr. Geo. H. Thomas, Mining Engineer, Seattle, who has had large and successful experience in mining in the west, while the milling will be under

94.  
 Letter, McTavish Brothers, Limited, to Dr. George H. Manchester, 21st April 1925.

Exhibits.  
—  
94.  
Letter,  
McTavish  
Brothers,  
Limited, to  
Dr. George  
H. Man-  
chester,  
21st April  
1925—con-  
tinued.

the supervision of Mr. David Barnes, Mining Engineer, also of Seattle, who is one of the best known mining and mill men in the Pacific North-west. The affairs of the Company will be handled from this office, under the present direction of my brother as President, and myself as Secretary.

The Company's property has fine ore bodies averaging \$12·00 per ton which can be mined very cheaply as it is a gravity proposition. Engineers estimate the cost of mining and milling at not more than \$1·50 to \$2·00, or less per ton. We have ample water and timber, excellent transportation, electric power available if desired from a power company less than one mile distant, favourable climatic conditions, competent and experienced management, and by no means of least importance, is the fact that the Company has a clear deed to the property, so that you will be buying an interest in a bona fide property of excellent merit which can never be taken from the Company for non-payment or any other reason. Truly this is the cleanest, safest proposition we have ever seen and has the greatest possibilities for immediate and future returns.

As we are offering only a small block of shares at 25c., we trust you will see the advisability of acting promptly.

Very truly yours,

McTAVISH BROTHERS, LIMITED,  
Per P. D. McTAVISH.

PDM/S

10

20

20.  
Letter,  
Alamo Gold  
Mines,  
Limited, to  
David  
Barnes,  
4th May  
1925.

20.—Letter, Alamo Gold Mines, Limited, to David Barnes.

McTAVISH BROTHERS, LIMITED,  
Vancouver, B.C.

May 4th, 1925.

DAVID BARNES, ESQ.,  
Seattle, Wash.

Dear Sir,

I hereby acknowledge having received from you the following share certificates in Alamo Gold Mines Limited. These certificates are endorsed in blank and are to be placed in Toronto General Trust Corporation in trust, the proceeds from sale of same to be used for the purpose of financing the above Company.

An equal amount of stock will be turned over under precisely the same conditions by each of the following: Messrs. George H. Thomas, W. B. Code, and McTavish Brothers (double portion).

30

Following are the certificates :—

	No. of Certificates.	No. of Shares.	Exhibits.
	48	100,000	20.
	55	50,000	Letter,
	56	50,000	Alamo Gold
	66	20,000	Mines,
	67	20,000	Limited, to
	68	10,000	David
	81	10,000	Barnes,
10	82	10,000	4th May
	83	10,000	1925—con- tinued.

Yours very truly,

ALAMO GOLD MINES LIMITED.

P. D. McTAVISH,  
Acting Secretary.

PDM/S

**3.—(e) Minutes of First Meeting of Directors of Alamo Gold Mines, Limited.**

MINUTES of first meeting of Directors of Alamo Gold Mines, Limited (Non-Personal Liability) held at 414 Standard Bank Building, 510 West Hastings Street, Vancouver, B.C., on the 4th day of May, 1925.

20 Present: Mr. W. B. Code.  
Mr. P. D. McTavish.  
Mr. David Barnes.  
Mr. D. N. McTavish, and

In attendance Mr. C. W. St. John, solicitor.

1. Mr. D. N. McTavish acted as Chairman and Mr. C. W. St. John as Secretary of the meeting.

2. The solicitor reported that the registration of the Company had been effected on the 17th day of March, 1925, and that statement in lieu of prospectus had been duly filed with the Registrar of Companies as required  
30 by law.

3. The solicitor further reported that by memorandum in writing dated the 25th day of March, 1925, the subscribers to the Memorandum of Association fixed the number of directors as five and thereby appointed the following persons as the first directors of the company :—

William B. Code, St. Charles Hotel, corner Cherry St., and Third Ave.  
Seattle, Wash., Broker.

3.—(e)  
Minutes of  
First  
Meeting of  
Directors of  
Alamo Gold  
Mines,  
Limited,  
4th May  
1925.

Exhibits.  
—  
3.—(e).  
Minutes of  
First  
Meeting of  
Directors of  
Alamo Gold  
Mines,  
Limited,  
4th May  
1925—con-  
tinued.

Donald Neil McTavish, 308 London Building, 626 West Pender Street, Vancouver, B.C., Broker.

Peter Duncan McTavish, 308 London Building, 626 West Pender Street, Vancouver, B.C., Broker.

David Barnes, Vananda, B. C., Mining Engineer.

George Hiram Thomas, 910 Dexter-Horton Building, Seattle, Wash., Mining Engineer.

4. RESOLVED that Mr. D. N. McTavish be appointed Chairman of the Board of Directors and President of the Company.

5. RESOLVED that Mr. W. B. Code be appointed Vice-Chairman of the Board of Directors and Vice-President of the Company. 10

6. RESOLVED that Mr. P. D. McTavish be appointed Secretary-Treasurer of the Company.

7. RESOLVED that the banking account of the Company be opened with the Bank of Montreal, corner of Pender and Granville Streets, Vancouver, B.C. subject to the control of the members of this Board and that the signatures of any two directors of the Company shall be sufficient authority to the Bank for the payment of all moneys and that the annexed resolution required by the Bank be, and the same is hereby duly passed and that a certified copy thereof be furnished to the Bank. 20

8. The President was then instructed to call the Statutory Meeting at the earliest possible convenient date.

9. RESOLVED that a meeting of the directors be called as soon as convenient after receipt from the Registrar of certificate entitling the Company to commence business, for the purpose of considering various contracts affecting the Company's business.

10. RESOLVED that Mr. C. W. St. John be appointed solicitor of the Company.

11. RESOLVED that the seal, an impression of which is imprinted on the margin hereof, be adopted as the common seal of the Company. 30

The meeting adjourned.

(SEAL OF ALAMO  
GOLD MINES.)

“ W. B. CODE ”  
Chairman.

**3.—(f) Minutes of Meeting of Directors of Alamo Gold Mines, Limited.**

MINUTES of meeting of directors of Alamo Gold Mines, Limited (Non-Personal Liability) held at 414 Standard Bank Building, 510 West Hastings Street, Vancouver, B.C., on the 13th day of May, A.D. 1925.

Present : D. N. McTavish (in the chair).  
P. D. McTavish.  
W. B. Code,

In attendance : C. W. St. John, solicitor.

Exhibits.

3.—(f).  
Minutes of  
Meeting of  
Directors of  
Alamo Gold  
Mines,  
Limited,  
13th May  
1925.

1. The reading of the minutes held on the 4th day of May, 1925, was  
10 deferred until the next meeting of directors.

2. RESOLVED that 2,999,995 shares being shares numbers 6 to  
3,000,000, both inclusive, be allotted to William B. Code, in consideration  
of the conveyance by him to the Company free of all encumbrances of that  
certain mining property, situate in the County of Grant, State of Oregon,  
and being Lot 464, consisting of the Gold Queen lode mining claim in  
section 23, in township 9 South, Range 35, East of the Willamette  
Meridian, and Lot No. 420 consisting of the Paris, Alamo, Juneau and  
Gold Queen No. 2, lode mining claims being part of sections 22, 23 and 27  
in township 9 South, Range 35 East of the Willamette Meridian, containing  
20 75.03 acres.

3. The solicitor of the Company was instructed to record the  
conveyance from Mr. Code to the Company together with certified copies  
of the patents covering said property and to procure a report on the  
Abstract from Mr. A. D. Leedy, Attorney, of Portland, Oregon.

4. RESOLVED that the Company do pay to Mr. W. B. Code the sum  
of \$25,000.00 for his services and expenditures in connection with the  
promotion of the Company, the said sum to be paid as follows :

Fifteen per cent. net profits of the Company in each year to be paid  
to Mr. Code until the said sum of \$25,000.00 without interest has  
30 been fully paid and satisfied.

5. The solicitor of the company was instructed to prepare an agreement  
between the Company and Mr. Code with reference to the matter.

The meeting then adjourned.

“ W. B. CODE ”

“ D. N. MCTAVISH ”

Chairman.

Exhibits.

3.—(g).  
Minutes of  
Meeting of  
Directors of  
Alamo Gold  
Mines,  
Limited,  
21st May  
1925.

**3.—(g) Minutes of Meeting of Directors of Alamo Gold Mines, Limited.**

MINUTES of meeting of directors of the Alamo Gold Mines, Limited held at 414 Standard Bank Building, 510 West Hastings Street, Vancouver, B.C., on the 21st day of May, 1925, at 12.30 p.m.

Present : William B. Code (in the chair).  
George H. Thomas.  
David Barnes.  
P. D. McTavish.

In attendance : C. W. St. John, solicitor.

The minutes of meetings held on the 4th day of May, 1925 and the 10  
13th day of May, 1925 were read and approved.

The solicitor submitted draft agreement between the Company and Mr. Code, in pursuance to the resolution respecting that matter contained in the minutes of meeting held on the 13th day of May, 1925. The agreement was discussed clause by clause and certain amendments thereto decided upon. The solicitor was then instructed to redraft the agreement and to submit it at an adjourned meeting to be held at 2.45 p.m.

The meeting then adjourned until 2.45 p.m.

At 2.45 p.m., the meeting was continued, the same persons being present as above mentioned. The redrafted agreement was submitted to the meeting and IT WAS RESOLVED that the seal of the Company be 20  
affixed thereto, attested by the hands of two directors and the secretary-treasurer.

The meeting then adjourned.

“ D. N. McTAVISH.”

46.  
Letter,  
David  
Barnes to  
the Alamo  
Gold Mines,  
Limited,  
3rd June  
1925.

**46.—Letter, David Barnes to the Alamo Gold Mines, Limited.**

Vancouver, B.C., June 3rd, 1925.

The Alamo Gold Mines, Limited,  
Vancouver, B.C.

Gentlemen—

As per your request to make a surface examination of the Alamo Gold Mine, near Granite, Oregon, will say that I was on the property and adjoining properties for two and one half days, panning the dumps and outcrops, and in every case found free gold in the pannings, which I consider all pay ore. No assays were taken as I was unable to get in the tunnels to get ore in place.

The conditions for mining and milling are most favourable—accessibility, timber and water for all purposes. The formation is Argillite and Porphyry and dykes of granite, cutting the formation at right angles.

30

The vein material is quartz porphyry from three to ten feet wide with a north-east and southwest trend. Exhibits.

The ore on the large dump shows oxidization to a great depth, and also from the size of the dumps shows a great amount of development work, and from my inspection will say that I find the reports and letters written by W. H. Jackson, James McGuigan and C. A. Smith to be correct. 46.  
Letter, David Barnes to the Alamo Gold Mines, Limited, 3rd June 1925—continued.

The Alamo is a free milling ore and with the large amount of ore that is blocked out, together with the proper management and equipment can be made one of the largest paying mines in the northwest.

10

Truly yours,

DAVID BARNES.

47.—Letter, David Barnes to McTavish Brothers, Limited.

Vancouver, B.C.,

June 3, 1925.

McTAVISH BROS., LTD.  
Vancouver, B.C.

Gentlemen—

While on my inspection trip to the Alamo Mine I examined the dump and surface of the Black Jack Mine one mile from the famous Red Boy mine and two miles from the Alamo mine.

20 I found the formation and conditions the same as the Alamo. Free milling oxidized quartz at great depth. The owner Mr. Sheedy made a mill run of twenty tons from a six foot vein 1480 in the cross cut tunnel which plated ten dollars per ton. There is over seven hundred feet of backs from the tunnel level to the surface. I consider this a very valuable property the same as the Alamo can be made a wonderful mine.

30 About three miles from the Black Jack mine is the Evans property which I examined which has not been developed to any extent but find the surface showings very fine as to free milling gold quartz. Where the open cut work has been done Mr. Evans the owner has made a living for his family for two years, by panning the fines, averaging from four to eight dollars per day. This ore pans extremely well and with development will be a wonderful mine.

Two openings have been made on two separate veins, one by shaft 15 ft. deep and one open cut on vein or dyke 100 ft. wide.

The vein where the 15 ft. shaft is sunk is about four feet wide of very high grade gold ore.

In conclusion will say that this is one of the most interesting mining districts I was ever in.

From Colorado west and from Mexico to the Arctic Circle.

40

Truly yours

" DAVID BARNES."



Exhibits.  
 3.—(h).  
 Statutory  
 Report of  
 Alamo Gold  
 Mines,  
 Limited,  
 26th June  
 1925.

3.—(h) Statutory Report of Alamo Gold Mines, Limited.

COMPANIES ACT.

STATUTORY REPORT

OF

ALAMO GOLD MINES, LIMITED, (NON-PERSONAL LIABILITY).

(Pursuant to Section 34 of the Companies Act, being  
 Chapter 38 of R.S.B.C. 1924.)

(a) The total number of shares allotted is 2,999,995 all of which were allotted as fully paid up to one, William B. Code, in consideration of the conveyance by him to the Company, free from all encumbrances, of that certain mining property situate in the County of Grant, State of Oregon, one of the United States of America and being Lot 464, consisting of the Gold Queen lode mining claim in section 23, in township 9 South, Range 35 East of the Willamette Meridian, and Lot No. 420 consisting of the Paris, Alamo, Juneau and Gold Queen No. 2, lode mining claims being part of sections 22, 23 and 27 in township 9 South, Range 35 East of the Willamette Meridian, containing 75.03 acres. 10

(b) The total amount of cash received by the Company in respect of all shares allotted is nil.

(c) No moneys have been received or expended by the Company. 20  
 The following is an account or estimate of the preliminary expenses of the Company :

Estimated preliminary expenses including registration  
 fees, stationery, etc. - - - - - \$1500.00

(d) The full names, addresses and descriptions of the directors and secretary of the Company are as follows :

DIRECTORS.

Surname.	Christian Name.	Address.	Occupation.	
Barnes	David	Vananda, B.C.	Mining Engineer.	30
Code	William B.	St. Charles Hotel, Cor. Cherry Street and 3rd Avenue, Seattle, Washington.	Broker.	
McTavish	Donald Neil	308 London Building, 626 West Pender Street, Vancouver, B.C.	Broker.	
McTavish	Peter Duncan	308 London Building, 626 West Pender Street, Vancouver, B.C.	Broker.	
Thomas	George Hiram	910 Dexter-Horton Building, Seattle, Wash.	Mining Engineer.	40
SECRETARY.				
McTavish	Peter Duncan	308 London Building, 626 West Pender Street, Vancouver, B.C.	Broker.	

The Company has no auditors or managers.

(e) No contract is to be submitted to the statutory meeting for its approval.

Dated the 26th day of June, 1925.

We hereby certify this report :

“D. N. McTAVISH,” Director.

“P. D. McTAVISH,” Director.

Exhibits.  
3.—(h).  
Statutory  
Report of  
Alamo Gold  
Mines,  
Limited,  
26th June  
1925—con-  
tinued.

**87.—Report of George H. Thomas to McTavish Brothers, Limited.**

Seattle, Washington,  
June 30, 1925.

10

McTAVISH BROS., LTD.,  
Vancouver, B.C.

Gentlemen,

In October, 1924, went South on the Southern Pacific Railroad, through Oregon and California, East into Nevada and Utah, North in Idaho to Eastern Oregon; was six weeks making the trip and looked at many different properties in the various states.

I then proceeded to look at the Alamo Mine, which is about 47 miles from Baker, Ore. by rail 30 miles to Sumpter, 11 miles by auto to Granite; thence by auto to the mine, four miles.

The mine is on a mountainside, covered with timber, suitable for saw-mill and mine timbers (see map as to contour and so forth).

The formation is argillite, porphyry and granite. The granite is on the south side, which is the only granite that I saw in that section, and in my opinion is an extremely good feature. It signifies that the veins in this section will go to a great depth.

In examining the property, the veins were exposed on the surface in several places, showing good strong outcrops. I made many pannings from the dumps, which showed free gold in paying quantities.

In talking with men that knew the mine, their verdict was the Alamo was a wonderful property.

In December, 1924, I went to Spokane, Washington, on a special trip, to see Mr. James P. McGuigan, the former manager for 8 years of the Alamo Mine. I had read his letters about the mine. In talking with the man one would be impressed with his ability, honesty and sincerity. We talked many hours about the property. He told me of the offer of \$450,000 for the property. The corporation that owned it got a copy of the Engineer's report that was made for the purchasers. When they read that at a directors' meeting, they refused the offer. He thinks it will make one of the biggest gold mines in the west. If one could meet the man anyone could not help but be convinced.

87.  
Report of  
George H.  
Thomas to  
McTavish  
Brothers,  
Limited,  
30th June  
1925.

Exhibits.  
—  
87.  
Report of  
George H.  
Thomas to  
McTavish  
Brothers,  
Limited,  
30th June  
1925—*con-  
tinued.*

In June, 1925, the Alamo Corporation sent me to go over the district again. On this trip I made inquiries about the manager that took charge of the mine after Mr. McGuigan, a Mr. C. A. Smith. He ran the mine for two years. You will see a letter from him in reference to the property. In fact, in a few words he wrote verified the statements of Mr. McGuigan. I inquired as to his reputation and found it A.I. Shortly after writing this letter he was killed in a mine.

I went over the property and made a more extensive examination; also the other properties in the district, and the examination confirmed my opinion of the former trip, as to vein outcrops, showing underground, and so forth. 10

Your company will be fully justified in going ahead on the reports you have received from the former managers and those that knew the mine.

In conclusion, I will say this section has all the advantages :

1. Formation—ideal for gold mining.
2. Large veins.
3. Contour of mountains with short tunnels, giving backs from 500 to 800 feet in depth.
4. Timber suitable for sawmill and mine purposes.
5. Water for milling and power purposes.
6. Power—East Oregon Light and Power Lines within two miles. 20

Good auto and truck road from the Power Line.

7. Telephone Lines  $2\frac{1}{2}$  miles away.
8. U.S. mail daily; two miles from mine; when operating will be delivered to property.

In my travels over the different states of the west, and in the different mining sections over the past thirty years, I have never seen more favourable conditions in any district.

Respectfully submitted,

GEO. H. THOMAS, 30  
910 Dexter-Horton Building.

3.—(i).  
Minutes of  
Statutory  
Meeting of  
Alamo Gold  
Mines,  
Limited,  
4th July  
1925.

**3.—(i) Minutes of Statutory Meeting of Alamo Gold Mines, Limited.**

**ALAMO GOLD MINES, LIMITED.**

**MINUTES OF STATUTORY MEETING.**

The above meeting was held at the office of the Company, 308 London Building, 626 Pender Street West, at 10 o'clock a.m., July 4th, 1925, in accordance with the following notice sent to all the shareholders :

“NOTICE IS HEREBY GIVEN that the statutory meeting of Alamo Gold Mines Limited (Non-Personal Liability), called in accordance with Section 34 of the Companies Act, (R.S.B.C. 1924, Chapter 38) will be held at number 308 London Building, 626 West 40

Pender Street, Vancouver, B.C., on Saturday the 4th of July, 1925, at the hour of 10 o'clock in the forenoon. Exhibits.

A copy of the report required to be submitted to the meeting under section 34 of the said Companies Act is enclosed herewith."

By Order of the Board,

P. D. McTAVISH,  
Secretary Treasurer.

3.—(i).  
Minutes of  
Statutory  
Meeting of  
Alamo Gold  
Mines,  
Limited,  
4th July  
1925—con-  
tinued.

Those present were David Barnes, D. N. McTavish and P. D. McTavish.

The statutory report as requested by Section 34 of the Companies Act  
10 (a signed copy of which is appended hereto) was placed before the meeting, and upon motion was duly adopted.

A list of shareholders as required by subsection 6, Section 34, of the Companies Act was presented to the meeting, and was available for inspection by the shareholders present.

There being no further business, the meeting was adjourned.

D. N. McTAVISH, Chairman.

**3.—(j) Minutes of Meeting of Directors of Alamo Gold Mines, Limited.**

**ALAMO GOLD MINES, LIMITED.**

MINUTES of the meeting of Directors of the Alamo Gold Mines,  
20 Limited, held in the company's office 308 London Building, at 10.30 a.m. Tuesday, July 14th, 1925.

Present: D. N. McTavish, P. D. McTavish, George H. Thomas, David Barnes.

The question of raising further funds for the purpose of installing a mill on one of the company's properties was fully considered. In view of the difficulty of raising money under the very adverse conditions at present existing, it was decided to make a special offer for the purpose of getting sufficient cash to instal the mill and meet contingent expenses until the mill was on a paying basis. It was felt that any extra cut made in the  
30 price of such stock would be more than compensated for by quick returns from such mill.

It was therefore resolved that all stock sold in Canada for the present should be sold at 12½ cents. per share. On such sales the Company is to pay cash commission of 25% and a bonus in stock of 25%. Any stock sold in the United States should net the Company 10 c. per share and the salesmen making such sales shall receive the same bonus as is paid on sales made in Canada. The same remuneration to apply on all sales made up to date.

3.—(j).  
Minutes of  
Meeting of  
Directors of  
Alamo Gold  
Mines,  
Limited,  
14th July  
1925.

Exhibits.  
—  
3.—(j).  
Minutes of  
Meeting of  
Directors of  
Alamo Gold  
Mines,  
Limited,  
14th July  
1925—con-  
tinued.

It was resolved that the sale of stock on above basis shall be continued until in the opinion of the officers sufficient funds shall have been raised to complete installation of a 15 ton mill beyond any doubt, pay all necessary expenses contingent thereto, and provide a reasonable reserve and that at that time all parties selling stocks should be notified and new arrangements made if necessary.

Chairman.

“ D. N. McTAVISH.”  
“ P. D. McTAVISH.”  
“ W. B. CODE.”  
“ DAVID BARNES.”  
“ GEO. H. THOMAS.”

10

3.—(k).  
Minutes of  
Meeting of  
Directors of  
Alamo Gold  
Mines,  
Limited,  
21st Sept-  
ember 1925.

**3.—(k) Minutes of Meeting of Directors of Alamo Gold Mines, Limited.**

**ALAMO GOLD MINES, LIMITED.**

MINUTES of the meeting of directors of the Alamo Gold Mines Limited, held in the office of the Company at 10 a.m. Monday, September 21st, 1925.

Present: David Barnes, P. D. McTavish, D. N. McTavish.

The minutes of the last meeting were read and approved.

The Secretary reported to the meeting that Mr. Thomas had acquired the “ Robert E. Lee ” and “ Constitution ” mineral claims adjoining the “ Black Jack ” Group and the “ Gold Bug ” and “ Gold Dust ” mineral claims adjoining the Isabel Evans Group.

20

The Secretary reported that he had carried on negotiations with Mr. Thomas who was prepared to transfer the above mineral claims to Alamo Gold Mines Limited in return for 300,000 shares of stock. After full discussion of the matter it was deemed to be in the company's best interests that these properties be acquired and it was therefore resolved that Mr. Thomas' offer be accepted and that in return for proper assignment of these claims the stock be turned over to him.

It was also resolved that a Denver Quartz Mill, Compressor, Engines and equipment necessary to complete the installation of the preliminary 15 ton plant be ordered as soon as financial conditions would warrant in order that installation be completed before winter weather would interfere.

30

There being no further business the meeting was adjourned.

Chairman.

“ D. N. McTAVISH.”  
“ P. D. McTAVISH.”  
“ W. B. CODE.”  
“ DAVID BARNES.”  
“ GEORGE H. THOMAS.”

40

**28 and 85.—Portion of Report of W. S. Bacon, Mining Engineer, on properties of Alamo Gold Mines, Limited.**

Vancouver, B.C.  
December 7th, 1925.

Alamo Gold Mines, Ltd.,  
308 London Building,  
Vancouver, B.C.

Gentlemen :

Acting on instructions from your directors I left Vancouver, B.C.,  
10 Thursday, November 25th, 1925, for the purpose of examining the  
properties under your control in the State of Oregon, U.S.A., and I am  
herewith submitting the results of my investigations into the nature and  
possibilities of the several groups of mineral claims which I had opportunity  
to examine and which have been consolidated under the name of the Alamo  
Gold Mines, Ltd.

Exhibits.  
—  
28 and 85.  
Portion of  
Report of  
W. S. Ba-  
con, Mining  
Engineer, on  
properties  
of Alamo  
Gold Mines,  
Limited,  
7th Dec-  
ember 1925.

**THE PROPERTIES :**

The properties consolidated under the name of the Alamo Gold Mines  
Ltd. comprise three separate and distinct groups of claims, viz. : The Alamo  
Group, The Black Jack Group, and the Evans Group. The Black Jack  
20 Group of claims is situated about a mile south west of the Red Boy Mine;  
The Alamo about two miles west of the Black Jack on Alamo Mountain  
near the confluence of Olive and Clear Creek and only a short distance from  
the old town of Alamo; The Evans Group about a mile north and west of  
the Alamo at the junction of Ruby and Clear Creeks. A reference to map  
No. attached to this report shows clearly the location of these several  
properties in relation to the Red Boy Mine.

(1) The Alamo Group comprises the following patented claims, viz. :  
Alamo, Gold Queen, Paris, Juneau and Gold Queen No. 2.

(2) The Black Jack Group comprises eight (8) claims viz. : National,  
30 Congress, Gold Coin, Banner, Premier, U.S. Grant, Robert E. Lee and  
Constitution.

(3) The Evans Group comprises seven (7) claims viz. : Evans, Lucky  
Strike, Ruby Creek, Blue Bell, Daisy, Gold Bug and Gold Dust.

An examination of the documents show that the titles to these claims  
are valid and in proper order, all taxes and dues having been paid to date and  
the requisite proofs of labor having been duly recorded.

**GEOLOGY :**

The Alamo : At the time of my visit it was impossible to make an  
inspection of this group of claims as a recent fall of snow had obscured the  
40 upper parts of the property and precluded any attempt to examine even the  
outcrops. However, from information received from miners who had been

Exhibits. —  
28 and 85.  
Portion of  
Report of  
W. S. Bacon, Mining  
Engineer, on  
properties  
of Alamo  
Gold Mines,  
Limited,  
7th Dec-  
ember 1925  
—continued.

in the mine at the time when it was being opened up, I gathered that the property had been extensively developed, that the outcrops were particularly promising and that the underground workings had revealed the normal fissure veins in argillite so characteristic of the immediate neighbourhood.

#### THE EVANS GROUP :

Very similar geological conditions obtain on the Evans Group as on the other two properties mentioned above with, however, one notable exception. There are no extensive underground workings. The principal showings have been opened on the surface. In one instance a shaft, about 13 feet deep, having been sunk on an outcrop of considerable promise. This vein is narrow at the shaft and has been somewhat shattered by the intrusion of a porphyry dyke which cuts the vein almost at right angles and constitutes itself one side of the shaft. Excellent values are in evidence here. The vein proper assaying across an exposed face of two feet \$18.20 in gold; the foot wall which is decomposed going \$4.27 a ton; while the intruding porphyry goes \$5.00 a ton. Very little exploratory work is required to determine the nature and extent of this vein, and also the dyke which cross cuts it. Considerable free gold can be panned from every part of the shaft, very little magnetite and practically no sulphides being in evidence. 10

The "Glory Hole" so called is the exception to the normal order of things. It is a large open cut and has revealed a zone of argillite and porphyry both of which are very much shattered and decomposed. The extent of this zone has so far not been determined; the open cut on the high side being about 15 feet deep and 12 feet wide. It would appear to be considerably wider as neither walls nor boundaries have been encountered. It is difficult to classify this deposit with certainty, and further work will be necessary to determine with any degree of accuracy either its extent or nature and thus reveal its possibilities. This much is certain, the zone or deposit as far as prospected and tested shows free gold of a surprisingly fine quality. Samples which I had assayed went \$4.40 to the ton, but extensive panning would indicate that the mass would exceed this considerably. The gold from this open cut is of unusual fineness, being certified by the U.S. mint at San Francisco under date of April 28th, 1925 as 976 fine or \$20.17 to the ounce. 20 30

#### EQUIPMENT :

The mechanical equipment at the Evans consists of an Ingersol-Rand Compressor operated by an 8-12 Petter Oil Engine; a Denver Quartz 15 ton mill, a Crusher, and an 18-21 H.P. Petter Oil Engine capable of handling two 15 ton Denver Mills. This equipment is all new and is now on the ground ready for installation. 40

#### CONCLUSION :

As intimated in the foregoing part of this report, the Black Jack property is well worth further development and bodies of commercial ore

will undoubtedly be disclosed by intelligent work on the existing veins as these are very obviously leading into ore shoots. The cost of operating the property should be very moderate indeed as the main tunnel will eventually give back of nearly 800 ft. on the ledges thus allowing all the ore to be dropped down.

The Evans open cut where the Denver Mill is being installed lends itself to very low cost in handling the material and there is evidently sufficient gold bearing ore in sight to operate one or two mills for a considerable period. The ore is entirely free milling and no difficulties whatever attach to a  
10 complete recovery of all values.

Respectfully submitted,

W. S. BACON,  
M.E.

(Seal.)

*(Balance of Report of W. S. Bacon not printed)*

Exhibits.  
—  
28 and 85.  
Portion of  
Report of  
W. S. Ba-  
con, Mining  
Engineer, on  
properties  
of Alamo  
Gold Mines,  
Limited,  
7th Dec-  
ember 1925  
—continued.



Exhibits.  
 91.  
 Certificate  
 of Assay of  
 J. R. Wil-  
 liams,  
 7th Dec-  
 ember 1925.

**91.—Certificate of Assay of J. R. Williams.**

CERTIFICATE OF ASSAY.

J. R. WILLIAMS.

Provincial Assayer and Chemist.

Vancouver, B.C.

I Hereby Certify that the following are the results of assays made by me upon samples of ORES herein described and received from Messrs. MCTAVISH BROS., Vancouver, B.C. Dec. 7th, 1925.

MARKED	GOLD		SILVER		COPPER				TOTAL VALUE
	Ounces Per Ton	Value Per Ton	Ounces Per Ton	Value Per Ton	Per Cent.	Value Per Ton	Per Cent.	Value Per Ton	(2000 Lbs.) Per Ton
"EVANS GROUP"		\$		\$		\$		\$	\$
Foot wall in shaft	0.20	4.00	0.40	0.27					\$ 4.27
Vein proper in shaft	0.90	18.00	0.30	0.20					\$18.20
Hanging wall in shaft	0.12	2.40	Nil	Nil					\$ 2.40
Glory Hole	0.22	4.40	Nil	Nil					\$ 4.40
Porphyry in shaft	0.25	5.00	Nil	Nil					\$ 5.00
	(Copy	Sept. 16th,	1926.)						

Gold calculated at \$20.00 per ounce.

Silver calculated at 68 c. per ounce.

calculated at.....cents per lb.

calculated at.....cents per lb.

NOTE.—Pulps of Samples retained 2 months from date of receipt.

(Seal) "J. R. WILLIAMS" Provincial Assayer.

## 48.—Letter, David Barnes to McTavish Brothers.

Baker, Oregon,  
May 17, 1926.

My Dear McS.,

Yours received the 14th and note what you say about sending sweet some gold which I will do at once as it is here. Saw Thomas when I got here this noon and he said he had expressed ore from the Banner and is bringing the rest with him he expects to leave here in a day or two. I'll have all the construction work finished before Mr. Crow gets here. 10 Everything is going fine but have had some bad weather expect to be grinding out gold in next two weeks if I can get all the necessities here. Am trying to rustle plates. Had to come to Baker to get the line shaft and pulleys. Will leave in the A.M. for camp. Had a little bad luck with the bus, let the radiator freeze and it cost \$5.00 to get it repaired, broke it in 5 places, and today I drew \$10.00 from the Bank for expenses as I couldn't write a check for every little thing. Just telling you this so you will know. Well things look good and will soon be producing, work Sundays and all the time. Hope the money is coming in to meet the expenses. Will keep you posted and write occasionally.

20

Sincerely  
DAVE.

Exhibits.  
48.  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
17th May  
1926.

## 49.—Letter, David Barnes to McTavish Brothers.

June 2, 1926.

My Dear McS.,

Received yours of 29th today. Thanks for the cheque as it relieved the situation a lot. I was able to pay the men which amounted to \$660.85 and my time was not included. You can send my cheque to the Mrs. in Seattle as she informs me she needs funds. Everything is going O.K. and will soon be humming. I hear Code was in Vancouver to see you. Mr. Claw 30 has not shown up as yet. Mr. Sheedy quit last night and said he was going to work on the Black Jack. He wants me to have him do some work there but I said no but would write you about it. There is no use in having anyone work there unless we have a gang. All last summer was wasted there and personally I would rather give it back to him than to waste money that way and another thing Sheedy is in the way when it comes to a bunch of men working. You have my opinion, so send yours along. Will wire you the day I start mill. Engine runs fine. I have about \$295.00 in bills I promised to pay June 1st. So you see. Every one thinks we have a dandy plant and are sure surprised to see the gold. Will send cancelled checks, paid bills all 40 but one \$64.50 which I have misplaced. It was for line shaft, pulleys & etc.

49.  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
2nd June  
1926.

Exhibits.  
—  
49.  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
2nd June  
1926—con-  
tinued.

McKim said he would mail one so might get it with these. The men receive \$5.00 per day and \$1.25 for board. Two of them board themselves and M. C. Carson is cooking also working 8 hrs. so allowed him for cooking \$17.50. That saves having a cook at present until we get fixed for it. Hope everything is O.K. with you. Mr. Grant says Snow Creek is looking fine and going good.

Sincerely,  
DAVID BARNES.

50.  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
12th June  
1926.

50.—Letter, David Barnes to McTavish Brothers.

Camp,  
June 12, 1926.

10

My Dear McS.

It has been some time since I heard from either of you. Started the mill Sunday the 6th run 2 hrs. and found one old belt wouldnt pull so Monday got another and run all day Tuesday and found I had to have 4 babbit washers so Tuesday took Mr. Claw and went to Baker as he had to get a bed or bedding so got started Thursday about noon and have run about 30 hrs. are starting today on 12 hr. shift and will put on night shift soon. Everything works fine only the screens are to fine a mesh for this class of material. I wired for coarser screens which I expect tonight. Guess you didn't get my last letter as I expected money to pay bills I promised. When do you expect to be here. Let me know a few days in advance. Hope to hear from you soon as I am worried about this finance business. Will be able to tell what the ore will run per day as soon as I get the new screens.

20

Sincerely  
DAVE BARNES.

Havent seen Thomas as yet but have had a number of visitors who are very much stuck on our mill and layout all around.

D. B. 30

By the way a party wants me to set up a layout just like this. He wants it next month. What do you think.

## 3.—(1) Minutes of First Annual Meeting of Alamo Gold Mines, Limited.

Exhibits.

## ALAMO GOLD MINES, LIMITED.

3.—(1).

## MINUTES OF FIRST ANNUAL MEETING.

Minutes of  
First  
Annual  
Meeting of  
Alamo Gold  
Mines,  
Limited,  
2nd July  
1926.

The first annual meeting of the above company was held at its head office, 308 London Building, 626 Pender Street, West, Vancouver, B.C., at 2.30 p.m. on Friday, July 2nd, 1926, in accordance with the following notice sent to the shareholders:—

Vancouver, B.C. June 22nd, 1926.

10 Shareholders,  
Alamo Gold Mines, Limited.

Dear Sir or Madam :

The annual General Meeting of Alamo Gold Mines Limited, will be held at the office of the Company, 308 London Building, 626 Pender St. West, Vancouver, B.C. on Friday, July 2nd, 1926, at the hour of 2.30 p.m.

Yours truly,

P. D. McTAVISH, Secretary.

Present :

David Barnes.	D. J. Welsh.	A. Bennett.	Miss E. C. Stott.
R. E. McKechnie.	A. P. Augustine.	D. Estabrooks.	Peter Stewart.
20 J. McKenzie.	P. J. Howard.	L. Sangster.	Nelson Wells.
D. Davidson.	Mr. Cunliff.	J. H. Alexander.	W. H. Fleming.
Mrs. Barron.	L. Cunliff, Jr.	J. Trodden.	D. N. McTavish.
E. J. Hillis.	Mr. Reilly.	Miss H. Watson.	P. D. McTavish.
S. T. Dare.			

The President, Mr. D. N. McTavish called the meeting to order punctually at 2.30 and called upon the Secretary to read the above notice of meeting.

The minutes of the Statutory Meeting were then read and upon motion of Mr. Peter Stewart, seconded by Mr. Bennett, approved.

30 It was moved by Dr. McKechnie, seconded by Mr. John McKenzie, that Mr. Reginald F. Smithers be appointed the Company's auditor for the ensuing year.

Carried.

It was moved by Mr. D. J. Welsh, seconded by Mr. Peter Stewart that the company's fiscal year date hereafter from July 1st to June 30th inclusive.

Carried.

40 The Secretary, Mr. P. D. McTavish then reported to the meeting, the company's progress from the time of its inception to the end of the first fiscal year.

The Auditor's report was then presented and it was moved by Dr. R. E. McKechnie and seconded by Mr. Sangster that the report be adopted.

Exhibits.	Moved by Mr. John McKenzie, seconded by Mr. Estabrooks that the present Board of Directors be re-elected.	
—	Carried.	
3.—(l).	Moved by Mr. Peter Stewart, seconded by D. J. Welsh that the meeting be now adjourned. Carried.	
Minutes of First Annual Meeting of Alamo Gold Mines, Limited, 2nd July 1926—continued.	The meeting then continued for some time in an informal way, the time being largely taken up by explanations and answers to questions made by Mr. Barnes the Company's superintendent in charge of the mining operation in Oregon.	
	Chairman,	10
	“ D. N. McTAVISH.”	

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**3.—(m) Minutes of Meeting of Directors of Alamo Gold Mines, Limited.**

3.—(m).	ALAMO GOLD MINES, LIMITED.	
Minutes of Meeting of Directors of Alamo Gold Mines, Limited, 2nd July 1926.	MINUTES of the meeting of directors of the Alamo Gold Mines, Limited, held at 308 London Building, 626 Pender Street West, at 4.30 p.m. on Friday, July 2nd, 1926.	
	Present : David Barnes, D. N. McTavish, P. D. McTavish.	
	The above directors being three of the newly appointed Board, held a meeting immediately following the Annual General Meeting.	
	The minutes of the previous meeting were read and approved.	20
	A resolution was passed re-electing D. N. McTavish President, and P. D. McTavish, Secretary-Treasurer of the Company.	
	There being no further business, the meeting then adjourned.	
	“ D. N. McTAVISH ”	
	Chairman.	
	“ DAVID BARNES.”	

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**15.—Auditor's Report of Alamo Gold Mines, Limited.**

15.	Vancouver,	
Auditor's Report of Alamo Gold Mines, Limited, 2nd July 1926.	British Columbia.	30
	2nd July, 1926.	
	To the Shareholders of—	
	Alamo Gold Mines, Limited,	
	Vancouver, B.C.	

Dear Sirs,

In accordance with your instructions, I have examined the affairs of your Company for the period from the date of Incorporation to the 30th June, 1926. From information so obtained and data furnished I have

prepared the Books and Accounts and have extracted therefrom and now annex: Exhibits.

EXHIBIT "A" Statement of Revenue and Expenditure for the period from the date of Incorporation to the 30th June, 1926. 15. Auditor's Report of Alamo Gold Mines, Limited, 2nd July 1926—continued.

EXHIBIT "B" Balance Sheet as at the 30th June, 1926.

As the matter has apparently not yet been determined, I would suggest that at your General Meeting of Members a resolution be placed on record fixing the Company's Fiscal Year as from the 1st July to 30th June in each and every year.

From correspondence, documents and other data in the hands of the Company's Solicitors and Directors, it would appear that the titles to your properties have been verified. These properties consist of

(a) Mining Claims in Grant County, Oregon, described as Lot 464, consisting of "Gold Queen" lode mining claim in Sec. 23, Township 9 South, Range 35, East of the Willamette Meridian and

20 Lot 420 consisting of the "Paris," "Alamo," "Juneau," and "Gold Queen No. 2" lode mining claims, being part of Sections 22, 23 and 27 in Township 9 South, Range 35, East of the Willamette Meridian containing 75.03 acres.

These properties were acquired by the allotment of 2,999,995 Shares of the Capital Stock of the Company, Fully Paid: part of said shares were placed at the disposition of your Directorate for sale and proceeds used for development purposes as noted in Exhibit "A." There are still 1,000,000 of these shares available for Treasury purposes.

30 (b) Five claims, each twenty acres, situated in Grant County, Oregon, on or near Ruby Creek and about one mile South of the Red Boy Mine and known as "Lucky Strike," "Ruby Creek," "Evans," "Bluebell," and "Daisy" respectively. These were acquired from Roy M. and Isabel Evans under an Agreement of Sale dated the 15th June, 1925. The consideration mentioned therein is the sum of \$40,000.00 payable over a period of nine years without interest.

During the period under review a total of \$5,000.00 has been paid in this connection and there are no instalments overdue.

The Balance Sheet annexed, and signed by me as relative hereto, is, in my opinion, a full and fair balance Sheet, containing the particulars 40 required by the Company, and is properly drawn up so as to exhibit a true and correct view of the Company's affairs according to the best of my information and the explanations given to me and as shown by the Books of the Company, subject to the qualifications contained in this Report.

Exhibits.  
—  
15.  
Auditor's  
Report of  
Alamo Gold  
Mines,  
Limited,  
2nd July  
1926—con-  
tinued.

I have obtained from the Directors and Officers of the Company all the information and explanations I have required.

Yours faithfully,  
REGINALD F. SMITHERS,  
Honours Associate,  
Institute of Bankers,  
London University, Eng.

Vancouver, B.C.,  
2nd July, 1926.

EXHIBIT "A." 10

ALAMO GOLD MINES, LIMITED.

STATEMENT OF REVENUE AND EXPENDITURE FROM DATE OF INCORPORATION  
TO 30TH JUNE, 1926.

REVENUE.

CAPITAL STOCK—

Incorporators' Subscriptions - - -	\$5·00
SHARE SALES—Net Proceeds - - -	22,572·64
	<u>\$22,577·64</u>

EXPENDITURE.

PROPERTIES—

Evans' Agreement of Sale - - - \$5,000·00 20

MACHINERY AND EQUIPMENT - - - 7,467·49

DEVELOPMENT

Wages - - - - - \$6,048·51

Travelling, Engineers and Directors - 1,067·10

Mining Supplies - - - - - 485·15

Assay, Recording and Mining Reports - 546·33

Taxes - - - - - 22·94

8,170·03

ORGANIZATION AND ADMINISTRATION—

Legal and Incorporation Fees - - - \$1,316·65 30

Stenographer - - - - - 304·90

Telephone and Telegrams - - - 35·60

Printing and Stationery - - - 176·55

Postage and Revenue Stamps - - - 72·00

Exchange and Bank Charges - - - 34·42

1,940·12

\$22,577·64

Vancouver, B.C., 2nd July, 1926.

EXHIBIT " B. "

ALAMO GOLD MINES, LIMITED.  
BALANCE SHEET AS AT 30TH JUNE, 1926.

ASSETS.		LIABILITIES.	
PROPERTIES—		AGREEMENT OF SALE—	
At Cost - - - -	\$3,039,995·00	R. M. & I Evans - - -	\$35,000·00
Less Share Sales - - -	22,572·64		
	<u>\$3,017,422·36</u>	CAPITAL—	
MACHINERY AND EQUIPMENT -	7,467·49	Authorized 3,000,000 Shares	
DEVELOPMENT - - - -	8,170·03	each \$1·00 - - - -	<u>\$3,000,000·00</u>
ORGANIZATION AND ADMINISTRATION - - - -	1,940·12	Issued—	
	<u>\$3,035,000·00</u>	For consideration other than	
		cash 2,999,995 at par -	\$2,999,995·00
CAPITAL STOCK AVAILABLE FOR		for cash 5 at par - -	5·00
TREASURY PURPOSES - - -	1,000,000		<u>3,000,000·00</u>
	SHARES.		<u>\$3,035,000·00</u>

Approved and adopted,  
D. N. McTAVISH, Director.  
P. D. McTAVISH, Director.  
Vancouver, B.C., 2nd July, 1926.

Certified as part of my Report of even date.  
REGINALD F. SMITHERS,  
Auditor.

Exhibits.  
15.  
Auditor's  
Report of  
Alamo Gold  
Mines,  
Limited,  
2nd July  
1926—con-  
tinued.



Exhibits.

## 51.—Letter, David Barnes to McTavish Brothers.

51.  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
13th July  
1926.

Baker, Oregon.  
July 13, 1926.

My Dear McS.,

Just a line to let you know how things are. Completed the road to the shaft and are installing the crusher that is why I am in Baker. We haven't been able to run the mill since I come back on acc't of the heavy rain, July 4. So muddy it won't slide down the chute, and it is so bad in shaft it is hard to work awful warm and sultry. Will start mill on shaft ore in 3 days. Shaft is looking fine getting richer and wider with depth. Got the crusher from the Snow Creek. They wont start there mill for 3 weeks yet. They have tried it out and it is on the bum. Now under the circumstances I won't be able to take out the payroll this month which will amount to about \$850.00 without my salary. I am sorry but road building starting tunnels and getting crusher has delayed things a lot, and the dirt in the glory hole getting so sticky. Thot I better let you know before the 20th as it is hard to raise money and I know it. So write me at once and let me know how you are fixed. If necessary stand Thomas off as this has to be paid. Then next month you need not worry. I'll send you a few good samples from the shaft tomorrow when I get back expect to be at camp by 9 a.m. Now write me at once as this money question is a bad one and I know it is tough on you to have to dig so much. It is about 400 in the shade here and Ruby Creek has gone completely dry regardless of the heavy rain. Here is hoping for success.

I am, sincerely,  
DAVE.

## 52.—Letter, David Barnes to McTavish Brothers.

52.  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
16th July  
1926.

Baker, Oregon.  
July 16, 1926.

My Dear McS.,

Received you letter today just after Welch and his friend left for the Banner. I was sorry I could not go with them. I was surely surprised to see them but glad as they got the richest pannings I have ever seen out of the shaft. And they were well pleased. Mr. Welch will explain everything on his return, much better than I can write it. I note what you say about the B.C. and I hope that streak extends down to the 50 ft. level or thereabouts. Welch was all peeped up and said they had a lot of ore that would go \$50,000\* to the ton. Weather is very hot here now. Started the mill today after installing the Snow Creek crusher. The shaft certainly looks good but in running the dump I have to run a lot of waste for 6 or 7 days then we will have clean ore. Have the tunnel started road completed

\* Sic.

but will have to make other arrangements for compressor as Ruby Creek is completely dry. It will take 1,250 ft. of 1½ inch pipe to run to the shaft. I sent some samples to you by Welch and his friend also has some fine ones. Sorry I missed Craw's time 11 days @ \$5.00—\$55.00, 12 days board \$1.25—\$15.00. Total come to Craw—\$40.00. Let me hear from you often.

Sincerely,  
DAVE BARNES.

53.—Letter, David Barnes to McTavish Brothers.

Camp  
July 17, 1926.

10 My Dear McS.,

Yours of the 14th inst. at hand and glad to hear things are going so nicely. Everything is going good here as far as we have been able to accomplish. The shaft is sure looking good better every round and if it goes to the 50 ft. mark we certainly have a real mine.

Now about the tunnel. There isn't a drop of water in Ruby Creek and I'll have to move the Compressor down to the mill and it will take 2 000 ft. of pipe. So you see all I have been able to do is by hand. Have two men on shaft two on tunnel. Dunc Welch will explain everything quite thoroughly. Having no water in Ruby Creek (and I was informed that it run a small stream the year around) surely put a damper on my plans. We are able to keep the mill going 12 hrs. per day now as ore has to be handled so much until we get rid of some of the dump so we can install a chute to save shovelling at the mine. Sounds good to hear I am going to receive cheque from the B.C. Gold Mines. Hope they make a cleaning. The B.C. owed me for Feb. and March which amount was paid as follows about Mch. 21 cheque for \$150.00—Apr. 30 about cheque for \$75.00 one you sent Martin May 26 cheque for \$108.35 making a total of \$333.35 amt. due \$600.00 leaving a total due me \$266.65. I will be thankful to receive cheque. Do you suppose you could sell Pat Ryan about 5 000 shares of my stock. I need the money. Glad to hear that Pat will eliminate Fell—Scharff—and Fales.

Now about the returns. I wrote you befor I seen Welch and no doubt he will explain every thing as I think I made it clear to him. I am satisfied that I could make a great showing if I could run the good dirt but as it is have to take the entire dump for a while waste and all as there is good pay in it and don't like to throw it away. Have to take it now or never and this is the 3rd day for the and it looks good. Cannot get enough ore with the team at present to run the mill 24 hrs. I sure feel sorry for you on this high financing and hope it will soon be over. Dunc Welch seems confident that he can raise a scad of money. Hope Ward don't come as I don't need him now. Keep me posted and I'll do the same. Here is hoping for the best.

Sincerely  
DAVE.

Exhibits.  
—  
52.  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
16th July  
1926—con-  
tinued.

53.  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
17th July  
1926.

Exhibits.

**54.—Letter, David Barnes to McTavish Brothers.**Camp,  
July 20, 1926.54.  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
20th July  
1926.

My Dear McS.,

Yours of the 16th at hand and thanks for the check which will cover payroll. The bills will amount to about \$150.00 for which you can send cheque any time before the 5th of Aug. Suppose Welch is there by now with the Samples. He said he would deliver them at once. It will be impossible for me to keep the mill going from the shaft and another thing cost too much. Have to have a man help which brings the hauling to \$390 per month for running mill one shift which is out of the question. Am going to try and draw the air from the shaft with stove pipe and a fire on top so I can work two shifts and get out as much ore as I can. Everything seems to go different from what one thinks. Not being able to work the Compressor as yet makes it bad. Now don't you think that D.N. ought to take a run down here before the first of the month and look this proposition over. It would do him good and relieve me a lot as I am stumped on this development work and keep mill running to. Now think it over at once and let me know by return mail if it is possible. I hear Ward is coming. Guess I'll have to tie him up. You fellows are surely some financiers to do what you have done and it sounds good. Hope Geo can wait a while on his and give you a rest. Shaft is looking fine but a hard proposition to work without air. Hope you will be able to dispose of some of my B.C. stock as it will help. If I see I cannot run mill and develop at same time will have to stop mill and go after it teeth and toe nails. Come down D.N. or P.D. if possible. Just a short drive. Let me hear from you at once.

Sincerely,  
DAVE.**55.—Letter, David Barnes to McTavish Brothers.**Camp,  
Aug. 11, 1926.55.  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
11th August  
1926.

My dear McS.

Enclosed find cancelled cheques, payroll for July also some paid bills. Cheques that I haven't bills for are marked on them what they were for. Received the \$500.00 in due time. Thanks. I have certainly been up a tree as what is best to do. Country being so dry this year makes operations much different to what I thought last fall and I don't want to go to too much expense at the present time until I know how things are coming out. Got the best pan from the shaft today I have ever had. Will have mill going Monday 16th for a short time. Expect Thomas here today. Didn't receive cheque from B.C. Gold as yet. How are they coming and how was the cleanup the 10th. Am awaiting P.D. arrival.

Sincerely,  
DAVE.

97.—Letter, McTavish Brothers, Limited, to David Barnes.

Exhibits.

McTAVISH BROTHERS, LIMITED.

308 London Building,  
626 Pender Street, West,  
Vancouver, B.C., Sept. 10, 1926.

David Barnes, Esq.,  
Granite, Ore.

97.  
Letter,  
McTavish  
Brothers,  
Limited,  
to David  
Barnes,  
10th Sept-  
ember 1926.

Dear Dave,

10 Just a hurried note to find out if it would be possible to get enough amalgam out of the mill or off the plates to enable us to make another brick or two the same size as the one procured from the last amalgam you brought in. We find that the little brick of pure gold is a real selling argument, and we are desirous of having one for use in the office as Mr. Welsh is using the other one most of the time. There was about 15 oz. of amalgam in the last lot brought in by yourself which produced  $7\frac{1}{4}$  oz. of gold. An equal amount would serve our present needs.

20 Beyond stating that things were going well at the mine you did not say what progress you had made. We would suggest that you let us know approximately how many feet the tunnel is now in and how soon you expect to have it completed. You might let us know how you are getting along with the installation of the tram.

Naturally we are quite concerned about your health and trust that Mrs. Thomas' doctor has been able to do you a great deal of good.

Trusting that you may be improving in health and that everything is going satisfactorily at the property, and hoping to hear from you at an early date, we remain,

Very truly yours,  
McTAVISH BROTHERS, LIMITED,  
Per P. D. McTAVISH.

30 P.S. It is just possible that we may wire you during the next few days to the effect that we will be taking down a very important prospect with a view to having him invest a considerable sum of money. We shall probably go by train and it will be necessary therefore for you to meet us in Baker with the car. Meanwhile you might figure out the estimated cost of installing a new 100 ton unit complete, together with the cost of erecting necessary building for carrying on the winter's work.

P.D.

40 P.S. Your insurance note came due yesterday amounting to \$156.75. I paid them \$56.75 and they are mailing you a note for \$100.00 drawn at 3 months. Please sign and return by next mail without fail.

D.N.

Exhibits.  
 69.  
 Two Assay  
 Certificates  
 of J. R.  
 Williams,  
 17th and  
 18th Sept-  
 ember 1926.

69.—Two Assay Certificates of J. R. Williams.

CERTIFICATE OF ASSAY.

J. R. WILLIAMS.

Provincial Assayer and Chemist.

Vancouver, B.C.

I Hereby Certify that the following are the results of assays made by me upon samples of ORES herein described and received from Mr. LANGER, Vancouver, B.C. Sept. 17th, 1926.

MARKED	GOLD		SILVER		COPPER				TOTAL VALUE
	Ounces Per Ton	Value Per Ton	Ounces Per Ton	Value Per Ton	Per Cent.	Value Per Ton	Per Cent.	Value Per Ton	(2000 Lbs.) Per Ton
		\$		\$		\$		\$	\$
No. 1.	0.14	2.80	Coarse stuff on bottom of shaft.						
2. 21.60	0.98	19.60	Screened from " " "						
3. "	0.14	2.80	Section cut " " "						
4. "	0.03	0.60	Coarse stuff from Glory Hole.						
6. 20.40	1.24	24.80	Evans Tailings.						
7. "	0.06	1.20	Fine stuff from Glory Hole.						

Gold calculated at \$20.00 per ounce.

calculated at.....cents per lb.

Silver calculated at.....per ounce.

calculated at.....cents per lb.

NOTE.—Pulps of Samples retained 2 months from date of receipt.

(Seal) J. R. WILLIAMS, Provincial Assayer.

CERTIFICATE OF ASSAY.

J. R. WILLIAMS.

Provincial Assayer and Chemist.

Vancouver, B.C.

I Hereby Certify that the following are the results of assays made by me upon samples of ORES herein described and received from Mr. LANGER, Vancouver, B.C.

Sept. 18th, 1926.

MARKED	GOLD		SILVER		COPPER				TOTAL VALUE
	Ounces Per Ton	Value Per Ton	Ounces Per Ton	Value Per Ton	Per Cent.	Value Per Ton	Per Cent.	Value Per Ton	(2000 Lbs.) Per Ton
A.	1.02	\$ 20.40	16.00	\$ Evans Tailings.		\$		\$	\$
B.	0.66	13.20	16.00	Fine stuff from Glory Hole.					
C.	0.24	4.80	11.20	Siftings from Shaft.					

Gold calculated at \$20.00 per ounce.  
Silver calculated at.....per ounce.

calculated at.....cents per lb.  
calculated at.....cents per lb.

NOTE.—Pulps of Samples retained 2 months from date of receipt.

(Seal) J. R. WILLIAMS, Provincial Assayer.

Exhibits.  
—  
69.  
Two Assay  
Certificates  
of J. R.  
Williams,  
17th and  
18th Sept-  
ember 1926  
—continued.

Exhibits.

98.

Letter,  
McTavish  
Brothers,  
Limited, to  
D. Barnes,  
28th Sept-  
ember 1926.

98.—Letter, McTavish Brothers, Limited, to D. Barnes.

ALAMO GOLD MINES LIMITED.

(Non-Personal Liability.)

308 London Building, 626 Pender Street West,  
Vancouver, B.C., Sept. 28th, 1926.

D. Barnes, Esq.,  
Manhattan Apartments,  
Seattle, Wash.

Dear Dave,

Mr. Howard has just been in and is very anxious to get one of those 10  
little watch charms in which you specialize. You know the kind I mean,  
a little glass circle filled with gold dust. He wants it for Mr. Langer since  
the gentleman has come into the enterprise, otherwise he did not want to  
give it to him. Thomas is coming up this week and if you could have  
George bring it up it would save any fussing through the Customs.

When we were down there I understood you to say that we had from  
30 to 40 feet to drive on the tunnel before encountering the vein and that  
you were making  $2\frac{1}{2}$  feet a day. At this rate it would take about 16 days,  
barring accident, to finish. This should be done some time during the 20  
present week. Mr. Langer is very anxious to go down right after that, and  
of course wants to go as soon as he can in case the weather gets bad and makes  
it impossible. If this letter reaches you in Baker, you might wire us when  
the tunnel is finished, but if it reaches you in Seattle, you might write the  
man in charge to send us a wire when the tunnel is finished, and in the  
meantime to drop us a line letting us know about how far he thinks he is  
from the vein.

As P.D. has taken up with you all other matters I will draw this epistle  
to a close.

With very kindest personal regards to yourself and wife,

Yours very truly,

McTAVISH BROTHERS, LIMITED.

Per D.N.

P.S.—Langer shouldn't go down until tram and tunnel are complete  
and mill running. That is time to send wire, as Langer should not go down  
till everything is complete. Rush this as much as you can.

P.D.

56.—Letter, David Barnes to P. D. McTavish.

Exhibits.

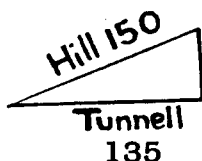
Camp,  
Oct. 11, 1926.

56.

My dear P.D.,

Letter,  
David  
Barnes to  
P. D. Mc  
Tavish,  
11th Octo-  
ber 1926.

Yours of the 8th at hand and note what you say about the Alamo gold being fine. I think that Mr. McGuigan tried to run the mill at double the capacity and natural enough would loose most of the gold even if it was coarse and if it was very fine would loose it much quicker. Now fine gold is just as easily saved as coarse gold if milled properly and I don't think there is a thing to worry about along this line. McGuigan had a stamp mill and I understand from several good authorities that he run it at twice its capacity and this will not work with any kind of mill or ours either. Two of my men had to go to town to get teeth pulled, been suffering with toothache for some time. Hit the porphyry dyke today and will if nothing happens will be to the ledge in 8 days. It is impossible to get more men at present as the Ben Harrison has started. Buffalo put on 8 more men. Ibex is running full blast and Snow Creek have 12 men for the winter. Am getting the houses fixed for winter also getting winter supply of wood before the snow comes. Weather rotten here also. Cox killed a deer about 100 yards from camp last night. Tunnel was in 118 ft. tonight. Now the rock got much harder than when D.N. and Mr. Langer was here, but is softer now and at 85½ ft. a seam crossed the tunnel which panned very good. Now this is the picture of tunnell and shaft so you figure for yourself. I estimated when we started the tunnell it would be 125 ft. but this is the dope



65 so my figures show tunnell as vein dip slightly to tunnell.

Will be able to get tram hauled out Thursday. Weighs about 2700. Hope this is what you want.

I am, Sincerely,  
D. BARNES.

30

57.—Telegram, David Barnes to D. N. McTavish.

57.

CANADIAN NATIONAL TELEGRAM.

Telegram,  
David  
Barnes to  
D. N. Mc  
Tavish,  
1st Nov-  
ember 1926.

PRA273 20 collect.

1926, Nov. 1, P.M. 2.48.

Sumpter, Org. 1 206P.

D. N. McTavish,

503 London Bldg., Vancouver B.C.

Vein pans for eight feet paystreak about the same as in bottom of shaft as to width and values.

DAVID BARNES.



Exhibits.  
 71.  
 Two Assay  
 Certificates  
 of J. R.  
 Williams,  
 6th Nov.  
 ember 1926.

**71.—Two Assay Certificates of J. R. Williams.**

CERTIFICATE OF ASSAY.

J. R. WILLIAMS.

Provincial Assayer and Chemist.

Vancouver, B.C.

I Hereby Certify that the following are the results of assays made by me upon samples of ORES herein described and received from Mr. LANGER, Vancouver, B.C. Nov. 6, 1926.

MARKED	GOLD		SILVER		COPPER				TOTAL VALUE
	Ounces Per Ton	Value Per Ton	Ounces Per Ton	Value Per Ton	Per Cent.	Value Per Ton	Per Cent.	Value Per Ton	(2000 Lbs.) Per Ton
No. 1.	0.66	\$ 13.20		\$		\$		\$	\$
2.	0.24	4.80							
3.	0.70	14.00							
4.	0.10	2.00							
5.	0.20	4.00							
6.	0.24	4.80							
7.	0.36	7.20							
8.	0.03	0.60							

Gold calculated at \$20.00 per ounce.

calculated at.....cents per lb.

Silver calculated at.....per ounce.

calculated at.....cents per lb.

NOTE.—Pulps of Samples retained 2 months from date of receipt.

(Seal) J. R. WILLIAMS, Provincial Assayer.

CERTIFICATE OF ASSAY.

J. R. WILLIAMS.

Provincial Assayer and Chemist.

Vancouver, B.C.

I Hereby Certify that the following are the results of assays made by me upon samples of TABLE PRODUCTS herein described and received from Mr. LANGER, Vancouver, B.C.

Nov. 24, 1926.

MARKED	GOLD		SILVER		COPPER				TOTAL VALUE
	Ounces Per Ton	Value Per Ton	Ounces Per Ton	Value Per Ton	Per Cent.	Value Per Ton	Per Cent.	Value Per Ton	(2000 Lbs.) Per Ton
No. 1. Conc.	Value of	\$ Gold recovered (98 m.g.)	6.56 cents.	\$		\$		\$	\$
No. 2. Conc.	" "	" (20.)"	1.34 cents.						
Tails.	0.60	1.20							

Gold calculated at \$20.00 per ounce.

Silver calculated at.....per ounce.

calculated at.....cents per lb.

calculated at.....cents per lb.

NOTE.—Pulps of Samples retained 2 months from date of receipt.

(Seal) J. R. WILLIAMS, Provincial Assayer.

Exhibits.  
—  
71.  
Two Assay  
Certificates  
of J. R.  
Williams,  
24th Nov-  
ember 1926  
—continued.

Exhibits.

**79.—Letter, McTavish Brothers to J. F. Langer.**

79.  
Letter,  
McTavish  
Brothers to  
J. F. Lan-  
ger,  
11th Nov-  
ember 1926.

Vancouver, B.C.,  
Nov. 11, 1926.

J. F. Langer, Esq.,  
3290 Granville St.,  
Vancouver, B.C.

Dear Mr. Langer,

We have just received the enclosed letter from Mr. Barnes which is self-explanatory. Please return it for our files when you are through with it.

We also enclose brief statement of expenditures to date. We shall be glad to have you or your auditor inspect the bank account and vouchers from time to time at your convenience. 10

Very truly yours,

McTAVISH BROTHERS, LIMITED,  
Per P. D. McTAVISH.

PDM/S  
Encl.

S.

58.

**58.—Letter, David Barnes to D. N. McTavish.**

Letter,  
David  
Barnes to  
D. N. Mc  
Tavish,  
12th Nov-  
ember 1926.

Baker, Oregon,  
Nov. 12, 1926.

My Dear D.N.,

Yours received with P.D.'s and I am disappointed with the assays myself. Something wrong when the sample out of ore bin only went \$7.20 as I know it will go \$25.00. In what way does it change the aspect of things, will he not put up money? I have the compressor and engine moved and being set up. Also ordered 1 ton powder \$395.00 700 ft., pipe \$140.00, 2000 ft. fuse \$19.00, pump and valves minors and couplings \$45.00. Lub oil air oil compressor oil \$45.00 and coal \$50.00. Also will have to get in about \$400.00 grub. All this does not include freight which amounts to \$65 or \$70. If it is possible to get it in. Snowing quite hard now. Total estimate around \$1200.00 and I'll have to get a couple sets of steel. Am hustling things just as fast as I can. Then there is \$100.00 for rails which Mr. Langer told me to get. It is sure a tough proposition to get Lumber. Have to have 2 in. stuff to floor the bunker at the foot of the hill built a large bunker to hold 125 tons sorry you didn't have a talk with the Mrs. while in Seattle. I might have to walk back as I had a hard time getting here. Moved in the cabin last night. Will keep you posted. 20

Sincerely,

DAVE.

## 59.—Letter, David Barnes to P. D. McTavish.

Baker, Oregon.  
Nov. 12, 1926.

My Dear P.D.,

Received your letter as I come through Granite this A.M. Had some time getting to Baker without chains in about 5 inches of snow and still snowing when I left camp. Think this is about the last trip with the car, and as luck would have it broke a spring skidding off the road. Saw Geo. Thomas as he come past the camp yesterday going to the Ben H. and had a talk with him in regard to Banner. I know you have had the devil's own time with payments and everything else and it would have been easy to start the Banner a month ago, but as it is so late I know it will cost four times what it ought to. Thomas said he would come down and see Kit Carson today about taking a contract. Kit told me he wouldn't tackle it this late with nothing on the ground. Hope he can make some arrangements but have my doubts. I am awful sorry things have happened as they have. Makes it bad all around. By the way before I forget it, I had a very eminent Gov't (Geologist) guess you will know what I mean on the Alamo or Ruby Creek this A.M. and he thinks that the ore will be much wider on other side of porphyry dyke. I will see Thomas again tomorrow and then he will wire you.

Sincerely,

DAVE.

Exhibits.

59.

Letter,  
David  
Barnes to  
P. D. Mc  
Tavish,  
12th Nov-  
ember 1926.

## 66.—(a) Letter, McTavish Brothers to David Barnes.

David Barnes, Esq.:  
Granite, Ore.

Nov. 16th, 1926.

Dear Dave,

We have just wired you \$1200 for supplies as per your estimate and have wired you accordingly.

Mr. Langer is exceedingly anxious that you get the drift started as quickly as possible and that you rush it with all possible speed. He would like to have a record of each day's work but as you will be snowed in we know it will be impossible for you to get a report out oftener than perhaps once a week.

I wish you would make a careful estimate of the distance so that we will be able to calculate about what time it will be finished. I told him that my estimate which was very roughly calculated was 825 feet. It seems to me it will be further than this you can make a calculation and let us know how far we have to count on driving.

66.—(a).

Letter,  
McTavish  
Brothers to  
David  
Barnes,  
16th Nov-  
ember 1926.

Exhibits.  
—  
66.—(a).  
Letter,  
McTavish  
Brothers to  
David  
Barnes,  
16th Nov-  
ember 1926  
—continued.

Mr. Langer suggested today that you should have a telephone connection made so that while you are snowed in we will be able to talk to you in the evenings.

He also enquired about the Alamo work he suggested that the main thing was not to let this interfere with getting the work at the Evans all properly going with the least possible delay. After that is done then you can make some arrangement to get some men working on the Alamo.

Of course I never pay any attention myself to these weather forecasts about hard winters. I read an article yesterday in the Seattle paper written by the Editor in which he said that these things were all bunk and that the only way to tell what kind of a winter we were going to have was to wait until you get it. I would not therefore be surprised if as in former years the present snow all disappeared and you had something approaching a green Christmas. In the meantime I trust that you are all quite comfortable and well and that the work is being rushed with the least possible delay. 10

With kind regards

Yours very truly

McTAVISH BROTHERS, LIMITED.

DNM/S.

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99.—Letter, P. D. McTavish to David Barnes.

McTAVISH BROTHERS LIMITED. 20

99.  
Letter,  
P. D. Mc  
Tavish to  
David  
Barnes,  
18th Nov-  
ember 1926.

503 London Building,  
626 Pender Street West,  
Vancouver, B.C. Nov. 18, 1926.

David Barnes, Esq.  
Granite, Ore.

Dear Dave,

I have just written you the enclosed in answer to your letter and we have arranged to make copies of all our correspondence and send duplicates to Mr. Langer so he will have them on file and know exactly what is going on so that in writing regarding the company's affairs please see that you confine yourself strictly to the Alamo business and if there is anything else that you wish to write us about it would be necessary for you to put it on another sheet of paper. A word to the wise is sufficient. 30

We are very glad indeed to learn that you are getting things properly in shape and trust that after you get the tunnel started and the men well under cover that you will be able to get through the porphyry up above and pick up the vein on the other side.

It has just occurred to me without talking it over with Langer that since we are not going to use those upper workings there would be very little use in making the upraising over east unless it was actually required while you are cutting through the porphyry. If the porphyry is only a few feet 40

thick it might be possible to finish that work without making an upraising as the upper workings will probably be abandoned after the long tunnel is finished.

George was to have called us up today so that we could arrange a meeting in Bellingham or Vancouver regarding the Banner affairs. When I saw him in Seattle last Monday he was arranging to have one of the nearby hoists moved to the Banner. We have not heard from him since but trust this work has all been done and that the work will also go steadily on there. It is just a great shame that we did not get at all of this work a month sooner and we would have been in beautiful shape for the winter but it seems to me that since you have gotten yourself pretty well dug in we will be able to "pinch hit" and get away with it.

The weather is very beautiful here. We can see the mountains across the harbour and they have just a beautiful covering of snow on their very peaks.

We will be very anxious to get your next report and trust that when it comes things will be going along nicely.

Yours sincerely

P. D. McTAVISH.

20 DNM/S.

D.N. has gone home so I'm signing his letter. Kind regards.

P.D.

Be sure and make daily measurements when you get under way and send along report once or twice weekly as weather will permit. If snow is bad send a wire at least once a week. Langer is feeling fine and we want to keep him that way.

P.D.

---

100.—Letter, McTavish Brothers, Limited, to David Barnes.

McTAVISH BROTHERS, LIMITED.

30

503 London Building, 626 Pender St. West,  
Vancouver, B.C. Nov. 25, 1926.

David Barnes, Esq.,  
Manhattan Apartments,  
Seattle, Wash.

Dear Dave,

Since phoning you this morning it has occurred to us that if you do not come to Vancouver until Saturday, we might give our friend Langer an opportunity to figure out that before you could then get back to the mine you would have to be away a week or more. He knows of course that you desire to be in Seattle for Thanksgiving and that you have some running around to do there on the Company's behalf. As a matter of fact he does not kick, but we do not wish him to have the slightest excuse to kick.

Exhibits.

—  
99.

Letter,  
P. D. Mc  
Tavish to  
David  
Barnes,  
18th Nov-  
ember 1926  
—continued.

100.

Letter,  
McTavish  
Brothers,  
Limited, to  
David  
Barnes,  
25th Nov-  
ember 1926.

Exhibits.  
 100.  
 Letter,  
 McTavish  
 Brothers,  
 Limited, to  
 David  
 Barnes,  
 25th Nov-  
 ember 1926  
 —continued.

Under the circumstances therefore, we suggest that you drive up here on Saturday and spend Monday in Seattle instead of Vancouver. By arranging your trip in this way, our good friend Langer need not know but what you are spending the weekend hurrying home to Granite.

If you can arrange the above we believe it would be advisable to do so. In any event as soon as you get this letter, wire us the day you will reach Vancouver and we shall arrange accordingly with Mr. Langer.

Hoping to see you and Mrs. Barnes soon, we remain,

Very truly yours,

McTAVISH BROTHERS, LIMITED. 10  
 Per P. D. McTAVISH.

PDM/S

Sunday will suit Langer just as well if you wish.

Can you get breathers etc. for Petter engine in Seattle? (Freda & "Bill" (?) will be home Sunday.)

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65. 65.—Weekly Mining Reports of Alamo Gold Mines, Limited, from December 4th, 1926, to May 21st, 1927.

(Not printed.)

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21.  
 Letter,  
 McTavish  
 Brothers,  
 Limited, to  
 J. F. Lan-  
 ger,  
 27th Dec-  
 ember 1926.

21.—Letter, McTavish Brothers, Limited, to J. F. Langer.

McTAVISH BROTHERS, LIMITED.

20

Vancouver, B.C.

Dec. 27th, 1926.

J. F. Langer, Esq.,  
 3290 Granville St.,  
 Vancouver, B.C.

Dear Mr. Langer,

The enclosed monthly epistle from Mr. Barnes is self-explanatory. You will recall that Mr. Barnes ordered two tons of powder and that one ton was paid for and the other left at Granite to be paid for later. Mr. Barnes evidently is desirous of removing this powder to the mine and has included the payment thereof in the present month's expenses. 30

Above we have pasted a small clipping taken from the "Northwest Mining Service." It is rather interesting in view of the fact that our own proposition is similar in many respects except of course that it runs much higher in values. The "other expenditures and crude charges" of which they speak are really interest charges as the Bradley's of San Francisco have a large bond issue on this undertaking. They were the controlling

spirits in the Treadwell during its later years and at the present time control that company which though not operating now has assets we understand totalling about \$7,000,000.

We received copy of agreement from Mr. Baird and are having it inspected on behalf of the company by their solicitor. There are one or two changes that Mr. Baird has made and we shall discuss these with you as soon as Mr. St. John has concluded his inspection of the agreement.

Very truly yours,

McTAVISH BROTHERS, LIMITED.

Per D. N. McTAVISH.

Exhibits.

21.

Letter,  
McTavish  
Brothers,  
Limited, to  
J. F. Lan-  
ger,  
27th Dec-  
ember 1926  
-continued.

10  
PDM/S  
Encl.

P.S.—Our solicitor Mr. St. John has been sick he expects to be at the office tomorrow when we will have him go over the contract as drafted by Mr. Baird. “D.N.M.”

CLIPPING.

Alaska Juneau mined and trammed to the mill 369,000 tons in October 1926, making a new record in respect to tonnage. Recoveries were \$187,000 or 50.55 cents per ton; operating expenses \$162,000 or 43.80 cents per ton; operating profit, \$25,000 or 6.75 cents per ton. Other expenditures and accrued charges, totalling \$48,250, made a deficit of \$23,250 for the month.

60.—Letter, David Barnes to McTavish Brothers, Limited.

Camp, Jan. 11-27.

My Dear McS.

Just received telegram asking about progress and weather. Progress is fine and weather mild only snowing. You surely ought to have had reports on progress up to Sunday the 9th. Ben Harrison team going out this P.M. so I can mail this. I have been doing a lot of figuring on the Alamo tunnelling and of course have to have car and track and timbers. Made arrangements with Waldo to use his place at Alamo and all his camp outfit. I had a man here yesterday to figure on opening tunnelling and he said if it was him he would open No. 2 instead of the lower one as he knew there was good ore in second one. There is a lot to consider on this job and if the roads get in shape from Baker to Portland I might drive up and have a conference with you and Mr. Langer. You surely ought to be pleased with reports sent in especially last 3. Fastest and cheapest any tunnelling has ever been driven in this country. Let me know what you think about

60.  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
Limited,  
11th Janu-  
ary 1927.



Exhibits.  
—  
60.  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
Limited,  
11th Janu-  
ary 1927—  
*continued.*

me coming as long as everything is going first class. Night shift trying to beat day shift and so on and a better bunch of men couldn't be found any place. Note what was done Xmas week. The boys that were here all worked overtime and Xmas day to keep up the average without extra pay. Hope you have reports by now. Mail is a hard proposition now, no mail in camp for 5 days.

Sincerely, "DAVE."

Hope Mr. Langer is fine. Last two shifts has been in solid slate first I have seen on the hill and a good indication at that.

89.  
Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
18th Janu-  
ary 1927.

89.—Letter, McTavish Brothers, Limited, to J. F. Langer.

10

Jan. 18th, 1927.

J. F. Langer, Esq.,  
3290 Granville St.,  
Vancouver, B.C.

Dear Sir,

We hereby acknowledge receipt of seven thousand eight hundred and twelve dollars and fifty cents (\$7,812.50), being initial payment on account of purchase price of 250,000 shares of stock in Alamo Gold Mines Limited at 12½ cents per share as per following statement :

250,000 shares at 12½ cents	-	-	-	\$31,250.00	20
Cash paid as above	-	-	-	\$7,812.50	
Payment due Feb. 18th	-	-	-	7,812.50	
Payment due Mch. 18th	-	-	-	7,812.50	
Payment due Apl. 18th	-	-	-	7,812.50	
				\$31,250.00	\$31,250.00

Herewith we hand you certificates for 250,000 shares covering the above purchase, being certificates numbered 423-4-5-6-7-8 and 9.

Very truly yours,

McTAVISH BROTHERS, LIMITED.

Per P. D. McTAVISH.

30

**80.—Letter, McTavish Brothers, Limited, to J. F. Langer.**

J. F. Langer, Esq.,  
3290 Granville St.,  
Vancouver, B.C.

Vancouver, B.C.,  
Jan. 24th, 1927.

Exhibits.

80.

Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
24th Janu-  
ary 1927.

Dear Sir,

Herewith we enclose statement showing amount received from you up to December 31st and the manner in which same has been disbursed. As previously mentioned, we would be glad to have your Mr. Kerr check  
10 this up with our bookkeeper at his convenience.

Yours truly,

McTAVISH BROTHERS, LIMITED.

Per " P. D. McTAVISH."

PDM/S  
Encl.

**3.—(n) Minutes of Meeting of Directors of Alamo Gold Mines, Limited.****ALAMO GOLD MINES LIMITED.**

MINUTES of the meeting of directors of the Alamo Gold Mines, Limited, held in the company's office at 503 London Building, 626 Pender St. West, at 3 p.m. February 3rd, 1927.

20 Present : W. B. Code, P. D. McTavish, D. N. McTavish.

The above meeting was held for the purpose of considering a contract between this company and Joseph Francis Langer relative to the construction of a mill of 1000 tons daily capacity on the company's property in Grant County, Oregon. After due consideration it was decided to be in the best interests of the company to ratify the agreement and a resolution was duly passed authorizing the company's officers to execute the necessary document.

30 It was then pointed out that in view of the fact that all money paid by Mr. Langer must be actually spent on the property or in the installation of the mill there would therefore be none available for the payment of commission to the brokers who had introduced Mr. Langer to the company. The officers were therefore authorized to negotiate with these parties for the purpose of having them accept stock as commission in lieu of cash to satisfy them if possible with the remainder of the stock that would now be available for Treasury purposes amounting to approximately 95,000 shares and if agreeable to complete a settlement with them on that basis.

There being no further business the meeting adjourned.

" D. N. McTAVISH," Chairman.

" W. B. CODE."

" P. D. McTAVISH."

" DAVID BARNES."

" GEO. H. THOMAS."

40

Exhibits.

**39.—Letter, McTavish Brothers, Limited, to P. J. Howard.**

39.  
Letter,  
McTavish  
Brothers,  
Limited,  
to P. J.  
Howard,  
5th Febru-  
ary 1927.

McTAVISH BROTHERS, LIMITED.

Vancouver, B.C., Feb. 5th, 1927.

P. J. Howard, Esq.  
Vancouver, B.C.

Dear Sir,

We wish to confirm our arrangement regarding commissions due to you and moneys owing by you to this company. For your services in introducing Mr. J. F. Langer to us, you are to receive a flat amount of 30,000 shares of stock in the Alamo Gold Mines Limited, N.P.L., said shares to be payment in full for all services rendered by you in connection with said introduction. 10

You are to continue selling stock for us on the regular commission basis and we are to give you a drawing allowance up to but not exceeding \$300.00 for the month of February, and \$200.00 per month for the balance of the year 1927.

The amount of your overdraft as at Feb. 1st, is to be determined and this together with any further drawings as above provided, to be secured by our holding above 30,000 shares of Alamo stock

Very truly yours.

PDM/S

McTAVISH BROTHERS, LIMITED.

Per "D. N. McTAVISH."

20

I hereby approve the above arrangement.

"P. J. HOWARD."

---

17.—Memorandum of Agreement between Alamo Gold Mines, Limited, Joseph Francis Langer, McTavish Brothers, Limited, and Donald Neil McTavish and Peter Duncan McTavish.

Exhibits.  
—  
17.

MEMORANDUM OF AGREEMENT made the seventh day of February, 1927,

Memo-  
randum of  
Agreement  
between  
Alamo Gold  
Mines,  
Limited,  
Joseph  
Francis  
Langer,  
McTavish  
Brothers,  
Limited,  
and Donald  
Neil Mc  
Tavish and  
Peter  
Duncan  
McTavish,  
7th Febru-  
ary 1927.

Between

10 ALAMO GOLD MINES LIMITED (Non-Personal Liability), a joint-stock Company incorporated under the laws of the Province of British Columbia, having its registered office in the City of Vancouver in the Province aforesaid (hereinafter called the "First Party")

*Of the First Part*

and

JOSEPH FRANCIS LANGER, of 3290 Granville Street in the said City of Vancouver, Theatre Proprietor (hereinafter called the "Second Party")

*Of the Second Part*

and

20 MCTAVISH BROTHERS LIMITED, a joint-stock Company having its head office at No. 503 London Building, in the said City of Vancouver (hereinafter called the "Third Party")

*Of the Third Part*

and

DONALD NEIL MCTAVISH, Mining Broker, and PETER DUNCAN MCTAVISH, Mining Broker, both of the said City of Vancouver (hereinafter called the "Fourth Parties")

*Of the Fourth Part.*

WHEREAS the First Party is the owner in fee simple of the following mining claims, situate near the City of Baker in Grant County in the State of Oregon, one of the United States of America, and being

- 30 (a) Lot No. 420 embracing a portion of sections 23, 22 and 27 in Township 9 South of Range 35 East, Willamette Meridian.  
(b) Lot 464 embracing a portion of section 23 in said Township 9 South,

the said mining claims being hereinafter called the "Alamo Group";

40 AND WHEREAS the First Party has purchased from Roy M. Evans and Isabel Evans by agreement dated the 15th day of June, 1925, the "Isabel Evans" group of mining claims situate on or about Ruby Creek about one mile South of the Red Boy Mine in the Red Boy Mining District, in Grant County, in the State of Oregon, aforesaid, consisting of five (5) mining claims of about twenty (20) acres, each known as "Lucky Strike," "Ruby Creek," "Evans," "Bluebell," and "Daisy";

AND WHEREAS the capital stock of the First Party consists of Three Million (3,000,000) shares of the par value of One Dollar (\$1.00) each, all

Exhibits. of which have been issued, but Seven Hundred and Fifty Thousand  
 — (750,000) of which are available, for sale or otherwise, for the use of the  
 17. First Party;

Memo-  
 randum of  
 Agreement  
 between  
 Alamo Gold  
 Mines,  
 Limited,  
 Joseph  
 Francis  
 Langer,  
 McTavish  
 Brothers,  
 Limited,  
 and Donald  
 Neil  
 McTavish  
 and Peter  
 Duncan  
 McTavish,  
 7th Febru-  
 ary 1927.  
 —continued.

AND WHEREAS the Second Party has agreed to expend certain moneys in development of the mineral claims hereinbefore mentioned, and at his option pay for the purchase and installation of certain mining equipment as hereinafter mentioned, in consideration of the transfer to the Second Party of certain shares of the said Alamo Gold Mines Limited (Non-Personal Liability);

NOW THIS AGREEMENT WITNESSETH that in consideration of the 10  
 premises and of the mutual covenants herein contained, the parties hereto covenant and agree with one another as follows:—

1. The Second Party hereby agrees to pay to the First Party from time to time as required, the moneys necessary for the purpose of developing the said mining claims of the First party, and in particular for the purpose of continuing the construction of the tunnel already commenced on the "Isabel Evans" group for a distance of Eight Hundred (800) feet more or less, to intersect the vein already disclosed in the upper workings of the said "Isabel Evans" group, and also for the purpose of clearing out the 20  
 existing tunnels on the "Alamo" group, and the other parties hereto agree that the whole direction of said work and the entire control of the expenditure of said moneys in connection therewith, shall be in the hands of the Second Party. It is understood and agreed that the Second Party shall not be obliged to advance more than the sum of Seventeen Thousand Dollars (\$17,000.00), including moneys already advanced for that purpose, on account of the construction of said tunnel on the "Isabel Evans" Group.

2. The Second Party further agrees to pay on behalf of the First Party, all payments as they shall become due by the First Party to the said Roy M. Evans and Isabel Evans, under the said agreement dated the 15th day of June, 1925; but in the event that the Second Party shall not 30  
 exercise the first option hereinafter set out, the Second Party shall not be obliged to make any of said payments which, according to the said agreement, accrue due after the 1st day of April, 1927. In the event that the Second Party shall exercise the said first option, then the Second Party shall pay all of said payments accruing due under said agreement until such time as the First Party shall be able to pay same out of the profits. If the Second Party shall exercise any or all of the options set out in paragraph 4 of this agreement, then and in that event all moneys paid by the Second Party on account of the said agreement dated the 15th day of June, 1925, shall be treated as a loan to the First Party of the Second 40  
 Party, and shall be repaid by the First Party to the Second Party out of profits as soon as possible, and shall form a first charge thereon.

3. In consideration of the aforesaid advances already made and to be made by the Second Party, the First, Third and Fourth Parties covenant and agree to issue or cause to be issued from time to time to the Second

Party fully paid up and non-assessable shares of Alamo Gold Mines Limited (Non-Personal Liability), each share to be valued for said purpose at five cents (5 cents) to cover the full amount of said advances. PROVIDED, HOWEVER, that in the event that the Second Party shall not exercise the first option hereinafter granted to him, the Third Party shall have an option to repurchase all or any portion of the shares transferred to the Second Party in pursuance to the terms of this agreement, at a price of five (5) cents per share, which said option shall be open for acceptance by the Third Party for a period of six (6) months from the date on which said first option to the Second Party shall lapse, or from the date on which the Second Party may signify his intention in writing not to exercise said first option, which ever date shall be later.

4. In consideration of the sum of One Dollar (\$1.00) and other valuable consideration now paid by the Second Party to the First Party (the receipt whereof is hereby acknowledged) the First Party gives to the Second Party the sole and exclusive right or option to erect at his own expense on the said mining claims or on such other property as the First Party may acquire, a complete crushing plant or mill with all suitable equipment and suitable workmen's quarters, on the following terms and conditions :—

(1) FIRST OPTION.

To erect a crushing plant of either two hundred tons daily capacity or five hundred tons daily capacity, as he in his sole discretion may decide. This first option shall be open for acceptance up until ten days after the date upon which the said tunnel now being driven on the mining claims in the "Isabel Evans" group shall have reached the ore vein or until the 1st day of April, 1927, whichever of these dates is the later. In the event that the Second Party shall decide to exercise this option he shall notify the First Party of his intention so to do on or before the times above limited for acceptance and shall commence construction of the said plant within one month after the date of acceptance and complete same as soon as possible.

(2) SECOND OPTION.

To erect a crushing plant of three hundred tons daily capacity in addition to the plant mentioned in said First Option. In the event that the Second Party decides to exercise this second option he shall notify the First Party on or before the 1st day of October, 1927, and shall commence construction of the said plant as soon thereafter as weather will permit but not later than the 1st day June, 1928, and complete same as soon as possible. PROVIDED, HOWEVER, that if the Second Party shall already have erected a plant of five hundred ton daily capacity under the first option he shall be at liberty under this second option to erect a plant of two hundred ton daily capacity in lieu of a plant of three hundred ton daily capacity as referred to herein.

Exhibits.  
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17.  
Memo-  
randum of  
Agreement  
between  
Alamo Gold  
Mines,  
Limited,  
Joseph  
Francis  
Langer,  
McTavish  
Brothers,  
Limited,  
and Donald  
Neil  
McTavish  
and Peter  
Duncan  
McTavish,  
7th Febru-  
ary 1927—  
*continued.*

## Exhibits.

## (3) THIRD OPTION.

17.  
Memo-  
randum of  
Agreement  
between  
Alamo Gold  
Mines,  
Limited,  
Joseph  
Francis  
Langer,  
McTavish  
Brothers,  
Limited,  
and Donald  
Neil  
McTavish  
and Peter  
Duncan  
McTavish,  
7th Febru-  
ary 1927—  
*continued.*

To erect a crushing plant of two hundred tons daily capacity in addition to the plant mentioned in said First and Second Options. In the event that the Second Party shall decide to accept this third option he shall notify the First Party not later than the first day of October, 1928, of his intention so to do and shall commence construction of such plant not later than the 1st day of June, 1929, and shall complete same as soon as possible.

## (4) FOURTH OPTION.

In the event that the Second Party shall have exercised the First, 10  
Second and Third Options above mentioned, the Second Party shall have the option to erect a further crushing plant of such capacity as shall make the total daily capacity of all plants not less than one thousand tons. In the event of the Second Party deciding to accept this Fourth Option he shall notify the First Party not later than the first day of July, 1929, of his intention so to do, and shall complete construction of the plant in this option mentioned not later than the 1st day of December, 1929.

Notification to the First Party by the Second Party of his acceptance of any of said options shall be in writing delivered at the registered office of the First Party in the Province of British Columbia or mailed to that 20  
address.

5. In consideration of the Second Party exercising the aforesaid Options and erecting crushing plants as aforesaid, the First Party hereby covenants and agrees that it will issue or cause to be transferred to the Second Party fully paid up and non-assessable shares of Alamo Gold Mines Limited (Non-Personal Liability), as follows :—

- (a) On the completion and satisfactory operation of the two hundred ton plant mentioned in said First Option, fully paid shares sufficient, together with those already transferred to him under paragraph 3 hereof, to make a total of 1,000,000 shares. 30  
In addition the Third and Fourth Parties hereby covenant and agree to make the necessary arrangements to deliver voting power to the Second Party on 530,000 further shares to be held by the Second Party until such time as he shall have acquired over fifty per cent. of the shares of the said Company under the terms of this agreement, provided, that power to vote said 530,000 shares shall not in any event be vested in the Second Party after the 31st day of December, 1929.
- (b) On the completion and satisfactory operation of the plant or 40  
plants mentioned in said Second Option, additional shares sufficient to make a total of 2,000,000 shares in the possession of the Second Party.
- (c) On the completion and satisfactory operation of the plant or  
plants mentioned in said Third Option, additional shares

sufficient to make up a total of 2,500,000 shares in the possession of the Second Party. Exhibits.

(d) On the completion and satisfactory operation of the plant or plants mentioned in said Fourth Option, additional shares sufficient to make up a total of 2,750,000 shares in the possession of the Second Party.

6. The First Party hereby agrees that, when required, it will take the necessary steps to increase the capital of Alamo Gold Mines Limited (Non-Personal Liability), from \$3,000,000 to \$5,000,000 to enable delivery to be made to the Second Party of shares as above mentioned, in excess of the 750,000 now available, and that it will place in trust with W. J. Baird, solicitor for the Second Party, and Mr. C. W. St. John, Solicitor for the First Party, on acceptance by the Second Party of any or all of the several options hereinbefore set out, certificates for the numbers of shares required to be delivered to the Second Party on the completion and erection of the crushing plants provided for under the said options respectively.

7. It is understood and agreed that the said Joseph Francis Langer, Donald Neil McTavish and Peter Duncan McTavish shall be directors of the said First Party, and that the said Joseph Francis Langer shall be President and Managing Director, the said Donald Neil McTavish shall be Vice-President thereof and the said Peter Duncan McTavish Secretary thereof, and that they shall continue in said offices as long as it shall be mutually agreeable to the parties hereto.

8. It is agreed by and between the parties hereto that no profits derived from the operation of any or all plants above referred to, shall be used for financing the installation of the said plants, and that all of said profits shall, in case the second Party shall carry out the provisions of any of said Options, be distributed, subject to the provisions of the Companies Act, as decided upon from time to time by the directors, to the Second Party until the Second Party shall have been repaid all sums advanced by him to the First Party for payment to the said Roy M. Evans and to the said Isabel Evans under said agreement dated the 15th day of June, 1925.

9. The Third Party hereto covenants with the Second Party that it will, so far as it is possible for it to do, carry out the provisions of this agreement.

10. The Fourth Parties hereto covenant with the Second Party that they and each of them will do and perform all matters, acts and things required by them to be done and performed to carry out the provisions of this agreement and that they will, as shareholders and directors of the said First Party, vote in favour of all resolutions necessary to be passed to implement the provisions of this agreement.

11. All plant and equipment erected and installed by the Second Party in pursuance to the Options set out in paragraph 4 hereof, shall be the absolute property of the First Party upon receipt by the Second Party of shares as provided in Paragraph 5 of this agreement.



Exhibits.

17.

Memo-  
randum of  
Agreement  
between  
Alamo Gold  
Mines  
Limited,  
Joseph  
Francis  
Langer,  
McTavish  
Brothers,  
Limited,  
and Donald  
Neil  
McTavish  
and Peter  
Duncan  
McTavish,  
7th Febru-  
ary 1927—  
*continued.*

This agreement shall be binding upon and shall enure to the benefit of the respective heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF the First and Third Parties hereto have hereunto caused their corporate seals to be affixed attested by the hands of their proper officers in that behalf, and the Second and Fourth Parties hereto have hereunto set their hands and seals.

The common seal of the First Party hereto was hereunto affixed in the presence of :

“ D. N. McTAVISH,” “ Pres.”  
“ P. D. McTAVISH,” “ Secy.”

“ J. F. LANGER.”

(SEAL)

10

(SEAL)

The common seal of the Third Party was hereunto affixed in the Presence of :

“ P. D. McTAVISH,” “ Pres.”  
“ D. N. McTAVISH,” “ Secy.”

(SEAL)

Signed, Sealed and Delivered by the Second and Fourth Parties in the presence of :

“ Chas. W. St. John ” as to signa-  
tures of Donald Neil McTavish  
and Peter Duncan McTavish.  
“ W. J. Baird ” as to signature  
of Joseph Francis Langer.

D. N. McTAVISH (SEAL)

P. D. McTAVISH. (SEAL)

20

92.—Letter, McTavish Brothers, Limited, to David Barnes.

92.  
Letter,  
McTavish  
Brothers,  
Limited,  
to David  
Barnes,  
14th Febru-  
ary 1927.

McTAVISH BROTHERS, LIMITED.

503 London Building, 626 Pender St. West,  
Vancouver, B.C., Feb. 14, 1927.

David Barnes, Esq.,  
Manhattan Apartments,  
Seattle, Wash.

30

Dear Dave,

Your letter came duly to hand and while we are pleased that Dr. Wallace has discovered your trouble, we regret very much that it will be necessary for you to undergo an operation. Removing the tonsils is not regarded as serious, but you will find this serious enough and that it behoves you to consider it a very serious matter until you have entirely recovered. Furthermore do not under any consideration think of returning to the mine until you feel absolutely fit.

40

While I think of it, let me say that \$150.00 was sent to Baker the day after you were here. We note your estimate for the forthcoming month and do not think that Mr. Langer's absence will make any difference in view of the fact that he expects to return here on or about the 24th instant.

*Re shares :* We note that you have had a talk with Code relative to Alamo stock. You can readily understand that as we have had to carry on for about two years our shares have been dwindling. When checking the matter up recently, we were shocked to find that we had consumed nearly 300,000 shares. In addition to this of course we must carry on for some time. In fact if Mr. Langer decides to drop the Alamo after April we would then have reduced our holding to such an extent that we would be little interested in the future of the company. At the same time, as you can understand, we must carry on in view of the fact that we have interested so many people in the enterprise. Under the circumstances therefore, we feel it is only reasonable that we should have a substantial interest, and the sooner it is fixed up the better.

While we have consumed approximately 300,000 shares, we must, as stated above, continue to carry on so that it would take approximately 400,000 shares to square us away. We do not wish to be unreasonable, however, and knowing that you and the others are disposed to be fair in the matter, we will leave it to you and them. We are of the opinion that if you and Code decide upon your plan first, George will be disposed to do pretty much what you suggest.

Trusting that you may have no serious difficulty as the result of your operation and that you and Code will be able to get this matter fixed up after your recovery, we remain,

Very truly yours,  
 McTAVISH BROTHERS, LIMITED,  
 Per P. D. McTAVISH  
 per S.

30 PDM/S.

109.—Letter, P. D. McTavish to David Barnes.

McTAVISH BROTHERS, LIMITED.

503 London Building, 626 Pender Street, West,  
 Vancouver, B.C., Feb. 22nd, 1927.

David Barnes, Esq.,  
 Manhattan Apartments,  
 Seattle, Wash.

Dear Dave,

We are this morning in receipt of your favour of the 21st inst. enclosing report for last week which shows that the boys are pretty well keeping up with their good record.

We expect that Mr. Langer will be back this week or early next week, and we would like to have the next report in as soon as possible. Please wire to us therefore immediately you receive it.

Exhibits.

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 92.

Letter,  
 McTavish  
 Brothers,  
 Limited,  
 to David  
 Barnes,  
 14th Febru-  
 ary 1927—  
*continued.*

109.

Letter,  
 P. D. Mc  
 Tavish to  
 David  
 Barnes,  
 22nd Febru-  
 ary 1927.

Exhibits.  
—  
109.  
Letter,  
P. D. Mc  
Tavish to  
David  
Barnes,  
22nd Febru-  
ary 1927—  
*continued.*

We have not heard from Mr. Langer since his departure, but presume that he satisfied himself in Los Angeles by making thorough investigations through Mr. Love and the Baash-Ross Tool Company with whom he is associated. It is just possible that he will want to have a talk with you when he returns, providing you are at that time still in Seattle.

Since it was apparently necessary to have your tonsils removed, we are delighted to know that the job is done and that you are rapidly recovering. We sincerely hope that the doctors have at last got at the root of your trouble and that from this time on you will continue to improve in health.

We note that you have had an interview with George *re* Banner, but did not mention Alamo. It is probably wise for you and Code to complete an arrangement so far as you are concerned first. George has said that he would do whatever you would. If therefore you sign a transfer for a certain block of stock, Code could take that to George and with it should be able to get at least the same number that you return, but in our opinion George should do a great deal better than that in view of the fact that he has practically forsaken the Alamo proposition and did scarcely nothing compared with what he was supposed to do, in payment for his stock. We would be pleased to go after George hard were it not for the delicate position in which we are placed with him in view of the Banner. This obviously makes it advisable for us to leave the Alamo stock matter in the hands of yourself and Code. Furthermore the proposition was originally hatched by you three and it is therefore fitting that you should settle among yourselves any arrangement of stock affecting the three of you.

Yes, Don has gone to California. He was spending about half his time in bed recently, and needed a rest or a change or both. Dr. Blow from Calgary was motoring down and invited him to go along. It seemed an excellent opportunity to do just what he should do and get the rest which he needed. He therefore motored as far as San Francisco where he will spend a week or two in a quiet, lazy way with our brother and sister.

Do not take any chance with that throat of yours, and be sure that it is thoroughly healed and that you are well on the road to good health before you leave Seattle.

Sincerely yours,

PDM/S.

P.D.

22.—Letter, McTavish Brothers, Limited, to J. F. Langer, with clipping attached.

Exhibits.

McTAVISH BROTHERS, LIMITED.

Vancouver, B.C.,  
Feb. 24th, 1927.

J. F. Langer, Esq.,  
Ambassador Hotel,  
Los Angeles, Cal.

22.  
Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
with  
clipping  
attached,  
24th Febru-  
ary 1927.

Dear Mr. Langer.

We were very much pleased to receive from you the following wire :

10       “ Have visited crushing plant course of erection at Randsburg  
revisiting same when in operation expect in few days much pleased  
with what I saw everything most modern and feel certain will be most  
efficient anxious hear reports to date also what funds required will  
wire same from here staying here about ten days address Ambassador  
Hotel Los Angeles regarding other transaction leave same in  
abeyance till my return best wishes.”

To the above we replied at once as follows :

20       “ Everything fine at mine. Averaged forty seven feet for last  
three weeks. Tunnel four hundred eighty feet Saturday stop Barnes  
reports ton powder needed will therefore require two thousand stop  
Parties interested other transaction would like to get half amount  
now if convenient Stop Trust both enjoying trip.”

The above figures are correct to within two feet, as the total footage  
was 478 feet but for purposes of abbreviating the wire we gave you the  
approximate footage. The general daily average has been kept up  
splendidly although last week they made only 45 ft. but report they struck  
some very hard rock. This, of course, is only incidental.

30       Mr. Barnes after many examinations by Seattle physicians, discovered  
that his tonsils were in extremely bad condition and he was obliged to have  
them removed. This was done last Wednesday and he is suffering from  
a very sore throat, but is recovering splendidly under the circumstances.  
As he will not return to the mine for a few days, it has occurred to us that  
you might desire that he make an inspection of the mills which you are  
going to visit. If so, you might wire him to Seattle but unless this is done  
immediately he will undoubtedly be hurrying back to the mine as he is  
getting very impatient about his unexpected delay owing to his operation.  
Mr. Barnes' address is Manhattan Apartments, Seattle.

40       There seems nothing startling to report; everything has been going  
splendidly at the mine and Mr. Barnes is about ready to resume work.  
The weather has been abominable all the time since your departure, and  
we sincerely trust that you have been favoured with better samples where  
you have been.

Regarding the payment of \$7,812.50 which fell due on the 19th, the  
parties interested were naturally looking for their money and we informed

Exhibits.  
—  
22.  
Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
with  
clipping  
attached,  
24th Febru-  
ary 1927—  
*continued.*

them you would be back about the 25th. Upon receipt of your wire, we explained to them the further delay of ten days, and they desired to know if half the amount, approximately \$4,000 could not be arranged at once, as they were counting on using this money; it would be alright to leave the balance until you return. We wired you accordingly and are awaiting your reply.

We trust that you and Mrs. Langer have enjoyed your trip and that you will have a pleasant time during your ten days in the Sunny South.

My brother D.N. was quite unwell, and so embraced the opportunity of motoring to San Francisco with a friend Dr. Blow from Calgary. Should you be in San Francisco you may reach him through our brother C. H. McTavish, whose name you will find in the phone book, or through the Pratt Sand & Gravel Company, with whom our brother is associated. 10

Again wishing you a pleasant time in California, we remain,

Very truly yours,

McTAVISH BROTHERS LIMITED.

Per P. D. McTAVISH.

PDM/S.

P.S. The attached clipping will interest you.

P.D.M. 20

#### WESTERN CANADA MINING NEWS.

Vancouver, British Columbia,  
February 25th, 1927.

#### VANCOUVER MEN HAVE PROMISING GOLD PROPERTY.

While citizens of the United States are credited with enterprise in coming to British Columbia and developing profitable mines, the fact must not be overlooked that Canadians are equally enterprising and invade American territory to take up good mining propositions. R. W. Wood, of Premier fame, for instance, is operating two properties in Arizona, and one of the latest instances is the development of very promising gold properties in Grant County, Oregon, by Vancouver men. 30

Operations are conducted by the Alamo Gold Mines, Ltd., organized by McTavish Brothers. The property consists of two groups, on one of which a considerable amount of work was done some years ago. Three tunnels were driven, and these are being cleaned out. The lowest, which gives a depth of over 700 feet on a very large vein, shows that the vein widens with depth to thirty feet, and that the values are consistent throughout. These average from \$10 to \$15. Other veins are yet to be developed. The second group, known as the Evans, is about a mile distant, and has a 300-foot face of gold showings, with two veins, where everything is in shape for quick production. 40

The company was organized less than two years ago, and it is confidently expected that it will be on a production basis within the next few months.

With no liabilities against the property it should be paying dividends before the present year is out. This is a fine record for a hard rock company and demonstrates the ability of those behind the enterprise.

Prominently associated in this company is J. F. Langer, of Vancouver, well known because of his success with theatre enterprises, and who is constructing the new million-dollar Orpheum on Seymour Street. Mr. Langer is one of the prime movers, and is now on a trip to Los Angeles and Denver investigating mills, with a view to securing the best for the Alamo property. While the capacity of the initial unit will not be decided until his return, it is definitely stated that at least a 200-ton mill will be in operation early this summer, and that the ultimate capacity within a year or so will be 1,000 tons daily. Such production on a free-milling gold property will soon bring it into the limelight. With an average value of \$10 per ton, the plant will have a daily gross output of \$10,000 daily.

Dave Barnes, one of the best known gold operators on this part of the coast, is in charge of the practical end.

A number of Vancouver people hold shares in the Alamo Gold Mines, Ltd. The property is easy of access, being located in the Blue Mountain region of Grant County 53 miles from Baker, Oregon.

Exhibits.

22.

Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
with  
clipping  
attached,  
24th Febru-  
ary 1927—  
*continued.*

20 93.—(a) Letter, McTavish Brothers, Limited, to David Barnes.

McTAVISH BROTHERS, LIMITED.

503 London Building, 626 Pender St. West,  
Vancouver, B.C., Feb. 24, 1927.

David Barnes, Esq.,  
Manhattan Apartments,  
Seattle, Wash.

Dear Dave,

Herewith I enclose copy of a letter just sent to Code. As it sets forth the situation to date regarding Alamo stock, it will not be necessary to write another long letter. I think, however, that the proper way to checkmate George in the matter of trying to cut down his contribution of stock, is for you and Code to settle up regarding your own shares first, and then George in all fairness cannot refuse to do as much or more.

Very truly yours,  
McTAVISH BROTHERS, LIMITED.  
Per P.D.

PDM/S.  
Encl.

40 Have since recd. your note *re* turning over 180,000 shares. If the others do as well as you we shall see that you get a reasonable "hunk" of this back but say nothing of this to George or Code.

Yours, P.D.

Exhibits.

93.—(b) Letter, McTavish Brothers, Limited, to W. B. Code enclosed in Exhibit No. 93 (a).

93.—(b).

Letter,  
McTavish  
Brothers,  
Limited,  
to W. B.  
Code  
enclosed  
in Exhibit  
93 (a),  
24th Febru-  
ary 1927.

Feb. 24th, 1927.

W. B. Code, Esq.,  
1629 Harvard St.,  
Seattle, Wash.

Dear Code,

Thomas came to see me yesterday. As you are aware we have purposely refrained from discussing with him the matter of returning Alamo stock, in view of the situation existing between him and ourselves in regard to the Banner. As previously mentioned however, we explained to him your position stating that you regarded your stock as part payment for the Alamo and did not feel called upon to part with any of it under the circumstances. 10

Yesterday George brought up the matter again and said that he had discussed it with Dave and it seemed reasonable that 300,000 shares should be turned back to us under the circumstances. This would make 100,000 shares from each of you. I immediately repeated to him the above statement to the effect that that would not be satisfactory to you. I did not want him to get this firmly fixed in his mind before you and Dave had had an opportunity of discussing the matter with him. 20

As mentioned in a previous letter, I believe it is advisable to have Dave sign up for his stock first, and then with that go to George. He simply cannot refuse to do as much if not more than Dave, and Dave has already expressed his willingness to turn in his portion.

I told George that we had already sent blank transfer forms to you, but for some reason he wanted to get forms himself. I think he has an idea that he will get to Dave first and get the matter fixed up on his basis, so I therefore suggest that you and Dave get together immediately as George intends taking this up with you on Saturday or possibly Friday upon his return to Seattle. 30

D. N. was feeling miserable for some time so when a friend who was motoring through to California suggested that he go along, I urged him to do so in order that he might secure a few days of much needed rest with our brother who is living in San Francisco.

With kind regards,  
Very truly yours,

PDM/S.

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## 114.—Letter, McTavish Brothers, Limited, to David Barnes.

Exhibits.

## McTAVISH BROTHERS, LIMITED.

114.

David Barnes, Esq., 503 London Building, 626 Pender St. West,  
 Manhattan Apartments, Vancouver, B.C., Feb. 24th, 1927.  
 Seattle, Wash.

Letter,  
 McTavish  
 Brothers,  
 Limited,  
 to David  
 Barnes,  
 24th Febru-  
 ary 1927.

Dear Dave :

We have been expecting to arrange to see you before you returned to Baker in order that we might make whatever re-arrangement was necessary with regard to Banner plans, but as we were unable to decide  
 10 definitely how best to rearrange our contracts so as to properly safeguard you and ourselves and at the same time make it feasible to secure money from the public by sale of stock, the matter has been delayed.

As you are probably aware, you and ourselves are now on contract to buy the Banner properties from George at a price of \$100,000. In addition to the money paid to the original owners, we undertook to pay George \$21,000. Of this money only \$2,600 has been paid, the entire balance of \$18,400 being now past due. Besides this you may remember that the balance of the total purchase price was to be paid in royalties, of which not less than \$10,000 was to be paid each year. The first payment  
 20 under this clause is now past due, which with the \$18,400 above mentioned, makes a total of \$28,400 due Thomas. As we have defaulted with regard to these various payments, he is in a position to give us notice of cancellation at any time, which of course would be very serious.

Under the above conditions it was absolutely necessary to make a rearrangement with George and unfortunately for us, we caught him at a time when he was sore pressed for money with which to rearrange the financing of his son's gravel business. This made it extremely difficult to deal with him. We felt that under the circumstances we could arrange with him to have the entire amount placed on a royalty basis, but he stood  
 30 firm by his contract and demanded the full payment of the \$18,400. The only thing he would do was to rearrange the payment of this amount on a short term basis. After two days therefore, we arranged that \$18,400 should be paid as follows :

During the month of February	-	-	\$3,400.00
"          "      March	-	-	3,500.00
"          "      April	-	-	3,500.00
"          "      May	-	-	3,000.00
"          "      November	-	-	5,000.00
			<hr/>
			\$18,400.00

40 As the above cash was to be taken in lieu of stock the total amount due under royalties was still to remain at \$65,000. Here he made a slight



Exhibits.  
—  
114.  
Letter,  
McTavish  
Brothers,  
Limited,  
to David  
Barnes,  
24th Febru-  
ary 1927—  
*continued.*

concession by allowing a minimum annual payment to be \$8,000 instead of \$10,000. In addition to the above, there is still \$5,500 due on the Big Johnnie, all of which must be paid within the next twelve months.

You will see from the above that Banner contract constitutes a very heavy obligation and one which we greatly desire to get from under. Having started the thing however and having sold about \$25,000 worth of stock we have no option but to go forward.

In filing documents at Victoria, it is very desirous to keep your name and ours out of it and we had been trying to arrive at some scheme whereby neither your name nor our own would appear at Victoria, as anything registered there becomes a permanent record and can always be dug up and thrown at you at some future time, should anything go amiss. We finally arranged with George to have his contract signed not by you and ourselves but by a dummy. This man was selected with great care, his name is Spaulding. He is an electrical engineer and had charge of our garage in Calgary for three years. We know him intimately and he is absolutely trustworthy. He has consented to take on the responsibility with George in return for a few thousand shares of stock, providing of course we give him our personal guarantee that he will not be injured by so doing. George has consented to this arrangement in view of the fact that McTavish Bros., Limited are guaranteeing to him all payments under the agreement between himself and Spaulding. Under this arrangement only Spaulding's name will appear at Victoria or elsewhere. 10 20

So far as you are concerned it would relieve you of your share of the obligation but if you wish to join us in our guarantee to Thomas (and George is willing that you should be relieved,) we would be pleased to have you do so. As there is a chance here for you to get from under a very big obligation it occurs to us that it would be a step in the right direction for you to get from under this load. If this meets with your approval, give George a letter stating that you consent to having your name left off the new agreement. We enclose a draft which may suit the occasion. This will have no bearing whatever upon any arrangement between you and ourselves regarding stock. 30

From the above you will observe that the \$18,400.00 becomes a new and very pressing obligation; it is the more so in view of the fact that Don is quite unfit for work and Howard has been in the same condition for several weeks. The matter therefore of meeting the first payment or two becomes a serious one and we have been endeavouring to arrange with some parties here for funds. So far as your one-third of this cash is concerned, we think it might be advisable for us to rearrange this matter on your behalf by a plan which would give you some less stock and relieve you from any other obligation in connection with the Thomas contract, except of course that of acting in an advisory capacity regarding the Banner operations and supervising the work. 40

We were hopeful that we would be able to get things definitely arranged and then go over the matter with you, but as this has not been feasible we have been trying to determine in our own minds what would be fair for

all parties concerned. If the above arrangement can be made so as to pass your financial responsibilities over to someone else, it occurs to us that a fair thing would be for you to receive say 200,000 or 250,000 shares of stock which you would then have free from any encumbrances whatsoever.

We are just trying to get the aftermath of the Alamo arrangement properly fixed up. We have been very fortunate in bringing this company to its present position in so short a time as two years. In view of the fact that the Banner ores are complex we expect that it will be necessary to carry on for a much longer period, perhaps three or five years, and we therefore anticipate that even bigger inroads will be made on our stock than was the case with the Alamo. Under the circumstances it is advisable to forestall in so far as possible any future trouble with regard to stock.

We want you to write us frankly about this matter; all we want is what is fair, reasonable and equitable to all parties concerned, and above all we want you to be thoroughly satisfied. Give George the letter he requires and so far as the arrangement between you and ourselves is concerned, you need have no worry whatever as we propose that it shall be fixed up to our mutual satisfaction.

This is a long letter and I hope I have succeeded in putting the matter clearly before you so as to enable you to get a view of the whole matter from our standpoint. It would have been better if we could have had an hour or two together, but in view of your sore throat and my inability to leave the office, it does not seem possible just now.

Langer wired us yesterday from Caliento, Nevada, that he was returning to California direct from Chicago as he anticipated the mill at Randsburg would be running by the time he got back. He was highly pleased with everything he saw. He will be in Los Angeles for the next ten days and we are writing him today suggesting that as you have been obliged to remain in Seattle you would be available to make a quick trip to Los Angeles and go over the milling situation with him. Unless he wires before middle of next week we shall conclude he will not require you to go south at present.

Trusting your throat is rapidly improving, we are.

Very truly yours,  
McTAVISH BROTHERS, LIMITED.  
Per "P. D. M."

PDM/S.

40 Encl.

Exhibits.  
—  
114.  
Letter,  
McTavish  
Brothers,  
Limited,  
to David  
Barnes,  
24th Febru-  
ary 1927—  
*continued.*

Exhibits.

**66.—(b) Telegram, David Barnes to McTavish Brothers.**

66.—(b).  
Telegram,  
David  
Barnes to  
McTavish  
Brothers,  
17th April  
1927.

## CANADIAN NATIONAL TELEGRAM.

RA248 12 collect Nite 1927 Apr 17 PM 10 42.

Sumpter Org 17

McTavish Bros.

503 London Bldg. Vancouver BC

Footage for week forty five total distance 759 feet.

DAVID BARNES.

61.  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
Limited,  
18th April  
1927.

**61.—Letter, David Barnes to McTavish Brothers, Limited.**

Camp,

Apr. 18—1927.

10

My Dear McS.

Well Easter did not bring us very good weather as it has snowed all morning, but not very cold. Snow is going fast enough to notice it. I want to have the tunnelling completed by the last of the month and will if nothing serious happens. Panning a little makes it look good. We are just about stumped on acc't of roads neither sled nor wagon can make it. Haven't been able to get mail out or in for some time. Hope to get some out to-morrow.

Sincerely

20

"DAVID BARNES."

66.—(c).  
Telegram,  
David  
Barnes to  
McTavish  
Brothers,  
Limited,  
25th April  
1927.

**66.—(c) Telegram, David Barnes to McTavish Brothers, Limited.**

PRA14 24 Collect NL.

1927 Apr 25 AM 3 16.

Sumpter Org 24

McTavish Bros.

503 London Bldg. Vancouver BC

Footage for last week forty four feet total distance 803 feet roads in very bad condition impossible to get freight in.

DAVID BARNES.

## 66.—(d) Letter, McTavish Brothers, Limited, to David Barnes.

April 28th, 1927.

Mr. David Barnes,  
Granite, Ore.

Dear Dave :

We have just wired nineteen hundred dollars (\$1900.00) to your credit in Baker.

As you are aware, we have been working night and day to get sufficient money to keep George in good humour and the result has been that our own personal affairs have been sadly neglected. To make matters worse, one or two cheques have been charged back against us and we are making a desperate effort to cover up at the bank as we simply cannot allow ourselves to be discredited with them. We find it necessary therefore to take a cheque for the insurance money paid on your behalf some months ago, amounting to \$56.75. We would, as you know, very much like to meet your convenience in this matter but under the circumstances we have been forced to act in the matter here, which of course is in the best interests of all concerned. It will be in order therefore, for you to pay yourself \$56.75 less when issuing cheque for your own salary on the Baker bank.

We are anxiously waiting information regarding progress made by you, and as Mr. Langer said, he expects every time the telephone rings, that it is McTavish Brothers with a message to the effect that Barnes has cut the vein. We trust therefore, that you will shoot us a wire immediately the vein is encountered.

Please do not lose a single moment in starting the work on the Alamo tunnel as it is vital that we get this completed as soon as possible.

Everybody well,

Sincerely yours,

MCTAVISH BROTHERS, LIMITED.

Per

PDM/S

30

## 42.—Telegram, David Barnes to McTavish Brothers, Limited.

CANADIAN NATIONAL TELEGRAM.

PRA 16 48 Collect NL

1927 Apr 30 AM 2 33

Sumpter Org 29

McTavish Bros.

503 London Bldg Vancouver BC

Have gone quite a distance beyond where vein ought to be stop found no trace of it shut down today till survey is made about May fifth sorry one of you could not come down let me know about Alamo I can come to Vancouver if necessary

DAVID BARNES.

Exhibits.

66.—(d).

Letter,  
McTavish  
Brothers,  
Limited,  
to David  
Barnes,  
28th April  
1927.

42.

Telegram,  
David  
Barnes to  
McTavish  
Brothers,  
Limited,  
30th April  
1927.

Exhibits.

43.  
Telegram,  
McTavish  
Brothers,  
Limited,  
to David  
Barnes,  
30th April  
1927.

43.—Telegram, McTavish Brothers, Limited, to David Barnes.

## PACIFIC TELEGRAM

Vancouver, B.C. April 30, 1927.

To David Barnes

Granite Ore.

Continue work in tunnel until survey made stop rush work on  
Alamo tunnel.

McTAVISH BROS.

108.  
Letter,  
Alamo Gold  
Mines,  
Limited,  
to J. F.  
Langer,  
2nd May  
1927.

108.—Letter, Alamo Gold Mines, Limited, to J. F. Langer.

## ALAMO GOLD MINES, LIMITED.

10

(Non-Personal Liability)

503 London Building,  
626 Pender Street, West, Vancouver B.C.  
May 2nd, 1927.

Mr. J. F. Langer,  
3290 Granville St.,  
Vancouver, B.C.

Dear Sir.

As weather conditions in Eastern Oregon have made it impossible within the time specified to carry out the terms of our agreement made with you for certain development on our property, we hereby agree to extend the terms and conditions thereof for two months. In consideration of this extension it is understood that you are to take care of the monthly payments of five hundred dollars (\$500.00) each, due on the Evans property during the period of this extension.

Very truly yours,

ALAMO GOLD MINES, LIMITED.

Per "D. N. McTAVISH," President.

"P. D. McTAVISH," Secretary.

(SEAL OF ALAMO GOLD MINES) 30

DNM/S

**44.—Telegram, McTavish Brothers, Limited, to David Barnes.****DAY LETTER—CANADIAN NATIONAL TELEGRAPHS.**

David Barnes  
Granite via Baker City  
Oregon.

Vancouver, May 5th, 1927.

Continue pushing work on Evans tunnel wire total footage to date.  
When can surveyor finish job wire results survey soon as completed.  
When will snow and frost be gone from Alamo so work can be carried on properly. How is road Baker to Granite. Wire answer.

10 Charge.

McTAVISH BROTHERS.

Exhibits.

44.

Telegram,  
McTavish  
Brothers,  
Limited,  
to David  
Barnes,  
5th May  
1927.

**45.—Letter, McTavish Brothers, Limited, to David Barnes.****McTAVISH BROTHERS, LIMITED.**

Vancouver, B.C., May 5th, 1927.

Mr. David Barnes,  
Granite, Ore.

Dear Dave :

We have just wired you as follows :

20 “Continue pushing work on Evans tunnel wire total footage to date. When can surveyor finish job wire results survey soon as completed. When will snow and frost be gone from Alamo so work can be carried on properly. How is road Baker to Granite. Wire answer.”

30 Mr. Langer is very anxious to finish the Evans tunnel so that we will know definitely what to expect there. There is a possibility that you may have to go in 100 feet or more, depending on the dip of the vein and also the dip of the porphyry. He thinks it would be wise to finish this work and then have the same men available to do the work on the Alamo. At that time frost would be sufficiently out of the Alamo and the hillside sufficiently dry to permit work being carried on in the most advantageous manner and at the least possible cost.

We trust therefore that you have wired us answering all the questions contained in the wire and also letting us know how the road is over the mountains. Or in other words, whether or not it will be possible to motor from Baker City out to the mine. The weather is a little better here and we trust it is changing for the better down there.

Hoping to hear from you by return and with very kindest personal regards,

DNM/S

Very truly yours,  
McTAVISH BROTHERS, LIMITED.

“DON.”

40

45.  
Letter,  
McTavish  
Brothers,  
Limited,  
to David  
Barnes,  
5th May  
1927.

Exhibits.

**64.—(a) Letter, David Barnes to McTavish Brothers, Limited.**

64.—(a).  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
Limited,  
6th May  
1927.

Baker, Oregon,  
Friday eve. 6th/ 27.

My Dear McS.,

Well, I arrived here in due time, looked for Pipe in Pendelton La Grand and can do better here than anywhere, but the price is higher than I was informed \$18.05 per hundred ft. cash or \$19.70 on time. So that I would notify you. Expect to see P.D. soon. Will go to camp early in the A.M.

Sincerely  
D. BARNES.

10

66.—(e).

Letter,  
McTavish  
Brothers,  
Limited,  
to David  
Barnes,  
9th May  
1927.

**66.—(e) Letter, McTavish Brothers, Limited, to David Barnes.**

Mr. David Barnes,  
Granite, Ore.

May 9th, 1927.

Dear Dave :

We have just received your letter of the 7th inst. in which you relate your experience with the surveyors. It is likely that by the time you get this, the other surveyor will be ready to do that work. You will remember I wrote you some time ago to the effect that if he did not charge too much that you should have him survey the original Evans claims while he was there with a view to getting the patents. You will have to 'phone him as soon as you get this letter so that he can get the field notes or whatever he may require. We think it would be wise to put him at this while he is in there, as otherwise we will have to make arrangements at some future date to get a surveyor in specially for that purpose.

I hope you get a good man in Kit Carson's place.

As intimated in our last letter, Mr. Langer is of the opinion that you should continue driving the tunnel. If you have been doing this all this present week or until the surveyor arrives it may be of considerable assistance to him in his work.

We are very sorry that the weather is cold. If you cannot get to the Ben Harrison before the 1st of June it is not likely that we would be able to see the surface of the Big Johnnie. Please let me know by return mail regarding this, as we are extremely anxious to get our friends in to look at that property. You might also let us know, if you can, what is doing at the Snow Creek.

As intimated before, Mr. Langer thinks it would be better to rush that tunnel to completion and then put the same crew on the Alamo. George was in town on Friday and suggested that we should clean out the upper tunnels first. It might be a very good idea. He suggested that we should go into the upper tunnel and get into that large shoot of ore that is spoken

30

40

of in McGuigan's report. This ore they report is running about \$17.00 to the ton. George believes that if Mr. Langer or any person else could see that shoot of ore it would have a large bearing on their subsequent plans as to the location of the mill. You might tell us what you think of this and if possible have a look at the tunnel to see what it looks like. I know the lower tunnel looks like a mess and it is quite possible that the upper tunnels are much drier.

With very best regards, we are as ever,

10 DNM/S

Very truly yours,  
McTAVISH BROTHERS, LIMITED.  
Per

Exhibits.  
—  
66.—(e).  
Letter,  
McTavish  
Brothers,  
Limited,  
to David  
Barnes,  
9th May  
1927—con-  
tinued.

**66.—(f) Telegram, David Barnes to McTavish Brothers, Limited.**

PRA99 21 Collect NL

1927, May 22, PM 9.29

Baker, Org., 22

McTavish Bros.

503 London Bldg Vancouver BC

Survey completed thirty feet past vein so started crosscut through dike to north at point of vein seam letter follows.

DAVID BARNES.

66.—(f).  
Telegram,  
David  
Barnes to  
McTavish  
Brothers,  
Limited,  
22nd May  
1927.

20

**66.—(g) Letter, David Barnes to P. D. McTavish.**

Baker, Oregon.

Sunday 22-27.

My Dear P. D.

Yours arrived yesterday, so soon as surveyor finished I come to Baker to get some reliable men for the Banner. Psyche & Johnnie wanted to see them before they left town and I didn't get here to soon as they were getting ready to go to Idaho. So if they don't back out will have them there by the first June. They might need some money to get supplies. Weather rotten and 10 inches new snow in Greenhorn. What the d— ails Geo. that he cannot help a little. I want to start the Alamo and can  
30 only work one shift while crossing the dike. Don't you think it would be a good idea to have Mr. Langer come down here. He can make the trip in a week. We nearly got our camp washed away and weather rotten. Will not be able to get to Green Horn from our camp before the 10th of June at earliest. How is the B.C. coming? I'll see that the men are at work at earliest possible date. Best to my partner and all.

I am,  
Sincerely  
DAVE.

66.—(g).  
Letter,  
David  
Barnes  
to P. D.  
McTavish,  
22nd May  
1927.



Exhibits.

**112.—Letter, McTavish Brothers, Limited, to O. R. Hollingsworth.**

112.  
Letter,  
McTavish  
Brothers,  
Limited,  
to O. R.  
Hollings-  
worth,  
23rd May  
1927.

**McTAVISH BROTHERS, LIMITED.**

503 London Building, 626 Pender St. West,  
Vancouver, B.C. May 23rd, 1927.

Mr. O. R. Hollingsworth,  
Bellingham, Wash.

Dear Mr. Hollingsworth :

In accordance with a recent promise made, we enclose herewith copy of sketch containing data regarding the affairs of Alamo Gold Mines Limited, which we trust will be of service to you.

10

Yours truly,  
McTAVISH BROTHERS, LIMITED,  
Per " P. D. McTAVISH,"

PDM/S.

Per S.

Encl.

66.—(h).  
Telegram,  
McTavish  
Brothers,  
Limited,  
to David  
Barnes,  
29th May  
1927.

**66.—(h) Telegram, McTavish Brothers, Limited, to David Barnes.****DAY LETTER—CANADIAN NATIONAL TELEGRAPHS.**

Vancouver, May 29, 1927.

To David Barnes,

Granite via Baker City, Oregon.

20

Our trip delayed because Langer getting bad cold. Just got your letter he suggests that since survey indicates only sixty feet or thereabout before encountering vein that you finish that at once then rush work on Alamo. Would then be easier to decide what to do when we arrive.

McTAVISH BROS.

C.  
Unsigned  
Report on  
Alamo Gold  
Mines.

**C.—Unsigned Report on Alamo Gold Mines.****UNSIGNED REPORT ON ALAMO GOLD MINES.**

The Alamo Gold Mines is situated in Grant County, Eastern Oregon in the Blue Mountains, about fifty miles west of Baker. It is reached by a first class automobile road, has telephone communication and daily mail to Granite. There is an abundance of wood and water for all mining purposes while weather conditions are ideal for continuance of work during the entire year.

30

The owners of the above property would not sell but sought out our engineers because of their long acquaintance with free gold mining propositions and offered to turn over the clear deed to the property in return for

half the stock in a company to be organized. As an examination of the property and the several engineering reports were highly satisfactory, the engineers in question were very keen to go ahead on the basis offered by the owners and it was arranged that McTavish Brothers Limited should go forward with the company's organization and attend to the management of its affairs. Consequently Alamo Gold Mines Limited was incorporated under the laws of the Province of British Columbia for 3,000,000 shares par value \$1.00 (Non-Personal Liability). The Company has been in existence for two years and has been carrying on actively in the Alamo District during that time.

Exhibits.  
C.  
Unsigned  
Report on  
Alamo Gold  
Mines—con-  
tinued.

The vein on the Alamo property contains free gold with little or no other values. It is twenty feet wide on the surface and has been traced by open trench and cross cut for approximately 1,000 feet. Surface values run \$8.00 to \$10.00 per ton. The cross cut tunnel was driven ninety feet which cut the vein fifty feet below the surface. Here the values run from \$8.00 to \$12.00. An upraise was made to the surface, which was all in ore. On the fifty foot level they drifted ninety feet in the vein. In this drift a winze was sunk seventy feet, at the bottom of which values run from \$12.00 to \$18.00 per ton.

The No. 2 tunnel was then started which cross-cut the vein 300 feet below the No. 1 tunnel. Here the vein was found to be thirty feet wide with values slightly higher than above. The No. 3 tunnel was then driven 1,250 feet, which cut the vein 380 feet below the No. 2 tunnel. At this point the vein was still 30 feet wide giving a total depth of 730 feet of vein matter from the surface. An upraise was driven which came out on the level of the No. 2 tunnel. Where the No. 3 tunnel intersects the vein they drifted thereon to the right 400 feet and to the left 350 feet. All this work was done in ore and it was found that the general average at this level was slightly higher than above, showing that the values have steadily increased from the surface down. One contact was found to be porphyry which for a considerable distance from the vein also carried good values.

While driving tunnel No. 3 a 12 ft. vein of hematite (oxidized decomposed vein matter) was encountered 185 feet from the tunnel. This carried \$8.00 to \$10.00 in free gold. 700 ft. further in a 12 ft. vein was encountered and 75 ft. from the main vein another 10 ft. vein was cut. These two veins were similar in character and value to the main vein.

On the surface is another vein 15 ft. wide running parallel to the one on which the work has been done, located about 275 feet therefrom. Still further along is a third vein thirty feet wide. On these two veins very little work has been done but they would indicate that further huge deposits of good ore await development.

Just prior to commencing the installation of a mill on this property, the Company got in touch with a large free gold property known as the Evans group and located about a mile upstream from the Alamo. This property may be described as a large hillside deposit 300 ft. in width and extending back over the mountain for 2,000 feet. Extracting by hand and washing in a pan the debris resulting from this crude method, Mr. Evans

Exhibits.  
—  
C.  
Unsigned  
Report on  
Alamo Gold  
Mines—con-  
tinued.

was able to make from \$4.00 to \$8.00 per day. Samples from this vein or dike have been taken indiscriminately over this whole surface and never failed to yield gold. It is difficult to determine the average values on so large a body of ore. In the vein on the open tunnel driven by Mr. Evans, a chiselled assay across 14 ft. gave \$12.82 per ton. The average values should run from \$5.00 to \$10.00 which would be highly satisfactory on so large a deposit so favourably situated for cheap mining.

A large vein known as the "Lucky Strike" cross-cuts this big deposit at a point about 700 ft. up the hillside. A cross-cut tunnel cuts this vein at a point 75 ft. below the surface, here it had a width of 9 ft. From the surface a shaft had previously been sunk a depth of 32 ft. In this shaft and into tunnel below this vein carried values of from \$12.00 to \$24.00. An 800 ft. tunnel is now being driven from the bottom of the hill which will tap this vein at a depth of approximately 500 ft. This tunnel is now in about 700 feet and should be completed by the end of April. 10

The Evans property was acquired by Alamo Gold Mines Limited by purchase for \$40,000, the Company agreeing to pay \$4,000 a year for ten years without interest. A 15 ton Denver Quartz mill, Crusher, Compressor and 2 Petter Semi-Diesel Engines have been installed and an aerial tram has also been installed between the upper tunnel on the Lucky Strike vein and the mill, together with the necessary bunkers, so that this small operation is now ready to start. As a surplus of power has been provided a second unit of the mill may be installed at any time at very low cost, which would give us a thirty-ton operation. It was the Company's intention to commence in this way and gradually increase in their output to several hundred tons daily. 20

At this point Mr. J. F. Langer a well known capitalist of Vancouver and London was approached with a view to having him invest a few thousand dollars. He intimated that he would not be interested in a small investment, but after going over the reports he was so favourably impressed that he stated he would be interested in a large investment. With this object in view he personally inspected and sampled the property, the results of which were quite satisfactory. Because of the enormous size of the ore bodies, Mr. Langer advised the immediate installation of a mill capable of handling a large tonnage and it was suggested that for the present a mill of 1,000 tons daily capacity be installed, this to be done in units of 200 tons each. Mr. Langer has twice visited Los Angeles for the purpose of completing investigations regarding the type of mill to be installed and plans are now far advanced for this work. 30

We have been informed that there is in Vancouver a gentleman who a few years ago invested \$1,500 in Teck Hughes mining stock at 6 cents a share, thereby securing 25,000 shares. He still holds his stock, which is now worth approximately \$6.50 per share and which it is freely predicted will go to \$10.00 in the near future. During the interim he has drawn \$7,500 in dividends. Recently we were informed that a party resident in this district had purchased Premier at 32 cents. For several years now he 40

has received 100 per cent. on his investment each year. And so one might go on multiplying instances, but we believe that in none of these cases were the opportunities for investment as favourable as in the case of the Alamo Gold Mines Limited, in view of the fact that the Company not only has large bodies of ore immediately available, but also has plans completed for its extraction and conversion into dividends at an early date.

Exhibits.  
—  
C.  
Unsigned  
Report on  
Alamo Gold  
Mines—con-  
tinued.

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**62.—Letter, David Barnes to McTavish Brothers, Limited.**

Camp, May 31/27.

My Dear McS.

10 Started to getting things going at the Alamo May 26th. Had to chop out road and get rid of the caved in buildings at portal of tunnel and the first cave is 50 ft. long and froze solid, cannot shoot and picking on frozen ground is slow and hard altho tonight we will have 35 ft. and when we get next 15 ft. caught up think we will have clear sailing and at that time can estimate time it will take. All this is on upper tunnel which I think is in some 600 ft. from the looks of the dump. Dump pans quite good and Evans thinks his high grade prospect comes on our ground. Which way does our claims lay. I cannot find any corners, but haven't looked much as snow is just about off today. Has stormed every day this  
20 month. Bring blue prints with you and I hope it will be soon. Am anxiously waiting Mr. Langers letter. Best to all and hope to see you soon. One of my men quit tonight so have to hustle another for night shift tomorrow night.

Truly,  
DAVE BARNES.

62.  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
Limited,  
31st May  
1927.

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**96.—Letter, McTavish Brothers, Limited, to O. R. Hollingsworth.**

McTAVISH BROTHERS, LIMITED.

503 London Building,  
626 Pender Street West,  
Vancouver, B.C. June 9th, 1927.

30 Mr. O. R. Hollingsworth,  
Bellingham, Wash.

Dear Mr. Hollingsworth :

We are glad indeed that you enjoyed your little holiday up the Island and hope you may soon come again.

In the meantime we thought you might like to know just what is doing on the property. Mr. Langer was particularly keen to get on with the construction of the mill and thought it advisable to turn all the crew on to the Alamo tunnels so as to get them cleaned out and thus hurry

96.  
Letter,  
McTavish  
Brothers,  
Limited,  
to O. R.  
Hollings-  
worth,  
9th June  
1927.

Exhibits.  
—  
96.  
Letter,  
McTavish  
Brothers,  
Limited,  
to O. R.  
Hollings-  
worth,  
9th June  
1927—con-  
tinued.

things along, as the men could go back to the Evans property and finish drifting for the vein any time after the work is finished on the Alamo. I might tell you frankly that he is becoming more and more interested in this property. We had a two hours conversation with him on Saturday morning and he requested that we get the lowest possible price on 20 of the Denver Quartz mills. He felt that if he took twenty of them, which would constitute a 2,000 ton mill, that he would buy them very much cheaper than if he only bought two to use in the first unit. In asking for this information he told us to tell them that if they gave him the right price he would undertake to buy twenty of them between now and the end of next year. 10

This is just an indication of what is going on in his mind and I think you can look for tremendous activity at the Alamo during the early summer. It is not possible to have something spectacular happen every few days on a large proposition like this, but we feel that the information herein contained will be sufficiently gratifying to you to know that everything is going forward in a perfectly satisfactory manner.

With kindest personal regards to yourself and Mr. White.

Very truly yours,

McTAVISH BROTHERS, LIMITED, 20

DNM/S.

Per D. N. McTAVISH.

111.  
Telegram,  
P. D. Mc  
Tavish to  
David  
Barnes,  
2nd July  
1927.

111.—Telegram, P. D. McTavish to David Barnes.

TELEGRAM.

Vancouver, B.C., July 2, 1927.

To David Barnes, Granite, Ore.

Langer leaving next week for England and therefore cannot make trip to Alamo stop. He leaves here Sunday arriving Baker Monday and mine Tuesday stop. You must therefore do everything possible to enable him to get into Alamo tunnels Tuesday afternoon stop. Critical condition had suddenly arisen here making this absolutely necessary. Wire report progress tonight to me personally. 30

P. D. McTAVISH.

110.—Telegram, McTavish Brothers, Limited, to David Barnes.

Exhibits.

TELEGRAM.

Vancouver, B.C. 7-4-1927.

To David Barnes,  
Granite, Ore.

110.  
Telegram,  
McTavish  
Brothers,  
Limited,  
to David  
Barnes,  
4th July  
1927.

Do you think it will be possible for Langer to inspect tunnel with reasonable safety on Thursday stop If so he will leave here Tuesday stop Otherwise because of English trip Wednesday is last day he can leave for Alamo arriving at mine Friday stop Wire Tuesday morning as definitely as possible condition of tunnel so Langer can decide whether to leave here Tuesday or Wednesday stop Cannot overestimate importance his making inspection now so do your best as everything is at stake stop Where is Don Rush answer

McTAVISH BROS.

66.—(i) Letter, David Barnes to McTavish Brothers, Limited.

66.—(i).

Camp, July 10, 1927.

My Dear McS.,

Letter,  
David  
Barnes to  
McTavish  
Brothers,  
Limited,  
10th July  
1927.

Suppose D. N. arrived home today. We are in the Alamo Tunnell 1200 ft. and some job. Run into a cave in a porphyry dyke and don't think it is possible to get through it. Will start on the upper tunnell at the Lucky shoot tomorrow. It will be 3 days before we can get powder and rails here. Have about 40 cars of muck to get out. Fellows was just here and said Banner was looking fine. Weather getting extremely warm. Am a foot now as the ring gear on the dodge striped out every tooth coming from Granite yesterday. Hope I can get it fixed soon as it is a necessary article. I will need \$1500.00 this month as powder and rails are quite expensive. Was sure put out at Mr. Langer not coming as it has knocked us out of over 2 months the best part of the year. Say, D. N., there was a fellow from the Ben H. here today and said he was going to try and go to Nevada and look at a prospect. He said the fellows just got back from there last night and from his description is the same one you know about.

Sincerely,

DAVE.

Exhibits.

23.

Letter,  
Alamo Gold  
Mines,  
Limited, to  
R. Kerr,  
6th August  
1927.

23.—Letter, Alamo Gold Mines, Limited, to R. Kerr.

ALAMO GOLD MINES, LIMITED

(Non-Personal Liability).

R. Kerr, Esq.,  
Vancouver, B.C.

Vancouver, B.C., August 6th, 1927.

Dear Sir,

We hereby acknowledge receipt of one thousand dollars (\$1000.00) paid by you on Mr. Langer's behalf, this amount to be applied on pay roll account Alamo Gold Mines Limited.

With reference to Mr. Langer's cable that stock at 5 cents per share be issued as per contract between Mr. Langer and Alamo Gold Mines Limited, we hereby agree to issue shares on this basis (for the above amount and any amounts paid by you), any adjustment in connection therewith to be made with Mr. Langer upon his return from England. 10

Yours truly,

ALAMO GOLD MINES, LIMITED.

Per " P. D. McTAVISH."

PDM/S

63.

Letter,  
David  
Barnes to  
McTavish  
Brothers,  
Limited,  
6th August  
1927.

63.—Letter, David Barnes to McTavish Brothers, Limited.

Camp, Aug. 6—27.

My Dear McS.,

Well I suppose D. N. is home by now. Everything is the same in the Evans drift. No values as yet. Expect to go to green horn tomorrow to see how things are up there. Have spent most of the day on the Alamo hill, trying to find where Roy Evans find hits the Alamo and as near as I can judge neither one of the tunnells have cut it as it is further up the hill than where the shaft is. Roys find prospects good and the Alamo tunnells will have to cut it. Might be that Roys vein is where they headed, as Sheedy told me that the vein they were after on the hill dipped to the west and the one they cut dipped to the east. So they might have got fooled. However this fall you can go through and see. Weather dreadful 30 warm and no signs of moisture. Expect to see you in about 10 days. It is impossible to run two shifts with the machine on \$1000.00 per month and two shifts by hand will go nearly as fast as 1 shift with machine.

Sincerely,

" DAVE."

66.—(j) Letter, McTavish Brothers, Limited, to David Barnes.

Exhibits.

August 8th, 1927.

Mr. David Barnes,  
Granite, Ore.

66.—(j).  
Letter,  
McTavish  
Brothers,  
Limited,  
to David  
Barnes,  
8th August  
1927.

Dear Dave,

I have just received your letter written on the 6th and note what you say about the Alamo vein. It will be rather interesting to learn that there is a better vein just beyond where the 1200 ft. tunnel ends. This of course will require some work and the work that Evans is doing may  
10 help us materially.

With reference to working one shift on the Evans you don't say how much extra it would cost to work the two shifts. It is not likely that it will cost more than somewhere around \$300.00 more than running the two shifts as at present. It will therefore be alright for you to go right ahead as we planned when I left, getting the necessary arrangements made for piping air up to that work and we will have to get this money from Langer or arrange to put it up ourselves. The main thing is that we expect him within the next four or five weeks and we sure do want to have that tunnel in just as far as it can be driven in that time. So rush the proposition  
20 just as much as you possibly can.

I suggested to Mr. Fellows that he wire me as soon as he struck the wall. Up to date I have not heard from him. Surely it is not possible that he has gone another week in that drift without finding something that looks like a wall. Unless you report before this letter reaches you I wish you would see him and send me a night letter as to just how the thing looks.

I have taken all the samples to Mr. Williams and he is going to rush assays as much as he can. As soon as I get the returns I will write you.

That beastly gear that we had put in at Winnamucka wore all to pieces and finally quit me entirely 16 miles this side of Lagrande. It was about  
30 8 o'clock in the evening and after an hour's wait I arranged with some tough-looking guys to tow me into Pendleton. There I stayed all the following day waiting for new gears to come from Portland. They got there the following morning and in a couple of hours I was on my way, so that I was considerably delayed in getting home.

I am leaving today to see the disgruntled crowd in Bellingham and trust there will be more information here when I return.

Very truly yours,

DNM/S



Exhibits.

**66.—(k) Telegram, D. N. McTavish to David Barnes.**

66.—(k).  
Telegram,  
D. N. Mc  
Tavish to  
David  
Barnes,  
9th August  
1927.

**DAY LETTER, CANADIAN NATIONAL TELEGRAPHS.**

David Barnes,  
Granite, Ore.

Aug. 9th, 1927.

Letter just received please arrange get air into upper tunnel as quickly as possible and rush work as we want to have as much work done as possible when Langer returns please wire any interesting information on Banner.

Charge McTavish Bros.

D. N. McTAVISH. 10

64.—(b).  
Telegram,  
no names,  
9th August  
1927.

**64.—(b) Telegram—no names.**

WIRE.

Aug. 9th, 1927.

Arrange pipe immediately. Am arriving camp noon Tuesday August seventeenth and will settle on cash basis. Meanwhile get pipe and rush work. Writing.

Rush.

24.  
Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
13th August  
1927.

**24.—Letter, McTavish Brothers, Limited, to J. F. Langer.**

J. F. Langer, Esq.  
Dear Mr. Langer,

Aug. 13th, 1927.

20

I trust that your voyage over the Atlantic was a pleasant one, but in any event I am sure that your sojourn in England will amply repay you. While I have never been there I understand that during the Spring and early Summer England is very beautiful.

I left shortly after seeing you and drove down to Baker. The weather was very hot which of course was favourable for our operation. The work had gone on steadily in the upper tunnel and when I left two weeks ago they were in forty feet. There was no change or no indication to show that there had been any fault or slip. I called in Mr. Fellows the Engineer who made the survey of the tunnel and he agreed with Mr. Barnes that the only thing to do was to drive straight ahead.

We then decided that if there was a considerable amount of driving to be done that we should take the pipe out of the lower tunnel and run it up the hole to the upper tunnel and do this work by the use of the air. While it would take four or five days to make this change I thought it would be time well spent as they then could make an average of six feet a day instead of two. I left instructions for them to wire us just as soon as

there was any change that might be of interest, otherwise to keep the work going as fast as they could. Exhibits.

Mr. Barnes succeeded in getting air circulating in the Alamo tunnel and ultimately got in 1200 feet. Here he came to the big porphyry dyke that is mentioned in the reports. This porphyry as you will remember is something like sandy clay and at this point it had caved very badly filling the tunnel for several feet back. It was broken up in very small particles and being wet whenever they attempted to take a shovelful out near the top it would run very energetically right back to the floor of the tunnel. 24.  
Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
13th August  
1927—con-

10 Mr. Fellows suggested that since the weather had turned very hot this might dry out very materially in the next few weeks and he advised giving it a chance. If it is not sufficiently dried out it might be necessary to tunnel around it. It is very encouraging to find that the large porphyry dyke is just as indicated in the various reports. *tinued.*

Mr. Evans, from whom we bought the property that bears his name has been prospecting for two years on the Alamo hill and he has found what Mr. Fellows reports as a very fine showing. It is a vein that appears to carry good values and it cuts right into our property. Mr. Barnes went up to look at it and was very much pleased. He spent some time 20 on the hill and came to the conclusion that if our 1200 ft. tunnel were driven on some distance further it would cut this vein. However, we will know more about it when you return.

When I reached camp I heard some intimation to the effect that Mr. Barnes had expressed dissatisfaction. I excused him on the ground that since his operation last Spring he has been anything but well. However, knowing your feelings in the matter I made up my mind that if he gave me any opportunity there was only one thing that I would do. After being there for some days I asked him if he was sincere in the statements he had made regarding his desire to get away. He said he was. I presume he 30 expected that I would try to persuade him to stay on, but I simply informed him that if a man had gotten himself into that frame of mind then of course there was no use arguing with him and asked him when he would be prepared to leave. He then said that he did not wish to leave us in the lurch and that if he got reasonable holidays it might be alright. However, I paid no attention to this remark and told him he did not need to worry about that as I had already spoken to Mr. Fellows and arranged with him to carry on until you returned. Mr. Barnes then suggested that he would carry on until the 15th, so by the time you receive this letter the work will be going on under new management.

40 Mr. Fellows is a very aggressive man, he made geological reports for the United States Government on most of that part of the country. He is highly regarded in that district and while Mr. Barnes' experience has been largely on outside milling, Mr. Fellows' experience has been largely in charge of underground work. He is therefore much better equipped for doing the work now going on at the Evans than Mr. Barnes. He told me however that the work being done to find this vein was in his opinion the proper thing to do. He was going to take a couple of men for a day

Exhibits.  
—  
24.  
Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
13th August  
1927—con-  
tinued.

or two with his instruments up on the top of the hill and see if he could not do some trenching and get some information that would assist him in the tunnel. I told him I was not satisfied with the rate of progress being made in the tunnel and I think he will be inclined to pep them up a bit.

Mr. Barnes will therefore be leaving the work on Monday. He is coming home to Seattle and will then make a trip up here to see us. At that time he will give us a verbal report of what has happened since I left and if there is anything of interest I shall pass it on to you.

Everything seems to be going on as usual in Vancouver, there is quite a bit of building activity. The Fair has just started this week and we are having the usual Fair weather which consists of cloudy days and occasional showers. 10

I trust you found everything as you hoped to over there and that you and Mrs. Langer will soon return to Vancouver.

With kind personal regards from all of us to both of you, I am,

Sincerely yours,

D. N. McTAVISH.

DNM/S.

67.  
Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
17th August  
1927.

67.—Letter, McTavish Brothers, Limited, to J. F. Langer.

J. F. Langer, Esq.,  
Coburg Court Hotel,  
Bayswater,  
London.

Aug. 17th, 1927. 20

Dear Mr. Langer,

We have just been favoured with a visit from Mr. Barnes. He reports that Mr. Evans who has been prospecting alongside the Alamo for the last two years, has at last been rewarded in getting the vein for which he was looking. When Mr. Barnes saw the vein just before leaving, he had a cross-cut in it for 12 feet and had not yet reached the other side. He describes this as a very rich vein the fine stuff in which carries as much gold as the fine stuff in the 9-foot vein on the Evans, and that when crushed the rock really contains more gold than the fine stuff. In other words he says that he saw lots of samples that would easily go \$200.00 a ton and intimated that from the surface indications there is a possibility that the vein might go \$50.00 to the ton. I am just passing this information on to you as it came to me. At the same time I have had a letter from Mr. Fellows in which he says that the discovery made by Mr. Evans was undoubtedly very fine. Barnes spent the whole day on the hill and said that he definitely determined that the vein cuts right through our property. 30

Things appear to be as usual in town, the weather is hot and there is a good deal of smoke about. The Vancouver Exhibition is progressing as usual and the Prince of Wales is due tomorrow. I think this is about all of interest.

I trust you are still enjoying to the fullest extent your trip and with very kindest regards from all of us to you both, I am,

Sincerely yours,

DNM/S.

Exhibits.

67.

Letter, McTavish Brothers, Limited, to J. F. Langer, 17th August 1927—continued.

16.—Auditor's Report of Alamo Gold Mines, Limited.

Vancouver, B.C.,  
1st September, 1927.

10 To the Shareholders of—  
Alamo Gold Mines, Limited,  
Vancouver, B.C.

16.  
Auditor's Report of Alamo Gold Mines, Limited, 1st September 1927.

Gentlemen :

In accordance with your instructions, I have examined the Books and Accounts of your Company for the year ended 30th June, 1927. From information so obtained and data furnished, I have prepared and now annex as part of this Report :

- 20 EXHIBIT " A " Statement of Revenue and Expenditure for the twelve months ended 30th June, 1927.  
EXHIBIT " B " Balance Sheet as at the 30th June, 1927.

Since the commencement of your Company's operations, when 1,500,000 shares of Capital Stock were made available for Treasury purposes 750,000 shares have been disposed of for the purposes of financing the Company's operations to September 1926, and acquiring additional properties immediately adjoining those enumerated in my report of 2nd July 1926, duly authorized by your Board of Directors and to wit :—

- 30 " Robert E. Lee " " Constitution "  
" Gold Bug " " Gold Dust "

all in the state of Oregon, U.S.A.

750,000 shares have been ear-marked by your Board of Directors under an agreement dated 7th February, 1927, with Mr. John Francis Langer, *et alia*, whereby said J. F. Langer agrees to finance as duly set out therein. As at 30th June, 1927, monies totalling \$21,850.00 had been received by the Company in this connection.

1,500,000 Shares.

Exhibits.  
 16.  
 Auditor's  
 Report of  
 Alamo Gold  
 Mines,  
 Limited,  
 1st Sept-  
 ember 1927  
 —continued.

The relative account set up in the books of account of the Company is in complete reconciliation with certificate furnished by the Bank of Montreal, Head Office, Vancouver, B.C.

## REMARKS.

The records of the Company have been conscientiously compiled. I have suggested that—

- (a) All disbursements not made through the Company's bankers in British Columbia shall be made by cheque on the Citizens National Bank, Baker, Ore.
- (b) Paid cheques and monthly statements shall be forwarded to Vancouver direct.
- (c) Superintendent of mining operations shall forward to Vancouver vouchers fully explanatory of all disbursements. Vouchers hitherto furnished, while satisfactory in substance, were not so arranged as to be amenable to expeditious audit.
- (d) Differentiation of supplies required for mining operations and commissariat, *i.e.*, housing and boarding of the Company's employees.

## CERTIFICATE.

The Balance Sheet annexed and signed by me as relative hereto is, in my opinion, a full and fair Balance Sheet, containing the particulars required by the Company, and is properly drawn up so as to exhibit a true and correct view of the Company's affairs according to the best of my information and the explanations given to me and as shown by the Books of the Company, subject to the qualifications contained in this Report.

I have obtained from the Directors and officers of the Company all the information and explanations I have required.

Yours faithfully,

"REGINALD F. SMITHERS." 30

Honours Associate,  
 Institute of Bankers,  
 London University, Eng.

Vancouver, B.C.,  
 1st September, 1927.

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## EXHIBIT " A "

Exhibits.

## ALAMO GOLD MINES, LIMITED.

STATEMENT OF REVENUE AND EXPENDITURE FOR THE YEAR ENDED  
30th JUNE, 1927.16.  
Auditor's  
Report of  
Alamo Gold  
Mines,  
Limited,  
1st Sept-  
ember 1927  
—continued.

## RECEIPTS :

Share Sales		\$ 5,637.16
J. F. Langer—Advances		21,850.00
Bank Overdraft		15.91
		<u>\$27,503.07</u>

## 10 EXPENDITURES :

Properties—		
Evans Agreement of Sale,		4,000.00
Machinery, Equipment and Building,		760.63

## Development—

Wages,	\$12,045.15	
Mining Supplies and Commissariat,	9,292.67	
Assay and Recording Fees,	173.80	
Travelling Expenses	355.00	
Taxes,	8.52	

20

## Administration—

Stenographer,	158.20	
Printing and Stationery,	121.14	
Postage and Revenue Stamps,	3.00	
Telephone and Telegrams,	99.27	
Exchange and Bank Charges,	51.99	
Legal and Audit Fees	433.70	

21,875.14

867.3027,503.07

30

Vancouver, B.C.,  
1st September, 1927.

**ALAMO GOLD MINES, LIMITED.**  
Balance Sheet as at 30th June, 1927.

ASSETS.	LIABILITIES.
<b>PROPERTIES—</b> At cost <span style="float: right;">\$3,039,995.00</span> <i>Less</i> Share Sales—Net— Prior to 1st July, 1926 <span style="float: right;">\$22,572.64</span> From 1st July to 30th September, 1926 <span style="float: right;">5,637.16</span> <hr style="width: 20%; margin-left: 0;"/> <span style="float: right;">28,209.80</span> <hr style="width: 20%; margin-left: 0;"/> <span style="float: right;">\$3,011,785.20</span> <b>MACHINERY, EQUIPMENT and BUILDING :</b> Prior to 1st July, 1926, <span style="float: right;">7,467.49</span> Since, <span style="float: right;">760.63</span> <hr style="width: 20%; margin-left: 0;"/> <span style="float: right;">8,228.12</span> <b>DEVELOPMENT—</b> Prior to 1st July, 1926, <span style="float: right;">8,170.03</span> Since, <span style="float: right;">21,875.14</span> <hr style="width: 20%; margin-left: 0;"/> <span style="float: right;">30,045.17</span> <b>ORGANIZATION AND ADMINISTRATION—</b> Prior to 1st July, 1926, <span style="float: right;">1,940.12</span> Since, <span style="float: right;">867.30</span> <hr style="width: 20%; margin-left: 0;"/> <span style="float: right;">2,807.42</span> <hr style="width: 20%; margin-left: 0;"/> <span style="float: right;"><u>\$3,052,865.91</u></span>	<b>AGREEMENT OF SALE—</b> R. M. & I. Evans <span style="float: right;">\$40,000.00</span> <i>Less</i> paid— Prior to 1st July 1926 <span style="float: right;">\$5,000.00</span> Since <span style="float: right;">4,000.00</span> <hr style="width: 20%; margin-left: 0;"/> <span style="float: right;">9,000.00</span> <hr style="width: 20%; margin-left: 0;"/> <span style="float: right;">31,000.00</span> <b>LOANS AND ADVANCES—</b> Bank overdraft <span style="float: right;">15.91</span> J. F. Langer—as per Agreement, 7th Feb., 1927 <span style="float: right;">21,850.00</span> <hr style="width: 20%; margin-left: 0;"/> <span style="float: right;">21,865.91</span> <b>CAPITAL.</b> <b>AUTHORIZED—</b> 3,000,000 shares, each \$1.00 <span style="float: right;"><u>3,000,000.00</u></span> <b>ISSUED—</b> For consideration other than cash, \$2,999,995.00 For cash <span style="float: right;">5.00</span> <hr style="width: 20%; margin-left: 0;"/> <span style="float: right;">3,000,000.00</span> <hr style="width: 20%; margin-left: 0;"/> <span style="float: right;"><u>\$3,052,865.91</u></span>

488

Approved and adopted,  
     “ D. N. McTAVISH,” Director.  
     “ P. D. McTAVISH,” Director.  
 Vancouver, B.C.,  
 1st September, 1927.

Certified as part of my Report of even date,  
     “ REGINALD F. SMITHERS,”  
     Auditor.

## 3.—(o) Minutes of Second Annual Meeting of Alamo Gold Mines, Limited.

Exhibits:

## ALAMO GOLD MINES, LIMITED.

3.—(o).

## MINUTES OF SECOND ANNUAL MEETING.

Minutes of  
Second  
Annual  
Meeting of  
Alamo Gold  
Mines,  
Limited,  
6th Sept-  
ember 1927.

The Second Annual Meeting of the above company was held at its head office 503 London Building, 626 Pender St. West, Vancouver, B.C. at 11 a.m. on Tuesday, Sep. 6th, 1927, in accordance with the following notice sent to the shareholders :

Vancouver, B.C. Aug. 22nd, 1927.

The Annual General Meeting of the Alamo Gold Mines Limited will be held at the office of the Company, 503 London Building, at 11 a.m. on Tuesday, September 6th, 1927.

10

## Present :

Miss Frame	E. C. Britton	P. J. Howard
Jas. Trodden	A. Bennett	P. D. McTavish
John McKenzie	Wm. Tomlinson	D. N. McTavish.
W. B. Code		

The meeting was duly called to order by the President, Mr. D. N. McTavish who called upon the Secretary to read the above notice of meeting.

20

The minutes of the last meeting were read and upon motion of Mr. Tomlinson, seconded by Mr. John McKenzie were adopted.

It was moved by Mr. Bennett, seconded by Mr. Tomlinson that Mr. Reginald Smithers be reappointed Auditor for the ensuing year. Carried.

The Auditor's report was then presented and upon motion of P. D. McTavish, seconded by W. B. Code, was adopted as read.

30

It was pointed out that Mr. Barnes was otherwise engaged and would not therefore be able to act as Director during the forthcoming year. It was also pointed out that when Mr. Langer had completed the installation of the first unit of the mill in accordance with his contract he was to be placed on the Directorate. Under the circumstances it would be advisable to elect four directors leaving a vacancy to be filled later by Mr. Langer's appointment. It was therefore moved by Mr. Bennett, seconded by John McKenzie that the remaining members of the present board, Messrs. W. B. Code, George H. Thomas, D. N. McTavish and P. D. McTavish be re-elected. Carried.

40

The President then briefly outlined the work of the year giving details of all important matters that had transpired in connection with the company's operation, the report meeting with the approval of the members present.

It was then moved by P. D. McTavish, seconded by John McKenzie that the meeting adjourn. Carried.

After adjournment the meeting resolved itself into an informal discussion of the Company's operation.

“ D. N. McTAVISH,”  
Chairman.



Exhibits.

**3.—(p) Minutes of Meeting of Directors of Alamo Gold Mines, Limited.**

3.—(p).  
Minutes of  
Meeting of  
Directors of  
Alamo Gold  
Mines,  
Limited,  
6th Sept-  
ember 1927.

**ALAMO GOLD MINES, LIMITED.**

Minutes of a meeting of directors of the Alamo Gold Mines, Limited, held at 503 London Building, 626 Pender St. West, Vancouver, B.C. at 12 o'clock noon on Tuesday, September 6th, 1927.

Present : W. B. Code, D. N. McTavish, P. D. McTavish.

The above directors being three of the newly appointed Board held a meeting immediately following the Annual General Meeting.

The Minutes of the previous meetings were read and approved.

A resolution was passed re-electing D. N. McTavish President and P. D. McTavish Secretary-Treasurer of the Company. 10

There being no further business the meeting then adjourned.

“ D. N. McTAVISH,”

Chairman.

64.—(c).  
Letter,  
David  
Barnes to  
D. N. Mc  
Tavish,  
20th Sept-  
ember 1927.

**64.—(c) Letter, David Barnes to D. N. McTavish.**

Seattle,  
Sept. 20-27.

My Dear D. N.

Hope you had a good trip down to Oregon and found things O.K. In regard to the powder I purchased 1 ton from O'Dair last fall and a ton and three quarters from Basche-Stge of which there was 250# left on the long tunnell and the 1,000# I purchased in July was being used for the upper tunnell and last summer a year ago all the powder was purchased from O'Dair for Glory hole—upper tunnell and roads which seems to me to be about 1,200#. All of this come in monthly statement which can be got from O'Dair. In the last year I got  $2\frac{3}{4}$  tons which will drive better than a 1,000 ft. of tunnell. I am going to Oregon very soon and if there is anything I can do for you let me know at once. Sorry I wasnt there while you was there. Drop me a line. 20

Sincerely,

“ DAVE.”

30

All the Powder last summer was purchased by the box as you remember we were short of cash.

“ DAVE.”

**73.—Letter, J. F. Langer to the Alamo Gold Mines, Limited.**

Vancouver, B.C.,  
7th Oct. 1927.

The Alamo Gold Mines, Ltd.,  
London Building.

Dear Sirs,

10 With reference to Mr. Kerr's meeting with Mr. McTavish today I hereby intimate that unless shares at the rate of 5 cents are issued to me for the amount expended in excess of the \$17,000.00 provided for in the Agreement, such shares to be in addition to the 1,000,000 shares agreed to be issued for the expenditure of \$17,000.00 and the erection of a 200 ton mill—I shall not be responsible for any further expenditure incurred after the receipt of this letter.

Yours truly,

“ J. F. LANGER.”

Exhibits.

73.

Letter,  
J. F. Langer  
to the  
Alamo Gold  
Mines,  
Limited,  
7th October  
1927.

**115.—Letter, McTavish Brothers, Limited, to J. F. Langer.**

McTAVISH BROTHERS, LIMITED.

503 London Building, 626 Pender Street, West,  
Vancouver, B.C. Oct. 8th, 1927.

20 J. F. Langer, Esq.,  
3290 Granville St.,  
Vancouver, B.C.

Dear Sir :

We are today in receipt of your favour of the 7th inst. in which you intimate that you will not be responsible hereafter for any further expenditures in connection with the operations being carried on by Alamo Gold Mines Limited unless there be issued to you stock at the rate of 5c. per share for such sums advanced in excess of \$17,000.00, such shares to be in addition to the 1,000,000 shares agreed to be issued for the erection  
30 of a 200 ton mill and the performing of that work preliminary thereto estimated at \$17,000.00, exclusive of amount necessary for opening of the Alamo tunnel and to meet payments due on account of Evans contract.

As already intimated to Mr. Kerr, there are no shares available beyond the 1,000,000 shares above referred to and to undertake to deliver stock in excess of these shares would obviously be impossible. Under the circumstances we have no option but to accept your decision in this matter and are accordingly wiring Mr. Fellows today to let us know immediately the amount of money expended in labour or otherwise from the 1st to the  
40 8th of this month inclusive. As soon as this information comes to hand we shall arrange final adjustment for work authorized by you. Meanwhile the bills and pay roll for September amounting to \$2000.00, plus \$100.00 for incidentals as intimated to Mr. Kerr yesterday, making a total of

115.

Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
8th October  
1927.

Exhibits.  
 115.  
 Letter,  
 McTavish  
 Brothers,  
 Limited,  
 to J. F.  
 Langer,  
 8th October  
 1927—con-  
 tinued.

\$2100.00 are now considerably past due and we suggest that this be forwarded not later than Monday so as to enable Mr. Fellows to take advantage of monthly discounts.

Having no other arrangements under way for the immediate present it will of course be necessary to close down the work which seems a pity on the eve of procuring valuable information from both the Evans Glory Hole and the Alamo tunnel, as obviously if work is discontinued now it would not be feasible to open up again during the winter. If under the circumstances any solution of the present difficulty occurs to you we shall of course be glad to hear from you with reference thereto. 10

Assuring you of our appreciation of the cordial relations which have always existed between us, we remain,

Very truly yours,

McTAVISH BROTHERS, LIMITED.

Per "P. D. McTAVISH."

PDM/S.

116.  
 Letter,  
 McTavish  
 Brothers,  
 Limited,  
 to J. F.  
 Langer,  
 10th Octo-  
 ber 1927.

116.—Letter, McTavish Brothers, Limited, to J. F. Langer.

McTAVISH BROTHERS, LIMITED.

503 London Building, 626 Pender St. West  
 Vancouver, B.C. Oct. 10, 1927.

J. F. Langer, Esq.,  
 3290 Granville Street,  
 Vancouver, B.C.

20

Attention Mr. Kerr.

Dear Sir :

We wish to thank you for your letter of this morning enclosing cheque for \$2100.00.

We wish to say that in stating that these payments "were considerably past due" we did not for one moment wish to imply that this was in any way due to your delay as you had on or about the 1st of the month asked us to let you know the amount. While the payments had gone considerably past the usual time it was entirely due to the fact that Mr. Fellows did not seem to think that it was urgent that bills and wages should be paid promptly on the 1st as was the case with Mr. Barnes. 30

Funds are being wired to Baker today and we wish to thank you for your promptness in delivering cheque to us.

Very truly yours,

McTAVISH BROTHERS, LIMITED.

Per "P. D. McTAVISH."

PDM/S.

64.—(d) Letter, David Barnes to McTavish Brothers, Limited.

Exhibits.

Seattle, Wash.,  
Oct. 10, 1927.

64.—(d).  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
Limited,  
10th Octo-  
ber 1927.

Dear McS.

I wrote you two or three times and as yet have had no reply. I do not see what is wrong, unless you both have your arms broke and cannot handle a pen. I expect to hear from you in regard to salary and stock at once. Do not want to make a trip to B.C. but will have to and talk things over with you. Just got back from the Baker Country and  
10 there is plenty of snow in the mountains and quite cold. Hoping to hear from you.

I am, truly,

“ D. BARNES.”

---

Exhibits.  
 70.  
 Assay  
 Certificate  
 of J. R.  
 Williams,  
 3rd Nov-  
 ember 1927.

**70.—Assay Certificate of J. R. Williams.**

#7506/7516.

CERTIFICATE OF ASSAY.

J. R. WILLIAMS.

Provincial Assayer and Chemist.

Vancouver, B.C.

I Hereby Certify that the following are the results of assays made by me upon samples of ORES herein described and received from J. F. LANGER, Esqr., Vancouver, B.C.

Nov. 3rd, 1927.

MARKED	GOLD		SILVER		COPPER.				TOTAL VALUE
	Ounces Per Ton	Value Per Ton	Ounces Per Ton	Value Per Ton	Per Cent.	Value Per Ton	Per Cent.	Value Per Ton	(2000 Lbs.) Per Ton
		\$		\$		\$		\$	\$
No. 1.	trace	—	First six	foot Glory	Hole East	side.			
2.	0.03	0.60	Second six	foot section	on Glory	Hole East side.			
3.	0.04	0.80	Third six	foot sample	Glory	Hole East side.			
4.	0.04	0.80	Fourth sample	East	side	Glory	Hole.		
5.	trace	—	Fifth sample	East	side	Glory	Hole.		
6.	trace	—	Mostly from	East	side, partly	from West	side	Glory	Hole 6 ft. sample.
7.	0.08	1.60	Last sample	taken from	upper	part of	Glory	Hole.	
8.	trace	—	Average	sample from	south	side	of	valley.	
9.	trace	—	General	sample across	face of	tunnel	below	Glory	Hole.
10.	trace	—	Quartz	Alomo	Tunnel.				
11. (Mud)	trace	—	Face	Alomo	Tunnel.				

Gold calculated at \$20.00 per ounce.

calculated at.....cents per lb.

Silver calculated at . . .per ounce.

calculated at..... . . .cents per lb.

NOTE.—Pulps of Samples retained 2 months from date of receipt.

(Seal) “J. R. WILLIAMS,” Provincial Assayer.

## 101.—Letter, McTavish Brothers, Limited, to W. C. Fellows.

Exhibits.

Nov. 4, 1927.

W. C. Fellows, Esq.,  
Granite, Ore.

101.  
Letter,  
McTavish  
Brothers,  
Limited,  
to W. C.  
Fellows,  
4th Nov-  
ember 1927.

Dear Mr. Fellows :

Herewith you will find enclosed copy of report signed by Mr. McGuigan which is about the same as another one we have made by a Mr. Jackson.

You will be very sorry to learn that the assays were most unfortunate. You will remember we started with No. 1 and took six out of the Glory Hole, the first assayed a trace; No. 2—60 cents; No. 3—80 cents; #4—80 cents; #5—trace; No. 6—trace; and No. 7 being the last sample taken from the upper part of the Glory Hole \$1.60. The one from the south side of the valley, just a trace. The general sample across the face of the tunnel below the Glory Hole, just a trace and the quartz from the Alamo tunnel and the sample of mud porphyry from there, also a trace. You can understand that getting a bunch of assays like this makes it very hard to do anything with Mr. Langer. He has just been in and reported that he would not spend another dollar on the Glory Hole as it confirms what he always thought, that it will not average \$1.00 per ton.

I wish you would give this very serious thought and let us know what you honestly think about it.

We have not heard anything from my brother since he left here excepting that he got to Arlington the second night. I trust the weather held out until after he got those people out of the country and that his people were all properly satisfied with the Evans.

Very truly yours,  
McTAVISH BROTHERS, LIMITED,

DNM/S.

Per

## 102.—Letter, W. C. Fellows to McTavish Brothers, Limited.

Granite, Ore. Nov. 7, 1927.

30

McTavish Bros.,  
503 London Bldg.,  
Vancouver, B.C.

102.  
Letter,  
W. C. Fel-  
lows to  
McTavish  
Brothers,  
Limited,  
7th Nov-  
ember 1927.

Gentlemen :

We are now in to the raise from the lower tunnel up to the upper tunnel and the slime has got about 2 feet deep again. I tried to wade in but it is over the top of my boots. I could see a cave ahead about 75 to 100 feet, and I am wondering just how long this tunnel is. We are in a little more than 1500. Mr. Barnes told me it was 1,450 or 60 feet to the face. We find that the rails in the tunnel are in fairly good shape and we

40

Exhibits.  
—  
102.  
Letter,  
W. C. Fel-  
lows to  
McTavish  
Brothers,  
Limited,  
7th Nov-  
ember 1927  
—continued.

have joined on to them, or otherwise we would be out of rails. I bought enough to lay 1,500 feet, as I assumed from what Mr. Barnes told me this was the length, and you will recall that I told Mr. Langer that I would have this cleaned out by the end of this week. By the end of this week, we will be in about 1600 feet, but if this tunnel is 2200 feet long as some of the natives say, with a possibility of a  $\frac{1}{2}$  doz. more caves to run through, it is pretty hard to say just when this job will be completed. I am anxiously awaiting the maps and reports to find just what is ahead of me. The above reference is made to the Alamo Tunnel.

Had a hard rain yesterday and last night but it bids fair to clear up again. 10

Sincerely yours,

“W. C. FELLOWS.”

---

64.—(e).  
Letter,  
David  
Barnes to  
McTavish  
Brothers,  
Limited,  
8th Nov-  
ember 1927.

64.—(e) Letter, David Barnes to McTavish Brothers, Limited.

Seattle,  
Nov. 8, 1927.

My Dear McS.

Have been expecting to hear from you in regard to what I have coming to me on wages. The last I heard was concerning the car, which you think I broke. You ought to know me better than that. If I had broke it I would tell you. I have positive proof that the car was O.K. when Ray Carson took it back to the mine and Mr. Fellows knew he was going to take it. I am in need of money and what you think is coming to me send it. Would like to hear from you at any rate. 20

Truly,

“D. BARNES.”

---

113.  
Bulletin of  
Alamo Gold  
Mines,  
Limited,  
10th Nov-  
ember 1927.

113.—Bulletin of Alamo Gold Mines, Limited.

ALAMO GOLD MINES, LIMITED.

Our last bulletin was sent out the latter part of August. Since that time work has gone steadily along with a view to getting the necessary information before proceeding with the erection of a mill. On the Evans property at Ruby Creek we have just cut the vein at a depth of 350 feet. Development work is proceeding to determine whether or not this will prove to be a commercial body of ore. 30

Work has continued all summer on the Alamo tunnel. There were a number of very bad caves. We are now in approximately 1600 feet and should soon be to the end. The upper tunnel is also cleaned out and while we have not sufficient information the indication is that both the Evans property and the Alamo are changing to a base ore with depth.

This as you know will not respond to the same method of treatment as free milling ore and of course will require a different type of mill. Exhibits.

We were recently favoured with a visit from Mr. McGuigan who did all the early development on the Alamo property and who with several mining engineers reports large bodies of good ore all ready to be taken out. Just as soon as we have the tunnels in proper shape he will make a trip to the property and assist in the work of locating the ore bodies. This should greatly speed up the acquiring of the necessary information. 113. Bulletin of Alamo Gold Mines, Limited, 10th November 1927 —continued.

As many of you are aware we have a new Superintendent by the name of Mr. Fellows who is a particularly capable man and we have been congratulated upon our good fortune in securing his services. Under his management the work has been pushed very rapidly all summer and we are quite hopeful that the winter's work will give us the desired information. so that we can have our plans all properly formulated and know how to proceed as soon as the weather breaks in the Spring.

ALAMO GOLD MINES, LIMITED.

503 London Building,  
Vancouver, B.C.

November 10, 1927.

20 72.—Telegram, W. C. Fellows to McTavish Brothers, Limited.

CANADIAN NATIONAL TELEGRAM.

PRA 234 45 Blue

1927 Nov 15 PM 12 45.

Sumpter Org 15 1201 P.

McTavish Bros.

503 London Bldg. Vancouver BC

Into the ore lower tunnel in Alamo sampling lower and number two tunnel today Vein big and looks good stop got five feet of quartz east crosscut lower tunnel Rubycreek taking samples to assay will try to wire results by Saturday stop big storm on.

30

W. C. FELLOWS.

72. Telegram, W. C. Fellows to McTavish Brothers, Limited, 15th November 1927.



Exhibits.

**103.—Letter, W. C. Fellows to McTavish Brothers, Limited.**

103.  
Letter,  
W. C. Fel-  
lows to  
McTavish  
Brothers,  
Limited,  
15th Nov-  
ember 1927.

McTavish Bros.,  
503 London Building,  
Vancouver, B.C.

Granite, Ore. Nov. 15, 1927.

Gentlemen :

The situation here has been rather hard to handle, due to the fact the mine look so blue, but breaking in to that 5 feet of quartz in the lower tunnel at Ruby Creek and getting in to the ore at Alamo has put a different light on the subject. A miner's mind runs along about like this. When pay day fails to come on the 10th and the mine shows no ore, he feels that the whole thing is about to blow up and which has been the case a good many times in this very district and he can see his money going up in smoke, so they get together in the bunk house and say nothing here and we are going to hold the sack. 10

But get in to quartz change them and they see a chance of the property making good.

I believe I can keep them satisfied until Saturday the 19th and surely by that time you will have the money here.

The ore in the Alamo look very good. I am send out 10 samples from the lower and upper tunnel and two samples from the 5 feet of quartz at Ruby Creek. 20

Mr. Davidson wants to take his car out in the morning so will let him take the sample to the assayer.

Sincerely yours,

" W. C. FELLOWS."

64.—(f).  
Letter,  
McTavish  
Brothers,  
Limited,  
to David  
Barnes,  
16th Nov-  
ember 1927.

**64.—(f) Letter, McTavish Brothers, Limited, to David Barnes.**

David Barnes, Esq.,  
Manhattan Apartments,  
Seattle, Wash.

Nov. 16th, 1927.

Dear Dave :

Your recent letter arrived when both D. N. and I were out of town. We regret delay in answering but you will understand the reason. Many thanks for bill of sale from O'Dair. 30

We regret delay in sending final cheque to you but as you are aware we have to get all funds from Mr. Langer and this has been extremely difficult during the past few months, in fact up to the present time he has not yet come through with a cheque for the October wages. We are

hoping to get this all arranged in the near future however, and when we do we shall see that cheque goes forward to you.

We note what you say about breaking the car and of course are prepared to accept your statement with regard to this, so that we shall see that you get your money irrespective of what Mr. Langer might decide to do.

With kind regards to yourself and Mrs. Barnes, we remain,

Very truly yours,

McTAVISH BROTHERS, LIMITED.

Per

10 PDM/S

Exhibits.  
64.—(f).  
Letter,  
McTavish  
Brothers,  
Limited,  
to David  
Barnes,  
16th Nov-  
ember 1927  
—continued.

104.—Telegram, W. C. Fellows to McTavish Brothers, Limited.

TELEGRAM.

Sumpter, Org. 1927 Nov. 16.

McTavish Bros.

503 London Bldg. Vancouver B.C.

Total width ten feet First side solid quartz Next mixed with country rock Good wall both sides Starting drift on Quartz today stop Sending samples both Ruby Creek and Alamo to Assayer today.

W. C. FELLOWS.

104.  
Telegram,  
W. C. Fel-  
lows to  
McTavish  
Brothers,  
Limited,  
16th Nov-  
ember 1927.

20

74.—Share Certificate No. 587, Alamo Gold Mines, Limited.

Incorporated under the Companies Act of British Columbia and Amending Acts.

No. 587.

100,000 Shares.

ALAMO GOLD MINES, LIMITED (Non Personal Liability).

Capital \$3,000,000 Divided into 3,000,000 Shares of \$1.00 each.

“ Issued Under Part VII, of the ‘ Companies Act ’ respecting specially Limited Mining Companies.”

Non-Assessable.

This Certifies that JOSEPH F. LANGER is the owner of One hundred thousand . . . . . Shares of the Capital Stock of ALAMO GOLD MINES, LIMITED (Non Personal Liability) numbered 200,001 to 300,000 inclusive transferable only on the books of the Corporation by the holder hereof in person or by Attorney, upon surrender of this Certificate properly endorsed.

30

74.  
Share  
Certificate  
No. 587,  
Alamo Gold  
Mines,  
Limited,  
16th Nov-  
ember 1927.

Exhibits. In Witness Whereof, the said Corporation has caused this Certificate to  
 — be signed by its duly authorised officers and to be sealed with the Seal  
 74. of the Corporation this 16th day of November A.D. 1927.  
 Share Certificate, " P. D. McTAVISH " " D. N. McTAVISH "  
 No. 587, Secretary President.  
 Alamo Gold Mines, Limited, Shares  
 16th November 1927 \$1.00  
 —continued. ALAMO GOLD MINES, LIMITED. Each.

SEAL

10

1. Letter, McTavish Brothers, Limited, to J. F. Langer, Esq., 3290 Granville St., Vancouver, B.C.

1.—Letter, McTavish Brothers, Limited, to J. F. Langer.  
 McTAVISH BROTHERS, LIMITED.

Vancouver, B.C., Nov. 17th, 1927.

Dear Sir,

We hand you herewith the following stock certificates in Alamo Gold Mines Limited :—

Cert. No. 587 for 100,000 shares

588	„	100,000	„	20
589	„	100,000	„	
590	„	100,000	„	
591	„	100,000	„	
592	„	50,000	„	
593	„	25,000	„	
594	„	25,000	„	
595	„	100,000	„	
596	„	50,000	„	

We hereby confirm our arrangement whereby we agree to sell the above 750,000 shares at 12½ cents per share making a total of \$93,750.00, \$21,000.00 30 of which is to be paid by transfer to us upon request of clear title to two lots on Granville Street between 9th and 10th Avenues and \$5,000.00 cash, receipt whereof is hereby acknowledged. The balance \$67,750.00 is payable as follows :

March 1st, 1928 (Note dated Dec. 1st at three months without interest)	\$10,000.00
June 1st, 1928	10,000.00
Sept. 1st, 1928	23,875.00
Dec. 1st, 1928	23,875.00

40

Previously paid as above

Total

67,750.00
26,000.00
<u>\$93,750.00</u>

We acknowledge receipt of note due March 1st, 1928 for \$10,000.00 without interest covering first quarterly payment and it is agreed that as each quarterly payment falls due we are to receive from you a note at three months without interest, covering the quarterly payment next thereafter falling due.

Yours truly,

McTAVISH BROTHERS, LIMITED,

PDM/S

Per " P. D. McTAVISH."

Exhibits.

1.  
Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
17th Nov-  
ember 1927

—continued.

I hereby confirm the above arrangement and acknowledge receipt of 10 stock certificates enumerated above.

" J. F. LANGER."

36.—Assay Certificate of W. W. Gibbs.

ASSAY OFFICE OF W. W. GIBBS.

Baker, Oregon, Nov. 17, 1927.

I hereby Certify that Ore samples Assayed for Alamo Gold Mines yielded as follows :

36.  
Assay  
Certificate  
of W. W.  
Gibbs,  
17th Nov-  
ember 1927.

Sample Mark	Copper %	Value	Lead %	Value	Zinc %	Value	Gold	Gold	Silver	Silver	Total
							Ozs. Per Ton.	Value Per Ton.	Ozs. Per Ton.	Value Per Ton.	Value Per Ton.

1	Lower Tun		Lower Tunnel		Alamo		—	—	—	—	
2			"		"		.005		0.1	\$.11	
3		No. 2	"		"		.01		.2	.21 c	
4		"	"		"		.005		.1	.11 c	
5		"	"		"		L. Trace		.2	.01 c	
6		No. 2	"		"		.005		Trace	.10 c	
7		No. 2	"		"		.02		"	.40	

" W. W. GIBBS,"

Assayer.

(Certificate continued on next page as Exhibit 37)

Exhibits.

37.

Assay  
Certificate  
of W. W.  
Gibbs,  
17th Nov-  
ember 1927.

## 37.—Assay Certificate of W. W. Gibbs.

## ASSAY OFFICE OF W. W. GIBBS.

Baker, Oregon, Nov. 17, 1927.

I hereby Certify that Ore Samples Assayed for Alamo Gold Mines yielded as follows (*continued*):

Sample Mark	Copper %	Value	Lead %	Value	Zinc %	Value	Gold Ozs. Per Ton.	Gold Value Per Ton.	Silver Ozs. Per Ton.	Silver Value Per Ton.	Total Value Per Ton.
8							.01		0.2	.21 c	
9							.02		.1	.41 c	
10 R C Left							.01		.2	.21 c	
11 R C Right							.015		Tr.	.30 c	
12 Gray Quartz							.005		.1	.10 c	

" W. W. GIBBS,"  
Assayer.

10

105.

Letter,  
McTavish  
Brothers,  
Limited,  
to W. C.  
Fellows,  
18th Nov-  
ember 1927.

## 105.—Letter, McTavish Brothers, Limited, to W. C. Fellows.

W. C. Fellows, Esq.,  
Granite, Ore.

Nov. 18th, 1927.

20

Dear Mr. Fellows,

We have just received your letter and can quite understand the gloominess that would hover around a mining camp when there was no ore in sight and also the elation when ore was struck. It was rather remarkable that you should encounter ore in both tunnels at the same time.

We regret very much that you were caused any concern because of the little mix up we had at this end which resulted in the delay in sending forward the Alamo funds. We might say that we are not altogether yet straightened out, but in the meantime we are enclosing our personal cheque for an additional \$500.00 and we feel quite confident that no such condition will arise at any time in the future. 30

Your telegrams were rather providential as they came at a time when the information was a real help at this end and should you at any future time get valuable information we trust you will lose no time in wiring it in.

I presume that everything is closed in at the Banner and that you are sinking a shaft. Here's hoping that we may get down to the working level. In the meantime let us know what the ore looks like that you are taking out.

Yours very truly,

MCTAVISH BROTHERS, LIMITED.

40

DNM/S

Per

## 68.—Letter, W. C. Fellows to McTavish Brothers, Limited.

Exhibits.

McTavish Bros.,  
503 London Bldg.,  
Vancouver, B.C.

Granite, Ore.,  
Nov. 19—27.

68.  
Letter,  
W. C. Fel-  
lows to  
McTavish  
Brothers,  
Limited,  
19th Nov-  
ember 1927.

Gentlemen,

Herewith please find assay Certificate, as you will see the Alamo has no ore of any value.

I learned that Tom Boreman run the mill where they mill the ore from the No. 2 tunnel. He states they got no gold and the Concentrates assayed .90 c. per ton. This would check on the assay I took.

The Ruby Creek shows no value but their are possibilities of drifting north and cross-cutting. The vein is cut by a fault and it is possible it may make some ore when it gets away from this fault. A small amount of work will prove this.

Sincerely yours,

“ W. C. FELLOWS.”

## 33.—Telegram, W. C. Fellows to McTavish Brothers, Limited.

33.

CANADIAN NATIONAL TELEGRAM.

20 PRA 144 86 Blue 1/61.

1927 Nov 21 AM 11.05

Sumpter Org 21 940A

McTavish Bros.

503 London Bldg. Vancouver BC

All of number two tunnel cleaned out can sample all of ore body stop about three hundred feet of ore chute on lower tunnel clean one hundred fifty feet on each side of raise the map shows this to be the center of ore chute stop impossible to say length of time required to clean out balance stop there is absolutely no commercial ore in either the number two tunnel or the lower tunnel stop Notwithstanding reports by McGuigan Jackson and others 30 mailed assay certificates Saturday.

W. C. FELLOWS.

Telegram,  
W. C. Fel-  
lows to  
McTavish  
Brothers,  
Limited,  
21st Nov-  
ember 1927.

Exhibits.

**90.—(9) Letter, McTavish Brothers, Limited, to James P. McGuigan.**

90.—(9).  
Letter,  
McTavish  
Brothers,  
Limited,  
to James P.  
McGuigan,  
21st Nov-  
ember 1927.

Jas. P. McGuigan, Esq.,  
503 E. Sinto Ave.,  
Spokane, Wash.

Nov. 21st, 1927.

Dear Sir,

We trust you had a pleasant journey and arrived home safely. In the meantime we have had a letter from Mr. Fellows our Superintendent at the Alamo. It seems he has taken about a dozen samples in the upper and lower tunnels and the highest one just went 41 c. per ton. The following is from his letter :—

“ Herewith please find assay certificate. As you will see the Alamo has no ore of any value. I learn that Tom Boreman ran the mill when they milled the ore from the No. 2 tunnel. He states they got no gold and the concentrates assayed 90 c. per ton. This would check all the assays I took.”

This of course does not check with your report or the report of any of the other mining men who examined the property. It seems it will be necessary for you to go down and verify all those old reports. We have therefore written Mr. Fellows to get everything in shape so that you will have no difficulty in getting into all the tunnels. When he advises us that this work is done, we will get in touch with you and trust there will be no difficulty in your getting away on the same terms as you came down here.

Thanking you for your co-operation in this matter,

Yours very truly,

MCTAVISH BROTHERS, LIMITED,

DNM/S

Per

35.

Letter,  
McTavish  
Brothers,  
Limited,  
to W. C.  
Fellows,  
22nd Nov-  
ember 1927.

**35.—Letter, McTavish Brothers, Limited, to W. C. Fellows.**

W. C. Fellows, Esq.,  
Granite, Ore.

Nov. 22nd, 1927.

Dear Sir,

We have just wired you to stop all work at the Alamo pending visit by our Mr. D. N. McTavish and Mr. McGuigan. We got Mr. McGuigan on the phone last night and he is willing to leave at any time although it is not always convenient for him to arrange with someone to attend

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to his business during his absence. As soon as he can do this he will wire us and they will arrange to go to Alamo at once. Mr. McGuigan did not anticipate being able to make the necessary arrangement until Saturday night, so we are making our plans accordingly.

Needless to say the assays received from your sampling of both the Alamo and the Ruby Creek properties are dismally disappointing and of course necessitate a complete rearrangement of plans which will be taken up with you by the writer's brother during his visit to the Alamo.

Very truly yours,

McTAVISH BROTHERS, LIMITED.

Per

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PDM/S

Exhibits.

—  
35.

Letter,  
McTavish  
Brothers,  
Limited,  
to W. C.  
Fellows,  
22nd Nov-  
ember 1927  
—continued.

90.—(8) Telegram, James P. McGuigan to McTavish Brothers, Limited.

TELEGRAM.

Spokane, Wash. 1927 Nov. 22.

McTavish Bros.

503 London Bldg., Vancouver, B.C.

Message received Almost impossible to make trip just now but willing to do all I can to assist you Had bad cold and would prefer taking trip at some other time As regards to pay ore have same faith I always had in the mine if values can be saved.

J. P. McGUIGAN.

90.—(8).  
Telegram,  
James P.  
McGuigan  
to McTavish  
Brothers,  
Limited,  
22nd Nov-  
ember 1927.

90.—(7) Telegram, McTavish Brothers, Limited, to James P. McGuigan.

TELEGRAM.

Nov. 26th, 1927.

J. P. McGuigan,

503 E. Sinto Ave.,  
Spokane, Wash.

Wire if possible for you proceed to Alamo tonight important.

McTAVISH BROTHERS.

90.—(7).  
Telegram,  
McTavish  
Brothers,  
Limited,  
to James P.  
McGuigan,  
26th Nov-  
ember 1927.



Exhibits. **90.—(6) Telegram, James P. McGuigan to McTavish Brothers, Limited.**

90.—(6).  
Telegram,  
James P.  
McGuigan  
to McTavish  
Brothers,  
Limited,  
26th Nov-  
ember 1927.

TELEGRAM.

Spokane, Wash. 1927 Nov. 26.

McTavish Brothers  
503 London Bldg., Vancouver B.C.

It will be impossible for me to go tonight Do not feel well enough at present.

J. P. McGUIGAN.

90.—(5).  
Telegram,  
McTavish  
Brothers,  
Limited,  
to James P.  
McGuigan,  
28th Nov-  
ember 1927.

**90.—(5) Telegram, McTavish Brothers, Limited, to James P. McGuigan.**

TELEGRAM.

Vancouver, Nov. 28, 1927.

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J. P. McGuigan,  
503 E. Sinto Ave.,  
Spokane, Wash.

Sorry to learn of your sickness Kindly wire when you think you can make the trip We are very anxious to get in there while the weather is good and trust you will be able to go within the next few days.

McTAVISH BROTHERS.

90.—(4).  
Letter,  
James P.  
McGuigan  
to McTavish  
Brothers,  
Limited,  
28th Nov-  
ember 1927.

**90.—(4) Letter, James P. McGuigan to McTavish Brothers, Limited.**

Spokane, Wash., 11-28-27.

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McTavish Bro.,  
Vancouver B.C.

Dear Sirs,

Your letter of 21st to hand also your wires of 26th and 28th and contents noted. I was sorry I was not in shape to go to the mine at your request but it is impossible for me to make the trip Just at present as I have a very bad cold and not feeling well enough to tackle it at the present time however I am willing to do so when I feel well enough to stand the trip Of course you understand I would have to be financed before leaving here as my obligations and expenses here are pretty heavy and keeps me going every day to make ends meet so you's would have to arange for the money part of it before I could arange to go under all conciderations, I was surprised at the results of your Superintendent's results of sampeling as I could not believe any one could take a dozen Samples on the vein and get no better results, now Mr. McTavish I can plainly see this man does not no how to sampel that Ledge your big values all lay mostly in

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the ledge filling and soft gang filling of the vein as there always was but little Gold in the hard material in the vein except at diferent intervals along the vein and a man would have to no the mine thorougly to get those places in taking his sampels, he would have to take an average of all the gang matter in that Ledge which I am satisfied he did not with such results as you tell me he got I think you must have a few nockers along the line also, yous will have to look out for thos fellows, as Orgon is chuck full of them aspecially if they have anything they want to make a turn on themselves

10 Now as for this man Tom Boreman I never had a man by that name for a mill man nor did he ever runn a pound of ore, throug the mill at Alamo, for me, never had such name on my Pay Role, that I can find any trace of or remember so you see this is all bunk

I am willing to go down to the mine and show your Supt. all I possibly can and I am satisfied I can get lots better results in sampeling, than he has got, but you's will have to give me time to recruit a little and a few day notice ahead before I start on the trip

hoping to hear from you's in the near future I am

Your very Resp

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" JAS. P. McGUIGAN."

**90.—(3) Letter, McTavish Brothers, Limited, to James P. McGuigan.**

Dec. 2nd, 1927.

J. P. McGuigan, Esq.,  
503 E. Sinto Ave.,  
Spokane, Wash.

Dear Sir,

We were glad indeed to receive your encouraging letter, but sorry to learn that you had been suffering from a cold. There seems to be quite an epidemic of them going around but I trust you have fully recovered.

30 We are of course very anxious to have you go in and help Mr. Fellows locate the ore bodies and we wish you would wire us at our expense just as soon as it is possible for you to make the necessary arrangements. We will then wire you the necessary funds as per your letter. We would consider it a great favour if you would have this done immediately upon receipt of this letter.

Very truly yours,

McTAVISH BROTHERS, LIMITED.

DNM/S

Per

Exhibits.  
—  
90.—(4).  
Letter,  
James P.  
McGuigan  
to McTavish  
Brothers,  
Limited,  
28th Nov-  
ember 1927  
—continued.

90.—(3).  
Letter,  
McTavish  
Brothers,  
Limited,  
to James P.  
McGuigan,  
2nd Dec-  
ember 1927.

Exhibits.

**90.—(2) Letter, James P. McGuigan to McTavish Brothers, Limited.**

90.—(2).  
Letter,  
James P.  
McGuigan  
to McTavish  
Brothers,  
Limited,  
5th Dec-  
ember 1927.

Mr's McTavish Bro.,  
Vancouver B.C.

Spokane, Wash., 12-5-27.

Yours to hand and will say I am not feeling very much improved as yet, I have a little tuch of Pluricy and you know what that meanes to a man that has had it a few times, I stayed in my bed, all day yesterday trying to work it off, I would not want to take any chances on making a trip, into the hills, in the condition I am in at present, so you's will have to be patiente with me untill I feel that I can stand the trip I am sory this trip could not of been made earlier in the season However I am willing to go, but will have to be in condition to make the trip without laying myself up, I have to look after my health also my family, as you understand that is most important point Hoping to hear from you in the near future I am as ever.

Yours Respt

"JAS. P. MCGUIGAN."

34.  
Letter,  
W. C. Fel-  
lows to  
McTavish  
Brothers,  
Limited,  
6th Dec-  
ember 1927.

**34.—Letter, W. C. Fellows to McTavish Brothers, Limited.**

McTavish Bros.,  
503 London Bldg.,  
Vancouver, B.C.

Sumpter, Ore.

Dec. 6, 1927.

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Gentlemen,

I have your letter of the 2nd enclosing copy of a letter from Mr. McGuigan.

First we will take up the sampling, these samples were taken by Barney Kempfer and myself, Davidson also helped us. They were taken just as we would mine the ore. The soft material was taken as well as the hard, in fact we cut a channel across the vein and the assay returns were the true value of the ore.

I want to say for your information that Barney Kempfer was my Mine foreman at the Ben Harrison Mine and McNeill. Milled and assayed about 50000 tons of ore. Our assays and the mill recovery never varied more than 10 c. or 15 c. per ton on about \$12.00 ore. I was for two years ore buyer for a large smelter and bought about \$1,000,000.00 of ore on my own samples, and my sampling and the smelter recovery had to check and it did. So it would be the most extraordinary case in the world If I were not able to sample a simple vein like the Alamo. Tom Boreman was

the mill man and Bob Wilson was in the mill when Boreman run it, and I again repeat that Boreman never recovered an ounce of amalgam and the concentrates assay 90 cents a ton. Geo. Neigand was the mill foreman and Pete Brody was the assayer.

It is possible there may be a spot or two that will assay but as for commercial ore there is none.

Yours Sincerely,  
"W. C. FELLOWS."

Exhibits.

34.

Letter,  
W. C. Fel-  
lows to  
McTavish  
Brothers,  
Limited,  
6th Dec-  
ember 1927  
—continued.

**90.—(1) Letter, McTavish Brothers, Limited, to James P. McGuigan.**

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Mr. Jas. P. McGuigan,  
503 E. Sinto Ave.,  
Spokane, Wash.

Dear Sir,

We were pleased to receive your letter of the 5th instant but regret very much that you are still somewhat under the weather. We can appreciate your desire to be careful of your health at this time and trust that it will rapidly improve. Your trip to the mine of course can be made in comparative comfort as Mr. Fellows would meet you at the hotel with his car and take you out in that way to the very portal of the tunnel.

We are as you know rather up against it and relying upon you to help clear up the situation and we trust you will appreciate the necessity of your going in at your earliest possible convenience. Just as soon as you feel that you can do so we wish you would send us a wire and we will have the money forwarded to you at once and make the necessary arrangements for Mr. Fellows to meet you at Baker.

Trusting that this finds you on the road to recovery, we are,

Very truly yours,  
McTAVISH BROTHERS, LIMITED.

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DNM/S.

Per

90.—(1).

Letter,  
McTavish  
Brothers,  
Limited,  
to James P.  
McGuigan,  
7th Dec-  
ember 1927.

Exhibits.

## 25.—Letter, J. F. Langer to McTavish Brothers, Limited.

25.  
Letter,  
J. F. Lan-  
ger to  
McTavish  
Brothers,  
Limited,  
8th Dec-  
ember 1927.

J. F. LANGER,  
Builder.

Vancouver, B.C.,  
8th December, 1927.

Messrs. McTavish Bros., Ltd.  
London Building,  
Vancouver, B.C.

Dear Sirs,

RE ALAMO GOLD MINES, LTD.

10

I regret I have been unable, owing to pressure of other business, to call on you in connection with the above Company's affairs.

You mentioned to Mr. Kerr to-day on his call, amongst other things, the matter of the payment of accounts, to the date of the closing down of operations. I may say that I never had any intention of re-assuming liability for expenditure after the 8th of October last, from which date you carried on on your own responsibility. If you feel that some additional expenditure was caused on account of any suggestions made by me on my recent visit to the mines I would propose that it be met out of the price coming to the Company for the driving and crushing plant, &c., which was removed from the Alamo to your other Company's mines. I shall be glad if you will let me know at what figure that plant stands against you in the Company's books, and also what amount you calculate might be applied against it for the additional expenditure above referred to. Having already expended in the neighbourhood of \$70,000.xx I do not now feel disposed to that amount on any account. 20

As regards the recent Shares transaction which, in view of the present situation, you were good enough to say would be called off entirely if Mr. McGuigan could not substantiate his report, I would prefer to have that done now, so that I may know definitely where I stand. It may be some considerable time before Mr. McGuigan can visit the mine, and the matter could be reviewed then. In the meantime it will be obliging if you will return the letter of agreement and my note, and send me Certificate for the shares equivalent to the \$5000.xx paid you and I shall return you the Certificates handed me in connection with the transaction. 30

Yours truly,

" J. F. LANGER."

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26.—Letter, McTavish Brothers, Limited, to J. F. Langer.

Exhibits.

McTAVISH BROTHERS, LIMITED.

Vancouver, B.C., December 12th, 1927.

J. F. Langer, Esq.,  
3290 Granville St.,  
Vancouver, B.C.

Dear Sir,

Your recent letter arrived in due course but remained unanswered owing to the absence of both Mr. P. D. and D. N. McTavish from business on account of temporary illness. Immediately upon their return your letter will no doubt be promptly answered.

Yours truly,

McTAVISH BROTHERS, LIMITED,

Per "L. E. GUSELLE."

LEG/S.

26.  
Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
12th Dec-  
ember  
1927.

27.—Letter, Alamo Gold Mines, Limited, to J. F. Langer.

27.

ALAMO GOLD MINES, LIMITED.

Vancouver, B.C.,  
January 12th, 1928.

20 J. F. Langer, Esq.,  
3290 Granville St.,  
Vancouver, B.C.

Dear Sir,

We regret that owing to illness combined with Christmas holidays we have been absent from the office almost continuously since receipt of your letter of December 8th, addressed to McTavish Brothers, Limited. Hence delay in answering.

30 Answering your question regarding the purchase of mill and engine, we wish to say that the factory prices of the mill, feeder and engine amount to \$2855.00. To this was added \$645.00 being approximately the amount paid for duty on the engine and for freight. This brings the total up to \$3500.00. It was arranged with you that the Banner Mining Company pay practically the original cost price for these things providing the purchase price was paid out of production—this in view of the fact that if the amount was paid in cash the price would naturally have to be reduced to that of second hand articles. Under the circumstances therefore, the money from this source is not available at this time for the purpose of meeting the Company's present pressing needs.

Letter,  
Alamo  
Gold  
Mines,  
Limited,  
to J. F.  
Langer,  
12th Janu-  
ary 1928.

Exhibits.  
—  
27.  
Letter,  
Alamo  
Gold  
Mines,  
Limited,  
to J. F.  
Langer,  
12th Janu-  
ary 1928—  
*continued.*

Needless to say your letter is a distinct surprise to us in view of the fact that it constitutes a repudiation of your contract with the Alamo Gold Mines, Limited. This action on your part as you know seriously embarrasses the company at this time in view of the probability of liens for past due wages and supplies being served on us and because of the fact that your contract makes it impossible for the company to finance elsewhere. We shall prepare and forward to you at once a statement of amount still due by you under your contract for work authorized by you up to November 22nd being date you authorized us to stop work pending visit to the property of Mr. McGuigan.

The recent purchase of shares by you is a transaction between yourself on the one part and McTavish Brothers and their associates on the other and we feel therefore must of necessity be kept separate and apart from the transaction between yourself and the Alamo Gold Mines, Limited.

Yours truly,

ALAMO GOLD MINES, LIMITED,

Per P. D. McTAVISH.

PDM/S.

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75.

Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
14th Janu-  
ary 1928.

75.—Letter, McTavish Brothers, Limited, to J. F. Langer.

Vancouver, B.C.,

Jan. 14th, 1928.

20

J. F. Langer, Esq.,  
3290 Granville St.,  
Vancouver, B.C.

Dear Sir,

*re Lot 5, Block 351, D.L. 526.*

You will recall that under agreement dated June 17th, we agreed to accept this lot as part payment for certain shares of Alamo Gold Mines Limited delivered to you. We have a probable deal pending for this lot at the present time and would therefore respectfully request that you execute deed in our favour under the terms of said agreement of June 17th.

Thanking you for giving this matter your immediate attention, we remain,

Very truly yours,

McTAVISH BROTHERS, LIMITED.

Per P. D. McTAVISH.

PDM/S.

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## 76.—Letter, McTavish Brothers, Limited, to J. F. Langer.

Vancouver, B.C.,  
Jan. 23rd, 1928.

J. F. Langer, Esq.,  
3290 Granville St.,  
Vancouver, B.C.

Dear Sir,

In negotiating for sale of lot on Granville Street, we find ourselves at a disadvantage endeavouring to dispose of a single lot, as most parties require greater frontage. We therefore respectfully request that you let us have deed to lots 3 and 4 B. 351—D.L. 526 purchased from you under terms of agreement of November 17th last.

An early compliance will greatly oblige,

Yours truly,

McTAVISH BROTHERS, LIMITED.

PDM/S.

Per P. D. McTAVISH.

Exhibits.

76.

Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
23rd Janu-  
ary 1928.

## 77.—Letter, McTavish Brothers, Limited, to J. F. Langer.

Vancouver, B.C.,  
February 17th, 1928.

20 J. F. Langer, Esq.,  
3290 Granville St.,  
Vancouver, B.C.

Dear Sir,

On the 23rd of January we wrote you regarding deed to be delivered to us in accordance with our agreement with you.

While Mr. Kerr has telephoned us with regard to this matter we have not yet received the deed. We have allowed the matter to drift because the writer's brother has been absent from the city and he himself has been prevented putting in much time at the office owing to illness. We now are requiring the deed and would therefore respectfully request that you arrange to have it delivered forthwith.

Yours truly,

McTAVISH BROTHERS, LIMITED.

PDM/S.

Per "P. D. McTAVISH."

77.

Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
17th Febru-  
ary 1928.



Exhibits.

78.

Letter,  
J. F. Lan-  
ger to  
McTavish  
Brothers,  
Limited,  
20th Febru-  
ary 1928.

## 78.—Letter, J. F. Langer to McTavish Brothers, Limited.

Vancouver, B.C.,  
20th February 1928.

Messrs. McTavish Bros., Ltd.,  
503 London Building,  
Vancouver, B.C.

Dear Sirs,

I am in receipt of your letter of 17th inst. Needless to say I am surprised at its contents in view of the fact that you had already called the deal off until such time as Mr. McGuigan could substantiate his report. 10

I have also been waiting for you to call, as promised several times after receipt of your first letter, but for some reason best known to yourselves you have avoided doing so.

In view of the cancellation of the agreement, and of the reports of your own engineer that the veins were barren as shown by the assays which he took, and being absolutely satisfied that the property was misrepresented I took advantage of an opportunity, some time prior to the receipt of your first letter, to sell the two lots. Mr. McGuigan had had plenty of time to make his visit to the property but apparently is disinclined to do so—he has not been there even yet. 20

Yours truly,  
J. F. LANGER.

## 106.—(b) Letter, McTavish Brothers, Limited, to J. F. Langer.

106.—(b).

Letter,  
McTavish  
Brothers,  
Limited,  
to J. F.  
Langer,  
29th Febru-  
ary 1928.

McTAVISH BROTHERS, LIMITED.

503 London Building,  
626 Pender Street, West,  
Vancouver, B.C.  
February 29th, 1928.

J. F. Langer, Esq.,  
3290 Granville St.,  
Vancouver, B.C.

Dear Sir,

Owing to the writer's continued indisposition and the fact that his brother has been absent from the city, your letter of February 20th still remains unanswered but it shall receive our prompt attention upon the return of our Mr. D. M. McTavish to the city.

Meanwhile we beg to remind you that in accordance with terms of your agreement of November 17th last you are to give us a note for \$10,000.00 at three months covering payment due June 1st next. We

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accordingly enclose note herewith and would respectfully request that you sign and send to us by return mail.

Thanking you for giving this matter your prompt attention, we remain.

Very truly yours,  
**McTAVISH BROTHERS, LIMITED,**  
 Per P. D. McTAVISH.

Exhibits.  
 —  
 106.—(b).  
 Letter,  
 McTavish  
 Brothers,  
 Limited,  
 to J. F.  
 Langer,  
 29th Febru-  
 ary 1928—  
*continued.*

106.—(a) **Promissory Note in favour of McTavish Brothers, Limited.**  
 \$10,000.00. Vancouver, B.C. March 1st, 1928.  
 500-520 Granville Street.

106.—(a).  
 Promissory  
 Note in  
 favour of  
 McTavish  
 Brothers,  
 Limited,  
 1st March  
 1928.

Three months after date I promise to pay to the order of McTavish Brothers, Limited, the sum of Ten thousand - - - -00/100 dollars, at the Bank of Montreal here, for value received Interest at 7 % after maturity.

**2.—Letter, Burns and Walkem to McTavish Brothers, Limited.**

**BURNS & WALKEM**

Vancouver, Canada,  
 6th March, 1928.

20 Messrs. McTavish Brothers, Limited,  
 London Building,  
 City.

2.  
 Letter,  
 Burns and  
 Walkem to  
 McTavish  
 Brothers,  
 Limited,  
 6th March  
 1928.

Dear Sirs,

Mr. Langer has consulted us with reference to your letter of the 29th ult. Regarding alleged agreement of the 17th November last which you mention in your letter, we beg to advise you that Mr. Langer repudiates all liability under this agreement on the ground that he was induced to enter into the same by misrepresentation and fraud.

30 We understand from Mr. Langer that notwithstanding the promise made by you shortly after the agreement was entered into that you would cancel this agreement and return the \$10,000.00 note which had been given by him, you discounted this note, and Mr. Langer has been obliged to pay the same. This constitutes a total of \$15,000.00 paid to you, and we hereby demand immediate repayment of the same, and beg to advise you that Mr. Langer is holding the stock certificates in the Alamo Gold Mines Limited which were handed to him to your order, and upon repayment of the \$15,000.00 which you have received these stock certificates will be returned to you.

We are further advised by Mr. Langer that he was induced by you by misrepresentation and fraud to invest an additional sum of \$64,597.50 in

Exhibits.

2.

Letter,  
Burns and  
Walkem to  
McTavish  
Brothers,  
Limited,  
6th March  
1928—con-  
tinued.

the Alamo Gold Mines Limited, and in the purchase of stock in those mines from you, and we beg to advise you that Mr. Langer demands immediate repayment of this sum of \$64,597.50, and is prepared on receipt of the same to hand back the shares in the Alamo Gold Mines Limited which he received in connection with that transaction.

Kindly advise us what you intend to do in the matter, and oblige.

KW/T.

Yours truly,

“BURNS & WALKEM.”

6.  
Particulars  
of State-  
ment of  
Defence of  
Defendant  
McTavish  
Brothers,  
Limited,  
in action  
*David  
Barnes v.  
Alamo Gold  
Mines,  
Limited,*  
28th May  
1928.

**6.—Particulars of Statement of Defence of Defendant McTavish Brothers, Limited, in action David Barnes v. Alamo Gold Mines, Limited.**

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No. B. 481/1928.

IN THE SUPREME COURT OF BRITISH COLUMBIA

between :

DAVID BARNES- - - - - Plaintiff

and

ALAMO GOLD MINES, LIMITED - - - - Defendant.

**PARTICULARS.**

In reply to the demand for further and better particulars of the Statement of Defence of the Defendant McTavish Brothers, Limited herein, the said Defendant, McTavish Brothers, Limited, says :

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1. The said 1,500,000 shares referred to in paragraph 8 of the Statement of Defence herein have been disposed of as follows :

- (a) To J. F. Langer, in pursuance to articles of agreement dated the 7th day of February, 1927, mentioned in paragraph 8 of the statement of defence of this Defendant - - - - - 573,200
- (b) Shares delivered to W. E. Fales, as bonus for loan made to the defendant, Alamo Gold Mines, Limited - 2,500
- (c) Shares transferred to George H. Thomas for Robert E. Lee, Constitution Gold Bug and Gold Dust Mineral Claims adjoining the property of the defendant, Alamo Gold Mines, Ltd. - - - - 300,000
- (d) Number of shares sold at .10 cents per share - - 50,000
- (e) Number of shares sold at 12½ cents per share - - 203,360
- (f) Number of shares sold at .25 cents per share - - 28,772
- (g) Shares issued in payment of commission - - - 165,368
- (h) Balance undisposed of but allocated to said agreement dated February 7th, 1927 - - - - 176,800

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1,500,000

The names of the persons to whom the shares above-mentioned were sold are set out in the Share Register of the Defendant, Alamo Gold Mines, Limited, but no record has been kept by this defendant of the sales in question.

2. The agreement referred to in the latter part of paragraph 10 of this defendant's Statement of Defence was made verbally between the Plaintiff, this Defendant, W. B. Code and George H. Thomas, in or about the month of May, 1925.

3. This Defendant, on or about the 1st day of July 1926, produced to the Plaintiff a statement showing the disposition of all that portion of the said 1,500,000 shares which had up to that time been disposed of, and on or about the 1st day of July, 1927, this Defendant, produced to Plaintiff a statement showing the disposition of those of said shares which had been disposed of in the last preceding years.

4. The verbal agreement between the Plaintiff and this Defendant referred to in paragraph 12 of the Statement of this Defendant was made at the City of Seattle in the State of Washington on or about the months of January or February 1927, and made between the Plaintiff and the Defendant D. N. McTavish, acting as agent of the Defendant, McTavish Brothers, Limited.

Dated at Vancouver, B.C. this 28th day of May, 1928.

ST. JOHN, DIXON & TURNER,

Solicitors for the Defendant  
McTavish Brothers Limited.

To KNOX WALKEM, Esq.,  
Solicitor for the Plaintiff.

Exhibits.

—  
6.

Particulars  
of State-  
ment of  
Defence of  
Defendant  
McTavish  
Brothers,  
Limited,  
in action  
*David  
Barnes v.  
Alamo Gold  
Mines,  
Limited,*  
28th May  
1928—con-  
tinued.

**81.—Certificate of Assay of G. S. Eldridge & Co.**

File No. 37854-64.

Cable Address "Eldrico."  
Head Office and Laboratories :  
567 Hornby Street, Vancouver, B.C.  
Phone : Seymour 4125.

G. S. Eldridge, B.Sc.,  
Provincial Assayer.  
Member of  
Canadian Institute of Chemistry.  
Canadian Institute of Mining and  
Metallurgy.  
Society Chemical Industry, England.  
American Society for Testing Materials.  
American Chemical Society.

CERTIFICATE OF ASSAY.

G. S. ELDRIDGE & CO.

Provincial Assayers, Analytical and Consulting Chemists, Metallurgists and Cement Inspectors.

WE HEREBY CERTIFY that the following are the results of assays made by us upon samples of ore herein described and received from Mr. H. L. Batten. 5th June, 1928.

Marked.	Gold.		Silver.		Per cent.	Value, Per ton.	Per cent.	Value, Per ton.	Value, Per ton.	Total Value, Per ton. (2,000 lbs.).
	Ounces, Per ton.	Value, Per ton.	Ounces, Per ton.	Value, Per ton.						
1	-	0.04								
2	-	0.04								
3	-	0.005								
4	-	0.04								
5	-	0.04								
6	-	0.20								
7	-	0.005								
8	-	0.005								
9	-	0.005								
21	-	Trace								
22	-	Trace								

Gold calculated at \$20.00 per ounce.  
Silver calculated at.....per ounce.

Calculated at.....cents per lb.  
Calculated at.....cents per lb.

" NORMAN L. ARMSTRONG "  
Provincial Assayer.

(Seal of Company)

*Note.*—Samples only retained 3 months unless otherwise specified.

83.—(1) Certificate of Assay of G. S. Eldridge & Co.

File No. 40931-63.  
 Cable Address "Eldrico."  
 Head office and laboratories,  
 567 Hornby Street,  
 Vancouver, B.C.  
 Phone Seymour 4125.

G. S. Eldridge, B.Sc. Provincial Assayer.  
 Member of  
 Canadian Institute of Chemistry.  
 Canadian Institute of Mining and Metallurgy.  
 Society Chemical Industry, England.  
 American Society for Testing Materials.  
 American Chemical Society.

CERTIFICATE OF ASSAY.

G. S. ELDRIDGE & CO.

Provincial Assayers, Analytical and Consulting Chemists, Metallurgists and Cement Inspectors.

WE HEREBY CERTIFY that the following are the results of assays made by us upon samples of ore herein described and received from Mr. R. F. Hill. 27th November, 1928.

Marked.	Gold.		Silver.		Per cent.	Value, Per ton.	Per cent.	Value, Per ton.	Value, Per ton.	Total Value, Per ton.). (2,000 lbs.)
	Ounces, Per ton.	Value, Per ton.	Ounces, Per ton.	Value, Per ton.						
		\$		\$		\$		\$	\$	\$
Second Level	C 1 -	Trace		Trace						
	C 2 -	None		None						
	C 3 -	None		None						
	C 5 -	Trace		Trace						
	C 6 -	None		None						
	C 7 -	None		None						
	C 8 -	None		None						
	C 9 -	None		None						
	C 10 -	0.005		Trace						
	C 11 -	0.01		Trace						
	C 13 -	None		None						
	C 14 -	Trace		Trace						
	C 15 -	Trace		0.1						
	C 16 -	Trace		Trace						
	C 17 -	Trace		Trace						
	C 18 -	Trace		0.1						
	C 19 -	None		None						
	C 20 -	None		None						
	C 21 -	Trace		Trace						

Gold calculated at \$20.00 per ounce.

Calculated at.....cents per lb.

Silver calculated at.....per ounce.

Calculated at.....cents per lb.

(Seal of Company)

" H. F. PUDER "

Provincial Assayer.

Note.—Samples only retained 3 months unless otherwise specified.

Exhibits.  
 83.—(1).  
 Certificate  
 of Assay  
 of G. S.  
 Eldridge  
 & Co.,  
 27th Nov-  
 ember 1928.

83.—(2) Certificate of Assay of G. S. Eldridge & Co.

File No. 40931-63.  
 Cable Address "Eldrico"

Head Office and Laboratories,  
 567 Hornby Street,  
 Vancouver, B.C.

Phone Seymour 4125.

G. S. Eldridge, B.Sc. Provincial Assayer.  
 Member of  
 Canadian Institute of Chemistry.  
 Canadian Institute of Mining and  
 Metallurgy.  
 Society Chemical Industry, England.  
 American Society for Testing Materials.  
 American Chemical Society.

CERTIFICATE OF ASSAY.  
 G. S. ELDRIDGE & CO.

Provincial Assayers, Analytical and Consulting Chemists, Metallurgists and Cement Inspectors.

WE HEREBY CERTIFY that the following are the results of assays made by us upon samples of ore herein described and received from Mr. R. F. Hill. 27th November, 1928.

Marked.	Gold.		Silver.		Per cent.	Value, Per ton.	Per cent.	Value, Per ton.	Value, Per ton.	Total Value, Per ton. (2,000 lbs.).
	Ounces, Per ton.	Value, Per ton.	Ounces, Per ton.	Value, Per ton.						
C 22 - - -	0.005	\$	0.1	\$		\$		\$	\$	\$
C 23 - - -	Trace		Trace							
C 24 - - -	None		None							
C 25 - - -	Trace		0.1							
C 26 - - -	Trace		Trace							
C 27 - - -	0.01		Trace							
C 28 - - -	0.005		Trace							
C 29 - - -	Trace		Trace							
C 30 Nov. 21st -	Trace		0.1							
C 30 Nov. 30th -	None		None							
C 31 - - -	None		None							
C 32 - - -	Trace		None							
C 33 - - -	None		None							
C 4 - - -	None		None							

Gold calculated at \$20.00 per ounce.

Silver calculated at.....per ounce.

(Seal of Company)

Calculated at.....cents per lb.

Calculated at.....cents per lb.

" H. F. PUDER " Provincial Assayer.

Note.—Samples only retained 3 months unless otherwise specified.

83.—(3) Certificate of Assay of G. S. Eldridge & Co.

File No. 40964-68.

Cable Address "Eldrico"  
 Head Office and Laboratories:  
 567 Hornby Street,  
 Vancouver, B.C.

Phone Seymour 4125.

G. S. Eldridge, B.Sc.  
 Provincial Assayer.  
 Member of  
 Canadian Institute of Chemistry.  
 Canadian Institute of Mining and  
 Metallurgy.  
 Society Chemical Industry, England.  
 American Society for Testing Materials.  
 American Chemical Society.

CERTIFICATE OF ASSAY.

G. S. ELDRIDGE & CO.

Provincial Assayers, Analytical and Consulting Chemists, Metallurgists and Cement Inspectors.

WE HEREBY CERTIFY that the following are the results of assays made by us upon samples of ore herein described and received from Mr. R. F. Hill.

27th November, 1928.

Marked.	Gold.		Silver.		Per cent.	Value, Per ton.	Per cent.	Value, Per ton.	Value, Per ton.	Total Value, Per ton. (2,000 lbs.).
	Ounces, Per ton.	Value, Per ton.	Ounces, Per ton.	Value, Per ton.						
		\$		\$		\$		\$	\$	\$
Lower Level	D 1 -	None		None						
	D 2 -	None		None						
	D 3 -	Trace		None						
	D 4 -	None		None						
	D 5 -	Trace		0.1						

Gold calculated at \$20.00 per ounce.

Silver calculated at.....per ounce.

(Seal of Company)

Calculated at.....cents per lb.

Calculated at.....cents per lb.

" H. F. PUDER " Provincial Assayer.

Note.—Samples only retained 3 months unless otherwise specified.

Exhibits.  
 83.—(3).  
 Certificate  
 of Assay  
 of G. S.  
 Eldridge  
 & Co.,  
 27th Nov-  
 ember 1928.



Exhibits.  
 83.—(4).  
 Certificate  
 of Assay  
 of G. S.  
 Eldridge  
 & Co.,  
 27th Nov-  
 ember 1928.

83.—(4) Certificate of Assay of G. S. Eldridge & Co.

File No. 40926-30

Cable Address " Eldrico "  
 Head Office and Laboratories,  
 567 Hornby Street,  
 Vancouver, B.C.

Phone Seymour 4125.

G. S. Eldridge, B.Sc. Provincial Assayer.  
 Member of  
 Canadian Institute of Chemistry.  
 Canadian Institute of Mining and  
 Metallurgy.  
 Society Chemical Industry, England.  
 American Society for Testing Materials.  
 American Chemical Society.

CERTIFICATE OF ASSAY.  
 G. S. ELDRIDGE & CO.

Provincial Assayers, Analytical and Consulting Chemists, Metallurgists and Cement Inspectors.

WE HEREBY CERTIFY that the following are the results of assays made by us upon samples of ore herein described and received from Mr. R. F. Hill.

27th November, 1928.

Marked.	Gold.		Silver.		Per cent.	Value, Per ton.	Per cent.	Value, Per ton.	Value, Per ton.	Total Value, Per ton. (2,000 lbs.).
	Ounces, Per ton.	Value, Per ton.	Ounces, Per ton.	Value, Per ton.						
		\$		\$		\$		\$	\$	\$
Surface	A 1 -	None	Trace							
	A 2 -	0.01	Trace							
	A 3 -	0.02	Trace							
	A 4 -	Trace	None							
Second Level	C 12 -	0.005	None							

Gold calculated at \$20.00 per ounce.

Silver calculated at.....per ounce.

Calculated at.....cents per lb.

Calculated at.....cents per lb.

(Seal of company) " H. F. PUDER " Provincial Assayer.

Note.—Samples only retained 3 months unless otherwise specified.

84.—Certificate of Assay of P. W. Thomas.

P. W. THOMAS.

Assayer Chemist Metallurgist

Vancouver, B.C.

November 28th, 1928.

CERTIFICATE OF ASSAY of Fifty-five Samples of Ore in sealed sample sacks received from Mr. T. D. PICKARD, M.E.

MARK	GOLD ozs. per ton	VALUE per ton \$	SILVER ozs. per ton	VALUE per ton \$	COPPER per cent	VALUE per ton \$	LEAD per cent	VALUE per ton \$	ZINC per cent			GROSS VALUE per ton 2000 lbs. \$
B 1	0.03		0.1									
" 2	0.01		0.1									
" 3	0.01		0.3									
" 4	0.01		Trace									
" 5	0.01		0.1									
" 6	0.01		0.1									
" 7	Trace		0.1									
2 ½ C	Trace		Trace									
3 "	"		"									
4 "	0.01		"									
9 "	Trace		"									
12 "	"		0.6									
13 "	0.01		0.3									
14 "	0.01		Trace									
15 "	Trace		Trace									
16 "	"		0.1									
17 "	"		Trace									
18 "	"		"									
19 "	"		"									
20 "	"		"									
21 "	"		0.1									
22 "	"		Trace									
23 "	"		"									
24 "	"		0.3									
25 "	"		0.4									

3 U 2

523

Exhibits.  
—  
84.  
Certificate  
of Assay  
of P. W.  
Thomas,  
28th Nov-  
ember 1928.

Exhibits.  
—  
84.  
Certificate  
of Assay  
of P. W.  
Thomas,  
28th Nov-  
ember 1928  
—continued.

MARK	GOLD		SILVER		COPPER per cent	LEAD		ZINC		GROSS VALUE per ton 2000 lbs. \$
	ozs. per ton	VALUE per ton \$	ozs. per ton	VALUE per ton \$		per cent	VALUE per ton \$	per cent	VALUE per ton \$	
26	½C	Trace		Trace						
27	"	"		"						
28	"	"		"						
29	"	0.01		"						
30	"	0.01		"						
31	"	Trace		"						
32	"	"		"						
33	"	"		"						
34	"	0.01		0.5						
35	"	Trace		Trace						
36	"	"		"						
37	"	"		"						
38	"	"		"						
39	"	"		"						
40	"	"		"						
41	"	"		"						
42	"	"		"						
43	"	"		"						
44	"	"		"						
45	"	0.02		"						
46	"	Trace		"						
47	"	0.01		"						
48	"	"		"						
49	"	"		"						
50	"	0.09		"						
51	"	Trace		0.2						
52	"	"		"						
53	"	"		"						
54	"	"		"						
55	"	"		"						

Gold Calculated at \$.....per oz.  
Silver     "      at \$.....   "

Copper Calculated at.....per lb.  
Lead     "      ".....   "  
" P. W. THOMAS," Provincial Assayer.

7.—Ledger Sheets of Alamo Gold Mines, Limited.

Sheet No. 1.

Name JOSEPH FRANCIS LANGER,  
Address 3290 Granville St., City.

Account No. L 2.

Terms

Rating

Credit Limit

Date	Items	Folio	✓	Debit		✓	Credit		Dr. or Cr.	✓	Balance		
1926													
Sep 26	Cash Disbursements	8					2	200	Cr		2	200	-
Dec 31	" "	9					5	500	Cr		7	700	-
1927													
Jan 31	" "	10					3	450	Cr		11	150	-
Mar 26	" "	11					4	500	Cr		15	650	-
June 30	" "	12					4	500	Cr		20	150	-
	" "	JE5					1	700	Cr		21	850	-
Aug 31	" "	14					2	000	Cr		23	850	-
Sep 30	" "	15					2	000	Cr		25	850	-
Oct 30	" "	17					2	100	Cr		27	950	-
Nov 15	" "	18						710	Cr		28	660	-

525

Exhibits.  
7.  
Ledger  
Sheets of  
Alamo Gold  
Mines,  
Limited.

Sheet No. 1:  
Name **McTAVISH BROS., LTD.**  
Address

Account No. **Mc 1**  
Terms  
Rating  
Credit Limit

Date	Items	Folio	✓	Debit			✓	Credit			Dr. or Cr.	✓	Balance			
1925 Mar 17	Cash Capital	1			5	00										
1926 June 30	Share Sales	1		22	572	64										
	Disbursements	6						22	577	64						
				22	577	64		22	577	64						
Sep 30	Cash Disbursements	8						5	187	16	C		5	187	16	
Aug 27	" "	8							450	00			5	637	16	
Dec 31	" "	9							15	85			5	653	01	
1927 Jan 31	" "	10							39	68						
	By Cheque 24	10			55	53					Cr		5	637	16	
Mar 28	Cash Disbursements	11							26	14	Cr		5	663	30	
Jun 30	By Cheque 40	12			26	14					Cr		5	637	16	
July 7	" Trip D N McTavish & Barnes to Nevada	14			40	-					Cr		5	597	16	
Oct 27	Cash Evans property	16							500	00	Cr		6	097	16	
31	To mill for Barnes mine	17		3	500	-					Cr		2	597	16	
1928 Jan 31	By Cash Disbursements	19							2	312	10	Cr	4	909	26	
	To Machinery, Equipment purchased this date	JE7			366	00					Cr		4	543	26	

(Balance of Ledger of Alamo Gold Mines Limited not printed by consent.)

8. Share Accounts of (a) J. F. Langer.

Account No. L 1

SHARE ACCOUNT

Sheet No. 2

Name—JOSEPH FRANCIS LANGER

Occupation—Capitalist

Address—3290 Granville St., City.

Original Issue—T'fer

Shares

Date of return of Allotment to

Register of Member's Sales

Registrar of Joint Stock Companies

SHARES DISPOSED OF							SHARES ACQUIRED						BALANCE		
Date	Folio	To	Cert. No.	Shares Numbered		No. of Shares	Date	Folio	FROM	Cert. No.	Shares Numbered		No. of Shares	Date	No. of Shares
				From	To						From	To			
1927							1926								
Jan 22		J F Langer	430	421	2524001	2524100	Sep 22		McTavish C H	365	1800001	1900000	100,000		
22		"	431	421	2524101	2524200	22		" "	366	1900001	2000000	100,000		
22		"	432	421	2524201	2524300	22		" "	367	2450001	2500000	50,000		
22		"	433	421	2524301	2524400	1927								
22		"	434	421	2524401	2524500	Jan 11		Code W.B.	408	2515551	2516050	500		
22		"	435	421	2524501	2524600	11		" "	409	2516051	2516550	500		
22		"	436	421	2524601	2524700	11		" "	410	2516551	2517050	500		
22		"	437	421	2524701	2524800	11		" "	411	2517051	2517550	500		
22		"	438	421	2524801	2524900	11		" "	412	2517551	2518050	500		
22		"	439	421	2524901	2525000	11		" "	413	2518051	2518550	500		
						1,000	11		" "	414	2518551	2519550	1,000		
							11		" "	417	2520001	2521000	1,000		
							11		" "	418	2521001	2522000	1,000		
							11		" "	419	2522001	2523000	1,000		
							11		" "	420	2523001	2524000	1,000		
							11		" "	421	2524001	2525000	1,000		
							11		" "	422	2525001	2526000	1,000		
							18		" "	423	1700001	1800000	100,000		
							18		" "	424	1600001	1700000	100,000		
						Fwd. 1,000				Fwd.			460,000		

527

Exhibits.  
8.  
Share  
Accounts  
of (a) J. F.  
Langer,  
22nd Sept-  
ember 1926  
-17th Nov-  
ember 1927.

Exhibits.  
8.  
Share  
Accounts  
of (a) J. F.  
Langer,  
22nd Sept-  
ember 1926  
-17th Nov-  
ember 1927  
—continued.

SHARES DISPOSED OF						SHARES ACQUIRED						BALANCE			
Date	Folio	To	Cert. No.	Shares Numbered		No. of Shares.	Date	Folio	FROM	Cert. No.	Shares Numbered		No. of Shares	Date	No. of Shares.
				From	To						From	To			
		Fwd			1,000		1927								
							Jan 18		Fwd						
									Barnes D	425	2100001	2110000	10,000		
									" "	426	2110001	2120000	10,000		
									" "	427	2120001	2130000	10,000		
									" "	428	2130001	2140000	10,000		
									" "	429	2140001	2150000	10,000		
							22		Langer J. F.	430	2524001	2524100	100		
									" "	431	2524101	2524200	100		
									" "	432	2524201	2524300	100		
									" "	433	2524301	2524400	100		
									" "	434	2524401	2524500	100		
									" "	435	2524501	2524600	100		
									" "	436	2524601	2524700	100		
									" "	437	2524701	2524800	100		
									" "	438	2524801	2524900	100		
									" "	439	2524901	2525000	100		
							June 17		Thomas Geo H.	518	625001	650000	25,000		
					1,000		July 3		Fwd						
							July 11		Barnes D	539	1500001	1600000	100,000		
							July 11		Barnes D	540	2550001	2570000	20,000		
							12		McTavish C H	547	2350001	2400000	50,000		
									Code W B	548	2002101	2014600	12,500		
							Sep 6		Fwd						
							Nov 16		McTavish Bros	587	200001	300000	100,000		
							16		Ltd						
									" "	588	1200001	1300000	100,000		
															536,000





Exhibits.  
 8.  
 Share  
 Accounts of  
 (b) C. H.  
 McTavish,  
 14th May  
 1925 to  
 6th Sept-  
 ember 1927.

**8. Share Accounts of (b) C. H. McTavish.**

Account No. Mc8

**SHARE ACCOUNT**

Sheet No. 2

Name—McTAVISH, CHARLES H.

Occupation—Salesmanager.

Address—970 Chestnut Street, San Francisco, Cal.

Original Issue

Shares

Register of Member's Sales

SHARES DISPOSED OF						SHARES ACQUIRED						BALANCE			
Date	Folio	To	Cert. No.	Shares Numbered		No. of Shares	Date	Folio	FROM	Cert. No.	Shares Numbered		No. of Shares	Date	No. of Shares
				From	To						From	To			
							1925								
							May 14	51	Code W. B.	51	1800001	1900000	100,000		
							" "		" "	52	1900001	2000000	100,000		
							" "		" "	59	2300001	2350000	50,000		
							" "		" "	60	2350001	2400000	50,000		
							" "		" "	61	2400001	2450000	50,000		
							" "		" "	62	2450001	2500000	50,000		
							" "		" "	72	2650001	2670000	20,000		
							" "		" "	73	2670001	2690000	20,000		
							" "		" "	74	2690001	2700000	10,000		
							" "		" "	75	2700000	2720000	20,000		
							" "		" "	76	2720000	2740000	20,000		
							" "		" "	77	2740000	2750000	10,000		
							" "		" "	87	2840001	2850000	10,000		
							" "		" "	88	2850001	2860000	10,000		
							" "		" "	89	2860001	2870000	10,000		
							" "		" "	90	2870001	2880000	10,000		
							" "		" "	91	2880001	2890000	10,000		
							" "		" "	92	2890001	2900000	10,000		
							1926								
							July 3						560,000		560,000
1926		Langer J. F.	365	1800001	1900000	100,000									
Sep 22		" "	366	1900001	2000000	100,000									
22		" "	367	2450001	2500000	50,000									
22						250,000									
							1927								
July 12		Langer J. F. 547	60	2350001	2400000	50,000	July 3		Fwd				310,000		
							Sept 6		Fwd				260,000		

530

8.—Share Accounts of (c) McTavish Brothers, Limited.

Account No. Mc9

SHARE ACCOUNT

Sheet No. 2

Name—McTAVISH BROS., LTD.,  
 Address—308 London Building, Vancouver, B.C.  
 Date of return of Allotment to  
 Registrar of Joint Stock Companies

Occupation Brokers  
 Original Issue  
 Register of Member's Sales  
 Shares

860098  
 P 30098

3 Y

SHARES DISPOSED OF						SHARES ACQUIRED						BALANCE								
Date	Folio	To	Cert. No.	Shares Numbered		No. of Shares.	Date	Folio	FROM	Cert. No.	Shares Numbered		No. of Shares	Date	No. of Shares					
				From	To						From	To								
/							1925													
							May 14					Code William B	6		6	1000	995			
							" "					" "	7		1001	5000	4,000			
							" "					" "	8		5001	15000	10,000			
							" "					" "	9		15001	25000	10,000			
							" "					" "	10		25001	50000	25,000			
							" "					" "	11		50001	75000	25,000			
							" "					" "	12		75001	100000	25,000			
							" "					" "	13		100001	150000	50,000			
							" "					" "	14		150001	200000	50,000			
							" "					" "	15		200001	250000	50,000			
							" "					" "	16		250001	300000	50,000			
							" "					" "	43		1200001	1250000	50,000			
							" "					" "	44		1250001	1300000	50,000			
							" "					" "	45		1300001	1350000	50,000			
							" "					" "	46		1350001	1400000	50,000			
							" "					" "	47		1400001	1500000	100,000			
							" "					Nov 27		Barnes D	306	2152001	2154000	2,000		
							" "								307	2154001	2156000	2,000		
												1926								
						July 3						603,995		603995						

531

Exhibits.  
 8  
 Share Accounts of (c) McTavish Brothers, Limited, 14th May 1925 to 16th November 1927.



8.—(d) Statement as to omission of Share Accounts of William B. Code, David Barnes and George H. Thomas. Exhibits.

SHARE ACCOUNTS of WILLIAM B. CODE, DAVID BARNES and GEORGE H. THOMAS contained in Exhibit 8 are not printed by consent of counsel, and it is admitted by counsel that on the date of any transfer of shares from any of the said persons to the defendant J. F. Langer as set out in the share account of the defendant J. F. Langer in Exhibit 8 the transferor was then shown as being registered on the books of the defendant Alamo Gold Mines, Limited, as a member of the last mentioned company, with respect to shares in question. Statement as to omission of Share Accounts of William B. Code, David Barnes and George H. Thomas.

*(Balance of Stock Ledger of Alamo Gold Mines, Limited,  
not printed by consent.)*

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9.—Cash Book of Alamo Gold Mines, Limited. 9.

*(Not printed.)*

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10, 11, 12, 13, 14.—Five Stub Books of Share Certificates of Alamo Gold Mines, Limited. 10, 11, 12, 13, 14.

*(Not printed.)*

EXHIBITS 10, 11, 12, 13 and 14 are not printed by consent of counsel, and it is admitted by counsel that the said exhibits show the following receipts for share certificates signed by the defendant J. F. Langer.

Date.	Certificate Number.	Total No. of Shares.	Share Numbers.
Sept. 22, 1926	365	100,000	1,800,001 to 1,900,000 inc.
Sept. 22, 1926	366	100,000	1,900,001 to 2,000,000 inc.
Sept. 22, 1926	367	50,000	2,450,001 to 2,500,000 inc.
Jany. 11, 1927	408	500	2,515,551 to 2,516,050 inc.
Jany. 11, 1927	409	500	2,516,051 to 2,516,550 inc.
Jany. 11, 1927	410	500	2,516,551 to 2,517,050 inc.
30 Jany. 11, 1927	411	500	2,517,051 to 2,517,550 inc.
Jany. 11, 1927	412	500	2,517,551 to 2,518,050 inc.
Jany. 11, 1927	413	500	2,518,051 to 2,518,550 inc.
Jany. 11, 1927	414	1,000	2,518,551 to 2,519,550 inc.
Jany. 11, 1927	417	1,000	2,520,001 to 2,521,000 inc.
Jany. 11, 1927	418	1,000	2,521,001 to 2,522,000 inc.

Exhibits.	Date.	Certificate Number.	Total No. of Shares.	Share Numbers.	
10, 11, 12, 13, 14—con- tinued.	Jany. 11, 1927	419	1,000	2,522,001 to 2,523,000 inc.	
	Jany. 11, 1927	420	1,000	2,523,001 to 2,524,000 inc.	
	Jany. 11, 1927	421	1,000	2,524,001 to 2,525,000 inc.	
	Jany. 11, 1927	422	1,000	2,525,001 to 2,526,000 inc.	
	Jany. 18, 1927	423	100,000	1,700,001 to 1,800,000 inc.	
	Jany. 18, 1927	424	100,000	1,600,001 to 1,700,000 inc.	
	Jany. 18, 1927	425	10,000	2,100,001 to 2,110,000 inc.	
	Jany. 18, 1927	426	10,000	2,110,001 to 2,120,000 inc.	10
	Jany. 18, 1927	427	10,000	2,120,001 to 2,130,000 inc.	
	Jany. 18, 1927	428	10,000	2,130,001 to 2,140,000 inc.	
	Jany. 18, 1927	429	10,000	2,140,001 to 2,150,000 inc.	
	Jany. 22, 1927	430	100	2,524,001 to 2,524,100 inc.	
	Jany. 22, 1927	431	100	2,524,101 to 2,524,200 inc.	
	Jany. 22, 1927	432	100	2,524,201 to 2,524,300 inc.	
	Jany. 22, 1927	433	100	2,524,301 to 2,524,400 inc.	
	Jany. 22, 1927	434	100	2,524,401 to 2,524,500 inc.	
	Jany. 22, 1927	435	100	2,524,501 to 2,524,600 inc.	
	Jany. 22, 1927	436	100	2,524,601 to 2,524,700 inc.	20
	Jany. 22, 1927	437	100	2,521,701 to 2,524,800 inc.	
	Jany. 22, 1927	438	100	2,524,801 to 2,524,900 inc.	
Jany. 22, 1927	439	100	2,524,901 to 2,525,000 inc.		
June 17, 1927	518	25,000	625,001 to 650,000 inc.		

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18 & 40. -Diagram showing Cross-section of Alamo Vein and Workings.

# CROSS SECTION OF ALAMO VEIN AND WORKINGS.

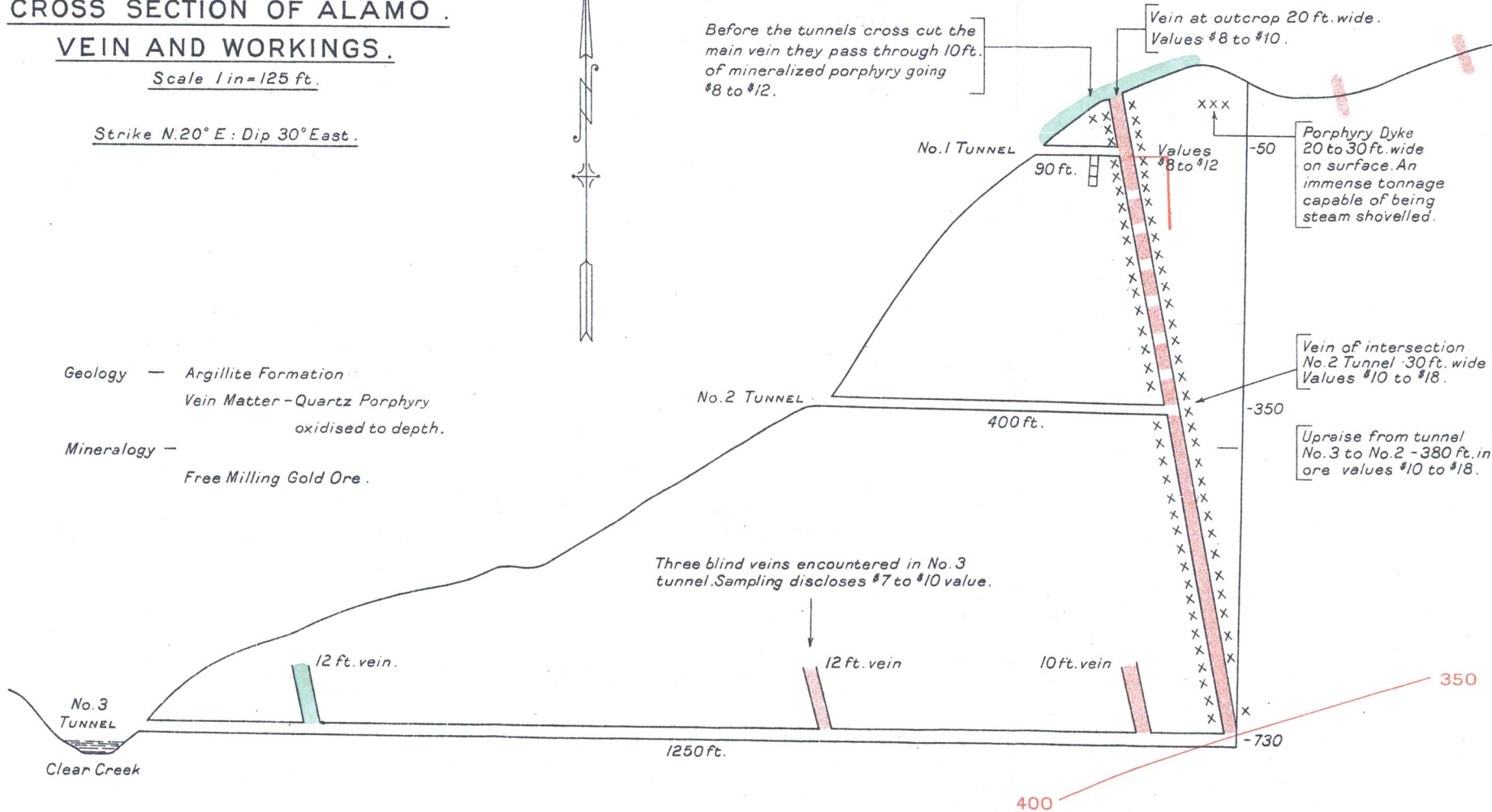
Scale 1 in = 125 ft.

Strike N.20° E : Dip 30° East.



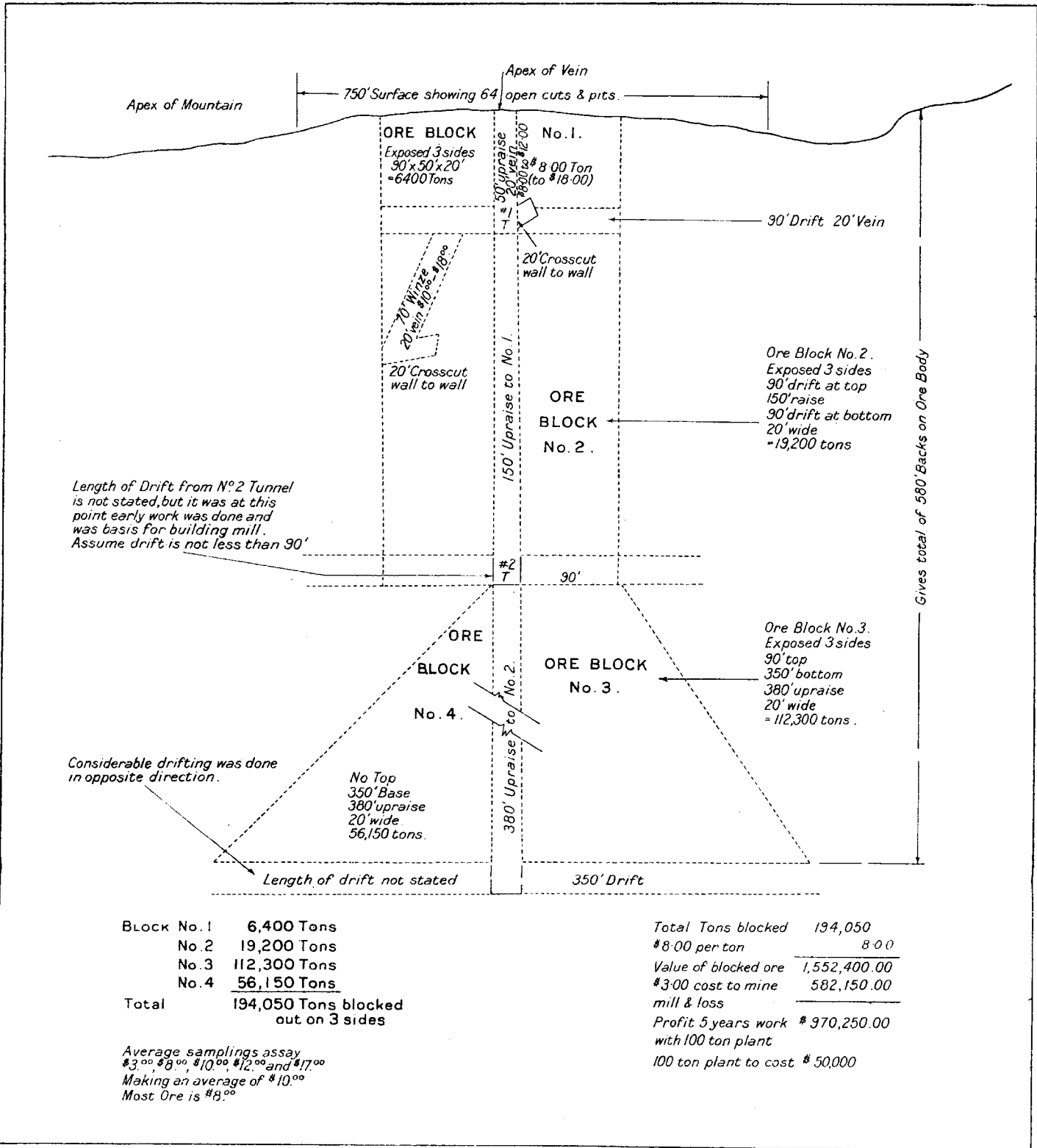
Geology — Argillite Formation  
 Vein Matter - Quartz Porphyry  
 oxidised to depth.

Mineralogy —  
 Free Milling Gold Ore.



Exhibits.  
 18 & 40.  
 Diagram showing cross-section of Alamo Vein and workings.

19 & 38.—Diagram showing ore blocks in Alamo Mine.



Exhibits.  
19 & 38.  
Diagram showing ore blocks in Alamo Mine

Block No. 1	6,400 Tons
No. 2	19,200 Tons
No. 3	112,300 Tons
No. 4	56,150 Tons
<b>Total</b>	<b>194,050 Tons blocked out on 3 sides</b>

Total Tons blocked	194,050
\$8.00 per ton	8.00
Value of blocked ore	1,552,400.00
\$3.00 cost to mine mill & loss	582,150.00
Profit 5 years work with 100 ton plant	\$970,250.00
100 ton plant to cost	\$50,000

Average samplings assay  
\$3.00 \$8.00 \$10.00 \$12.00 and \$17.00  
Making an average of \$10.00  
Most Ore is \$8.00

- 41.—Sketch Map of Properties of Alamo Gold Mines, Limited, Grant County, Oregon. Exhibits.  
(Not printed.) 41.
- 
- 82.—Sketch Plan showing results of Sampling of the Alamo Mine, Clear Creek, Grant County. 82.  
(Not printed.)
- 
- 95.—Information regarding Alamo Mine issued by McTavish Brothers, Limited. 95.  
INFORMATION REGARDING ALAMO MINE OWNED BY THE ALAMO GOLD MINES, LIMITED. Information regarding Alamo Mine issued by McTavish Brothers, Limited.  
Head Office, 308 London Building, Vancouver, B.C.
- 10
- DEVELOPMENT WORK ALL DONE.
- Over 5,000 feet of development work has been done on this property, showing up huge ore bodies of good value. Therefore no money is required for development work.
- LOCATION AND WORKING CONDITIONS.
- The property is beautifully located on an auto highway in Eastern Oregon, in one of the best known mining areas in America. The climate is ideal, permitting work to be carried on the year round without interruption.
- WATER AND TIMBER GREAT ESSENTIALS FOR MINING.
- 20 There is an abundance of water and timber for all mining purposes, and, best of all, there is a large body of free milling gold ore that can be mined and milled for much less than the usual transportation charges paid by companies handling complex ores.
- TITLE IN FIRST-CLASS SHAPE.
- The Company has title to the property, free of all incumbrance.
- ABUNDANCE OF POWER.
- There is a power company's line within a mile of the property, insuring plenty of power at a minimum cost.



Exhibits.

95.

Information  
regarding  
Alamo Mine  
issued by  
McTavish  
Brothers,  
Limited—  
*continued.*

## WHAT A SHREWD BANKER SAYS ABOUT MINING.

A President of one of the largest banks was criticized by his brother presidents because he had become largely interested in a gold and silver mine in the Rocky Mountains. He answered :

“Throughout the Rocky Mountains, ages ago, God built stronger vaults in His granite banks than ours. He filled these vaults with gold, silver and lead. He gave the prospector knowledge and insight, and guided him on his way to the door of the bank vault. The Government handed him his patent title to all therein. It is no crime, but a virtue to enter. With drill, blast, pick and spade, the poor man broke the combination lock, and entered. But for him, our notes in issue would be as the current value of a German mark. But for him, this Government would be bankrupt. Mines will be producing millions in gold, silver and lead in that future day when banks are unknown. Remember, a mine is simply a crop, already raised, that needs but to be harvested and deposited in the bin or bank. You check it out at your pleasure to your investment. 10

The wealth gathered from the mines immortalized King Solomon. Mining made Rome the mistress of the world. Mining made Great Britain the world's commercial dictator. Mining is making this the richest country in the world. Show me a country that has no mines, and I will show you a people sunk in degradation of poverty ; and poverty makes cowards of nations as well as men. Mining has transformed more broken men and tramps into millionaires and placed them in positions of honour and trust than any other business. Without the miner you would not have a frying pan, a spoon or a hatpin. Eliminate the miner and you wipe out civilization. A nation's prosperity depends upon the extent, variety and development of its mineral resources.” 20

Recent figures disclosed by the census show that :

Farming produces annually, per capita	\$297.00	30
Forestry industries produce annually, per capita	425.00	
Manufacturing produces annually, per capita,	764.00	
Mining (gold, silver, copper, lead and zinc) produces annually, per capita	1910.00	

## WHAT A BANKING JOURNAL SAYS.

The National Banker in a recent issue makes the unequivocal statement that the combined dividends paid by the gold and silver companies of the United States are greater than the combined dividends paid by all banks in the United States; that the combined dividends paid by the copper companies of the United States are greater than the combined dividends paid by all the railroads of the United States—that 52 per cent. of the freight handled by these same railroads is either ore or some commodity connected with the mining and milling of ore. 40

FINE SHOWING, BUT LET US MAKE IT BETTER THIS YEAR.

In a year which was generally marked by business depression, it is a remarkable fact that the mineral industry of British Columbia closes 1924 with the greatest production in history, a total of \$35,494,492.00 having been taken from the metal mines of the Province last year. This would mean over \$100,000.00 of new wealth taken from the earth every working day of the year.

Exhibits.  
—  
95.  
Information  
regarding  
Alamo Mine  
issued by  
McTavish  
Brothers,  
Limited—  
*continued.*

THERE ARE MANY PROPERTIES LIKE THE PREMIER JUST AWAITING  
ATTENTION.

10 According to a report appearing in the "Alaska Weekly," the Premier mine, in December 1924, declared a quarterly dividend of \$500,000.00. This Company began paying dividends in December 1921, and since that time has paid to shareholders the huge sum of \$7,140,625.00. As the Company is capitalized at \$5,000,000.00, the above figures represent total payments to shareholders amounting to 146 per cent. within a period of less than four years. The Company has large ore reserves to work on for years to come.

IMMEDIATE RESULTS.

20 The Alamo mine, having large bodies of ore blocked out, is in a position to commence production immediately upon installation of a mill.

MILL TO BE INSTALLED AT ONCE.

As a mill is being installed at once this property will be actually producing profits at an early date. Two of the best known mining engineers in the West will have charge of mining and milling operations.

EARLY DIVIDENDS.

As all development is already completed on the Alamo mine and large bodies of good ore are now blocked out, it is not too much to expect that this Company will be paying dividends long before most others have completed their necessary development work.

30

YOUR OPPORTUNITY.

Rarely is such a mining opportunity as this offered to the public, and we strongly urge upon you the advisability of procuring a block of shares in Alamo Gold Mines, Limited. We own and are now offering for sale a small block of shares. See us for further particulars before price advances.

McTAVISH BROTHERS, LIMITED.

308 London Building, Vancouver, B.C.

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**In the Privy Council.**

No. 26 of 1930.

*On Appeal from the Court of Appeal of  
British Columbia.*

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BETWEEN

J. F. LANGER - (*Defendant*) *Appellant*

AND

McTAVISH BROTHERS LIMITED  
(*Plaintiff*) *Respondent.*

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**RECORD OF PROCEEDINGS**

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MARKBY, STEWART & WADESONS,

5, Bishopsgate, E.C.2.

*Solicitors for Appellant.*

WILLIAM A. CRUMP & SON,

Baltic House,

27, Leadenhall Street, E.C.3.

*Solicitors for Respondent.*