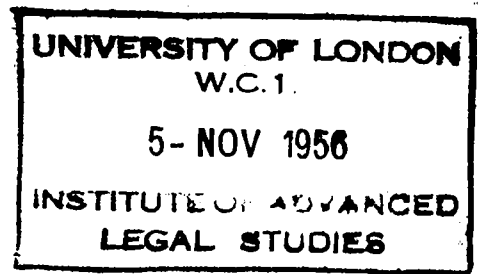


68,1937



45075

In The Privy Council

No. 134 of 1936.

ON APPEAL FROM THE COURT OF APPEAL
FOR ONTARIO

BETWEEN:

E. B. M. COMPANY LTD.
(Plaintiff) APPELLANT,

AND

THE DOMINION BANK
(Defendant) RESPONDENT.

RECORD OF PROCEEDINGS

BLAKE & REDDEN,
17 Victoria Street,
London, S.W. 1.

For the Appellant

LAWRENCE JONES & CO.,
Lloyd's Building,
Leadenhall Street,
London, E.C. 3.

For the Respondent.

WEST TORONTO PRINTING HOUSE, LIMITED
TORONTO, CANADA

RECORD OF PROCEEDINGS

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Between:

E. B. M. COMPANY LTD.

(Plaintiff) APPELLANT

AND

THE DOMINION BANK

(Defendant) RESPONDENT.

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

PART I

No.	Description of Document	Date	Page
1	Statement of Claim	November 5, 1931	1
2	Statement of Defence and Counterclaim	November 20, 1931	2
3	Reply and Defence to Counterclaim	March 12, 1932	4
4	Reply to Plaintiff's Defence to Counterclaim	March 22, 1932	5
5	Statement of Defence of Low to the Counterclaim	March 24, 1932	5
6	Statement of Defence of Leon to the Counterclaim	March 26, 1932	6
7	Statement of Defence of Burns to the Counterclaim	March 26, 1932	7
8	Reply to Statements of Defence of Low, Leon & Burns to Counterclaim.....	March 31, 1932	7
9	Proceedings at Trial	September 19-22, 1933	8
Plaintiff's Evidence			
10	WILLIAM C. MacAGY		
	Examination	September 20, 1933	13
	Cross-Examination	September 20, 1933	51
	Re-Examination	September 20, 1933	64

II

No.	Description of Document	Date	Page
11	MARCO LEON		
	Examination	September 20, 1933	67
	Cross-Examination	September 20, 21, 1933	76
	Re-Examination	September 21, 1933	115
	Re-Cross-Examination	September 21, 1933	115
	Re-Examination	September 21, 1933	118
12	JACK ESAR		
	Examination	September 21, 1933	120
	Cross-Examination	September 21, 1933	122
13	JOSEPH HYMAN MAGID		
	Examination	September 21, 1933	127
	Cross-Examination	September 21, 1933	133
Defendant's Evidence			
14	WILLIAM B. MILLIKEN		
	Examination	September 21, 1933	139
	Cross-Examination	September 21, 1933	140
	Re-Examination	September 21, 1933	142
15	ALBERT CLIFFORD ASHFORTH		
	Examination	September 21, 1933	142
	Cross-Examination	September 21, 1933	143
	Re-Examination	September 21, 1933	144
16	Reasons for Judgment of Kelly, J.	January 4, 1934	146
17	Judgment of Kelly, J.	January 4, 1934	153
18	Notice of Appeal by Plaintiff to Court of Appeal	January 19, 1934	154
19	Reasons for Judgment of Court of Appeal...	June 29, 1934	155
	Latchford, C.J.A.	June 29, 1934	163
	Riddell, J.A.	June 29, 1934	155
	Masten, J. A.	June 29, 1934	156
	Fisher, J.A.	June 29, 1934	163
	Davis, J.A.	June 29, 1934	163
20	Judgment of the Court of Appeal	June 29, 1934	167
21	Order Approving Security and Admitting Appeal	October 19, 1934	168
22	Order of Middleton, J.A., Amending Style of Cause and Ordering Further Security for Costs	June 18, 1936	168a
23	Order of Court of Appeal Dismissing Appeal From Order of Middleton, J.A.	October 23, 1936	168d
24	Order of Latchford, C.J.A., Approving Security and Admitting Appeal	November 5, 1936	168e

PART II
EXHIBITS

Mark	Description of Document	Date	Page
1	Copy of letters Patent Incorporating Carling Export Brewing and Malting Co. Ltd.	May 8, 1922	218

Judgment of Kelly, J.
May 14th, 1935 168(1)

III

Exhibit Mark	Description of Document	Date	Page
2	Letter, London Manager of Dominion Bank to General Manager	June 1, 1927	183
	Letter, General Manager of Dominion Bank to London Manager	June 2, 1927	184
3	Letter, Carling Export Brewing and Malting Co. Ltd. to Dominion Bank	October 26, 1927	186
	Copy of letter, Assistant General Manager Dominion Bank to Carling Breweries Ltd.	October 27, 1927	187
4	Letter, London Manager of Dominion Bank to Chief Inspector	October 13, 1927	185
	Copy of letter, Chief Inspector of Dominion Bank to London Manager	October 14, 1927	186
5	Copy of letter, Assistant Manager of Dominion Bank to Chas. Burris	May 1, 1928	189
	Letter, Charles Burns to Dominion Bank ...	May 16, 1928.....	189
	Copy of letter, Assistant Manager Dominion Bank to Charles Burns	May 18, 1928	190
	Copy of letter, Assistant Manager Dominion Bank to London Manager	May 18, 1928	190
	Copy of letter, Assistant Manager Dominion Bank to Chas. Burns	November 1, 1928	194
	Copy of letter, Assistant Manager Dominion Bank to Chas. Burns	May 1, 1929.....	199
	Copy of letter, Assistant Manager Dominion Bank to Chas. Burns	November 1, 1929	208
6	Copy of letter, Carling Export Brewing and Malting Co. Ltd. to Dominion Bank	April 25, 1928	188
7	Letter, Chief Inspector Dominion Bank to Chas. Burns	January 2, 1931	210
8	Copy of Savings Account C 3108 in Name of Carling Export Brewing and Malting Co. Ltd. at Dominion Bank, Toronto ...	June 30, 1931	243
9	Letter, N. W. Rowell to General Manager Dominion Bank	May 13, 1931	212
	Copy of letter, General Manager Dominion Bank to N. W. Rowell.....	May 16, 1931	213
	Copy of letter, Chief Inspector Dominion Bank to N. W. Rowell	June 30, 1931	216
10	Letter, Plaintiff's Solicitors to Dominion Bank	June 3, 1931	214
	Letter, Chief Inspector Dominion Bank to Plaintiff's Solicitors	June 6, 1931	214
	Letter, Plaintiff's Solicitors to Dominion Bank	June 27, 1931	215
	Letter, Chief Inspector Dominion Bank to Plaintiff's Solicitors	June 30, 1931	216

IV

Exhibit Mark	Description of Document	Date	Page
10 (Cont'd)	Letter, Plaintiff's Solicitors to Dominion Bank	October 19, 1931	217
	Letter, General Manager Dominion Bank to Plaintiff's Solicitors	October 26, 1931	218
11	Assignment, Carling Export Brewing and Malting Co. Ltd. to Dominion Bank	July 12, 1929	265
12	Letter, Montreal Manager, Dominion Bank to London Manager	July 3, 1928	192
13	Letter, Windsor Manager, Dominion Bank to Montreal Manager	June 26, 1929	201
14	Letter, Assistant Manager, Montreal, to Chief Inspector Dominion Bank	July 5, 1929	203
15	Letter, Windsor Manager, Dominion Bank, to Chief Inspector	July 8, 1929	206
16	Statement of Affairs of Carling Export Brewing and Malting Co. Ltd.	April 7, 1926	171
	Statement of Affairs of Carling Export Brewing and Malting Co. Ltd.	May 23, 1927	178
	Application for Line of Credit by Carling Export Brewing and Malting Co. Ltd. ..	May 25, 1927	180
17	Copy of letter, Chief Inspector Dominion Bank to London Manager	May 28, 1929	200
18	Letter, London Manager Dominion Bank to Chief Inspector	June 25, 1929	200
19	Copy of letter, Chief Inspector Dominion Bank to London Manager	January 22, 1929	196
	Letter, London Manager Dominion Bank to Chief Inspector	January 28, 1929	198
20	Agreement to postpone by Low to Dominion Bank	February 21, 1925	241
	Agreement to postpone by Burns to Dominion Bank	February 24, 1925	241
	Agreement to postpone by Leon to Dominion Bank	February 24, 1925	242
21	Guarantee of Low, Leon and Burns to Dominion Bank	December 28, 1923	235
	Guarantee of Low, Leon and Burns to Dominion Bank	April 9, 1924	238
22	Copy of By-law of Carling Export Brewing and Malting Co. Ltd. re Borrowing and Banking	November 1, 1923	224
	Copy of Resolution of Directors of Carling Export Brewing and Malting Co. Ltd. re Banking Account and Securities	November 1, 1923	226

V

Exhibit Mark	Description of Document	Date	Page
23 (Cont'd)	Application by Carling Export Brewing and Malting Co. Ltd. for Credit	November, 1926	173
	Memorandum of Information Supplied Dominion Bank by Low	November 24, 1926	174
24	Letter from Carling Export Brewing and Malting Co. Ltd.	January 11, 1928	188
25	Ledger Sheet of Account 4916 of Carling Export Brewing and Malting Co. Ltd. at Dominion Bank, London	September 20, 1929	244
26	Application for Line of Credit by Carling Export Brewing and Malting Co. Ltd.	February 26, 1925	169
27	Letter, London Manager Dominion Bank to General Manager	May 23, 1927	177
	Letter, General Manager Dominion Bank to London Manager	May 26, 1927	182
28	Preferred Share Register of Carling Export Brewing and Malting Co. Ltd. (Not printed)
29	Common Share Register of Carling Export Brewing and Malting Co. Ltd. (Not printed)
30	Minute Book of Carling Export Brewing and Malting Co. Ltd. Extracts only printed as follows: Extract from General By-laws re Powers of Officers	June 20, 1922	227
	Minutes of Meeting of Board of Directors held	October 11, 1923	228
	Minutes of Meeting of Board of Directors held	October 12, 1923	230
	Minutes of Meeting of Board of Directors held	June 14, 1927	231
	Minutes of Meeting of Board of Directors held	January 31, 1928	233
	Minutes of Meeting of Export Brewing and Malting Co. Ltd. held	May 20, 1931	234
31	Letter, Harry Leon to Marco Leon	June 25, 1928	191
	Letter, Harry Leon to Marco Leon	December 20, 1928	195
32	Statement of Joint Account of Marco and Freda Leon at Dominion Bank, Montreal
	(Not printed)		
33	Mortgage Harry Low et al to Dominion Bank (Windsor properties)	June 20, 1929	247

VI

Exhibit Mark	Description of Document	Date	Page
34	Mortgage Harry Low et al to Dominion Bank (Toronto properties)	June 20, 1929	257
35	Cheque drawn by Border Cities Exporters Co. in favour of T. J. Haley	June 25, 1928	245
36	Letter, Marco Leon to Jack Esar	November 29, 1928	194
37	Share Certificate No. 101 of Carling Export Brewing and Malting Co. Ltd. in name of J. Esar	February 4, 1931	267
38	Letter, Marco Leon to Jack Esar with memorandum	November 29, 1928	195
39	Four cheques, drawn on Provincial Bank of Canada, signed J. Esar	November, 1928 —March, 1929	246
40	Letter, Chas. Burns to J. H. Magid with List of Securities	January 23, 1929	197
	Letter, J. H. Magid to Chas. Burns	May 13, 1929	199
	Letter, J. H. Magid to Chas. Burns	December 27, 1930	209
	Letter, J. H. Magid to Chas. Burns	January 3, 1931	211

List of Exhibits Not Printed in Record by Consent of Solicitors.

Exhibit Mark	Description of Document	Reference Page in Evidence
28	Preferred Share Register of Carling Export Brewing and Malting Co. Ltd.	Plaintiff's Exhibit 73
29	Common Share Register of Carling Export Brewing and Malting Co. Ltd.	Plaintiff's Exhibit 74
32	Statement of Joint Bank Account of Marco and Freda Leon at Dominion Bank, Montreal	Defendant's Exhibit .. 111

IN THE SUPREME COURT OF ONTARIO
(Writ issued the 21st day of October, 1931)

Record.
*In the
Supreme
Court of
Ontario.*
No. 1.
Statement
of Claim.

BETWEEN:

E. B. M. COMPANY LTD.

Plaintiff,

AND

THE DOMINION BANK,

Defendant.

10

STATEMENT OF CLAIM

1. The Plaintiff is an incorporated Company having its Office at the City of London in the Province of Ontario. The Defendant is a Chartered Bank having its Head Office at the City of Toronto.

2. On or about the 26th day of October, 1927, the Plaintiff deposited with the Defendant Dominion of Canada Victory Loan 5½% Bonds due first November 1934, with coupons attached, the principal par value of the said Bonds being the sum of \$400,000.00.

3. The said bonds were so deposited by the Plaintiff with the Defendant as security to the Defendant in respect of the guarantee given by the Defendant that any final judgment that might be obtained by the Dominion Government against the Plaintiff in respect of an action then pending with reference to Sales Tax and Gallonage Tax on export sales would be duly paid,

4. On or about the 30th day of June, 1931, the Defendant paid to the Dominion Government the sum of \$88,073.17 in full satisfaction of the final judgment recovered against the Plaintiff by the Dominion Government in the said action and thereby the said guarantee of the Defendant was discharged.

5. By an arrangement between the Plaintiff and the Defendant certain of the said bonds were converted into money, and on the 29th day of March, 1930, the Defendant had in its hands, as representing the security against its said guarantee deposited with it by the Plaintiff Dominion of

Record.
In the
Supreme
Court of
Ontario.
No. 1.
Statement
of Claim
—concluded.

Canada Bonds to the amount of \$100,000.00, and cash to the amount of \$313,250.69.

6. Before the commencement of this action the Plaintiff demanded from the Defendant the return of the said bonds and payment of the said moneys with accrued interest thereon after crediting thereon the said sum of \$88,073.17 paid by the Defendant as aforesaid, but the Defendant has neglected and refused to return the same.

THE PLAINTIFF THEREFORE CLAIMS:

- (a) Return of the said Bonds to the principal amount of \$100,000. with coupons and payment of the said sum of \$313,250.69 and accrued interest, after crediting thereon the said sum of \$88,073.17.
- (b) Costs of this action.
- (c) Such further and other relief as the Plaintiff may be entitled to.

The Plaintiff proposes that this action should be tried at Toronto.

DATED this 5th day of November, 1931, by Fasken, Robertson, Aitchison, Pickup & Calvin, 36 Toronto Street, Toronto, Solicitors for the Plaintiff.

No. 2

IN THE SUPREME COURT OF ONTARIO

BETWEEN:

20

E. B. M. COMPANY LTD.

Plaintiff,

AND

THE DOMINION BANK,

Defendant.

AND BETWEEN:

THE DOMINION BANK,

Plaintiff by Counterclaim,

AND

E. B. M. COMPANY LTD. HARRY LOW, MARCO LEON
AND CHARLES BURNS,

30

Defendants by Counterclaim.

No. 2.
Statement of
Defence and
Counterclaim.

STATEMENT OF DEFENCE AND COUNTERCLAIM

Record.
In the
Supreme
Court of
Ontario.
No. 2.
Statement of
Defence and
Counterclaim.
—continued.

1. The Defendant Bank admits the allegations contained in the first paragraph of the Statement of Claim. The Plaintiff Company (herein referred to as the Export Company) was incorporated by Dominion Letters Patent dated 8th May, 1922, to which a reference is made for a description of its corporate powers.

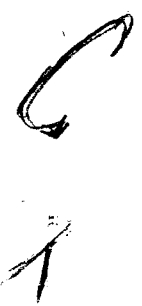
2. The individual defendants by counterclaim are and have been since 1923 the sole owners of the shares in the capital stock of the Export Company, Mrs. Low and Mrs. Leon having shares in their names to bring the number of shareholders up to five to comply with the provisions of the Companies Act. Charles Burns at all material times was President, Marco Leon, Vice-President and Harry Low, Secretary-Treasurer and Sales Manager of the Export Company.

3. In June 1927 the Export Company (then called The Carling Export Brewing & Malting Company Limited) sold its undertaking to Carling Breweries Limited, receiving in payment therefor fully paid shares in the capital stock of the latter Company, which shares were subsequently sold, the proceeds being held for the shareholders of the Export Company which was in process of liquidation.

4. At the time of the said sale a claim was being made by the Crown against the Export Company for sales and gallonage taxes which was disputed and was not assumed by the purchasers. The Export Company and/or Low, Leon and Burns in order to secure payment of any amount that might be found due to the Crown deposited the bonds referred to in the statement of claim with the defendant Bank on terms that the Bank was to pay out of the proceeds thereof any amount that might ultimately be found due to the Crown. All the said bonds were subsequently sold and out of the proceeds the Bank in June 1931 paid to the Crown about \$88,073.17 in settlement of the judgment that had then been recovered by the Crown against the Export Company.

5. The Export Company and/or Low, Leon and Burns carried on a brewery and dealt in spirituous liquors and had large dealings in lands and in the erection of buildings. These transactions were largely intermixed as between the Company and the individuals and the Company assisted, as it was entitled to do, the said Low, Leon and Burns in financing the various projects in which they and/or the company were interested from time to time.

6. In July 1929 the Export Company and/or Low, Leon and Burns agreed with the Bank that the Bank should hold the said bonds and the proceeds of bonds sold as security for the joint and several indebtedness from time to time of the said Low, Leon and Burns to the Bank (subject to the claim of the Crown) and subsequently the Bank in pursuance of this



Record.
 In the
 Supreme
 Court of
 Ontario.
 No. 2.
 Statement of
 Defence and
 Counterclaim.
 —continued.

agreement credited the balance of the proceeds of bonds remaining in its hands against the said indebtedness of Low, Leon and Burns, leaving a balance still due by them.

7. The advances made by the Bank to Low, Leon and Burns were connected with and for the purposes of ventures in respect of which the Export Company was entitled to agree, as it did agree, that the bonds and the proceeds thereof should be held as security as aforesaid.

8. The Export Company is estopped from maintaining this action by its laches, delay and acquiescence.

9. The defendant Bank submits that the plaintiff's action should be 10 dismissed with costs.

COUNTERCLAIM

10. By way of counterclaim the defendant Bank repeats the foregoing allegations and claims:

1. A declaration that it was entitled to apply the balance of the proceeds of the bonds remaining in its hands against the indebtedness of Low, Leon and Burns.
2. That an account be taken of the amount due to the Bank by the defendants by counterclaim or any of them.
3. Payment of the amount found due with interest. 20

DELIVERED this 20th day of November, 1931, by Mulock, Milliken, Clark & Redman, 711 Dominion Bank Building, Toronto, Solicitors for the defendant and plaintiff by counterclaim.

No. 3.
 Reply and
 Defence to
 Counterclaim.

No. 3

REPLY AND DEFENCE TO COUNTERCLAIM

1. The Plaintiff denies that the Defendants by Counterclaim, Messrs. Harry Low, Marco Leon and Charles Burns, deposited any of the Bonds referred to in the Statement of Claim, or had any right, title or interest in such Bonds so deposited.

2. The Plaintiff denies that it ever made any agreement with the Defendant Bank as alleged in paragraph 6 of the Statement of Defence and Counterclaim and says that if any such agreement was entered into in the name of the Plaintiff the same is not binding upon the Plaintiff. 30

3. The Plaintiff further says that if there was any such agreement between the Plaintiff and the Defendant Bank as alleged in paragraph 6 of the Statement of Defence and Counterclaim, which the Plaintiff does not admit but denies, such agreement was to the knowledge of the Defendant

Bank made without consideration, in fraud of the Plaintiff and for the personal interest and advantage of certain of the Plaintiff's officers and directors and is therefore null and void.

4. The Plaintiff further says that the matters alleged in the Statement of Defence and Counterclaim do not constitute any counterclaim against the Plaintiff and are not the proper subject matter of a counterclaim against the Plaintiff and that the Court has therefore no jurisdiction to entertain the counterclaim.

The Plaintiff submits that the counterclaim should be dismissed with 10 costs.

DELIVERED this 12th day of March, 1932, by Fasken, Robertson, Aitchison, Pickup & Calvin, 36 Toronto Street, Toronto, Solicitors for the Plaintiff.

Record.
In the
Supreme
Court of
Ontario.

No. 3.
Reply and
Defence to
Counterclaim.

—continued.

No. 4

REPLY TO PLAINTIFF'S DEFENCE TO COUNTERCLAIM

Filed 22 March, 1932.

1. The Plaintiff has heretofore raised the matters alleged in paragraph 4 of its Reply and Defence to Counterclaim by way of an interlocutory motion to the Assistant Master who by Order dated the 8th day of 20 January, 1932, dismissed the plaintiff's motion in so far as it related to the matters now alleged in said paragraph 4 and an appeal by the plaintiff therefrom was dismissed by Order of Hon. Mr. Justice Orde dated the 27th day of January, 1932. An application for leave to appeal from the latterly mentioned order was refused by Hon. Mr. Justice Jeffrey on the 19th day of February, 1932.

DELIVERED this 22nd day of March, 1932, by Mulock, Milliken, Clark & Redman, Dominion Bank Building, Toronto, Solicitors for the Plaintiff by Counterclaim.

No. 4.
Reply to
Plaintiff's
Defence to
Counterclaim.

No. 5

30 STATEMENT OF DEFENCE OF THE DEFENDANT HARRY
LOW TO THE COUNTERCLAIM

1. Save as herein expressly admitted this defendant denies all allegations in the Counterclaim herein contained.

2. This Defendant says that the matters alleged in the Counterclaim

No. 5.
Statement of
Defence of
Low to the
Counterclaim.

Record.
*In the
 Supreme
 Court of
 Ontario.*
 No. 5.
 Statement of
 Defence of
 Low to the
 Counterclaim.
 —continued.

are not the subject matter of a Counterclaim against the individual defendants and the Plaintiff and that the Court has no jurisdiction in this action to try the issues between the Plaintiff by Counterclaim and the individual Defendants by Counterclaim.

3. This Defendant denies that the individual Defendants by Counterclaim are or have been the sole owners of the shares of the capital stock of the Plaintiff Company along with Mrs. Low and Mrs. Leon as alleged in paragraph 2 of the Counterclaim, and denies that the Plaintiff Company was in process of liquidation as alleged in paragraph 3 of the Counterclaim, and denies that the individual defendants had dealings or transactions which were in any way intermixed as between the plaintiff and the individual Defendants. 10

4. This Defendant further denies the agreement alleged in paragraphs 6 and 7 of the Counterclaim and denies the indebtedness and advances therein alleged.

5. This Defendant submits that the counterclaim should be dismissed with costs.

DELIVERED this 24th day of March, 1932, by Fasken, Robertson, Aitchison, Pickup & Calvin, 36 Toronto Street, Toronto, Solicitors for the Defendant Harry Low. 20

No. 6.
 Statement of
 Defence of
 Leon to the
 Counterclaim.

No. 6

STATEMENT OF DEFENCE OF THE DEFENDANT MARCO
 LEON TO THE COUNTERCLAIM

1. Save as herein expressly admitted this defendant denies all allegations in the Counterclaim herein contained.

2. This Defendant says that the matters alleged in the Counterclaim are not the subject matter of a Counterclaim against the individual defendants and the Plaintiff and that the Court has no jurisdiction in this action to try the issues between the plaintiff by Counterclaim and the individual Defendants by Counterclaim. 30

3. This Defendant denies that the individual Defendants by Counterclaim are or have been the sole owners of the shares of the capital stock of the Plaintiff Company along with Mrs. Low, and Mrs. Leon as alleged in paragraph 2 of the Counterclaim, and denies that the Plaintiff Company was in process of liquidation as alleged in paragraph 3 of the Counterclaim, and denies that the individual defendant had dealings or transactions which were in any way intermixed as between the Plaintiff and the individual defendants.

4. This Defendant further denies the agreement alleged in paragraphs 6 and 7 of the Counterclaim and denies the indebtedness and advances therein alleged. 40

5. This Defendant submits that the Counterclaim should be dismissed with costs.

DELIVERED this 26th day of March, 1932, by Messrs. Nasmith, Fennell & Porter, 357 Bay Street, Toronto, Solicitors for the Defendant Marco Leon.

Record.

In the
Supreme
Court of
Ontario.

No. 6.
Statement of
Defence of
Leon to the
Counterclaim.
—continued.

No. 7.
Statement of
Defence of
Burns to the
Counterclaim.

No. 7

STATEMENT OF DEFENCE OF THE DEFENDANT CHARLES
BURNS TO THE COUNTERCLAIM

1. Save as herein expressly admitted this Defendant denies all alle-
10 gations in the Counterclaim herein contained.

2. This Defendant says that the matters alleged in the Counterclaim are not the subject matter of a Counterclaim against the individual defendants and the Plaintiff and that the Court has no jurisdiction in this action to try the issues between the Plaintiff by Counterclaim and the individual defendants by Counterclaim.

3. This Defendant denies that the individual Defendants by Counterclaim are or have been the sole owners of the shares of the capital stock of the Plaintiff Company along with Mrs. Low and Mrs. Leon as alleged in paragraph 2 of the Counterclaim, and denies that the Plaintiff Company
20 was in process of liquidation as alleged in paragraph 3 of the Counterclaim, and denies that the individual defendant had dealings or transactions which were in any way intermixed as between the Plaintiff and the individual Defendants.

4. This Defendant further denies the agreement alleged in paragraphs 6 and 7 of the Counterclaim and denies the indebtedness and advances therein alleged.

5. This Defendant submits that the Counterclaim should be dismissed with costs.

30 DELIVERED this 26th day of March, 1932, by Nasmith, Fennell & Porter, 357 Bay Street, Toronto, Solicitors for the Defendant Charles Burns.

No. 8

REPLY TO STATEMENT OF DEFENCE OF THE DEFENDANTS
HARRY LOW, MARCO LEON AND CHARLES BURNS TO
THE COUNTERCLAIM

No. 8.
Reply to
Statements of
Defence of
Low, Leon
and Burns
to the
Counterclaim.

Filed 31st March, 1932.

1. The Plaintiff has heretofore raised the matters alleged in the para-

Record.

*In the
Supreme
Court of
Ontario.*

No. 8.

Reply to
Statements of
Defence of
Low, Leon
and Burns
to the
Counterclaim.

—continued.

graphs numbered 2 in each of the respective statements of defence of the defendants to the counterclaim Harry Low, Marco Leon and Charles Burns, by way of an interlocutory motion to the Assistant Master who by order dated the 8th day of January 1932 dismissed the plaintiff's motion in so far as it related to the matters now alleged in said paragraphs numbered 2 and an appeal by the plaintiff therefrom was dismissed by order of Hon. Mr. Justice Orde dated the 27th day of January, 1932. An application for leave to appeal from the latterly mentioned order was refused by Hon. Mr. Justice Jeffrey on the 19th day of February, 1932.

2. On or about the 16th day of December 1931 notice of a similar motion was served on behalf of the defendant by counterclaim Charles Burns by the Solicitors for the plaintiff who were then acting for the said Burns but said motion was not proceeded with pending the final disposition of the motion referred to in paragraph 1 hereof and after the disposition of that motion was countermanded by notice served by the present solicitors for said Burns on the 22nd day of March, 1932. 10

3. No similar motion was launched on behalf of the defendants by counterclaim Low and Leon and no appearance having been entered or defence filed on their behalf the pleadings were noted closed as against them on the 23rd day of February, 1932, but the solicitors for the said Low then acting as well as for the said Leon having represented that they understood the proceedings so far as Low, Leon and Burns were concerned could stand until the motion made by the plaintiff company was finally disposed of, the defendant Bank consented to the pleadings being reopened and a consent order to that effect was made on 10th March, 1932. 20

4. The Defendant Bank submits that in the circumstances herein outlined the said Low, Leon and Burns should not now be permitted to raise the matters alleged in the paragraphs numbered 2 in each of their respective statements of defence to the counterclaim.

DELIVERED this day of March, 1932, by Mulock, Milliken, 30
Clark & Redman, Dominion Bank Building, Toronto, Solicitors for the
Plaintiff by counterclaim.

No. 9.
Proceedings
at trial, 19th
to 22nd
September,
1933.

No. 9

PROCEEDINGS AT TRIAL

—Tried before the Honourable Mr. Justice Kelly at the Non-Jury Sittings held at the City of Toronto, County of York, Province of Ontario; commencing on Tuesday, September 19, A.D. 1933, at 11.10 o'clock a.m.

APPEARANCES:

R. S. ROBERTSON, K.C.	for the Plaintiff.
W. N. TILLEY, K.C.	} for the Dominion Bank.
and	
C. F. H. CARSON	
and	
J. L. WILSON	} for the defendant Harry Low.
J. W. PICKUP, K.C.	
D. H. PORTER	for the defendants Marco Leon and Charles Burns.

Record.
In the
Supreme
Court of
Ontario.
No. 9.
Motion for
Adjournment.

10

MR. CARSON: My learned friend Mr. Robertson appears for the plaintiff, and with Mr. Tilley and Mr. Wilson I appear for the Dominion Bank, my Lord.

HIS LORDSHIP: Are you going on?

MR. CARSON: We are ready to go on. I understand that some of Mr. Robertson's witnesses are not here.

HIS LORDSHIP: I will read the record in my room.

MR. ROBERTSON: I appear for the plaintiff and my friend Mr. Tilley for the Dominion Bank, and my friend Mr. Porter is appearing for
20 Leon and Burns, and has sent word over that he is in the Court of Appeal and will be detained there for a little while. Personally I am ready, but I have not any witnesses here. These people are in Montreal, and some of the witnesses, I am instructed, have to be brought from the state of New York. I received this wire from Leon in answer to the wire sent by my firm yesterday afternoon:—

“WIRE RECEIVED LATE LAST NIGHT STOP WAS OUT OF
“TOWN STOP WILL BE IN TORONTO WITH WITNESSES
“TOMORROW TWENTIETH.”

30 So your Lordship will see that I am in the position of having to ask your Lordship to let the matter stand until tomorrow. I cannot go on without witnesses. I understand that my firm advised these Montreal people that they must expect the case to go on on Wednesday, and things happened a little faster than anticipated, so last night my friend Mr. Pickup telegraphed that they would probably be needed today, and I have read your Lordship the answer. It is a case in which I need witnesses, of course.

HIS LORDSHIP: Have you not other witnesses with whom you can proceed today?

MR. ROBERTSON: No, I have no witnesses here.

Record.
*In the
 Supreme
 Court of
 Ontario.*
 —
 No. 9.
 Motion for
 Adjournment.
 —continued.

HIS LORDSHIP: Was this case on the Peremptory List for last week?

THE REGISTRAR: Yes, my Lord.

HIS LORDSHIP: I have not last week's Peremptory List before me, but the Registrar tells me it was on the Peremptory List last week.

MR. ROBERTSON: It was one of the fifty or more cases that were on.

HIS LORDSHIP: What about it?

MR. TILLEY: It is a very awkward situation that has arisen as the result of the witnesses not being here today. We notified my friend's firm that the case was on the list some two weeks ago, and that we would be ready to go on when the case was reached, and we are here and we are ready. Tomorrow I have an appointment in Ottawa. We are anxious to get this case disposed of. That is one feature. 10

Another feature is that we have been for a long time endeavouring to get the books of this company. I understand that my friend has them in his office. So far my friend's firm has refused to produce them for inspection.

MR. ROBERTSON: Oh, no, not at all. Mr. Carson was over with Mr. Wilson; I saw them in the office the other day going through the books. 20

HIS LORDSHIP: Have the books been produced under affidavit?

MR. ROBERTSON: I do not know.

MR. TILLEY: They will not include the books in their affidavit on production and they will not let our auditors look at them. The object seems to be to crowd the trial through in some way so that we cannot explain what the books show. Now, the Master made an Order yesterday that these books should be deposited in Court so that we could send auditors to examine them. If this case stands for today it should be on terms that these books are placed at our disposal today so that our auditors may examine them. If we do not do that the trial may have to be interrupted 30 in order that these books may be examined by some person who can give some intelligent evidence as to what they show. I ask your Lordship to say that if the case does not go on today the books should be deposited in Court. It cannot do any harm for an auditor to see them. The books have been produced in other litigation, and most of them have been made exhibits, so there cannot be any object in preventing an examination of them by an auditor unless the object be to prevent the Court from knowing what is in the books and from getting the information in some convenient form from an auditor. That is one thing that I ask your Lordship to direct; also that we have today and tomorrow in which to examine these 40 books, and proceed with the trial on Thursday morning.

HIS LORDSHIP: Is this likely to be a lengthy case?

MR. TILLEY: It will not be lengthy if we get a proper examination of the books.

MR. ROBERTSON: My friend is making a mountain out of these books. Anybody can see the books that are available. It is utterly ridi-

culous for my friend to talk about the books in the way he has. This company has not been carrying on business for a good many years. All of its books were produced and used in litigation in which I was not concerned, but in which my friend was acting for the company. These books were produced in litigation over certain taxes, and my friend went to the Privy Council with the matter, acting for the company. In that proceeding all the books were produced and brought into court. After that litigation was over—I am not speaking from personal knowledge but merely from what is disclosed in the Examinations for Discovery in this action—the officers
 10 of the company made certain efforts to get the books of the company from Ottawa, where they were supposed to be lodged, in the Supreme Court. They succeeded in getting only five books, or rather, parts of books, because some are loose-leaf affairs which are now much tattered and torn. They got these books. They were not produced in the original affidavit on production because they say there is nothing in the books that in any way relates to any question in this action. The books were, however, produced on the Examinations for Discovery, and by arrangement were left in the vault in the office of my firm. Mr. Porter's clients, the individual defendants by counterclaim, have taken an attitude with respect to the inspection
 20 of these books that may be warranted and may not. They think there is a desire to see these books for quite a different purpose than this litigation.

HIS LORDSHIP: I understand Mr. Tilley to say that you are now under Order to have the books placed in court.

MR. ROBERTSON: The books were produced months ago on the examinations, and my friends have been at liberty at all times to see those books, and have seen them in my office. Since the first of September my friend Mr. Carson desired to have an auditor allowed to examine the books. That request, I understand, was declined, although both Mr. Wilson and
 30 he could see them to their hearts' content; to bring an auditor in to examine these books is something which we are under no obligation to permit. We had no instructions to allow anything except their production on the Examinations for Discovery. The books are in our vault. An application was made to the Master, and I understand that an Order of some kind was made yesterday; I have not seen it. So far as I am concerned, it is a matter of indifference whether the books are seen, and who sees them; I do not care anything about them; it is no part of my case. There are three parties to this suit, and the books have been left in our office. I have not the slightest objection to anybody seeing those books. If my instructions
 40 are right, it does not matter what the books contain and if my friend wants to see the books he is welcome to do so. My whole purpose in suggesting an adjournment now is because of the telegram I have read to your Lordship.

HIS LORDSHIP: I have in mind that I have to try this case, and I would like to try it early because I do not want it carried over. If it is going to dawdle along until near the end of the week, I am not disposed

Record.
*In the
 Supreme
 Court of
 Ontario.*
 No. 9.
 Motion for
 Adjournment.
 —continued.

Record.

*In the
Supreme
Court of
Ontario.*No. 9.
Motion for
Adjournment.

—continued.

to try it. On the other hand, if I do try it and become seized of it I am prepared to grant ample time to determine whether those books are producible or whether there is evidence in them that would be relevant in this case.

MR. ROBERTSON: The books are produced. The whole question is whether we should let an auditor have them.

HIS LORDSHIP: Mr. Tilley, what about getting on? What about the main motion to postpone for today?

MR. TILLEY: I do not know that your Lordship can dismiss the action because my friend is not ready today? 10

HIS LORDSHIP: I am not going to do that.

MR. TILLEY: I would be a consenting party to that!

HIS LORDSHIP: Will you be ready tomorrow?

MR. TILLEY: We will have to be ready, I suppose.

HIS LORDSHIP: If I am to try the case I prefer to start tomorrow rather than later in the week. Will you be ready tomorrow, Mr. Robertson.

MR. ROBERTSON: Oh, yes; I will be ready.

HIS LORDSHIP: I do not want a long case to get in ahead of yours. 20

MR. TILLEY: I am told there is no other case ready, my Lord.

HIS LORDSHIP: Mr. Registrar, have you any other cases ready?

THE REGISTRAR: No, my Lord.

HIS LORDSHIP: Then I will take up this case at 10.30 o'clock tomorrow morning.

MR. TILLEY: Might we not have those books deposited in court so that our auditors can see them?

HIS LORDSHIP: If the Order is made, it is made.

MR. TILLEY: Could your Lordship not say, as a term of this adjournment, that the Order be obeyed today? 30

HIS LORDSHIP: If there is any purpose in counsel seeing the books I should think it would expedite matters if they were made available today.

MR. ROBERTSON: If I really knew what it is my friend wants I might be able to help him.

HIS LORDSHIP: Mr. Tilley wants the Order complied with now.

MR. ROBERTSON: The Order is not issued. I represent only one party. My friend Mr. Porter is concerned about this, too.

HIS LORDSHIP: Mr. Porter does not represent a party.

MR. TILLEY: If the books are not produced today, it may delay the trial. 40

MR. ROBERTSON: I will see what the Master's judgment is, and act accordingly. I do not wish to delay the trial.

HIS LORDSHIP: If anybody is to be penalized for the delay I am willing to hear it.

—Whereupon the case was adjourned at 11.45 o'clock a.m. until 10.30 o'clock a.m. on Wednesday, September 20, A.D. 1933.

Record.

*In the
Supreme
Court of
Ontario.*

—Upon resuming on Wednesday, September 20, A.D. 1933, at 10.30 o'clock a.m.

No. 9.
Motion for
Adjournment.

--concluded.

HIS LORDSHIP: Proceed, please.

MR. ROBERTSON: Has your Lordship read the pleadings?

HIS LORDSHIP: Yes.

MR. ROBERTSON: My friend Mr. Pickup appears for the defendant Harry Low, my Lord.

10

No. 10

WILLIAM CLARENCE MacAGY, sworn.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy
Examination.

EXAMINED BY MR. ROBERTSON:

Q. What is your position with the Dominion Bank? A. I have no official title at the present time, Mr. Robertson.

Q. You say you have no official title at the present time? A. That is correct.

Q. Were you the Chief Inspector for a time? A. Yes.

Q. Were you the Chief Inspector in the period from 1923 or 1924 on to 1929? A. Quite right.

20 Q. And somewhat later than that? A. Yes.

Q. Up until when? A. Until two months ago.

Q. Covering the period of these transactions which are the subject of this action? A. Yes.

Q. And as Chief Inspector your ordinary place of business was at the head office of the bank in Toronto? A. Correct.

Q. I believe the bank had some transactions, beginning perhaps in 1923 or thereabouts, with a company that was in its inception and for some considerable period known as The Carling Export Brewing and Malting Company Limited? A. Yes.

30 Q. And at some quite comparatively recent time the word "Carling" was dropped from the title, and the name is as appears in this action? A. I have no information as to that.

Q. In any event, that was the name by which you knew the plaintiff company: "Carling Export Brewing & Malting Company Limited"? A. Yes.

Q. For most of the period of your business with them? A. Yes.

MR. ROBERTSON: With your Lordship's permission I put in a copy of the Letters Patent incorporating the plaintiff company, dated 8th May, 1922. I may say, my Lord that in these Letters Patent, as is usually the

Record.
*In the
 Supreme
 Court of
 Ontario.*
 —
 No. 10.
 Plaintiff's
 Evidence.
 W. C. MacAgy
 Examination.
 —continued.

case, the names of the persons who appear as members of the company are simply the solicitor who incorporated it and persons in his office; none of the parties concerned here are Charter members.

HIS LORDSHIP: That is not unusual.

MR. ROBERTSON: No. The question of who were the shareholders may become of importance at a later time.

—EXHIBIT NO. 1: Copy of Letters Patent incorporating Carling Export Brewing and Malting Company Ltd., dated 8th May, 1922.

Q. When, approximately, did the company to which I have referred, 10
 the Carling Export Brewing & Malting Company Limited open an account with your bank? A. About September, 1923.

Q. And from that time on for how long did they carry an account with you? A. I have not got that information before me.

HIS LORDSHIP: I must ask you to speak louder. I question if counsel at the counsel table can hear you.

MR. ROBERTSON: Q. May I suggest, until 1931 at any rate?
 A. Approximately so.

Mr. ROBERTSON: We will come to the account later.

Q. At what branch or branches of your bank was this account carried? 20
 A. The principal account was carried at London, Ontario, and they also had an account at our Windsor office.

Q. And, speaking generally, the nature of the company's business was what? A. The brewing business.

Q. Then in 1927 was there a transaction of importance with reference to the company's assets? A. (No answer).

MR. ROBERTSON: May I ask my friends to let me have two letters, one of the first June, 1927, written by the London manager. It appears as Production No. 52 at page 233 of the bank's Productions. The other letter is the reply thereto, dated 2nd June, 1927. 30

Q. I produce to you a letter which one of your counsel hands me, dated 1st June, 1927, from the manager of the London branch to the general manager. That letter concerns the affairs of the Carling Export Brewing & Malting Company Limited? A. Yes.

Q. Before reading that letter perhaps I may show you the reply to it, dated 2nd June, 1927, from the general manager to the manager at London? A. Yes.

MR. ROBERTSON: May I put these two letters in together as Exhibit No. 2, my Lord?

HIS LORDSHIP: Yes. 40

MR. ROBERTSON: The first letter reads:—

“Dear Sir:

“The newspapers of yesterday contained certain information regarding refinancing of the affairs of the Carling Export Brewing &

"Malting Company Limited, valued customers at this branch. The reports were denied by the President of the Company, as it was considered advisable to do so for the time being, but in an interview which I had with Mr. Chas. Burns last evening he frankly discussed the whole matter with me and requested me to acquaint you with the details as arranged."

Q. Was Mr. Charles Burns the president? A. Yes.

MR. ROBERTSON: Then:—

10

"A new Charter has been applied for under the name of Carlings Breweries Limited, and the present Company will dispose of their entire assets to the new organization. Capital shares having no par value are to be issued for 200,000 shares. Of the 200,000 shares the firm of Doherty, Easson & Co. Ltd. Brokers of Toronto are to take delivery of 100,000 from our Toronto Branch upon payment on the basis of \$20. per share, and upon the first day of delivery which is expected to be June 11th next an initial delivery is to be made of 12,500 shares, and the balance from time to time."

None of these details are important from any point of view that I know of, so perhaps I need not read them. Then:

20

"The remaining 40,000 shares are to be retained in the treasury of the new Company.

30

"The present partners are agreeing to remain with the Company for a period of not less than three years at a salary of \$25,000. each and are not to engage in the same business for a period of at least five years. All assets of the present Company with the exception of Bills Receivable, Accounts Receivables and Cash are to be turned over to the new Company, and the plant etc. is to be free of all encumbrance. The partners are to assume responsibility for all taxes, etc., and to furnish \$100,000 working capital to be paid into the Bank in cash. The present indebtedness of the Company will be fully retired, but the relative arrangements regarding this matter will be discussed at a later date."

Then there is something about the price at which the stock is to be released to the public. Then:—

40

"Should there be other additional information which you would care to have, I will be pleased to obtain it from the management of the Company. In the meantime, I am assured that the Banking Account of the Company will remain at this Branch and arrangements made regarding the indebtedness of the present Company that will be agreeable to the Bank.

"Yours truly,
(Signed) "B. B. Manning,
"Manager."

Record.

In the
Supreme
Court of
Ontario.—
No. 10.
Plaintiff's
Evidence.
W. C. MacAgy
Examination.

—continued.

Record.

In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy
Examination.

—continued.

The answer, dated June 2, 1927, is short:—

“Dear Sir:—

“I have received your letter of the 1st instant giving us some
“interesting information respecting the formation of the Carling
“Breweries Limited, which concern is to purchase the assets of the
“Carling Export Brewing & Malting Co. Ltd. You will no doubt be
“writing us again shortly regarding the arrangements which are to
“be made to retire the present liability of the latter concern, and as
“I take it the plans for the refinancing outlined by you have been
“definitely decided upon, we shall expect you to write us further when 10
“you have obtained the necessary data, so that we may instruct our
“Toronto Office in regard to delivery of shares to Doherty, Easson &
“Co. Ltd., Toronto

“It is satisfactory to note from the last paragraph of your com-
“munication that you have been assured that the banking account of
“the new Company will be carried at your Branch.

“Yours truly,

(Signed) “C.A.B.

“W.,

“General Manager.”

20

- EXHIBIT NO. 2: (a) Letter from Manager, London, (Ont.) branch
to General Manager of the Dominion Bank,
dated June 1, 1927, re stock issue of Carling
Export Brewing & Malting Co. Ltd.
(b) Reply to (a) dated June 2, 1927.

HIS LORDSHIP: Let me see Exhibit 2.

MR. ROBERTSON: Q. Then, Mr. MacAgy, a sale did go through
along the lines set out in that letter? A. Yes, approximately so.

Q. And at that time there was a claim pending by the Dominion
Government against the older company, the Carling Export Brewing & 30
Malting Company Limited for some large sum for taxes of some sort? A.
Yes.

Q. I do not want to go into the details, because they are not im-
portant here, but there was such a claim, and in connection with that
claim, for the purpose of consummating this sale, were there certain bonds
deposited with the bank? A. Yes.

MR. ROBERTSON: Will you produce to me a letter of October 26,
1927 from the plaintiff company to the head office of the bank? It ap-
pears on page 1 of your Production No. 60. Perhaps I may read my copy 40
while my friend finds the Production.

This letter, dated October 26, 1927, is from the Carling Export Brew-
ing & Malting Company Limited, per Charles Burns, president, to the
Head Office, Dominion Bank, Toronto, and is marked: “Attention Mr.
Pierce.”

Q. Mr. Pierce was the Assistant General Manager? A. Yes.

MR. ROBERTSON: The letter reads:—

“Dear Sir,—

“Messrs. Roadhouse and McTague have handed you today \$400,000 of Dominion of Canada Victory Loan 5½% Bonds, due 1st November, 1934.

“These are to be held by you to meet any final judgment that may be obtained by the Dominion Government against Carling Export Brewing and Malting Company, Limited in respect to action now pending with reference to sales and gallonage tax on export sales.

10

“In view of the fact that this Company and Messrs. Low, Leon and Burns have agreed to indemnify Carling Breweries, Limited in respect to such arrears of gallonage and sales tax, we would ask you to write a letter to Carling Breweries, Limited advising them that you hold the sum of \$400,000. to meet any judgment that may be obtained against this Company with respect to such taxes.

“It is understood that you are to hold said Bonds until any action by the Government with respect to sales and gallonage tax on export is finally disposed of by judicial decision or settlement.

20

“The coupons on the Bonds are to be clipped by you and cheque for interest payments is to be remitted to this Company from time to time during the period the Bonds are held by you.

“Yours truly.”

MR. ROBERTSON: Have you found the letter?

MR. TILLEY: Here is a copy.

MR. ROBERTSON: There is merely a copy produced.

Then will my friend also give me a copy of the letter of the 27th October, 1927, from the Assistant General Manager of the bank to the Carling Breweries, Limited, appearing on page 3 of the same Production?

30

If I may, I will attach this copy to the copy of the letter of the 26th October and put them in together. This is a copy of the letter to the other brewery company, written, as requested by the letter of the 26th October.

HIS LORDSHIP: Is this the purchasing company?

MR. ROBERTSON: Yes, my Lord; the two documents go together:—

“27th October, 1927.

“The Carling Breweries Limited,

“London,

“Ontario.

“Dear Sirs:—

40

“We have been requested to advise you that in the event of your being called upon, under the agreement made or about to be made with the Minister of National Revenue whereby your Company undertake to pay any sum that might be judicially established to be owing by The Carling Export Brewing and Malting Company Limited on account of taxes under the Special War Revenue Act, 1915, and amendments, we are or will be in funds to the extent of \$400,000.

Record.

In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy
Examination.

—continued.

Record.

*In the
Supreme
Court of
Ontario.*No. 10.
Plaintiff's
Evidence.
W. C. MacAgy
Examination.

—continued.

“for the purpose of applying the same or so much thereof as is necessary in payment of any claim made by the Government under the agreement above referred to.

“We are informing you of this and our instructions, and will be in a position to make payment of any such demand then made so that you may rely upon funds being available to meet any such demand up to the amount above specified.

“Yours very truly,

“Assistant General Manager.”

- EXHIBIT NO. 3: (a) Copy of letter dated October 26, 1927, from 10
Carling Export, Brewing & Malting Company
Limited to the Head Office, Dominion Bank
—attention Mr. Pierce.
(b) Copy of letter dated October 27, 1927, from
Assistant General Manager of Dominion Bank
to the Carling Breweries Limited.

Q. And the bank did receive the bonds as stated in these letters? A. Quite right.

Q. Are you able to tell me whose funds or from what account the funds came that paid for those bonds which were put up? A. I have not 20
any information about that.

Q. We can get it later from an account produced? A. Maybe; I cannot remember.

MR. ROBERTSON: May I see your Production No. 48 on pages 73 and 74: a letter from the London manager to the witness of the 13th October, 1927, and the reply of the 14th October, 1927.

The first letter reads:—

“13th October, 1927.

“W. C. MacAgy, Esq., Chief Inspector,
“Head Office, The Dominion Bank,
“Toronto, Ontario.

30

“Dear Sir:— Routine

“Referring to our telephone conversation of yesterday I was unable to see Mr. Charles Burns until today regarding the cheque for \$415,000, payable to Doherty-Easson Co. Ltd., and I now learn that this was given in payment for Dominion of Canada War Loan Bonds.

“As you are aware the Carling Export Brewing & Malting Co. Ltd. assumed all outstanding liabilities when the assets of the Company were sold to Carling Breweries Ltd. Amongst the liabilities 40
“was a Government claim for approximately \$400,000. involving sales and gallonage tax in dispute. It appears that the Government was unwilling to transfer the license of the former Company to the new organization unless the latter would assume responsibility for the

“taxes referred to. This, I am informed, has been done under the protection of the bonds purchased. Mr. Burns informs me that it is his intention to deposit the bonds with the Bank.

“In conversation with Mr. Burns I expressed regret that he had not made use of our Bond Department, but he informed me that through the brokers mentioned the purchase was made at an extremely close price. There has been no intimation of the Company’s intention to make further withdrawals from their savings account for the time being at least.

10

“BBM/MMM.

“Yours truly,
(Signed) “B. B. Manning,
“Manager.”

Then the reply, dated October 14, 1927, reads:—

“LH/90 14th October, 1927.

“B. B. Manning, Esq.,
“Manager, The Dominion Bank,
“London, Ont.

“Dear Sir: Routine

20

“Your letter of the 13th instant has been received and I note what you state respecting the cheque of \$415,000. issued on your office to the Carling Export Brewing & Malting Co. Limited.

“It is a pity that your customers did not arrange for the purchase of the bonds referred to through our Bond Department and I hope that in the event of their wishing to invest further funds they will not overlook our facilities. No doubt you will write me if and when the bonds referred to are deposited with you.

“Yours truly,
“Chief Inspector.”

30

- EXHIBIT NO. 4: (a) Letter (2 sheets) dated October 13, 1927, from the London Manager to W. C. MacAgy, Chief Inspector, Head Office, Dominion Bank.
(b) Copy of letter dated October 14, 1927, replying to (a).

Q. That letter deals with the cheque of the Carling Export Brewing and Malting Company Limited? A. Apparently I had not remembered that.

Q. With respect to the interest on the bonds. I want to ask you a question or two? A. Yes?

MR. ROBERTSON: Will my friends produce a letter of the 26th April, 1928, from the Carling Export Brewing & Malting Company Limited to Dudley Dawson—no, that is not the letter I want for the moment, but a letter of May 1, 1928, from the Assistant Manager of the bank to Charles Burns enclosing a draft for \$11,000.

Record.
In the
Supreme
Court of
Ontario.
—
No. 10.
Plaintiff's
Evidence.
W. C. MacAgy
Examination.
—continued.

Record.
*In the
 Supreme
 Court of
 Ontario.*
 —
 No. 10.
 Plaintiff's
 Evidence.
 W. C. MacAgy
 Examination.
 —continued.

MR. TILLEY. The Assistant Manager at Toronto?
 MR. ROBERTSON: I do not know; there is nothing to tell me that.
 HIS LORDSHIP: You had better read the letter.
 MR. ROBERTSON: Yes, my Lord:—

“ ‘Securities’
 “Chas. Burns, Esq.,
 “President,
 “Carling Breweries Ltd.,
 “London, Ont.
 “Dear Sir: 10

“We enclose herewith our draft on London, Ontario, in favor of
 “the Carling Breweries Ltd., for \$11,000.00 being proceeds of coupons
 “clipped from \$400,000 Dominion of Canada 5½% bonds due 1st of
 “November, 1934, which we hold here for your account.

—Part of EXHIBIT NO. 5. “Yours truly,
 “Assistant Manager.”

There are two or three letters on the same subject that I want to put
 in with that letter. The next is a letter of the 16th May, 1928, from
 Charles Burns to the Securities Department of The Dominion Bank, Head
 Office, Toronto, appearing at page 12 of your Production No. 60:— 20

“May 16th, 1928.

“Dear Sir:—

“I acknowledge receipt of your letter of May 1st, enclosing draft
 “in our favour for Eleven Thousand Dollars (\$11,000.00).

“I regret that I did not reply until now but I was absent from
 “my office and just returned today.

“I would like to call your attention that this draft should be made
 “to the ‘Carling Export Brewing & Malting Co. Ltd.’ instead of ‘Carl-
 “ing Breweries, Limited.’

“Thanking you for same, I remain, 30
 “Yours very truly,
 (Signed) “Chas. Burns.

“CB/MP.

“The Dominion Bank,
 “Securities Department,
 “Head Office,
 “Toronto 2, Ontario.”

Attention Mr. J. D. L. Waugh.

—Part of EXHIBIT NO. 5.

Then a letter dated May 18, 1928, from the Assistant Manager of the
 bank at Toronto to Charles Burns:— 40

"May 18th, 1928.

"Charles Burns, Esq.,
 "The Carling Breweries Limited,
 "London, Ontario.

"Dear Sir:—

"We have received your letter of the 16th instant, acknowledging
 "ours of the 1st idem. enclosing draft for \$11,000.

10 "This draft was in payment of coupons clipped from Dominion
 "of Canada Bonds held at this office for account of the Carling Export
 "Brewing & Malting Company, Limited, and was in error made pay-
 "able to the Carling Breweries Limited.

"Yours very truly,
 "Assistant Manager."
 "JDNW/W.

Record.
 In the
 Supreme
 Court of
 Ontario.
 —
 No. 10.
 Plaintiff's
 Evidence.
 W. C. MacAgy
 Examination.
 —continued.

—Part of EXHIBIT NO. 5.

Then on the same date another letter from the Assistant Manager of
 the bank at Toronto to the Manager of the bank at London:—

20 "B. B. Manning, Esq.,
 "Manager,
 "The Dominion Bank,
 "London, Ontario.

"May 18th, 1928.

"Dear Sir:—

30 "Referring to Dominion of Canada Victory Loan 5½% Bonds, due
 "November, 1934, amounting to \$400,000 held by us for account of
 "the Carling Export Brewing & Malting Company Limited, we were
 "instructed by Head Office to remit for the coupons clipped to the
 "Carling Export Brewing & Malting Company, Limited. However,
 "through errors in this office, our drafts of both November 1st, 1927,
 "and May 1st, 1928, were payable to the Carling Breweries Limited,
 "and the mistake was pointed out to us by Mr. Burns in his letter to
 "us of the 16th instant.

"We enclose herewith our paid draft No. 6474 for \$11,000. dated
 "November 1st last, which you will note has been endorsed by the
 "Carling Breweries Limited to the order of the Carling Export Brew-
 "ing & Malting Company, Limited, and we would appreciate it if you
 "could obtain for us the endorsement of the latter company. The draft
 "issued on the 1st of this month has not yet been negotiated, but we are
 "anxious to obtain the endorsement of both Companies on it also.

"Thanking you for your attention to this matter on our behalf.

40 "Yours truly,
 "JDNW/W.
 "Encl. Assistant Manager."

—Part of EXHIBIT NO. 5.

Record.
*In the
 Supreme
 Court of
 Ontario.*
 —
 No. 10.
 Plaintiff's
 Evidence.
 W. C. MacAgy
 Examination.
 —continued.

There is a notation on the side, my Lord, in lead pencil, but I do not know that it means anything to us.

MR. TILLEY: Are these letters all part of Exhibit 5?

MR. ROBERTSON: Yes.

Then a letter of November 1, 1928, from the Assistant Manager of the bank at Toronto to Charles Burns:—

“ ‘Securities’ Nov. 1, 1928.
 “Chas. Burns, Esq.,
 “President,
 “The Carling Breweries Ltd., 10
 “London, Ont.
 “Dear Sir:
 “We enclose herewith draft drawn on our London, Ont., office in
 “favour of the Carling Export Brewing & Malting Co. Ltd., for \$2,-
 “750.00 being the proceeds of coupons detached from \$100,000.00
 “Dominion of Canada, 5½% bonds due 1st of November, 1934.
 “Yours truly,
 “R/B
 “Encl. Assistant Manager.”

—Part of EXHIBIT NO. 5. 20

I shall explain in a moment that \$300,000. of them had been sold.
 Then a letter of May 1, 1929, from the Assistant Manager of the bank at Toronto to Charles Burns:—

“ ‘Securities’ May 1st, 1929.
 “Chas. Burns, Esq.,
 “President,
 “Carling Breweries Ltd.,
 “London, Ont.
 “Dear Sir:
 “We enclose herewith a draft on our London, Ontario Branch in 30
 “favour of the Carling Export Brewing & Malting Co. Ltd. for
 “\$2,750.00 being the proceeds of coupons detached from \$100,000.
 “Dominion of Canada, 5½% bonds due 1st of November, 1934.
 “Yours truly,
 “R/B
 “Encl. Assistant Manager.”

—Part of EXHIBIT NO. 5.

I may say the purpose of this is merely to show that the bank was constantly carrying these for this particular company.

Then a letter of November 1, 1929, from the Assistant Manager of the bank at Toronto to Charles Burns, a similar letter:—

“Securities’
 “Charles Burns, Esq.,
 “President, Carling Breweries Ltd.,
 “London, Ont.

“Dear Sir:—

10 “We enclose herewith our draft on London, Ontario Branch in
 “favour of the Carling Export Brewing & Malting Co. Ltd. for \$2,-
 “750.00, being the proceeds of coupons detached from \$100,000.00
 “Dominion of Canada 5½% bonds due 1st of November, 1934.
 “JR/TB
 “Encl.

November 1st, 1929.
 “Yours truly,
 Assistant Manager.”

—Part of EXHIBIT NO. 5.

—EXHIBIT NO. 5: (a) Copy of letter from Assistant Manager of bank at Toronto to Charles Burns, dated May 1, 1928.

20 (b) Letter dated May 16, 1928, from Charles Burns to Securities Department of bank at Toronto: Attention Mr. J. D. L. Waugh.

(c) Copy of letter dated May 18, 1928, from Assistant Manager of Bank at Toronto to Charles Burns.

(d) Copy of letter dated May 18, 1928, from Assistant Manager of Bank at Toronto to B. B. Manning, Esq., London Manager of bank.

30 (e) Copy of letter dated November 1, 1928, from Assistant Manager of bank at Toronto to Charles Burns.

(f) Copy of letter dated May 1, 1929, from Assistant Manager of bank at Toronto to Charles Burns.

(g) Copy of letter dated November 1, 1929, from Assistant Manager of bank at Toronto to Charles Burns.

Q. Then these \$400,000. of bonds were eventually all sold? A. Correct.

40 MR. ROBERTSON: May I get the letters regarding that? Will my friend let me have the letter of the 26th April, 1928, to Dudley Dawson, Manager of the Dominion Bank, Toronto, from the plaintiff company,—the letter which I asked for a little while ago by mistake. It appears at page 10 of Production No. 60.

Record.

In the
 Supreme
 Court of
 Ontario.

No. 10.
 Plaintiff's
 Evidence.
 W. C. MacAvoy,
 Examiner

—continued.

Record.

In the
Supreme
Court of
Ontario.No. 10.
Plaintiff's
Evidence.
W. C. MacAGY,
Examination.

—continued.

Q. These bonds were carried at the head office branch? A. No.
MR. ROBERTSON:—

“London, 26th April, 1928.

“Dudley Dawson, Esq.,
“Manager,
“The Dominion Bank,
“Toronto 2, Ont.

“Dear Sir:

“Referring to the \$400,000. odd Victory Loan Bonds now held at
“your office for account of the Carling Export Brewing and Malting 10
“Company Limited, we hereby instruct you to dispose of these bonds
“forthwith at the market price whatever that may be and to deposit
“the proceeds to a Special Savings Account to be opened in our name
“and the balance therein to be held under the same conditions now
“pertaining to or covering the aforementioned bonds.

“Thanking you,

“Yours very truly,

“THE CARLING EXPORT BREWING & MALTING
CO., LTD.

“Per: Harry Low
“Marco Leon.”

20

—EXHIBIT NO. 6: Copy of letter dated April 26, 1928, from plaintiff
company to Dudley Dawson, Manager, Dominion
Bank, Toronto.

Perhaps the detail of how these were sold does not matter much.

Q. You went on at this time and sold within a fairly brief period
\$300,000. of the bonds? A. Yes. I think that is right.

Q. And then at a distinctly later date you sold the remaining \$100,-
000.? A. Quite right.

MR. ROBERTSON: There is a letter of the 2nd January, 1931, from 30
the witness, as Chief Inspector, to Charles Burns, president of the plaintiff
company, reading as follows:—

“2nd January, 1931.

“Chas. Burns, Esq.,
“President,
“Carling Export Brewing & Malting Co., Ltd.,
“London, Ont.

“Dear Sir:—

“We beg to acknowledge receipt of your letter of the 19th ultimo
“and to inform you that the Dominion of Canada War Loan Bond, due 40
“1934, held by the Bank under an agreement of escrow, has been sold
“and from the proceeds of the sale the sum of \$100,000. has been de-
“posited in the special savings account at our Toronto Branch and the
“balance, \$3,904.11, representing the premiums and accrued interest

"from the 1st November, 1930, was credited to the account of Carling
"Export Brewing & Malting Company, Ltd. at London Branch.

"As requested, we enclose a memorandum of the liabilities of
"Messrs. Low, Leon & Burns to The Dominion Bank.

"Yours truly,
(Signed) "W. C. MacAgy,
"Chief Inspector.

Record.
In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy.
Examination.

—continued

"Enclosure."

10 Then there is a memorandum attached showing certain liabilities of
Low, Leon and Burns:—

"LOW, LEON AND BURNS LOANS

	"Low, Leon & Burns—Windsor.....	\$ 226,319.	
	"Unpaid interest to 31st Dec., 1930	18,364.	
		—————	\$ 244,683.
	"Low, Leon & Burns		
	"re Dom. Square		
	"Corporation, Windsor	\$ 390,500.	
	"Montreal	390,500.	
	"Unpaid interest to 31st Dec., 1930	82,221.	
20		—————	863,221.
	"Carling Export		
	"Brewing & Malting		
	"Company, Ltd., London		8,803.
			—————
	"3rd January, 1931.....		<u>\$1,116,712."</u>

—EXHIBIT NO. 7: (a) Letter dated January 2, 1931, from W. C.
MacAgy, Chief Inspector, Dominion Bank, to
Charles Burns.

30 (b) Memorandum showing certain liabilities of
Low, Leon and Burns;

MR. ROBERTSON: Will my friends produce the account known as
"Special Account No. C3108" headed: "Savings Account, Toronto Branch,
The Carling Export Brewing & Malting Co. Ltd."

Q. This account appears to have been opened on May 4, 1928? A.
Yes.

Q. And it shows in the first five entries from May 4 to May 28,
1928, deposited to the credit of this account the proceeds of the sale of
\$300,000. of these bonds? A. That is right.

Q. That resulted in a credit balance, if I read this sheet correctly, of
40 \$313,250.69 on the 28th May, 1928? A. Correct.

Record.

In the
Supreme
Court of
Ontario.No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Examination.

—continued.

Q. Then on the 31st December, 1930 there is carried to the credit of the account \$100,000.? A. Yes.

Q. And that, I take it, represents the proceeds of the sale of the last \$100,000 of bonds carried into this account as explained in the letter I have just put in? A. That is right.

Q. Is this the whole of that account carried to a conclusion here? A. As far as I know, yes.

Q. Speaking as a man accustomed to reading accounts? A. It is closed off.

Q. It is a closed off account? A. Yes.

Q. I will inquire later as to what you did in the way of closing it off?

A. Very well.

10

—EXHIBIT NO. 8: Copy of The Dominion Bank Savings Account (Toronto Branch) C3108 in the name of The Carling Export Brewing & Malting Co. Ltd., London, Ontario.

MR. ROBERTSON: I would like to have a letter of the 13th May, 1931 from N. W. Rowell to Mr. C. A. Bogert, General Manager of The Dominion Bank.

MR. PORTER: Production No. 27.

20

MR. ROBERTSON: Perhaps I can give my friend the dates of two or three other letters relating to the same matter: Letter dated May 16, 1931, from Mr. Bogert to Mr. Rowell; letter of June 30, 1931 from the Chief Inspector of the Bank to Mr. Rowell.

I will put in the three letters as one exhibit, my Lord. The first, dated May 13, 1931, is marked: "The King vs. Carling Export Brewing & Malting Co."

Q. Mr. Rowell was acting for the Dominion Government in this matter of the claim of the Dominion Government? A. Yes, that is correct.

MR. ROBERTSON: This letter reads:—

30

"38 King St. West,
"Toronto, 13th May, 1931.

"C. A. Bogert, Esq.,
"General Manager, The Dominion Bank,
"Toronto.

The King vs. Carling Export
Brewing & Malting Co.

"Dear Sir:—

"Referring to letter of the 29th March 1930, signed by your Chief Inspector, in which it is stated that you held in your hands Dominion "of Canada bonds bearing 5½% per annum, payable in 1934, to the "amount of \$100,000. and cash on deposit to the amount of \$313,250.69, "to meet any final judgment that might be obtained by the King "against the Carling Export Brewing and Malting Company in re-

40

“spect of the action then pending with reference to sales and gallonage tax on export sales, I beg to advise you that under the terms of the judgment of the Privy Council there is payable in respect of the Crown’s claim, up to the 1st May 1931, the sum of \$87,222.52, and to that amount must be added interest at 8% on the sum of \$63,800.00 from the 1st May to the date of payment.

“I should be glad to receive cheque for the amount due payable to the Receiver-General of Canada.

“Yours truly,
(Signed) “N. W. Rowell.”

10

—Part of EXHIBIT NO. 9.

HIS LORDSHIP: Is that the same amount as is mentioned in the pleadings?

MR. ROBERTSON: No, there will be some interest added, but it is substantially the same, and there is no dispute about it.

Then on the 16th May, 1931, there is an answer to that letter by Mr. Bogert to Mr. Rowell:—

“16th May, 1931.

“EJW/40

20

“N. W. Rowell, Esq., K.C.,
“38 King St. West,
“Toronto, 2.

“Dear Sir:—Re: The King vs. Carling Export Brewing & Malting Co. Ltd.

“I beg to acknowledge receipt of your letters of the 13th and 14th instant, the latter with enclosure.

“We have seen the Reasons for Judgment of the Judicial Committee of the Privy Council and the formal Judgment issued pursuant thereto. We observe that the formal Judgment does not state specifically the amount to be paid by the Carling Export Brewing & Malting Co. Ltd. to the King. The funds held by The Dominion Bank to meet the final judgment are held upon instructions from the Carling Export Brewing & Malting Co. Ltd. which read as follows:

30

“These are to be held by you to meet any final judgment that may be obtained by the Dominion Government against Carling Export Brewing & Malting Co. Ltd. in respect to action now pending with reference to sales and gallonage tax on export sales. It is understood that you are to hold said bonds until any action by the Government with respect to sales and gallonage tax on export is finally disposed of by judicial decision or settlement.

40

“You will note the words ‘finally disposed of by judicial decision or settlement,’ and you will also observe that in our letter to you of the 29th March, 1930, it was pointed out that the funds were to be held pending judicial decision or settlement.

“The Bank has not yet received from the Carling Export Brewing

Record.

In the
Supreme
Court of
Ontario.No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Examination.

—continued.

Record.

In the
Supreme
Court of
Ontario.No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Examination.

—continued.

"& Malting Co. Ltd. any confirmation of the figures mentioned in
"your letter of the 13th instant to myself, nor has the Bank received
"any amended form of judgment of the Exchequer Court containing
"definite figures. Under these circumstances, we are advised by our
"Solicitors that the Bank should have either the consent of the Car-
"ling Export Brewing & Malting Co. Ltd. to payment of the amount
"mentioned in your letter, or production of a formal judgment of the
"Exchequer Court fixing that amount as the amount to be paid by the
"Company to the King.

"Will you be good enough to give these matters your considera- 10
"tion, and let me hear from you again.

"Yours faithfully,
"General Manager."

—Part of EXHIBIT NO. 9.

Then a letter of the 30th June, 1931, from the Chief Inspector to Mr.
Rowell:—

"LH/490 30th June, 1931.
"N. W. Rowell, Esq., K.C.,
"38 King Street West,
"Toronto.

20

"Dear Sir: The King vs. Carling Export Brewing & Malting Com-
"pany, Limited.

"Referring to your letter of the 13th May and other corres-
"pondence, we have been requested by the Carling Export Brewing &
"Malting Co. Ltd. to pay the Government, under its judgment against
"that concern, the sum of \$88,073.17 and we enclose herewith our
"cheque for that amount payable to the Receiver General of Canada.

"This payment is made without prejudice to the claim of the Car-
"ling Export Brewing & Malting Co. Ltd. to be repaid certain sums
"paid by the Company for gallonage tax and other taxes and which, 30
"according to the judgment of the Privy Council, the Government
"was not entitled to demand.

"Will you kindly acknowledge receipt.

"Enclosure "Yours truly,
"Chief Inspector."

—Part of EXHIBIT NO. 9.

- EXHIBIT NO. 9: (a) Letter dated May 13, 1931, from Mr. N. W.
Rowell to Mr. C. A. Bogert, General Manager,
Dominion Bank.
(b) Copy of letter dated May 16, 1931, from Mr.
Bogert to Mr. Rowell, (2 sheets). 40
(c) Copy of letter dated June 30, 1931, from Mr.
MacAgy to Mr. Rowell.

Q. The amount that was so paid appears charged up against the plaintiff company in this account (Exhibit 8) on the 30th June, 1931? A. That is right.

Q. And that left standing to credit in this account on that date \$331,964.67? A. Correct.

MR. ROBERTSON: Then will my friend produce a letter written by my firm to The Dominion Bank under date 27th June, 1931 and also a letter of the 3rd June, 1931 from my firm, and the reply of the 6th June, 1931, and, to complete this same series, a later letter of the 19th October, 1931
10 from my firm to them.

I will put these letters in as one exhibit, my Lord. The first is dated 3rd June, 1931, from the plaintiff's solicitor to The Dominion Bank:—

"3rd June, 1931.

"The Dominion Bank,
"King and Yonge Streets,
"Toronto 2.
"Dear Sirs:

20 "The Carling Export Brewing & Malting Company, Limited
"some time ago deposited with you security for the amount of \$400,000.00 to secure you against a guarantee given by you to the Dominion Government in respect of a claim against the Company then in litigation. The litigation has now been determined, and the amount to be paid by the Company to the Government has been ascertained.

"We are now instructed by the Company to request you to pay to the Government the amount payable in respect of the liability guaranteed by you and to forthwith return to the Company the balance of the security.

30 "RSR/AF. FASKEN, ROBERTSON, AITCHISON,
"PICKUP & CALVIN,
"Per R. S. Robertson."

—Part of EXHIBIT NO. 10.

The answer to that letter by Mr. MacAgy to the plaintiff's solicitors is dated June 6, 1931:—

"LH/525

"6th June, 1931.

40 "Messrs. Fasken, Robertson, Aitchison,
"Pickup & Calvin,
"Barristers,
"Excelsior Life Building,
"Toronto.

"Dear Sirs: Re: Carling Export Brewing &
"Malting Co. Ltd.

"We have received your letter of the 3rd June. Since that was

Record.

In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
v. C. MacAgy,
Examinatio.

— continued.

Record.
*In the
 Supreme
 Court of
 Ontario.*
 —
 No. 10.
 Plaintiff's
 Evidence.
 W. C. MacAgy,
 Examination.
 —continued.

"written our solicitor, Mr. Milliken, communicated with your Mr. Robertson asking that you state definitely the amount that is to be paid to the Government and pointing out that Mr. Rowell had calculated this amount to be \$87,222.52 with interest at 8% on \$63,800 from the 1st of May to date of payment. Mr. Milliken understood that you would write us a letter confirming this amount as the amount to be paid to the Government. Will you please do this so that further interest may be saved.

"With reference to the last part of your letter to us in which you ask that the balance of the funds in our hands be returned to the Company, we beg to say that this balance has been hypothecated to the Bank. 10

"Yours truly,
 (Signed) "W. C. MacAgy,
 "Chief Inspector."

—Part of EXHIBIT NO. 10.

Q. Then a letter of the 27th June, 1931, from the plaintiff's solicitors to the Dominion Bank:—

"27th June, 1931. 20

"The Dominion Bank,
 "Head Office,
 "King and Yonge Streets,
 "Toronto 2.

"Dear Sirs: Re—Carling Export Brewing & Malting
 "Company, Limited.

"Referring to previous correspondence herein, the amount to be paid to the Government under its judgment has now been definitely fixed at \$88,073.17. Payment of this amount by the end of the month will be accepted in full.

"In making payment we are directed to ask that it should be expressly stated that it is made without prejudice to the claim of the Company to be repaid certain sums paid by the Company for gallonage tax and other taxes and which, according to the judgment of the Privy Council, the Government was not entitled to demand. 30

"With respect to the balance of the security deposited with you by the Company, our instructions are to take proceedings on behalf of the Company to recover it.

"Yours truly,
 "FASKEN, ROBERTSON, AITCHISON,
 "PICKUP & CALVIN,
 Per (Signed) R. S. Robertson." 40

"RSR/AF.

—Part of EXHIBIT NO. 10.

The reply to that letter is dated 30th June, 1931, from the witness to the plaintiff's solicitors:—

"30th June, 1931.

"Messrs. Fasken, Robertson, Aitchison,
 "Pickup & Calvin,
 "Barristers,
 "Excelsior Life Building,
 "Toronto.

"Dear Sirs: Re: Carling Export Brewing &
 "Malting Co. Ltd.

"We beg to acknowledge receipt of yours of the 27th instant.

10 "We are today sending to Mr. Rowell a cheque in favour of the
 "Receiver General of Canada for \$88,073.17. In the letter to Mr.
 "Rowell we have stated that the payment is made without prejudice
 "to the claim of the Company to be repaid certain sums paid by the
 "Company for gallonage tax and other taxes and which, according to
 "judgment of the Privy Council, the Government was not entitled to
 "demand.

20 "With respect to the balance of the security deposited with us by
 "the Company, referred to in your letter, we beg to say that this bal-
 "ance has been applied in reduction of the indebtedness to the Bank
 "for which it was given as security.

"As our solicitors state that you wish a copy of the hypothecation
 "under which we claim the balance of this security, we enclose a copy
 "thereof herewith.

"Yours truly,
 (Signed) "W. C. MacAgy,
 Chief Inspector."

"Enclosure

—Part of EXHIBIT NO. 10.

I have not that copy immediately available, but we will be putting the
 document in.

30 MR. TILLEY. Is it with the letter?

MR. ROBERTSON. It is not now, but I will put that document in.
 HIS LORDSHIP: The hypothecation document is not in that file?

MR. ROBERTSON: No, that particular copy has gone, I do not
 know where.

The next letter is dated October 19, 1931 from the plaintiff's solicitors
 to the Dominion Bank:—

"19th October, 1931.

"The Dominion Bank,
 "Cnr. King and Yonge Streets,
 "Toronto 2.

40 "Dear Sirs:

"We had recently some correspondence with you regarding the
 "security provided by the Carling Export Brewing & Malting Com-
 "pany Limited to protect the Bank against its guarantee given to the

Record

In the
 Supreme
 Court of
 Ontario.

No. 10.
 Plaintiff's
 Evidence.
 W. C. MacAgy.
 Examination.

—continued

Record.
*In the
 Supreme
 Court of
 Ontario.*
 —
 No. 10.
 Plaintiff's
 Evidence.
 W. C. MacAgy.
 Examination.
 —continued.

"Dominion Government. You claim to hold the balance of the security, after deducting the amount that you have paid the Government, against a personal liability of Messrs. Low, Leon & Burns to the Bank.

"We are now definitely instructed by the Company to bring action to recover the amount of the security after crediting what has been paid the Dominion Government, and we intend to issue a writ accordingly within the next few days.

"Yours truly,

"FASKEN, ROBERTSON, AITCHISON,
 "PICKUP & CALVIN,

10

"RSR/AF.

Per (Signed) R. S. Robertson."

—Part of EXHIBIT NO. 10.

The last letter in this series is the reply to the foregoing on the 26th October, 1931, from the General Manager of the Bank to the plaintiff's solicitors:—

"Dear Sirs:

"Your letter of the 19th instant was duly received relating to instructions which have been given to you by the Carling Export Brewing & Malting Company, Limited, and the contents have been noted." 20

—Part of EXHIBIT NO. 10.

- EXHIBIT NO. 10: (a) Letter dated June 3, 1931, from plaintiff's solicitor to defendant bank.
 (b) Letter dated June 6, 1931, from defendant bank, per W. C. MacAgy, to plaintiff's solicitors.
 (c) Letter dated June 27, 1931, from plaintiff's solicitors to defendant bank.
 (d) Letter dated June 30, 1931, from defendant bank, per W. C. MacAgy, to plaintiff's solicitors. 30
 (e) Letter dated October 19, 1931, from plaintiff's solicitors to defendant bank.
 (f) Letter dated October 26, 1931, from defendant bank to plaintiff's solicitors.

Q. As to the account Exhibit 8, after charging against the account on June 30 the amount of the cheque sent to Mr. Rowell for the Government and leaving a balance of \$300,000. odd carried under the same date there are certain other entries and the result of the other entries is to wipe out the whole amount of the balance to the credit of the account? A. Quite right. 40

Q. So that we may get what these things were, the first of the items following the cheque to the government is an item of \$8807.98.

HIS LORDSHIP: Debit?

MR. ROBERTSON: Yes, there are four debit items and no other entries in the account except those four debit items from that time on.

Q. Can you tell me from the notation on the account, or from your own knowledge, what that \$8807.98 was for? A. That was applied on the debt of the Carling Export Brewing & Malting Company Limited at London, Ontario.

Q. The next amount debited is \$48,516.78. Tell his Lordship what that was for? A. That was applied on a debt which Low, Leon and Burns
10 had on our Montreal branch.

Q. Or was it the Windsor branch? A. I am sorry,—at our Windsor branch.

MR. TILLEY: Windsor, Ontario? A. Yes, Windsor, Ontario.

MR. ROBERTSON: Q. Applied on a debt of Low, Leon and Burns to the bank at Windsor, Ontario. May we add to that, that that was a debt owing by Low, Leon and Burns in connection with a matter known as the Dominion Square Building? A. That is right.

Q. The next item is one of \$226,123.12. How was that applied? A. That was applied on the indebtedness of Low, Leon and Burns at Windsor.

20 Q. Do you know what that indebtedness was, or in what connection it was? A. I do not know offhand.

Q. Can you find out from your records and tell me? A. If I can refer to my records I can tell you. You are asking me what the indebtedness was?

HIS LORDSHIP: What the transaction was that involved that amount of money.

MR. ROBERTSON: Q. Out of what did the indebtedness arise? A. From loans to Low, Leon and Burns.

Q. Do you know whether it was in connection with the Dominion
30 Square Building matter at Montreal? A. Not that particular item.

Q. Then the next item under the same date is \$48,516.79. What was that? A. That was applied on an indebtedness of Low, Leon and Burns at our Montreal office.

Q. In connection with what? A. Regarding the Dominion Square transactions.

MR. ROBERTSON: Perhaps my friend will let me have a document of the 12th July, 1929.

Q. I produce to you Mr. MacAgy, a typewritten document dated 12th July, 1929, purporting to be executed by The Carling Export Brewing &
40 Malting Company Limited per Charles Burns, president, and Marco Leon, secretary, with the company's seal, and Harry Low, Marco Leon and Charles Burns, and I ask you if that is the document which is referred to in a letter that I put in a few minutes ago dated in June, 1931, under which you said the bank had applied the balance of this account remaining after satisfying the claim of the Dominion Government? A. Yes, that is the document.

Record.

*In the
Supreme
Court of
Ontario.*
No. 10.
Plaintiff's
Evidence.
W. C. MacAgy.
Examination.

—continued.

Record.

In the
Supreme
Court of
Ontario.No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Examination.

—continued.

—EXHIBIT NO. 11: Assignment dated July 12, 1929, from plaintiff company to defendant bank:—

“WHEREAS the undersigned individuals HARRY LOW, MARCO LEON and CHARLES BURNS are jointly and severally indebted to the Dominion Bank and own the total issued capital stock of The Carling Export Brewing and Malting Company Limited.

“AND WHEREAS the undersigned THE CARLING EXPORT BREWING and MALTING COMPANY LIMITED, on or about the 26th day of October, 1927, deposited with the Dominion Bank \$400,000.00 of Dominion of Canada Victory Loan 5½ per cent. Bonds due 1st of November, 1934, to be held by the said bank to meet any final judgment that might be obtained by the Dominion Government against the said Company in respect of the action then pending with reference to sales and gallonage tax on export sales. 10

“AND WHEREAS with the consent of the undersigned Company certain of the said Bonds have been converted into cash, and the proceeds thereof deposited in the said Bank in a special savings account in the name of the said Company.

“AND WHEREAS the said Bank has required from the undersigned individuals further security for the payment of the said indebtedness of the said individuals to the Bank, as the consideration for which the Bank will refrain from immediately taking proceedings against the said undersigned individuals to recover the said indebtedness. 20

“NOW THEREFORE in consideration of the premises, the undersigned Company and individuals do and each of them doth hereby assign, transfer and set over unto the said The Dominion Bank all the right; title and interest of them and each of them of, in and to the said hereinbefore mentioned Bonds and proceeds thereof, subject however to the payment thereof of the amount of any final judgment that may be obtained by the Dominion Government against the undersigned Company in respect to the action above mentioned. 30

“IT IS UNDERSTOOD and agreed that the said Bank shall hold the said Bonds and proceeds thereof to the extent to which the same are hereby assigned to the said Bank as further continuing, additional security for the payment of the joint and several indebtedness from time to time of the undersigned individuals to the said Bank, and interest thereon, and that in connection with the said bonds and proceeds thereof hereby assigned to the said Bank it shall have all the powers, rights and privileges contained in a certain agreement of even date herewith executed by the undersigned company and individuals. 40

“DATED at Toronto this Twelfth day of July, A.D. 1929.
 “THE CARLING E.B. & M. CO. LTD.

Per (Signed) “Chas. Burns,
 “Pres. } (Company Seal)
 (Signed) “Marco Leon, }
 “Secr. }
 (Signed) “Harry Low, (Seal)
 (Signed) “Marco Leon (Seal)
 (Signed) “Chas. Burns (Seal)”

Record.
 In the
 Supreme
 Court of
 Ontario.
 No. 10.
 Plaintiff's
 Evidence.
 W. C. MacAgy,
 Examination.
 —continued.

10 Q. Then, Mr. MacAgy, had you personally to do with the transac-
 tions of Low, Leon and Burns, and the Dominion Bank, with respect to
 the Dominion Square matter at Montreal? A. Yes, I had.

Q. See if I can state correctly what the general nature of the business
 proposition was down there that they were interested in, and correct me
 if I do not state it correctly: Certain land had been acquired and vested in
 a corporation called the Dominion Square Corporation or a name closely
 resembling that, and Low, Leon and Burns either controlled or were
 largely interested in that corporation? A. Yes.

20 Q. And the project that they had in mind was to erect upon this land
 that had been acquired a large office building? A. Yes.

Q. And it was an enterprise that involved the investment of several
 millions? A. A substantial sum.

Q. It was several millions? A. Yes, possibly.

Q. Then in connection with that matter the bank loaned one and a
 half million dollars to Low, Leon and Burns personally? A. Yes.

Q. Am I correct in understanding that that was an advance to Low,
 Leon and Burns and not to the Dominion Square Corporation? A. No,
 the advance was to Low, Leon and Burns.

30 Q. One and one-half Million Dollars advanced to Low, Leon and
 Burns? A. Yes.

Q. And had the plaintiff company, the Carling Export Brewing &
 Malting Company Limited, any concern or interest in this Dominion Square
 proposition? A. Not to my knowledge.

MR. TILLEY: How does he know that?

MR. ROBERTSON: I have examined this gentleman for Discovery
 and received an answer before.

HIS LORDSHIP: Q. What is your answer? A. Not to my
 knowledge, my Lord.

40 MR. ROBERTSON: Q. You had a good deal to do with this
 proposition? A. Yes.

MR. TILLEY: Are you giving the evidence or is the witness giving
 it?

HIS LORDSHIP: Do not forget that Mr. MacAgy is your witness,
 Mr. Robertson.

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Record.
In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Examination.

—continued.

MR. ROBERTSON: Q. As far as you know, the Carling people had not anything to do with it? A. (No answer).

Q. Who was the person in the bank, if there was a person in the bank, who had direct charge of the Dominion Square account or the loan made by the bank in connection with it? A. I do not think I quite follow that question?

Q. I do not know whether anyone in the bank had particular charge of the loan of One and One-half Million Dollars to Low, Leon and Burns, arranging about it and making an investigation to see if it was a good loan? A. I probably had as much to do with it as anybody. 10

Q. Can you tell me approximately when that loan was made? A. I would have to refer to my records about that.

Q. I have in front of me your Examination for Discovery, but I do not know what you were speaking from at that time. You told me then the time, about June 1928? A. That would be about right.

MR. TILLEY: What happened in June, 1928?

MR. ROBERTSON: The time of the loan to Low, Leon and Burns of One and one-half Millions. Will my friends let me have a letter of the 3rd July, 1928, appearing at page 59 of your Production No. 54, addressed to Mr. A. M. Cowie at Windsor from the Manager, Mr. Bogert? 20

HIS LORDSHIP: From Mr. Bogert in Montreal?

MR. ROBERTSON: Yes, my Lord. The letter reads:

“Dear Sir:—

“I beg to confirm our telegram of today’s date reading as follows:

“‘Debit your Demand Loan Account \$750,000. and credit us “through direct branch clearings similar account re: Leon, Low and “Burns loan \$1,500,000. made today.’

“We were advised by Head Office, on the 18th instant, in respect “to the above advance to Leon, Low and Burns, proceeds of which 30 “were paid to the Dominion Square Corporation at this office and “then transferred to The Royal Trust Company to be applied by “them in the discharge of certain mortgages, that one-half of the “amount was to be carried at your office and the balance here, “which explains our telegram.

“In connection with this advance, we beg to advise for your “records that we hold the following securities in negotiable form as “collateral, hypothecated or assigned, as per copies of forms enclosed.”

Then follow a page and a half of description of various securities that, of course, does not refer to the matter in controversy here, that is, this 40 money in this special account. The rest of the letter goes on to tell the terms of the loan, the interest to be payable, and so on. The rest of the letter is just concerned with details of the loan.

—EXHIBIT NO. 12:—Letter dated July 3, 1928, from M. S. Bogert, Manager, to A. M. Cowie, Windsor Manager, Dominion Bank, re loan to Dominion Square Corporation (4 sheets).

Record.

In the
Supreme
Court of
Ontario.No. 10.
Plaintiff's
Evidence.
W. C. MacAgy
Examination.

—continued.

Q. Did Low, Leon and Burns, make their payments in reduction of this loan as was required by the bank? A. No, they did not.

Q. There was, I think, a substantial reduction, perhaps \$500,000., to be made at the end of the year? A. Yes.

Q. And they did not make it? A. No, sir.

10 Q. Then a little later, early in 1929, was there some difficulty about getting ahead with the completion of the building for the Dominion Square Corporation? A. There were some difficulties at one time.

Q. About that time? A. Approximately, yes.

Q. And was the building completed? A. Eventually.

Q. Yes? A. Oh, yes.

Q. About when? A. I cannot recollect.

Q. What year? A. I should think probably the latter part of 1929.

20 Q. I am concerned, I may tell you, with the situation as it existed along about the time that this hypothecation dated 12th July, 1929 was taken. At that time were things in regard to this loan of One and one-half Millions in a satisfactory or unsatisfactory condition? A. They were unsatisfactory.

HIS LORDSHIP: At what time?

MR. ROBERTSON: At the time the hypothecation, bearing date 12th July, 1929, is dated.

Will my friends produce a letter of the 26th June, 1929, addressed to W. O. H. James, Assistant Manager, Montreal, from the Windsor Manager.

This letter reads as follows, my Lord:—

“26th June, 1929.

“W. O. H. James, Esq.,
“Assistant Manager,
“The Dominion Bank,
“Montreal, Que.

“Dear Sir: Re: Low, Leon and Burns.

“On Sunday, the 9th instant, I in company with Mr. Harry Low
“visited Toronto where we interviewed the Chief Inspector concern-
“ing the Low, Leon and Burns various liabilities to the Bank.

40 “As you are probably aware, we are now taking as additional
“security to the L., L. & B. accounts an Assignment of their equities
“in certain Windsor and Toronto properties—it was in this connec-
“tion that I confirmed by wire a few days ago the amount of the Liabil-
“ity at your end—and in addition to insisting upon being given the
“further security we made it very clear to Mr. Low that he and his

Record.

*In the
Supreme
Court of
Ontario.*No. 10.
Plaintiff's
Evidence.
W. C. MacAGY,
Examination.

—continued.

“associates must without any more unnecessary delay clean up with Bank from one source or another irrespective of what doing so might cost them.

“Mr. Low spoke of several ways his firm might have of raising money, but with one exception these were so vague and indefinite that we practically told him to ‘forget’ them and get down to earth and accept any bona fide offer to refinance the Dominion Square Building proposition even though it meant a very substantial loss to the firm. The exception mentioned was a statement to the effect that Messrs. Wm. A. White & Sons of 350 Madison Avenue, New York, had undertaken to refinance the Dominion Square Building proposition by providing or underwriting a bond or stock issue thereon totalling \$9,000,000., which would be used as follows:—” 10

The letter goes on to give certain details which include \$1,400,000. to pay The Dominion Bank loan. Then:—

“Our customers have \$1,200,000. of their own money in the Dominion Square Building venture, which means that if the White offer were accepted they would take a loss on the deal of \$600,000. However, by doing this they would get back or release for themselves \$600,000. after paying off the Bank and the Geo. A. Fuller Company of Canada, Limited, and Mr. MacAgy and I in addition to informing Mr. Low that we were strongly of the opinion that this offer should be taken up intimated that the Bank would insist upon their doing this.” 20

“On our return trip from Toronto Mr. Low and I stopped at London for an hour or so on the 10th instant and outlined to Mr. Chas. Burns what had transpired at the interview we had with the Chief Inspector, and our London Manager and I tried to show Mr. Burns where following our suggestion in this matter was in the best interests of his firm. It was apparently quite a shock to both Low and Burns to see the Montreal picture change from what they had previously viewed as a \$1,000,000. to \$2,000,000. profit to a \$600,000. loss, and we expected them to discuss the subject with Mr. Marco Leon forthwith and take some action in the connection. Although Mr. Low has been East several times during the past two weeks or so and on one occasion was expected to see his two partners in Montreal, I do not yet know whether they have talked over our request with him.” 30

“These men, as you are doubtless aware, have been having considerable trouble with the parties associated with them in the Chatam Distillery enterprise—this resulted in a \$60,000. writ being issued against them.” 40

Then there is some discussion of that distillery matter, and the letter proceeds:—

Record.

*In the
Supreme
Court of
Ontario.*No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Examination.

—continued.

“It might be mentioned that I have not seen Mr. Low since the 10th of the month as he has been spending most of his time of late in Chatham with a visit or two to Toronto and Montreal, which accounts for my not having obtained the desired information through him. In any event I think it advisable for you to see Leon and urge him to accept the Wm. A. White & Sons offer.

10 “Since writing the foregoing I have succeeded in reaching Mr. Low by 'phone; and while he has promised to call upon me today, the indications are that a Chatham appointment may keep him from doing so. I have just asked him who obtained the Wm. A. White & Sons offer and what assurance he had that the New York concern were willing to go through with this. He replied that the information and figures given to me in the connection were obtained by him from Mr. Leon and the Montreal rental agents looking after the Dominion Square Building. Apparently Leon and the agents mentioned saw the White people and I would like you to confirm this if you can and find out definitely what the White concern really under-
20 took to do for Low, Leon & Burns. I am sure Mr. Low would not intentionally misinform me on any subject, but Leon is difficult to understand at times and his recital to Low of what the White firm promised to do may have been to some degree misinterpreted by Low; that is not likely but just possible.”

Q. Mr. Leon is very deaf? A. Yes.

Q. Then:—

30 “I neglected to mention when giving you the figures of the White offer that in addition to the \$600,000. that would go to Low, Leon & Burns, they would receive 25% of the Common Stock. What this might be worth coming after a \$9,000,000. Preferred or Bond Issue is quite problematical, but if the building's anticipated rentals are realized the Common Stock should at least be worth something.

“Head Office has asked me what I have done to confirm the White offer, hence the request I am making of you.”

—EXHIBIT NO. 13: Letter (5 sheets) dated June 26, 1929, from A. M. Cowie, Windsor Manager, to W. O. H. James, Montreal Assistant Manager of defendant bank.

MR. ROBERTSON: Then will my friends produce a letter of the 5th July, 1929 from the Montreal Manager to the Windsor Manager?

40 My friend hands me the letter I asked for, and with it a letter of the

Record.
In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Examination.

--continued.

same date from the Montreal Branch to the witness, enclosing a copy of the letter:—

“Montreal, 5th July, 1929.

“A. M. Cowie, Esq.,
“Manager, The Dominion Bank,
“Windsor, Ont.

“Dear Mr. Cowie:

“Referring to your letter of the 26th ultimo, received a week ago “today, a reply to which has been held up owing to my inability to see “Mr. Leon, I may say I spent last evening with him. 10

“It is as you know very difficult to discuss matters with Leon, “but from the conversation I had with him it would appear that he “does not know very much about what his partners do, or may be do- “ing at our other Branches. However, he does know our attitude “regarding payment of the loan, and, I think, is doing everything pos- “sible to raise the necessary funds, or at least a substantial portion of “them.

“White & Sons have not undertaken to refinance the Dominion “Square Building, nor have they made any offer to do so, but they have “gone into the proposition pretty fully, and the option given them 20 “about a month ago has been renewed until 1st August next.

“Apparently it is an easy matter for them to obtain \$6,000,000. “under a first mortgage, but the trouble is in finding the balance either “by way of second mortgage or a preferred stock issue with bonus of “common.

“Leon is quite willing that he and his partners should lose \$600,- “000., provided they can obtain the necessary funds and retire their “loans to us.

“Locally the Laurentian Realty Company are confidentially can- “vassing about eight or ten local men from whom they hope to raise 30 “about \$1,000,000. on the preferred and common stocks of the Cor- “poration presently held by us. If this were to materialize we would “then be handed \$600,000. on account of the loan, \$200,000. would be “used to repay Geo. A. Fuller Company of Canada and Ross & Mac- “Donald, from whom Leon, Low & Burns borrowed \$100,000. each a “year ago—this I think is not generally known. The balance of “\$200,000. it is expected will be required to cover taxes, sundry carry- “ing charges and particularly alterations to suit tenants’ require- “ments, which will no doubt be substantial before the property is all “rented. 40

“Leon is, in my opinion, pretty well up against it for ready cash, “and just at present I cannot see how he is going to be able to finance “the extras required, which, of course, are not provided for in the con- “struction fund handled by the Royal Trust Company.”

- EXHIBIT NO. 14: (a) Letter dated July 5, 1929, (4 sheets) from Assistant Manager, Montreal Branch, to Manager, Windsor Branch of defendant bank re Dominion Square Corporation (Copy).
 (b) Letter dated July 5, 1929 from Assistant Manager, Montreal Branch, to W. C. MacAgy, Chief Inspector, defendant bank, enclosing copy of (a).

Record.
*In the
 Supreme
 Court of
 Ontario.*
 —
 No. 10.
 Plaintiff's
 Evidence.
 W. C. MacAgy.
 Examination.
 —continued.

MR. ROBERTSON: Then another letter of the 8th July, 1929 from
 10 the Manager of the Windsor Branch to Mr. MacAgy. Perhaps I might
 read this while my friend is looking for his copy. It is Production No. 49,
 page 41:—

8th July, 1929.

“W. C. MacAgy, Esq.,
 “Chief Inspector,
 “Head Office,
 “Toronto - 2, Ont.

“Dear Sir:

Routine:

“Re Low, Leon and Burns.

20

“Since talking with you over the telephone this afternoon, I have
 “discussed with Mr. Low certain points referred to by you and men-
 “tioned in the Montreal Assistant Manager's letter of the 5th instant
 “addressed to me. Mr. Low informs me that it is quite true that his
 “firm borrowed \$100,000. from the George A. Fuller Co. of Canada,
 “Ltd. and also \$100,000. from Ross & McDonald at the time it was de-
 “cided to put two extra stories on the Dominion Square Building.
 “Forty thousand dollars of the \$200,000. borrowed has been paid back.

30

“Regarding the \$200,000. which Mr. W. O. H. James gathered
 “from his interview with Marco Leon would have to be set aside for
 “taxes, sundry carrying charges and alterations to suit tenants' re-
 “quirements out of any moneys raised by refinancing, Mr. Low states
 “that there must be some mistake about this, and that the last time he
 “went into the matter, which was three or four weeks ago, he was
 “given to understand there was then between \$150,000. and \$160,000.
 “still left for 'tenants' alterations.' ”

The rest of that part of the letter goes on with details of further ex-
 penditures. Then:—

40

“I beg to hand you herewith a list of the Border Cities properties
 “covered by the Mortgage dated 20th June, 1929, to be given by Low,
 “Leon & Burns to The Dominion Bank. There are twelve properties
 “on this list, and attached to it are twelve memoranda giving par-
 “ticulars of each property. There is also enclosed a list of Toronto

Record.
 In the
 Supreme
 Court of
 Ontario.
 —
 No. 10.
 Plaintiff's
 Evidence.
 W. C. MacAgy,
 Examination.
 —continued.

“properties covered by the Mortgage dated 20th June, 1929, to be given from Low, Leon & Burns to The Dominion Bank, and this includes six properties. Attached to the list is a two-page memorandum giving particulars of these properties. You asked me for a list of the properties which had been sold by Messrs. Low, Leon & Burns to provide for the \$115,000. cash they put into the Chatham Distillery. “It is as follows:—”

Then follows a list. Then:—

“We are trying to arrange a meeting of the three partners at Windsor for Wednesday of this week. Mr. Low communicated with Burns 10
 “by telephone, and Burns said that if he could not be here Wednesday
 “he would come the following day. He was requested to arrange to
 “bring Leon with him.

“Yours truly,
 (Signed) “A. M. Cowie,
 Manager.”

“Encls.

—EXHIBIT NO. 15: Letter dated July 8, 1929, (4 sheets) from Windsor Manager to W. C. MacAgy, Chief Inspector of defendant bank, re routine, Low, Leon and Burns, with List of Border Cities properties included in the mortgage from Low, Leon and Burns to defendant bank, dated June 20, 1929. 20

MR. ROBERTSON: Q. At that time was the bank pressing Low, Leon and Burns for mortgages on their Windsor and Toronto real estate holdings? A. We were asking them for mortgages.

Q. As security for thir indebtedness? A. Exactly.

Q. Was there any property of Low, Leon and Burns that the bank had any knowledge of at this time and which it already did not hold as security that it did not demand security upon? A. I do not think so.

Q. Did you make it your business to find out as far as you could 30
 what assets they did have? A. We knew they had certain assets, and they supplied us with the information.

Q. What is your answer to the question: Did you make it your business to find out what their assets were? A. Only through inquiry with them.

Q. Did you then get security on this real estate and on all of the properties so far as you knew of them? A. Yes.

Q. And was that the situation immediately prior to the 12th July, 1929? A. Yes, that is my recollection.

Q. You were actively engaged in these matters? A. Yes. 40

Q. On behalf of the bank? A. Yes.

MR. ROBERTSON: Will my friend produce a letter of the 18th

February, 1929, from Mr. MacAgy to Mr. Cowie appearing in Production 49, page 11?

Q. This is handed to me by my friend as a copy of a letter written by you as Chief Inspector to Mr. Cowie on the 18th February, 1929. (Reads).

MR. ROBERTSON: Will my friends produce that statement referred to in that letter?

MR. TILLEY: Is that the Breweries Limited or the Brewing & Malting Company Limited?

10 MR. ROBERTSON: Breweries Limited. I do not need to put that letter in. Produce to me the last statement, annual or not, that the bank had in July, 1929, from the plaintiff company. My recollection is that on examination for discovery there was produced and marked as an exhibit one of a year later. Perhaps I may pass that for the moment, until I look up the examination for discovery, and then no doubt my friend will be able to find the statement; if not, I will have to come back to this one of 1926.

MR. TILLEY: Could we not deal with this as we go along?

MR. ROBERTSON: It is a long examination for discovery.

20 MR. TILLEY: Can the witness say whether this is the last?

WITNESS: I am not sure, Mr. Tilley; I think it would be approximately that date.

MR. TILLEY: You think this would be the last statement, but you are not sure?

WITNESS: No, but about that time.

MR. TILLEY: About 1926?

WITNESS: Yes.

HIS LORDSHIP: I understood it to be the last statement he had before July, 1929?

30 MR. ROBERTSON: Yes; the examination would indicate that Exhibit 7 on the examination contains the statement. Mr. Carson's statement was May 23, 1927. There was an application for a line of credit also dated in 1927 attached to it.

MR. TILLEY: There is a statement, but it is not the one you asked for. If you prefer this one, you may have it.

MR. ROBERTSON: It is not the auditors' statement?

MR. TILLEY: No.

40 MR. ROBERTSON: Q. My friend has produced this statement of three sheets. Perhaps you can tell us what it is? A. The front sheet is an Application Form for a line of credit, dated May 25, 1927, on behalf of the Carling Export Brewing & Malting Company Limited.

Q. Attached to it is what? A. Attached to it is a statement of affairs, the last being an estimated statement dated 23rd May, 1927; attached to that is a further comparative statement of affairs covering four different dates.

MR. TILLEY: Was that prepared by the plaintiff company or by the bank?

Record.

In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy
Examination.

—continued.

Record.
*In the
 Supreme
 Court of
 Ontario.*
 No. 10.
 Plaintiff's
 Evidence.
 W. C. MacAgy.
 Examination.
 —continued.

MR. ROBERTSON: Q. I suppose this comes from the London manager? A. The two sheets which are attached covering the statement of affairs were prepared by our London manager and the front sheet was prepared at the head office of the bank.

Q. When you say that, you say that is the way these things are generally done? A. Yes, that is the practice.

Q. But you cannot say how it was done in this case? A. Except that it is signed by our London manager.

Q. In any event, this, you say, is the last one? A. That is my recollection.

Q. Prior to the date of the document of the 12th July, 1929? A. I think so.

Q. So far as you know, this is the last one? A. I think that is right.

MR. TILLEY: The last estimate?

MR. ROBERTSON: The last statement of affairs.

WITNESS: An estimated statement as of that date, 23rd May, 1927.

- EXHIBIT NO. 16: (a) Application for line of credit by Carling Export Brewing & Malting Company, Limited, to London branch, dated May 25, 1927. 20
- (b) Statement of Affairs of Carling Export Brewing & Malting Company, Limited, London, Ontario, certified correct April 7, 1926.
- (c) Statement of Affairs (estimated) of Carling Export Brewing & Malting Company, Limited, certified correct, May 23, 1927.

Q. The plaintiff company in July, 1929, had an overdraft in either their Windsor or London account? A. I cannot tell unless I refer to some records; I think there was a small overdraft.

MR. ROBERTSON: I would like to see the correspondence about that overdraft. There are letters inquiring why this overdraft exists, and so on, early in 1929 from the head office branch. 30

MR. WILSON: It will require some minutes to find the correspondence.

MR. ROBERTSON: I want to get the letters, because they are of importance as showing the position of the company. Perhaps my friend will let me have a letter of May 28, 1929, from the Chief Inspector to the manager at London.

The letter reads:—

“Dear Sir:—

“We notice by your Weekly Return of the 20th instant that this account was overdrawn \$2,531. Has cover since been provided, if not, when is it anticipated? 40

“Yours truly,
 “Chief Inspector.”

—EXHIBIT NO. 17: Copy of letter dated May 28, 1929, from Chief Inspector to London Manager of defendant bank re Carling Export Brewing & Malting account.

Record.
In the
Supreme
Court of
Ontario.

Then a letter of the 25th June, 1929, from the London manager to the Chief Inspector of the bank:—

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Examination.

—continued.

“Dear Sir:—

“Referring to your letter of June 20th, I beg to advise you of the following balances relative to the above and allied Accounts at this Branch:—

10	“Carling, E. B. & M. Company, Ltd., Overdrawn.....	\$3,023.46
	“Carling, E. B. & M. Co. Ltd., Savgs. Credit	318.24
	“Charles Burns,	805.84
	“Mrs. T. Burns,.....	61.23
	“M. Leon,	298.87

“All available funds of the Principals concerned are being used at the present time for their various interests, and for that reason the balances are reduced to a minimum. Mr. Charles Burns informs me that arrangements are being made to provide cover for the existing overdraft on our books, as it was distinctly understood that this would be of a strictly temporary nature.

20

“Yours truly,
(Sgd.) “B. B. Manning,
“Manager.”

Q. There is a note on the margin in lead pencil. Is that yours? A. Yes.

Q. You wrote on the margin: “Must cover immediately”? A. Yes, correct.

—EXHIBIT NO. 18: Letter dated June 25, 1929, from the Manager of the London branch to the Chief Inspector of the defendant bank, re Carling Export Brewing & Malting Company, Limited.

30

MR. ROBERTSON: Then a further letter in Production No. 52, page 244, of the 22nd January, 1929, from the Chief Inspector to the London Manager of the bank:—

“Dear Sir:

“We notice by Bradstreet’s Bulletin of the 17th instant that the Ohio Realty Ltd. has issued a Writ against the Carling Export Brew-

Record.

*In the
Supreme
Court of
Ontario.*No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Examination.

—continued.

“ing & Malting Co. Ltd., amount unstated. We would be interested to
“have Particulars as to what the action covers.”

“Yours truly,

“Chief Inspector.”

Then the answer to that letter from the London Manager to the Chief
Inspector of the bank is dated January 28, 1929:—

“Dear Sir:

“Referring to your letter of the 22nd instant, I beg to advise you
“that the writ issued against the Carling Export, Brewing & Malting
“Co. Ltd., amount unstated, by the Ohio Realty Company, is relative 10
“to a Dock property at Riverside, Ontario, which Carling Export,
“Brewing & Malting Co. Ltd. hold under lease. The writ is issued to
“try and compel the Carling, Export, Brewing & Malting Co. Ltd. to
“give up their lease rights.

“Yours truly,
(Sgd) “B. B. Manning,
“Manager.”

- EXHIBIT NO. 19: (a) Copy of letter dated 22nd January, 1929, from
the Chief Inspector to the London Manager
of the defendant bank. 20
(b) Letter dated January 28, 1929, from the
London Manager to the Chief Inspector of
the defendant bank, re Carling Export Brew-
ing & Malting Company, Limited account.

MR. TILLEY: I hope there is some point in this correspondence? I
am sure I cannot follow what it is. I have no doubt the Carling Company
had a great many disputes.

MR. ROBERTSON: What I have in mind is very simple, namely,
that I intend to argue later in the case that the transaction of the 12th July,
the hypothecation of that date was something that was not done either 30
regularly by the company or within its power, or for its benefit, and that
in so far as the defendants seek to claim that while it was a Low, Leon and
Burns transaction, Low, Leon and Burns as shareholders of the company
were entitled to appropriate the company's assets as they saw fit for their
own benefit; the situation was not one where shareholders had the only
interest.

HIS LORDSHIP: That is something that the pleadings intimate, but
are these particular letters and documents which you are now producing
relevant to that situation?

MR. ROBERTSON: My submission is that there it shows that the 40
company, notwithstanding the fact that they had sold their assets two

years before, were still carrying on business to the extent that they had an overdraft at the bank; and, in the second place, that they were disputing over holding a certain lease; and that it was plain notice to the bank that the company as a company had still a separate existence from its shareholders.

HIS LORDSHIP: Subject to objection I will hear the evidence.

MR. ROBERTSON: Q. I show you Exhibit 11, which you have already identified. By whom was this document prepared? A. By Mr. Milliken, the bank's solicitor.

10 Q. When? A. On the day of the date of the document.

Q. Had you seen Low, Leon or Burns on that date? A. Yes, we had a meeting.

Q. Where? A. At the head office of the bank.

Q. In whose office? A. I think we met in the Board Room.

Q. Who were present? A. Mr. Low, Mr. Leon, Mr. Burns, Mr. Milliken, Mr. Cowie, I think, and, I think, Mr. Springsteen was there.

Q. Who is he? A. A solicitor at Windsor.

Q. Who else? A. Myself, and there may have been one or two others.

20 Q. For whom was Mr. Springsteen appearing there? A. Either for the company or for Messrs. Low, Leon and Burns.

Q. Are you sure he was there? A. That is my recollection.

Q. I ask you if you are sure he was there?

MR. TILLEY: Do not cross-examine him.

MR. ROBERTSON: I want to hear if he is as sure on this subject as he is on others.

HIS LORDSHIP: The implication is that you are doubting your own witness.

MR. ROBERTSON: His recollection, yes.

30 HIS LORDSHIP: He has made his statement.

MR. ROBERTSON: I want to know if he is sure. It is not to be forgotten that while he is my witness he is from the other side, and I have examined him.

MR. TILLEY: That is a remark that my friend interjects once in a while as though it discredited the evidence of the witness.

MR. ROBERTSON: No.

MR. TILLEY: Then what is the purpose of it?

MR. ROBERTSON: Because I have examined him before. I say to him now, "Are you sure?"

40 HIS LORDSHIP: I will allow you to produce what he said before.

MR. TILLEY: I have no objection to that, but I want to register a protest against this method of reflecting on my friend's own witness. My friend is not allowed to read the examination except by consent, but he continually makes references to the fact that he knows what the witness said before.

Record.

In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Examination.

—continued.

Record.

*In the
Supreme
Court of
Ontario.*No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Examination.

—continued.

MR. ROBERTSON: I do not know why you say "continually"; I think I did on one occasion.

HIS LORDSHIP: Do you think that affects the Court in the slightest,—what counsel say that is not produced in evidence?

MR. ROBERTSON: The only other occasion, as I recollect, that I referred to the examination for discovery was for the purpose of finding a statement.

HIS LORDSHIP: Q. Have you given your answer to the question, Mr. MacAgy? A. I have, my Lord.

MR. ROBERTSON: Now, may I read what was said before on the examination for discovery, or shall I leave it where it is? 10

HIS LORDSHIP: As to what?

MR. ROBERTSON: As to the witness's recollection as to who was there.

HIS LORDSHIP: I will allow you to read it.

MR. ROBERTSON: I read to you from your examination for discovery, commencing at question No. 553.

"553. Q. And who were present? A. If I can recollect—I am "not sure about this—I will have to tell you as far as my memory "goes. 20

"554. Q. That is all I can get? A. I think Mr. Blackwell "was there; he was the Chairman of the Board.

"555. Q. C. S. Blackwell? A. Yes, and W. K. Pearce. He was "the assistant General Manager at that time but he has since retired. "I am not sure whether Mr. Bogart was there or not. I think he may "have been in and out once or twice. Then Mr. Milliken was there, "our solicitor. I think that is all. I am not sure but I think that is all."

"557. Q. Did Low, Leon and Burns have anyone with them?

"A. No, I don't think so."

HIS LORDSHIP What page? 30

MR. ROBERTSON: Page 88 of the witness's examination for discovery. This was a continuation of the examination for discovery held on the 12th September, 1933.

Q. Now that I have read those questions and answers to you, Mr. MacAgy, what do you say? A. At the time I was up for examination for discovery when you asked me that question, Mr. Robertson, I became confused with another meeting we had and thought at the time you asked that the taking of this document had occurred when the other parties mentioned were present. Since that time I have been giving it more thought, and I think my first recollection was wrong. 40

Q. Is there any memorandum available as to who were there? A. I think possibly our solicitor has one; I have none.

Q. I mean kept by someone for the bank? A. Possibly our solicitor Mr. Milliken would have a memorandum.

Q. No officer of the bank took anything, that you know of? A. No, not so far as I know.

Q. How long did the interview last? A. It is difficult to say; a couple of hours, probably.

Q. Am I to understand from that, that you were there for a couple of hours before the meeting broke up? A. I cannot recall that definitely; we had a meeting, and I think we broke up and met together again.

10 Q. When you broke up, it was for what purpose? A. For the purpose of Mr. Milliken preparing this particular document.

Q. Prior to that breaking up for that purpose, what is your recollection as to how long the meeting had lasted? A. I should say a couple of hours, roughly.

Q. What was said at that meeting with respect to the matters that are dealt with in this document? A. We had a general discussion.

Q. About what? A. We expressed our dissatisfaction with the position of the account.

20 Q. What account? A. The borrowings of Low, Leon and Burns, and requested the additional security mentioned in that document.

Q. And do you recall what the discussion was with reference to this particular security, if there was any discussion? A. Not particularly, excepting that we asked for it, and there was some discussion about it as to how it would be taken, and so forth.

30 Q. Then what happened? A. The document was prepared by Mr. Milliken, our solicitor, and brought up to the head office of the bank. It was handed over to Messrs. Low, Leon and Burns. I am not sure whether it was signed there, but I think so. In any event, it was taken away by Mr. Burns to London in order to have him sign the document by the Carling Export Brewing & Malting Company, Limited.

Q. Where were Low, Leon and Burns during the preparation of the document? You broke up and Mr. Milliken drew up the paper and met you again? A. I think they remained in the head office of the bank, as far as I can remember.

Q. They did not go to Mr. Milliken's office with him? A. No, I do not think so.

Q. Do you know who gave Mr. Milliken the information, the data, upon which to prepare the document, or do you know how he got it? A. I imagine I would give him that.

40 Q. Did you enquire on this occasion or on any prior occasion as to whether or not the Carling Export Brewing & Malting Company, Limited had any interest of any kind in the Montreal venture on which the bank had loaned \$1,500,000? A. No.

Q. Did you enquire as to whether the Carling Export Brewing & Malting Company, Limited, had any interest in the indebtedness to the bank of Low, Leon and Burns? A. No.

Record.

In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Examination.

—continued.

Record.

In the
Supreme
Court of
Ontario.Plaintiff's
Evidence.
W. C. MacAgy,
Examination.

—continued.

Q. Did anyone tell you whether or not the Carling Export Company had any interest in either of these matters? A. No.

Q. Was any promise made to anyone upon the faith of this document Exhibit 11, or in consideration of its being given, was any promise or undertaking given by the bank to anyone? A. I think the understanding was that we agreed not to unduly press for repayment of our advance at once if they gave us this security.

Q. From whom? A. From Low, Leon and Burns.

Q. Have you any recollection of anything being said about it? A. No, I have not. 10

Q. Was there at any time any arrangement or agreement—I do not mean necessarily in writing, but an agreement binding the bank—

MR. TILLEY: There are two things there.

HIS LORDSHIP: Leave out the binding of the bank part of it.

MR. ROBERTSON: Very well.

Q. Was there any agreement or arrangement that the bank would give any extension of time? A. No, I do not think so.

Q. Was there any enquiry made by you or anyone on behalf of the bank as to the authority of anyone to give this document on behalf of the company? A. No. 20

Q. Were any representations made as to the authority of anyone to give this document on behalf of the company? A. No.

Q. Was there any request that the bank should pass by-laws in connection with it? A. No.

Q. Was there any request that a meeting, either of directors or shareholders, should be held in connection with it? A. No.

Q. Was any information given to the bank as to whether a meeting of shareholders or a meeting of directors was held in connection with it? A. No.

Q. Had the transaction, that is the giving of this document Exhibit 11, any other purpose than to further secure the bank in respect of the indebtedness of Low, Leon and Burns? A. No, I do not think so. 30

Q. As I understand it, you say that your recollection does not serve you as to whether any of the signatures were on Exhibit 11 on the day the parties were at the bank on the 12th July? A. I think they were, but I am not sure.

Q. Would you mind saying how much you think was on, on that date? A. I think the signatures of Harry Low, Marco Leon and Charles Burns were on that document on that particular date.

Q. You mean their signatures as individual parties? A. Yes. 40

Q. Because you see that Burns and Leon also sign as officers of the company? A. I mean as individuals.

Q. Marco Leon at this time and prior to this time lived where? A. Montreal.

Q. And Burns' place of residence was where? A. London, Ontario.

Q. And Low? A. Windsor, Ontario.

MR. ROBERTSON: That is all.

—Witness stood aside.

—Whereupon the Court adjourned at 12.52 p.m. until 2.10 p.m.

—Upon resuming at 2.10 p.m.

WILLIAM C. MacAGY resumed the stand.

CROSS-EXAMINATION BY MR. TILLEY:

Q. You referred to certain documents which the bank received. I believe you received as well agreements by Burns, Leon and Low, postponing any claim they had against the company to the claim of the bank?

10 A. That is right, sir.

MR. TILLEY: These agreements are to the effect that they postpone any claim they might have against the company to the claim of the bank against the company.

—EXHIBIT NO. 20: Three agreements to postpone, dated respectively February 21, 1925, February 24, 1925 and February 24, 1925, between Messrs. Low, Leon and Burns and the defendant bank.

Q. Did you also have guarantees from the three individuals by way of security for the company's debt? A. Yes, sir.

20 Q. The first of them is dated the 28th December, 1923, the amount of the guarantee being \$50,000 for each of the guarantors? A. That is correct.

Q. And later you had a guarantee of \$100,000 for each guarantor? A. That is correct.

MR. TILLEY: The second Guarantee is dated April 9, 1924. The second one, I see, is a continuing Guarantee.

Q. Did that continue down to the end of their dealings with you? A. Yes; the Guarantee is still in effect.

30 —EXHIBIT NO. 21: (a) Guarantee of Messrs. Low, Leon and Burns in the sum of \$50,000 each to defendant bank re Account of The Carling Export Brewing & Malting Company, Limited, dated 28th December, 1923.

(b) Guarantee of Messrs. Low, Leon and Burns in the sum of \$100,000 each to the defendant bank re Account of The Carling Export Brewing & Malting Company, Limited, dated April 9, 1924.

Record.

*In the
Supreme
Court of
Ontario.*

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Cross-
Examination.

Record.
*In the
 Supreme
 Court of
 Ontario.*
 No. 10.
 Plaintiff's
 Evidence.
 W. C. MacAgy,
 Cross-
 Examination.
 —continued.

MR. TILLEY: Then I produce the plaintiff company's certified copy of by-law with regard to banking and execution of securities, dated November 1, 1923, or at least it is said to be passed at a meeting of the directors held on that date. It is by-law No. 18. The by-law reads as follows:—

“BY-LAW NO. 18

“(a) THAT the Directors of the Company may from time to time borrow any sum or sums of money from THE DOMINION BANK upon the credit of the Company . . .”

It goes on in detail that I need not read, and there is attached a resolution 10 pursuant to the By-law which reads:—

“(a) That THE DOMINION BANK be and are hereby appointed bankers to the Company, and authorized to pay and honour or make advances upon all cheques, drafts, acceptances and other negotiable instruments purporting to be signed by President or Vice-President and countersigned by any one of other officers and further to accept for deposit all cheques, drafts and bills purporting to be endorsed on behalf of the Company by any one Director or the Secretary or Treasurer.

“(b) That all agreements, securities, promises to give security, 20 hypothecations and pledges, shall be valid and binding on the Company when signed by any one of the officers and countersigned by any one of other officers.”

Q. That was given to you. I do not know that you can fix the date, but I presume it was on or about its date? A. It was given to our London branch about that time.

—EXHIBIT NO. 22: Borrowing and Banking By-Law and Resolution of The Carling Export Brewing & Malting Company, Limited (By-Law No. 18) dated November, 1, 1923. 30

Q. You have spoken of accounts at London and Windsor? A. Yes, sir.

Q. Were you acquainted with the various accounts at these different places? A. Only through correspondence with our managers at that point, and statements which they submitted.

Q. Can you tell me how many accounts there were in connection with the liquor business, say at Windsor? A. I am afraid I cannot offhand.

Q. Can you tell us any of them? A. There was an account there of Low, Leon and Burns, and I think there was an account in the name of Harry Low, and at one time there was an account of the Cuban Export 40

Company, and there may have been one or two others that I cannot recollect at the moment.

Q. That is at Windsor? A. Yes.

Q. I do not know whether there are any accounts except the one at London? A. They had the Carling Export account at London and the individuals, Low, Leon and Burns have had personal accounts at London.

Q. But at London the account of Low would be in the name of Low? A. Yes.

10 Q. It was not the same as the account at Windsor, which was in the name of all three? A. That is correct.

Q. At London you say your recollection is that they had individual accounts each in his own name? A. That is my recollection.

Q. I suppose what you would know about those accounts would be what came through to you as Chief Inspector? A. Exactly.

Q. Did you ever yourself investigate to see what kind of transaction went into one account and what kind into another? A. No, sir.

Q. You did not do that? A. No.

20 Q. Did you have any conversations with Mr. Low, Mr. Leon or Mr. Burns with regard to their interest in the company? A. Yes, I had frequent conversations with them. My understanding from them was—

MR. ROBERTSON: I object.

HIS LORDSHIP: What was said.

MR. TILLEY: Surely the witness can say "My understanding from them was. . ."

HIS LORDSHIP: I want to know on what he based his understanding.

MR. TILLEY: Q. Give us the effect of what he said to you.

MR. ROBERTSON: That is not evidence against the company.

HIS LORDSHIP: I will hear it subject to objection.

30 MR. TILLEY: An incorporated company cannot talk over the telephone.

Q. I will ask you what Low, Leon and Burns said to you? A. In my conversations with them they stated to me that they were the owners of the business, the brewery business, owners of the company, and were carrying on the business as officers of the brewery and also carrying on an export liquor business.

Q. And they themselves carried on an export liquor business? A. Yes, they themselves.

40 Q. Did they describe it any further than that? A. Not in so far as the liquor business is concerned.

HIS LORDSHIP: Q. Do I understand you now to say that they or some of them said they were on their own account carrying on an export business? A. That is correct, my Lord.

MR. ROBERTSON: An export liquor business.

MR. TILLEY: Q. My friend asks you to say what you can about that different kind of business that is involved in calling it "liquor" in-

Record.

In the
Supreme
Court of
Ontario.

Plaintiff's
Evidence.
W. C. MacAgy.
Cross-
Examination.

—continued.

Record.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
W. C. MacAgy,
Cross-
Examination.

—continued.

stead of "beer."? A. My understanding and information that I received from Low, Leon and Burns, was that they were exporting both liquor and beer.

Q. At what point? A. At Windsor and one or two border points.

Q. Do you mean the border between Canada and the United States?

A. Yes; for instance, Amherstburg and points of that kind.

Q. At what time do you say the individuals were, according to what they said to you, carrying on both liquor and beer exportation? A. At various times.

Q. How far back did they go, and did it continue throughout the 10 period we are concerned with here? A. It continued throughout.

Q. That is to say, we are concerned here, I take it, from 1923 when you understood they bought the Carling business at that time? A. Yes.

Q. And, of course, that was a brewery? A. Yes.

Q. And do you say then they continued carrying on the export of both liquor and beer down to say 1927 when the Carlings were sold out?

A. Yes, I would say so.

Q. Do you know whether they continued exporting liquor after that?

A. Oh, yes, I think so.

Q. That is after the Carling Company was sold they continued ex- 20 porting liquor, as you understood? A. That is my understanding.

Q. Do you know from anything they said to you whether the liquor export accounts were in the Carling books or whether they were kept separate, or how that was?

MR. ROBERTSON: May I urge another objection: The witness is now being asked about a business that was, according to what he says, not the business of the company at all but the business of these individuals, and what these individuals told him about their own business is, I submit, not evidence against us; it is purely hearsay. They may have told him the truth and may not, but they were not speaking then as officers of the com- 30 pany but speaking as Low, Leon and Burns.

HIS LORDSHIP: There is a document put in by which the company has purported to give these individuals some authority, and it may be or may not be that that sort of evidence may be admissible.

MR. ROBERTSON: But the witness is not suggesting that this was a business carried on under the authority of the company.

HIS LORDSHIP: I do not know.

MR. ROBERTSON: He says so.

HIS LORDSHIP: You cannot get all the information in answer to one question. 40

MR. ROBERTSON: He has already said that it was their business. He is not giving evidence now about the company.

HIS LORDSHIP: I will hear the evidence subject to objection.

MR. ROBERTSON: So long as my objection is noted.

HIS LORDSHIP: I have in mind, too, what he has already said, that they had some authority, and this document says they had some

authority from the company to do certain things. It may be that that is relevant here.

MR. TILLEY: Q. Do you know from anything they said to you as to whether the liquor export accounts were in the Carling books or whether they were kept separate, or how that was? A. No, I cannot say as to that.

Q. What positions did these three men occupy in the company? A. Mr. Burns was president, and I think Mr. Low was vice-president and Mr. Leon was Secretary-treasurer.

10 Q. Did you have any conversation with Mr. Low at one time of which you made a note? A. Yes.

Q. Was there more than one conversation or just one? A. That is the only one that I have any recollection of making a note of.

Q. And does this document correctly set out what he said to you at that time? A. Oh, yes.

MR. TILLEY: It is dated 24th November, 1926.

MR. ROBERTSON: I suppose my objection stands?

HIS LORDSHIP: Yes.

MR. TILLEY: It reads:—

20 “CARLING EXPORT BREWING & MALTING CO. LTD.
“LONDON BRANCH

“Information supplied by Mr. Low at an interview on the 24th “November, 1926.

“STOCK ON HAND: Said to total approximately \$300,000 at this “date, including \$150,000 of beer, balance represented by bottles, casks, “malt. etc.

“ACCOUNTS RECEIVABLE: Amounts owing for 4.4 are repre- “sented by sundry accounts in the Province of Ontario.

30 “Amounts owing for 9% beer are due by the firm of Leon, Burns “and Low—on the 30th June last the total of the former was approxi- “mately \$50,000 and the latter \$196,000.”

Then I pass down to the fourth paragraph:—

40 “The total export sales for the last twelve months of the Brew- “ing Company are approximately \$2,000,000. Up until the end of June “beer and ale was invoiced to Leon, Burns and Low at a price of \$2.50 “a case which, I understand, is the price usually charged by brewers “for export merchandise to exporting organizations. Because of the “largely increased turnover during the last two months it was found “that on this basis the brewing company’s profits were very sub- “stantial, those for the month of June alone being approximately “\$60,000. Since that time, in order to modify the returns, Leon, Burns “and Low have been billed for the product at \$1.75 per case only.”

Does that recall any further discussion you had or what was meant by “to modify the returns”? A. I recall that conversation with Mr. Low, and

Record.

In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy.
Cross-
Examination.

—continued.

Record.

In the
Supreme
Court of
Ontario.No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Cross-
Examination.

—continued.

he gave me this information; I do not know that there is anything to add to that particular item.

Q. But prior to that change it would be invoiced at \$2.50? A. That is what Mr. Low told me.

Q. And after the change it was invoiced to Leon, Burns and Low at \$1.75? A. According to the information Mr. Low gave me.

—EXHIBIT NO. 23: (a) Copy of application by Carling Export Brewing & Malting Company, Limited, for total credit of \$200,000.

(b) Memorandum of London branch re Carling Export Brewing & Malting Company Limited dated 24th November, 1926, of information supplied by Mr. Low. 10

Q. Did he or Mr. Burns or Mr. Leon tell you anything more about the liquor export business, as to where it was carried on? A. It is rather difficult to say, because we discussed these things so frequently, but I am satisfied that Mr. Low informed me on frequent occasions that they were exporting liquor at the border points.

Q. Does that apply to Windsor? A. To Windsor.

Q. Did you have any discussion with them or either of them as to their dealings as between them and the company, as to putting up money for the company or getting accommodation from the company, or anything of that kind? A. I cannot recall any particular conversations. 20

Q. It is shown here that there was some discussions at times, possibly about a balance on the wrong side of some account for a time. Was there any discussion as to whether that ought to be satisfactory because of credit balances in other accounts they had with you? A. You mean in so far as our making loans did we consider the credit balances in other accounts?

Q. Yes, did they put it to you: "You should not be anxious about that account because we have other accounts in our own names that have good credit balances in them"? A. I would say that. 30

Q. Did they put that to you? A. Perhaps not in so many words, but that was the trend of a number of conversations.

Q. That was the tenor of the conversation? A. Exactly.

MR. ROBERTSON: Well!

MR. TILLEY: Q. Did they at times agree with you that they would keep credit balances in other accounts? A. Oh, yes.

Q. Does this letter indicate what you mean by that, dated January 11, 1928:— 40

"London, Ontario January 11th, 1928.

"In consideration of an advance of the sum of Two Hundred Thousand Dollars, \$200,000., having been made on behalf of Messrs.

"Leon, Burns and Low, at the Dominion Bank, Windsor, it is hereby agreed that the sum of \$200,000 will be maintained at credit of the Carling Export Brewing & Malting Co. Limited Account, in the Dominion Bank, London, Ontario, during the currency of the advance of aforementioned.

"THE CARLING E. B. & M. CO. LTD.,

"Per (sgd) Chas. Burns, Pres."

Record.

In the
Supreme
Court of
Ontario.

Plaintiff's
Evidence.
W. C. MacAgy.
Cross-
Examination.

—continued.

HIS LORDSHIP: Addressed to whom?

MR. TILLEY: Not addressed to any person, but signed by the com-
10 pany per Charles Burns, President, my Lord.

Q. Was that arrangement carried out? A. As far as I can recollect,
yes.

—EXHIBIT NO. 24: Letter dated London, Ontario, January 11, 1928,
signed by The Carling E. B. & M. Co. Ltd. per
Chas. Burns, Pres.

Q. Then you were asked about their real estate transactions. Do
you know where those transactions took place? A. Yes. We know that
they bought real estate in the city of Toronto and some in Windsor.

Q. That is outside of the Dominion Square Building transaction to
20 which you have referred? A. Yes.

Q. And a reference was made to some litigation here with regard to
property at Windsor, some reference made to that this morning about a
lawsuit being started there? A. (No answer)

MR. ROBERTSON: About a lease?

MR. TILLEY: Q. About a lease? A. About some dock lease?

Q. Yes? A. I have no recollection of that at all.

Q. Do you know whether any of the properties bought or acquired
in the name of Low, Leon and Burns were really used by the Carling
Company? A. I think the company used docks at the border which
30 were owned by Low, Leon and Burns.

Q. And were the transactions in Toronto real estate extensive? A.
Quite so.

Q. Central property? A. Yonge street property mostly, and some
other property on Bay Street, I think.

Q. Were those transactions carried through your bank in Toronto?
A. Not through us in Toronto.

Q. You know, with reference to the Dominion Square Building, that
it started with an advance of \$1,500,000 to Low, Leon and Burns? A. Yes.

MR. TILLEY: I do not know that your Lordship will go into the
40 accounts here, but perhaps I should make this point:—

Q. There is a balance still due on that loan? A. Yes.

Q. That is not paid? A. No.

Record.

In the
Supreme
Court of
Ontario.No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Cross-
Examination.

-continued.

Q. There is a matter of accounting to be taken there, or the amount to be arrived at in some way? A. Yes.

Q. You say that in 1929 you were present on one occasion when you believed that Mr. Milliken was there for the bank? A. Yes.

Q. And Mr. Springsteen for the company or the individuals? A. That is my recollection.

Q. I suppose from your standpoint it would be just representing the persons on the other side with whom you were dealing? A. Exactly.

Q. There would be no accurate definition of who they acted for? A. We did not distinguish between them. 10

Q. Your recollection is that he was there. Did you meet him on any other occasion? A. Yes, I think I did, but I cannot tell you; I think I met him two or three times.

Q. And at that time was it the fact, as I think your evidence already indicates, that there was default in the promises that had been made as to how that account would be brought down? A. Quite right.

Q. And was the bank considering the account from that standpoint, that these promises were not being carried out? A. Exactly.

Q. And then you had this conversation, due to the attitude of the bank in insisting on payment or something more satisfactory? A. That is right. 20

Q. As bankers sometimes do. And on the strength of that did the account continue? Did you let it run on without suing or enforcing payment? A. Yes.

Q. Was that the purpose of this conversation and negotiation that you had, to get it in some such state that you could run on? A. To strengthen our position.

Q. And render it unnecessary for you to sue them or to enforce payment? A. Quite right.

Q. A letter has been put in by Mr. Robertson showing a demand made by the solicitors for the plaintiff company on the bank or possible repudiation. I do not want to stop to be sure that I got the right word, so we will pass that over. Down to that point of time had there been any repudiation by the company or any of these individuals? A. There had not. 30

Q. That is, this matter stood on the document of June 11, 1929, until Exhibit 10 was written two years later, without any complaint or protest or objection? A. That is correct.

Q. And the letter shows the first intimation of objection that you received? A. Yes. 40

Q. Were there requests for further accommodation during that period? A. I think we had requests for some moderate temporary accommodation in London.

Q. That you acceded to? A. Yes.

Q. Accommodation for the company or for Low, Leon and Burns. A. For the company.

Q. Was there any demand or request for accommodation that the bank did not give or hesitated about giving? A. I do not recall any.

Q. So that down to 1931, except for some temporary accommodation, matters ran along without complaint, and then the letter was received from the solicitors? A. Yes, that is correct.

Q. Do you remember when the company, or the shares in the company, were sold whether there was a substantial deposit made? A. Yes, there was.

HIS LORDSHIP: Sold to a new company?

10 MR. TILLEY: Yes.

Q. When the old company sold to the Breweries Company there was a substantial deposit, was there? A. Yes, in the old company's name.

Q. Of how much? A. (No answer)

HIS LORDSHIP: Do you mean immediately preceding or at the time of the sale, or as the result of the sale?

MR. TILLEY: As the result of the sale.

Q. I assume it was as the result of the sale that these monies came into the bank? A. The proceeds of the sale.

Q. The purchase price? A. Yes.

20 Q. In July, 1927. Is this the account? A. Yes, in our Toronto office—no, that account is in London.

Q. In London? A. Yes.

—EXHIBIT NO. 25: Ledger Sheet of Account No. 4916 of Carling Export Brewing & Malting Co. Ltd. with defendant bank at London, Ontario.

30 Q. I do not know whether you can help us at all about this, but it seems to be fairly clear when you read it: On July 14 there is a deposit of \$1,000,000 and that increases to \$1,200,000, and then in February, 1928, \$100,000 is checked out to Leon, \$100,000 to Low and \$100,000 to Burns; those three cheques were on the 1st, 2nd and 3rd February, 1928. Then on April 7—this is blurred—"M. Leon—\$215,000." Of course, you can only say that is what the account shows, I suppose? A. That is all.

Q. Then \$199,989.13, approximately \$200,000, checked out to the Dominion Bank on February 2. Can you say what that was for? A. No, I cannot say that personally.

Q. There is a memorandum on the account, but it is not in your writing? A. No, that would be our London office.

HIS LORDSHIP: That is from the London office's book?

MR. TILLEY: Yes.

40 HIS LORDSHIP: The account of the plaintiff?

MR. TILLEY: Yes.

HIS LORDSHIP: Referring to Exhibit 25?

MR. TILLEY: Yes.

Q. Were you conversant with the transaction? The stock that was

Record.

In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy
Cross-
Examination.

—continued.

Record.
*In the
 Supreme
 Court of
 Ontario.*
 No. 10.
 Plaintiff's
 Evidence.
 W. C. MacAgy
 Cross-
 Examination.
 -- continued.

put on the market was sold through Doherty-Easson & Company? A. Yes.

Q. At \$20. a share? A. Yes, that was the figure.

Q. And then the monies came into the general account first, I think a couple of million dollars? A. Yes.

Q. And from that account \$1,000,000 was put to the credit of this special account that we have just added, Exhibit 25? A. The original monies came into our Toronto branch and they were transferred, or a portion of them, to London later on.

Q. But the original monies from the sale would total approximately \$2,000,000? A. (No answer) 10

MR. TILLEY: I ask your Lordship to say that examinations now are in reply and not re-opening the matter.

MR. PORTER: My friend Mr. Tilley has just asked some questions. I submit I have the right to cross-examine as broadly as I wish to do. The witness is not my witness. I was brought into this action.

HIS LORDSHIP: You are examining on your counterclaim?

MR. PORTER: Yes, my Lord.

HIS LORDSHIP: I suppose Mr. Tilley will have the right to cross-examine on it. 20

MR. PORTER: But there is some evidence in here—

HIS LORDSHIP: If you want to introduce that part of your counterclaim now you are at liberty to do so while the witness is in the box, but being on the counterclaim Mr. Tilley would have the right to cross-examine upon it.

MR. PORTER: My friend has asked this witness whether there was a balance owing by my client.

HIS LORDSHIP: I have given you the privilege of going on.

MR. TILLEY: I am wondering if my friend is going to dispute that general statement that there is a balance owing? 30

HIS LORDSHIP: I am quite sure you do not want to be confined to a mere examination of what Mr. Tilley has introduced?

MR. PORTER: No.

HIS LORDSHIP: You are proceeding on your counterclaim and you are not limited to what Mr. Tilley has cross-examined upon.

MR. PORTER: No.

HIS LORDSHIP: The door is opened to you. Proceed.

No. 10.
 Plaintiff's
 Evidence.
 W. C. MacAgy,
 Cross-
 Examination
 by Mr. Porter.

CROSS-EXAMINATION BY MR. PORTER:

Q. You said something a few moments ago about some docks at the border that were owned by Low, Leon and Burns and were used by the plaintiff company. In what way were those docks used by the plaintiff company? 40

MR. TILLEY: My friend is not concerned with that except so far as the company is concerned with it, and my friend Mr. Robertson is

appearing for the company. I object to my friend Mr. Porter continuing an examination started by Mr. Robertson and cross-examined upon by me when it does not concern Mr. Low in connection with this personal liability on the counterclaim with Mr. Burns and Mr. Leon. If my friend is now disputing that there is a balance owing and that there is nothing to refer, I agree that he is entitled to go on; but my friend has no right to examine in regard to the company's claim against the bank.

HIS LORDSHIP: Except in so far as the company and the personal defendants may be involved in what I think is an allegation in the pleadings that they were working together.

MR. TILLEY: That has to do with the company's claim against us. It is our defence to the company's claim. My friend Mr. Robertson represents the company and my friend Mr. Porter has no interest in this litigation except the individual liability of Low, Leon and Burns; and the only evidence I put in about that is that there is a balance still owing.

HIS LORDSHIP: I think that perhaps is a reasonable view of it, but I will hear the evidence, subject to objection.

MR. TILLEY: If my friend had any common cause with Mr. Robertson he should have examined before I cross-examined, but why he should be allowed to start in on what seems to be a rather long cross-examination of this witness on matters with which he is not concerned except as being interested in the company which my friend Mr. Robertson represents, I cannot understand.

HIS LORDSHIP: Mr. Porter, confine yourself to the interest of your own client.

MR. PORTER: Let me put my position perhaps a little more clearly, my Lord. As I understand it, on the pleadings in this case there is an allegation in the counterclaim against my client to the effect that there was some inter-mixing and that all these parties were so involved with one another that they should really be regarded as a group.

MR. TILLEY: That has nothing to do with Mr. Burns. Mr. Burns' liability stands quite apart from that; that is a defence of the company.

MR. PORTER: Perhaps I had not quite finished. The only reason I have been brought into this action at all is on the basis of the allegation that there was some inter-mixing, otherwise we would not be properly defendant by counterclaim.

HIS LORDSHIP: I will hear you subject to objection. You are not in the original claim at all?

MR. PORTER: No; I have only been brought in because there was some allegation made that we were identified so closely with these other people.

MR. TILLEY: I am not claiming any liability against Burns for that, but against the company.

MR. PORTER: It is against us all, as I understand it.

HIS LORDSHIP: Go on.

MR. PORTER: Q. I asked you about your knowledge of the use

Record.

In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy
Cross-
Examination
by Mr. Porter.

—continued.

Record.

In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Cross-
Examination
by Mr. Porter.

—continued.

of those docks owned by Low, Leon and Burns by the plaintiff company. Do you know how they were used by the plaintiff company? A. I have no definite knowledge about that.

Q. When you said that, you must have had some idea in your mind as to how they were used by the company? A. I would be informed by our Windsor manager in conversations, and so on, that they were exporting through these docks.

Q. Do you know the procedure that was used for exporting by the Exporting Company? A. No.

Q. So that so far as that particular point is concerned, you have no personal knowledge at all about it? A. Only what I was told.

Q. As far as the bank accounts of these individuals were concerned and the bank accounts of the company, there was never any confusion in the bank's books of all these transactions as to which was a company account and which was an individual account? A. No.

MR. TILLEY: Speaking of head office or Windsor?

MR. PORTER: I will ask about Windsor.

Q. Was there any confusion there? A. Not so far as I know.

Q. Or at the head office? A. I do not understand what you mean by "confusion" exactly.

Q. You knew which accounts belonged to the individuals, and you knew which accounts belonged to the company, and there was never any confusion in the minds of the bank or any officials of the bank as far as you know? A. We really did not concern ourselves with that because we regarded them all as one.

Q. Was there ever anything on your books to show that these accounts were in any way merged or regarded as one whole account? A. Of course, I am really not familiar with the bookkeeping end of it.

Q. Have you ever looked at that? A. I have not searched the books.

Q. Have you ever made any enquiries about that? A. No.

Q. You mentioned, for instance, that Low, Leon and Burns used to deal in spirituous liquors? A. Surely.

Q. And the Export Brewing Company dealt only in beer? A. So far as I knew.

Q. And so far as you knew the Export Brewing Company carried on business limited to the manufacture and sale of beer? A. Surely.

Q. And had nothing to do with the liquor business? A. Not so far as I know.

Q. And so far as Low, Leon and Burns are concerned if they had anything to do with the beer it was entirely on their own account? A. How do you mean?

Q. Did they ever do any business for the company? A. In marketing the beer? We always thought they were doing all the business for the company, so far as marketing the beer is concerned.

Q. I think you said something on your examination for discovery

about the method used in marketing the beer? A. From what Mr. Low told me.

Q. And the company sold to Low, Leon and Burns? A. So we understood.

Q. And there was a certain price fixed for the beer? A. Yes.

Q. And Low, Leon and Burns disposed of it in some manner or another? A. Yes.

Q. And all these transactions were kept perfectly separate, were they not? A. I could not say as to that.

10 Q. As far as you know? A. I have no knowledge of it, really.

Q. I just want to find out how much you know about this inter-mixing allegation. Do you know whether any of the profits derived by Low, Leon and Burns from their business of exporting ever got into the company? A. My impression is that quite a substantial amount of profits of Low, Leon and Burns went into the company.

Q. I want to know what you know about that? A. We know that Low, Leon and Burns placed their individual monies into the company.

Q. That is, they made advances to the company from time to time? A. Monies were deposited by the individuals in the company's account.

20 Q. Do you know on what terms those deposits were made? A. No.

Q. All you know is that in your account it would appear from time to time that a withdrawal was made from some individual's account and the corresponding credit was placed to the company's account? A. Yes; we did not pay any attention to that, because it was all one thing with us.

Q. Why do you say it was all one thing? A. Because, Low, Leon and Burns owned the company.

Q. Oh, you say because Low, Leon and Burns owned the company it was all one thing with you. Did you know they owned the company?

30 Did they say they controlled the company or owned the company? A. I do not know the distinction.

Q. Then it may be that the impression you got from them was that they only owned five per cent of the stock in the company? A. No; the impression we got from them was that they owned all the shares in the company except the qualifying shares.

MR. TILLEY: Q. Who owned those? A. our information was that their wives owned the qualifying shares.

MR. PORTER: Q. With that impression in your mind you apparently slipped into the habit of regarding the individuals' accounts and the 40 company's accounts all as the one business? A. Quite naturally.

Q. Although you knew the company made its little profit in selling to the individuals, and the individuals may have made some profit on their own? A. We did not care how that was.

Q. That did not matter to you? A. No.

MR. PORTER: No further questions.

Record.

In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Cross-
Examination
by Mr. Porter.

—concluded.

Record.

In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Cross-
Examination.

...concluded.

MR. ROBERTSON: I would like to see the exhibit that contains the Statement of Affairs.

THE REGISTRAR: Exhibit No. 16.

MR. TILLEY: Mr. Robertson, before you commence I would like to put in an application of the kind you put in this morning.

Q. Mr. MacAgy, I am not putting in all the applications for credit, but from time to time applications would be sent in by the London Manager to the head office for a further credit or continuation of credit? A. Yes.

Q. And this is an application for credit dated February 26, 1925? 10
A. Yes.

Q. And amongst the securities listed appears this item:—
“Postponement of claim from Chas. Burns, H. Low and Marco Leon, “\$165,000.”?

A. Yes.

Q. That would be a reference to the postponement that we put in, the general language of the postponement? A. Identically the same thing.

Q. But it shows the amount in this case? A. Yes.

MR. TILLEY: I will take off that first sheet. 20

—EXHIBIT NO. 26: Application for Line of Credit by Carling Export Brewing & Malting Company, Limited, to London branch of defendant bank, dated February 26, 1925.

HIS LORDSHIP: Let me see Exhibit No. 26 for a moment?

RE-EXAMINATION BY MR. ROBERTSON:

Q. With reference to the use by the company of some docks at Windsor, that you say you think belonged to the individuals or some of them, have you any knowledge whatever of the terms on which the company used that dock? A. No. 30

Q. They may have paid rent for it, for all you know? A. I do not know.

Q. About this statement of yours that you made a few moments ago, that the bank considered these people as one, look at Exhibit 16, an application for a line of credit. The application is the company's application? A. It is an application for a loan on behalf of the company.

Q. Not the individuals? A. No, for the company.

Q. And along with that you have a statement of affairs that you said something about this morning. Now, the assets that are listed in this statement of affairs, were they the company's assets? A. May I see the 40 statement?

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Re-
Examination.

Q. Yes? A. Not entirely. Some of the assets belong to the individuals.

Q. Which assets belong to the individuals? A. I would like to refer to our London manager's letter forwarding the application.

Q. Very well, look at the letter? A. (Witness complied).

MR. TILLEY: Here is a letter of the 23rd May, 1927.

WITNESS: I think there must be another letter.

MR. ROBERTSON: Let me see this letter?

MR. WILSON: These are the relevant letters. This is applying for
10 it, and that is sanctioning it.

MR. ROBERTSON: Q. Your counsel says one is the letter applying for the credit and this is the letter from the head office sanctioning it?

A. This letter recalls this to my mind. Our manager in writing states:—

“The figures submitted are not taken from the books of the Company, but were given to the writer verbally by the General Manager, Charles Burns. They not only include the actual assets of the Carling Export Brewing & Malting Co. Ltd., but other assets as well, owned solely by the three partners, who also are the owners of all Brewery Stock outright.”

20 And this is your reply to that letter? A. Yes.

MR. ROBERTSON: One of these letters is dated 23rd May, 1927, from the London Manager to the General Manager, and the other letter is dated 26th May, 1927, from the General Manager to the London Manager of the bank.

—EXHIBIT NO. 27: (a) Letter dated May 23, 1927, from the London Manager to the General Manager of the defendant bank re application for additional line of credit by Carling Export Brewing & Malting Company Limited. (Four sheets).

30 (b) Letter dated May 26, 1927, from the General Manager to the London Manager of the defendant bank re additional line of credit to Carling Export Brewing and Malting Company Limited.

Q. The advances spoken of in these letters I have just put in are advances to the company? A. Correct.

Q. And part of the security called for was a guarantee of Low, Leon and Burns? A. Yes.

40 Q. I notice here amongst the liabilities listed for the years 1924 and 1925 in Exhibit 16 appears:—“Special Loan, Leon, Burns & Low,” and that is a liability of the company to the individuals that is listed? A. Yes.

Q. And is it a fact that you had not only an account or accounts with Low, Leon and Burns as partners, but that each of the individuals had an account with you? A. Yes.

Record
in the
Supreme
Court of
Ontario
No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Re-
Examination

—continued.

Record.

In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Re-
Examination.

—continued.

Q. In London? A. No, not all in London; some in Windsor and some in Montreal.

HIS LORDSHIP: Q. I thought the individual account in Windsor was an account of the three of them? A. They had other accounts as well.

Q. In Windsor? A. Yes.

Q. Individually? A. Harry Low had, and I think Mr. Burns had.

MR. ROBERTSON: Q. And Leon had his account in Montreal?
A. Yes.

Q. And they were accounts separate from the Company? A. They 10
were in their own names.

Q. And for their own transactions? A. I suppose so.

Q. Then with reference to the drawing of certain moneys, my friend Mr. Tilley called your attention to the deposit of a large sum of money at the time the company sold its assets to the new company, and then there appear from the bank account certain withdrawals, and the notations indicate that they were withdrawals for the benefit of some of the individuals?
A. That is right.

Q. We may take it, I suppose, that those were made on cheques duly signed by the company? A. I suppose so. 20

Q. And that the bank had no interest in the payments themselves?
A. No; we would have to act on the cheques.

Q. You knew nothing about it except that here was a cheque presented for payment? A. That is all.

Q. Then with reference to the document that my friend said was not repudiated, the document of the 12th July, 1929, that is the document which purports to pledge the proceeds of these bonds, did the bank communicate at all with the company regarding that document? A. Do you mean after we received it?

Q. At any time between the 12th July or between receiving the docu- 30
ment and June 3, 1931? A. Not to my recollection.

Q. And the document was not acted upon in the way of dealing with money or the bonds up to that time? A. (No answer)

Q. Let me put that a little plainer: The proceeds of the bonds as they were sold were, notwithstanding that document, carried to the credit of the company's special account? A. Yes.

Q. And they remained there until the 30th June, 1931, as shown by the statement of account put in? A. Yes.

Q. The bank did not then seek to apply any of the monies in that account by reason of this document of the 12th July until June, 1931? 40

A. We were waiting to know what the Government's claim was.

Q. But I am right as I put it? A. Yes.

Q. The matter was standing until the Government's claim was proved? A. Yes.

Q. You did not know how much the Government's claim might be?
A. No.

Q. It might have been a very much larger sum.

MR. TILLEY: Larger than what?

MR. ROBERTSON: \$88,000.

MR. TILLEY: Oh, yes; it was about \$400,000.

MR. ROBERTSON: I thought the Supreme Court of Canada held them liable for a much greater sum.

MR. TILLEY: About \$400,000.

MR. ROBERTSON: And it went to the Privy Council and that amount was reduced?

10 MR. TILLEY: Yes.

MR. ROBERTSON: Q. You said to my friend Mr. Tilley that certain temporary accommodations were allowed the company during this period? A. I said I thought so; I would have to search my records to be sure.

Q. See if I understand it: The company, of course, was not carrying on its ordinary brewery business during this period? A. No.

Q. But I suppose the company had some fairly expensive litigation going on? A. It may have.

20 A. I thought the advances may have been in connection with that? A. It may have been partly in connection with that.

Q. Have you anything else in mind? A. No.

Q. But you did have some advances to make? A. Yes; we did make them some little loans.

Q. They were not advances on notes? A. I think they were advances on overdraft.

—Witness withdrew.

No. 11

MARCO LEON, Sworn.

EXAMINED BY MR. ROBERTSON:

30 Q. You are Marco Leon, named as a party to these proceedings? A. Yes.

Q. And you were a shareholder and officer and director of the plaintiff company? A. Yes.

Q. This plaintiff company was known first as The Carling Export Brewing & Malting Company, Limited? A. Yes.

Q. And at quite a late date the "Carling" was dropped from the name? A. Yes.

Q. Because that name was taken by the new company in 1927? A. Yes.

40 Q. In 1927 were you a shareholder? A. Yes.

Q. Can you tell us who were the other persons whose names ap-

Record.

In the
Supreme
Court of
Ontario.

No. 10.
Plaintiff's
Evidence.
W. C. MacAgy,
Re-
Examination.

—concluded.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Examination.

Record.
 In the
 Supreme
 Court of
 Ontario
 No. 11.
 Plaintiff's
 Evidence.
 Marco Leon,
 Examination.
 —continued.

peared on the company's records as the holders of shares? A. Mr. Burns and Mrs. Burns, Mr. Low and Mrs. Low, Mr. Marco Leon and Mrs. Marco Leon.

Q. What was your wife's interest in the company at that time? A. 50 per cent with me.

HIS LORDSHIP: Was that on record or just between themselves?

MR. ROBERTSON: I will straighten it out, by Lord.

Q. You say your wife was 50 per cent with you. What do you mean by that? A. I mean on the preferred stock and the common stock that was on the records for Mr. Marco Leon—Mrs. Leon had 50 per cent interest in that stock. 10

MR. TILLEY: On the books?

MR. ROBERTSON: Q. How did that appear, if at all, on the books of the company? A. On the books of the company appears "Marco Leon, 16,666 shares of common and 7,545 shares of preferred."

HIS LORDSHIP: In whose name?

MR. ROBERTSON: Marco Leon, his own name, my Lord.

Q. Yes? A. And besides that one share of preferred, if I am not mistaken, in Mrs. Leon's name.

Q. That is the way it stood on the record? A. Yes. 20

MR. TILLEY: Could we have the record, please?

MR. ROBERTSON: Yes.

Q. Mr. Leon, did the company have what is called a Share Register or book in which they entered the names of the shareholders with columns to show how many shares they held? A. I do not know that; the books were in London, Ontario.

Q. In any event, if there was a share register you have not got it now? A. No.

Q. Do you know where it is? A. No.

Q. Do you know, as a matter of fact, whether they had one? A. I know that they had one. 30

HIS LORDSHIP: Q. Down to what time did they have one last? A. They had up until 1927, when the Carling E. B. M. sold the business to the Carling Breweries.

MR. ROBERTSON: Q. Then what became of the share register? A. I do not know; I did not see it any more.

Q. Where was the book kept while they had one? A. In London, Ontario.

Q. Were you the secretary-treasurer of the company? A. Yes, I was secretary-treasurer of the company. 40

HIS LORDSHIP: Q. At that time, at the time of the sale? A. Yes.

MR. ROBERTSON: Q. Were you in London? A. When?

Q. Was that generally where you were? A. No. Most of the time I was in Montreal in the province of Quebec.

Q. I wanted to know in whose particular charge this share register was? A. Mr. Burns'.

Q. Who took care of it? A. Mr. Burns, the president of the company.

Q. He lived in London? A. Yes.

Q. Did you have a bookkeeper? A. Yes.

Q. What was his name? A. When?

Q. In 1927? A. In 1927 we had Mr. Morrison.

Q. Then you cannot help us about that book now? A. No.

10 Q. There are some books here that I have in front of me. Here is a book containing certain bound certificates, some of them in blank and some not, and of some of them merely the stubs are here? A. Yes.

Q. Are you familiar with this book? A. Yes. I am not familiar with this one.

Q. This is prior to your time? A. Prior to our getting an interest in the company.

Q. You came into the company in what year? A. 1923.

MR. ROBERTSON: There are a lot of certificates in the names of persons with whom we are not concerned here, and perhaps we can pass 20 them by.

Q. Tell me where the place is that you became familiar with it? A. That is Harry Low: Preferred stock, 7,543 shares.

Q. Certificate No. 82? A. Yes.

Q. There is here only the stub? A. Yes.

Q. And there is no date on the stub? A. No.

Q. There is the signature of Harry Low at the foot of it and the number of shares? A. Yes.

Q. 7,543 preferred shares? A. Yes.

Q. And the next certificate is what number? A. No. 83.

30 HIS LORDSHIP: Q. Let me see the stub from which you are reading. You produce now as No. 82 the stub to the effect that 7,543 shares were issued to Harry Low, and the signature "Harry Low" appears at the bottom of the stub, no date nor any record of handing out the certificate, nor from whom the shares were transferred? A. (No answer)

MR. ROBERTSON: Q. The next certificate is No. 83? A. Yes, 7543 shares, and the name of Charles H. Burns. That was cancelled.

MR. ROBERTSON: The certificate has been re-pasted on the stub and is dated 30th December, 1926.

40 Q. Then the next certificate? A. No. 84 for 7,543 shares to Marco Leon; that was also cancelled, it was issued on December 30, 1926.

HIS LORDSHIP: Is that a certificate?

MR. ROBERTSON: Yes, it has been pasted into the book and marked "cancelled."

Q. And the next? A. No. 85, one share of preferred stock issued to Mrs. Charles Burns, no date.

Q. There is only a stub in that case? A. Yes.

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Examination.

—continued.

Q. And the next is No. 86? A. Yes, in the name of Marco Leon, 1543 shares cancelled.

Q. And the date of this certificate is March 24, 1928.

MR. TILLEY: Common or preferred?

MR. ROBERTSON: These are all preferred. This is also marked "cancelled" and the certificate is pasted in here.

HIS LORDSHIP: Any date to the cancellation?

MR. ROBERTSON: No, just marked "cancelled." Wait until I see if any date can be read through this.

Q. Then the next certificate is No. 87? A. Yes, Mrs. Marco 10 Leon, 6,000 shares.

Q. Dated 24th March, 1928? A. It is cancelled.

HIS LORDSHIP: Preferred or common?

MR. ROBERTSON: Preferred. Your Lordship will see that the number of shares in this and the last certificate, No. 86, make up the total number of 7543 shares that are covered in the certificate No. 84 to Marco Leon.

Q. Can you tell his Lordship anything about this matter we are just looking at? You began with 7543 preferred shares covered by a certificate dated in 1926 and in your name. What about those shares, were 20 they all your own shares? A. In 1926?

Q. Yes? A. There were on record in my name 7543 shares.

Q. Were you the sole owner of them or what about it? A. No, I was not the sole owner of them because we have in the books of the company—

Q. Tell me what the facts were? A. 1,000 shares of preferred stock belonged to a gentleman by the name of I. Podolsky, which were in trust, kept by me.

Q. That was the state of affairs in 1926, was it? A. No, it was in 1924. In 1926 it was changed from 1000 shares preferred, and Mr. Podol- 30 sky got 3000 shares of common.

Q. Was a certificate issued to him for them? A. No, it was in trust in my name.

Q. Instead of having 1000 shares of preferred he was to have 3000 of common, but in neither case were they in his name, they were in your name? A. Yes.

Q. Did anyone else have any interest, besides Mr. Podolsky who had an interest for a time, in the 7543 shares? A. Mrs. Leon.

Q. Tell us about Mrs. Leon? A. She had 1 share in her name and a half interest in the preferred shares in my name. 40

Q. How did she come to have the half interest? A. Because she put money in.

Q. How much money did she put in? A. Around \$50,000 she invested.

Q. Put it in what? What did she do with the \$50,000? A. She invested it in the Carling Export Brewing & Malting Company.

Q. When? A. In 1923 when we took over the brewing.

Q. You say she was entitled to have the preferred shares. Tell us about this transaction when we come to 1928. We see here in 1928, according to the certificate, that Mrs. Marco Leon has in her name on a certificate dated 24th March, 1928, 6000 shares? A. It was cancelled.

Q. How did it come to be issued? I suppose it was issued before it was cancelled?

MR. TILLEY: We do not know that.

WITNESS: Because I thought I had the right to give her her share in her name, but then I thought it would be illegal to transfer it to her name, from me to her, and I cancelled it.

MR. ROBERTSON: Q. When was it cancelled? A. In 1928, on March 24.

Q. That is the date of its issue? A. Yes, the same time as it was issued.

Q. What was done then? First, let us see if you ever turned your certificate back? Witness examined Exhibit 28).

Q. You are getting off into places with which we are not the least bit concerned. Let us get the stub again. There is your certificate issued in 1926.

MR. TILLEY: The secretary ought to know better than Mr. Robertson.

WITNESS: There is 7543 shares issued in my name,—“Marco Leon.”

MR. ROBERTSON: Q. That is No. 84? A. That is cancelled, and there was issued a new share to a gentleman by the name of Harry Leon for a loan of \$67,000 that I got from him.

Q. Is that in here? A. (No answer)

Q. Certificate No. 96 for 7543 shares? A. (No answer)

HIS LORDSHIP: Is that the stub only?

MR. ROBERTSON: Yes, dated February 9, 1931, in the name of Harry Leon for 7543 shares.

HIS LORDSHIP: Q. What you are speaking of now is something transferred to Harry Leon in 1931? A. Yes.

Q. But you had disposed of those shares to your wife by certificate No. 87 dated 24th March, 1928? A. That was cancelled.

MR. TILLEY: He said it was destroyed the day it was written out.

WITNESS: It was not signed by the president. We found out it was illegal, and that I could not transfer to Mrs. Leon half of my shares, from husband to wife, so I cancelled it.

HIS LORDSHIP: Q. Where did you get the knowledge that it was illegal to transfer it to your wife? A. I learned it from Quebec.

HIS LORDSHIP: Certificate No. 87 which you read indicated on the 24th March, 1928, a holding by this witness's wife of 6000 preferred shares out of the 7543.

MR. ROBERTSON: And that is the only record I have.

Record.
 in the
 Supreme
 Court of
 Ontario.
 No. 11.
 Plaintiff's
 Evidence.
 Marco Leon,
 Examination.
 —continued.

HIS LORDSHIP: I am wondering how he was dealing with these shares later to Harry Leon?

MR. ROBERTSON: I think this explains it. Under the column headed "No O C" is filled in the figure "84" and 84 happens to be the number of the certificate for 7543 shares that were issued originally to Marco Leon; that is, as it were, passing over the two certificates dated March, 1928, which are here and marked cancelled.

HIS LORDSHIP: I have no record of certificate No. 87 being cancelled. Is it marked "cancelled"?

MR. ROBERTSON: Yes, it is marked "cancelled." 10

MR. TILLEY: He said that certificate No. 87 was never signed.

MR. ROBERTSON: It is signed in the book. Certificate No. 84 is the one referred to in this last certificate, and what the story is in between I do not know.

Q. In any event, you say a certificate was issued to Harry Leon under this date? A. Yes.

Q. How did that come about? A. At the end of 1928 I got a loan from Harry Leon and as guarantee for the loan I hypothecated one certificate of preferred stock of 7545 (sic) shares which were in my name up until 1931. In 1931 when I saw I could not pay him that loan, Harry Leon 20 asked me that he would like to have the certificate issued in his name, which could replace the certificate I had endorsed, so I issued a new certificate in his name for 7545 share (sic) and I cancelled the preferred share which was in my name and it is here cancelled.

Q. Have you any documents or papers about the Harry Leon loan? A. Yes, I have two letters.

MR. ROBERTSON: I may say, my Lord, that this is stretching out a great deal more than I anticipated; I had not intended to enter upon an enquiry so prolonged.

HIS LORDSHIP: You may have struck something important. 30

MR. ROBERTSON: It may be. I wanted to get merely who the people were.

HIS LORDSHIP: Perhaps you had better leave that for cross-examination and save time.

MR. ROBERTSON: Perhaps I should.

HIS LORDSHIP: Q. Who was Harry Leon? A. My nephew, an orphan.

Q. How old? A. About 37.

MR. TILLEY: I do not undertake to go into it.

MR. ROBERTSON: Q. Then without going into all the details of 40 the several transfers, I would merely like to get from you simply, if I can, first of all who the shareholders appearing from the company's records were on say October 1927. Let us take that date as the time when the \$400,000 of bonds was put up. Tell us simply who appeared on the company's records? A. Mr. and Mrs. Leon, Mr. and Mrs. Burns, Mr. and Mrs. Low; they were shareholders of the company.

Q. Then you have told us of an interest of your wife, and later of an interest of Harry Leon? A. Yes.

Q. Were there any other persons entered in the company's records as the holders of any shares, either common or preferred, until after the 1st August, 1929? A. No.

Q. Do you understand my question? A. Yes, if there were any shareholders besides the people I have mentioned up until 1929.

Q. The 1st August, 1929? A. Yes.

Q. You say they still continued the same way on the records? A. 10 Yes.

MR. ROBERTSON: This Certificate Book relating to the preferred shares will be marked Exhibit No. 28, my Lord.

—EXHIBIT NO. 28: Preferred Share Register of Carling Export Brewing & Malting Company, Limited.

Q. I see in Exhibit 28 several certificates all bearing the date March 24, 1928, and in the name of several people of the name of Burns: Bennie Burns, Arthur Burns, Milton Burns and some others? A. Yes.

Q. Do you know anything about that? A. No.

Q. Do you know when the certificates appearing in these names, 20 which run from Certificate No. 88 to Certificate No. 94 inclusive, were cancelled? A. They were cancelled on the same date; they were never used.

Q. When after the 1st August, 1929, did someone else appear in the company's records as a shareholder,—do you know? A. No.

Q. Is there any other record except this book? A. Except that.

Q. What is the first one here? A. That is after 1st August, 1929: 7543 shares made to the order of J. H. Magid, that were issued January 6, 1931. Against this one was another certificate, No. 83, which was cancelled; No. 83, Charles H. Burns, which was cancelled.

MR. ROBERTSON: The date is the 6th January, 1931.

HIS LORDSHIP: No, December 30, 1926.

MR. ROBERTSON: But the date of the last certificate.

HIS LORDSHIP: The witness was just talking of certificate No. 83.

MR. ROBERTSON: Oh, yes.

HIS LORDSHIP: What are you just now trying to get from this witness in reference to the shares?

MR. ROBERTSON: I want to get precisely what the record is in the company's books, first of all.

HIS LORDSHIP: At what time?

MR. ROBERTSON: Now I want to get the date when there was 40 any change in the company's record as to the holders of shares.

HIS LORDSHIP: So far we have not got a very satisfactory account of the record, depending on stubs and cancelled certificates.

MR. ROBERTSON: Of course, that is all the record there is.

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Examination.

—continued.

Record.
*In the
 Supreme
 Court of
 Ontario.*
 No. 11.
 Plaintiff's
 Evidence.
 Marco Leon,
 Examination.
 —continued.

HIS LORDSHIP: So he says, but there was some other record.

MR. ROBERTSON: He says not since 1927. He says now that the first change was on the 6th January, 1931. That is as far as the preferred shares are concerned.

Q. This book we now have before us is the Certificate Book for common shares? A. Yes.

—EXHIBIT NO. 29: Common Share Register of Carling Export Brewing & Malting Company, Limited.

MR. ROBERTSON: I do not think it adds anything to the information we already have as to dates and persons. 10

Q. Had you any personal knowledge as to the shares that were standing in the name of Mr. Charles Burns or Mr. Harry Low, that is as to whether or not they were the absolute owners of them or not? A. No, I do not know.

Q. Then, Mr. Leon, in 1929, on the 12th July, were you present in the Dominion Bank in Toronto? A. Yes.

Q. How did you come to be there at that time? A. I was notified.

Q. By whom? A. By Mr. Burns from London.

Q. I am afraid I cannot ask you what he told you. You were asked to be there? A. To be in Toronto on the next day. 20

Q. Who were present in the Dominion Bank at the time? A. Mr. Milliken, the attorney of the Dominion Bank, and Mr. Ashforth and the Chief Inspector, Mr. MacAgy.

Q. Who is Mr. Ashforth? A. An officer of the bank.

Q. Was any person there as solicitor for yourself and your associates or for the company? A. No.

Q. Was Mr. Springsteen there from Windsor? A. No.

Q. What occurred on that occasion? A. The Chief Inspector, Mr. MacAgy, presented to us two documents, one referring to the hypothecation of all the real estate that we had in our name, and one referring to the sum of over \$400,000 which was in the Dominion Bank deposited as guarantee for the case that the Canadian Government had against Carling E. B. M. 30

Q. What was said about that? A. Mr. Milliken, together with Mr. MacAgy, told us we would have to sign these documents; and if we do not sign they will be forced to call in all the loans.

Q. What loans? A. Personal loans, \$1,500,000, which was invested in the Dominion Square Building.

Q. Yes? A. And if we do not sign they will call the loan in, and in the meantime they will put us in receivership. 40

HIS LORDSHIP: Q. Who was going to be put into receivership? A. Low, Leon and Burns—

MR. TILLEY: Let him finish.

MR. ROBERTSON: Q. What more was said?

HIS LORDSHIP: By the inflection of his voice I thought he had not finished.

Q. Who was or were to be put into receivership. A. Low, Leon and Burns, and the Carling E.B.M.; and they would sell the stock of the Carling Breweries, which was in the hands of the bank as collateral.

Q. Burns, Low and yourself were to be put in receivership? A. Yes.

MR. TILLEY: And the company, too.

HIS LORDSHIP: He said so.

10 MR. ROBERTSON: Q. Was there anything said by Mr. MacAgy or anybody else as to any claim that the bank had against the company, or explaining how they would put the company into receivership? A. I do not know that.

Q. Was anything said about it? A. He just told us he was going to put us in receivership. How, he did not explain to me.

Q. Had the Carling Export Brewing & Malting Company any interest in the Montreal venture that you had regarding the Dominion Square Building? A. Absolutely no interest.

20 Q. Were the Export Brewing & Malting Company in any way liable to the bank in respect of this \$1, 500,000 that had been borrowed? A. No.

Q. What do you say as to when the document Exhibit 11 was prepared? A. I refused in the beginning to sign it.

Q. Was it there when you came there or was it prepared after you came there? A. When Mr. Burns, Mr. Harry Low and myself came into the Dominion Bank headquarters' office at half past ten the documents were lying on the desk.

Q. You say at first you refused to sign? A. Absolutely.

30 Q. And afterwards you did sign. A. Naturally when they talked for two hours and told us all the time they are going to call the loans and put us into the receiver's hands I sign, and I left as sore as possible.

Q. Did you leave with Burns and Low? A. No, I left alone; I was completely sore and left alone.

HIS LORDSHIP: Who refused to sign?

MR. ROBERTSON: Q. Who refused to sign? A. At the beginning everyone refused to sign but at the last minute we were forced to sign.

40 HIS LORDSHIP: Q. Why forced? A. Because, your Honour, we were afraid at that time, not knowing the legal arguments, the legal points, not to sign; we thought that by signing the company incorporated would go with us hand in hand together over the depression.

Q. Who did sign on that day? A. We did sign.

Q. Did all three sign in the bank's office at that time? A. Yes, Mr. Burns, Mr. Low and myself.

Q. You all three signed on that day at the bank? A. Yes, at that hour.

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Examination.

—continued.

Record.

In the
Supreme
Court of
Ontario.No. 11.
Plaintiff's
Evidence.
Marco Leon,
Examination.

—continued.

MR. ROBERTSON: Q. Did you see the document again until this action started? A. No.

Q. Was there any meeting either of directors or of shareholders in connection with the giving of that document? A. No.

Q. Who were the directors at this time? A. Mr. Burns, Mr. Low, Mr. Leon, Mrs. Leon and Mrs. Low.

MR. TILLEY: Is Mr. Porter going to examine this witness? If so, we should have it now.

MR. PORTER: I have nothing to ask this witness now, my Lord.

HIS LORDSHIP: Very well. 10

CROSS-EXAMINATION BY MR. TILLEY:

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

Q. Mr. Leon, what part of the company's business did you engage in? A. I had the supervision of sales organization in the provinces of Quebec and New Brunswick.

Q. The sales organization for the two provinces? A. Yes.

Q. Quebec and New Brunswick? A. Yes.

Q. For beer? A. For beer, yes.

Q. Also for spirituous liquors? A. No, sir.

Q. Did you sell spirituous liquors? A. Where? 20

Q. In either Quebec or New Brunswick? A. No.

Q. Did you, Burns and Low, sell spirituous liquors for export to the United States? A. Yes, through Windsor, Ontario.

Q. Let me ask you whether the business of the Carling Brewery Company was carried on in this way—I am going to read to you an extract from the judgment of the Privy Council and ask you whether this correctly describes it.

HIS LORDSHIP: Was that in the action by the Dominion Government for sales and gallonage taxes?

MR. TILLEY: Yes, judgment was delivered in February 19, 1931. Carling Export Brewing & Malting Company, Limited V. The King, L.R., A.C.1931, 435, at 441, et seq. 30

Q. "The appellant company" that is the Carling Export Company—"acquired the Brewery at London, Ontario, in 1923 . . ."? A. Yes.

Q. "... the brewery, which had an ale plant, had been closed down "for some years, and the appellant changed the plant to a lager beer "plant though the ale plant was retained—and started brewing in April "1924."? A. Yes, that is right.

Q. "The shareholders of the appellant company were the witness "Harry Low and his wife, Mr. and Mrs. Leon and Mr. Burns . . ."? 40

A. Yes.

Q. "... throughout the period here in question Low was vice-president of the company and export sales manager at Windsor, Ontario, "on the Canadian border."? A. Yes.

Q. Passing on to a later portion of the judgment: "During the ma-

"terial period, from April 1, 1924, to May 1, 1927, the appellant company had an agreement first with one Grandi until October, 1925, and thereafter with one Savard, that they should take the company's whole output of beer for export to the United States."? A. Yes.

Q. "Both Grandi and Savard resided in Detroit, Michigan, U.S.A., and the beer was put on rail at London, consigned to them at Windsor or one of the adjacent ports on the Canadian border."? A. I do not know that.

Q. You do not know how it was consigned? A. No.

10 Q. But it went through Windsor mainly? A. Yes.

Q. Then passing to a later portion of the judgment:—"According to the orders received, consignments of beer were put on rail at London for delivery at a port on the river front where they were either shipped on small boats or warehoused at the dock until the boats were ready for their shipment; the warehousing and shipment was supervised by Low or a representative of his at the particular dock. In the large majority of cases, the boats were receiving the goods in fulfillment of sub-sales made by the purchaser from the appellant company; in some few cases the shipment was on behalf of Grandi or

20 "Savard themselves"—that would be a fair way to describe it? A. I do not know that. I said from the beginning—

Q. You do not know whether that is so or not? A. I do not know that.

Q. What don't you know? A. (No answer)

Q. You know that Mr. Low was there supervising? A. Yes, but I do not know how the business there was done.

Q. Were you ever in Windsor? A. From time to time.

Q. How often? A. Once in a while.

30 Q. How often is once in a while? A. I suppose I can say twice a month.

Q. But you did not know how the business was carried on? A. No, I did not have anything to do with it.

Q. I am asking you what you knew about it? A. I did not know much about it.

Q. Did you know how it was carried on? A. I know it was carried on, but I did not know how it was carried on.

Q. What is it you did not know? A. There are many things I cannot answer; in a business of that kind I cannot tell you; I can tell you about Quebec and New Brunswick.

40 Q. We will come to Quebec in a short time if we can get past the Windsor border for the moment: "It is admitted that these sub-sales were arranged and the price, generally an advanced one, was fixed by Grandi or Savard independently of the appellant"—that is the export company. Is that right, that Grandi and Savard fixed the price for sale in the United States? A. I do not know.

Q. I must read the intervening part to get the connection: "Boats

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Record.
 In the
 Supreme
 Court of
 Ontario.
 No. 11.
 Plaintiff's
 Evidence.
 Marco Leon,
 Cross-
 Examination.
 —continued.

acting on behalf of sub-purchasers were required to pay the purchase price on shipment of the goods;"—did you know that? A. No.

Q. You did not know that the persons who came over in boats had to pay for the goods? A. No.

Q. Although you were there once or twice a month? A. Yes, but not for that.

Q. What were you there for? A. For liquor business.

Q. What to do with the liquor business? A. Which was exported.

Q. Where? From Vancouver via Windsor to the United States.

Q. And that is what you were connected with? A. Just to have a 10
 general idea of the liquor business, strong liquors.

Q. Why not have a general idea of the beer business? A. Because of the fact that it was decided at headquarters in London, Ontario, that Mr. Low has full control of the export business as far as concerns Windsor, and I have to give my time in the province of Quebec and the province of New Brunswick.

Q. The why did you bother about the export liquor business at Windsor? A. Because I was going to London and from London to Windsor to have a general conversation with Mr. Burns and Mr. Low and to have a little idea about the business. 20

Q. Mr. Low was looking after the liquor business the same as the beer business? A. Yes.

Q. If you wanted him to talk about liquor, why not talk to him about beer? A. I talked to him about how the business goes, but not going into details.

Q. You would find out how the business goes by the statements you received showing the money received? A. Yes, but I did not want to wait so long to get the financial statement.

Q. You wanted to go up and get quicker knowledge. These motions of yours mean nothing to me. Answer the questions. We will get on to the next part: "In the case of Grandi or Savard credit was usually given"— 30
 is that right? A. I do not know.

Q. You do not know whether these purchasers got credit? A. No.

Q. You do not know at all whether when the beer was sold to Grandi and Savard it was sold to them on credit or whether they paid cash? A. No, I did not know.

Q. "Any monies so received"—we are now coming to the point where money was coming in—"were paid into a bank account in the name of the appellant company at Windsor,"—that is the Carling Export Company. Is that right? A. I do not know. 40

Q. You do not know that? A. No.

Q. You do not know whether when these boat pullers were bringing money across and handing it out on the Canadian side it was put into the bank in the name of the company? A. No.

Q. "The railway freight was paid by the appellant"—the Carling Export Company—"at London." Did you know that your company paid

the railway freight? A. From London to where?

Q. To the border? A. No.

Q. "The expenses of handling and warehousing at the river side were paid by the purchaser"—that is Grandi or Savard. Did you know that?

A. No.

Q. "The bank account in the appellant's name,"—the Carling Export Company—"on which Low had authority to draw was opened on May 12, 1924, and continued in operation during the rest of the period,"—did you know that? A. No.

10 Q. Did not you know that Mr. Low had authority to draw on the account at Windsor? A. What for?

Q. For the expenses that he had to pay out? A. No.

Q. You did not know that? A. No.

Q. When you went up once or twice a week how long did you stay? A. Once or twice a month.

Q. Yes, how long did you stay? A. A couple of days.

Q. So you would be there probably four or five days a month. A. Yes.

20 Q. Then we will read on: "... and the appellant company at London drew from time to time on it"—that is, on the Windsor bank account—"for the invoice price of the goods delivered. . ." Did you know that? A. I do not know it.

Q. You do not know whether you knew it or not? A. No, I did not know.

Q. "... which during the Grandi period was the current market rate in Canada . . ." Did you know that what the London office got paid for the goods in the Grandi time was the current market price of the goods in Canada? A. That is in 1923, around ten years ago; I cannot remember.

Q. I am not asking you how long ago it is? A. I cannot remember.

30 Q. You do not know whether you had a fixed price of so much per case or whether it was the market price as the market price would change? A. From the business point of view I can believe it was the market price.

Q. Did you know? A. I answered that I do not know.

Q. Did you know at the time? A. Maybe; possibly; I do not remember now.

Q. Let us pass on: "... and during the Savard period was a fixed price, commencing at \$1.75 per case and being later varied by agreement"—did you know that? A. No.

Q. Did you know it was \$1.75 per case? A. No.

40 Q. Did you know it at the time, and have you forgotten it? A. I mean I do not remember.

Q. We had it in one of the letters here that the price at a certain time was changed to \$1.75. Did you know it was changed to \$1.75? A. Possibly the market then went so that they had to change it.

—Witness stood aside.

Record.
In the
Supreme
Court of
Ontario.
No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.
—continued.

Record.
 In the
 Supreme
 Court of
 Ontario.
 —
 No. 11
 Plaintiff's
 Evidence.
 Marco Leon,
 Cross-
 Examination.
 —continued.

—Whereupon the Court adjourned at 4.34 o'clock p.m. until 10.30 o'clock a.m. on Thursday, September 21, A.D. 1933.

—Upon resuming on Thursday, September 21, A.D. 1933, at 10.30 o'clock a.m.

MARCO LEON resumed the stand.

CROSS-EXAMINATION CONTINUED BY MR. TILLEY:

Q. I was asking you yesterday, Mr. Leon, to give your concurrence to certain statements in the judgment of the Privy Council as to how the business was carried on. I wanted to see whether you agreed that the facts were properly stated? A. Yes. 10

Q. I think I asked you yesterday whether you agreed that during the Savard period the price was a fixed price of \$1.75 and then changed later on? A. I knew in general how the business was done in Windsor, but I did not know the details.

Q. We will have to test that. I do not want you to sum it up. I am asking you did you know that the goods were sold to Savard at a fixed price, either \$1.75 or something more than that, or different from that? A. I knew that the price was changeable every day.

Q. With Savard? A. In general.

Q. I am asking you about Savard? A. I do not know. 20

Q. You do not know whether the price was something like \$1.75 for a time and then changed subsequently? A. I knew that the price started from \$1.75 up.

Q. Why didn't you say that in the first place? You knew it started at \$1.75. A. I knew from \$1.75 up.

Q. Did you know that it was \$1.75? A. I knew that it was \$1.75 once.

Q. Then why cannot you say yes? A. Yes.

Q. And then Savard sold it, we assume, for a higher price in the United States? A. Possibly. 30

Q. You know he did, because you shared in the profit? A. That was an arrangement made with Mr. Low.

Q. You knew he sold for a profit? A. Yes.

Q. Does this statement correctly set out the fact: "During the Grandi period the balance of the monies paid into this bank account,"—that is the one at Windsor—"after the deduction of the invoice prices was accounted for to Grandi by Low." Do you know that? A. No.

Q. What happened as to accounting for the monies in the account? A. I did not know anything about it.

Q. You did not tell what the arrangement was in the Grandi period? A. No, I did not know. 40

Q. The monies were for the most part in cash? They were cash trans-

actions with the men who came and took the goods at the river front? A. That is a detail of the arrangements of which I know nothing.

Q. According to my instructions—you will tell me whether they are correct or not—you were up at Windsor as much as ten days at a time watching this business? A. No, not the liquor business, the beer business.

Q. Were you there ten days at a time? A. Possibly I was there ten days.

Q. What were you doing? A. The liquor business.

10 Q. Was the liquor business carried on in the way I have described, by the men coming over with the boats and bringing the money with them and taking the goods away? A. I do not know that part.

Q. What do you know about the liquor business? A. I knew to buy goods from the province of Quebec to export via Windsor to the United States, and I was also the buyer of liquors from Vancouver to go via Windsor to the United States, but I had nothing to do with delivering or selling goods at Windsor.

Q. What were you at Windsor for? A. I went to see if the accounts to Vancouver were paid in time.

20 Q. You went all the way to Windsor to see whether they were paying their accounts in time? A. Yes, to Vancouver.

Q. Why? A. Because I was partially responsible in the deal I closed with the Consolidated Exporters Limited of Vancouver.

Q. Was that the concern there which you got the goods from in Vancouver? A. Yes.

Q. And you say you had to go from Montreal up to Windsor to see that they had sent a cheque for the goods? A. To see how the accounts were taken care of with Vancouver.

Q. What accounts? A. The goods were sometimes shipped from Vancouver on credit.

30 Q. Mr. Low was there? A. Yes, I know.

Q. Why did you have to go there? A. Because I was responsible to Vancouver for the goods.

Q. And you would stay there as much as ten days to see that the goods from Vancouver were paid by cheque? A. Yes.

HIS LORDSHIP: Q. To whom do you refer when you say you went to see if they were paying? If who were paying? A. I cannot hear you, sir?

MR. TILLEY: Q. You said you went to Windsor to see if they were paying for the goods from Vancouver? A. Yes.

40 Q. Who do you mean by "they"? A. Low, Leon and Burns.

Q. You went to see if you three were paying? A. Yes.

Q. Was it a company? A. No, a partner of Low, Leon and Burns.

Q. Where did you get the money from to pay for the goods from Vancouver? A. From the goods sold.

Q. Goods sold where? A. In the United States.

Q. For export? A. Yes.

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Record.
 In the
 Supreme
 Court of
 Ontario.
 No. 11.
 Plaintiff's
 Evidence.
 Marco Leon,
 Cross-
 Examination.
 —continued.

Q. At Windsor? A. Yes.

Q. I am not caring which side of the border it was on. Where did the money come from that you got in that way, from the men who took the goods across the river? A. I do not know that.

Q. You do not know? A. No.

Q. You were at the docks? A. Myself personally, no.

Q. Do you say you were never down at the docks in Windsor and LaSalle? A. Yes.

Q. And you saw how the business was handled? A. Yes.

Q. And you saw the cash system you had in vogue? A. Yes. 10

Q. And you saw where the cash came from? A. No.

Q. Were you there watching Mr. Low to see that he brought in all the monies that should be turned in? A. No; they had an accounting system there.

Q. I know; but if the money does not get into the system you might lose something. Were you watching him? A. No.

Q. You were not there just to keep an eye on him? A. If I am not mistaken we had a special accountant who came from time to time to check up the books.

Q. I daresay you have accountants. Sometimes, you know, a partner 20 wants to know himself that he is getting his fair share. How did you divide with Low and Burns—evenly? A. Yes, three equal shares.

Q. At any rate, you cannot help us more than you are. You are doing your best to help us with your evidence? A. What I know of it.

Q. Mr. Low is here in the court room? A. No, he is not here now.

Q. He was here yesterday? A. Yes, he is in the hotel.

Q. And Mr. Burns? A. Yes, he is here.

Q. Let us go on to the next sentence. I think I read this: "During the Grandi period the balance of the monies paid into this bank account, after deduction of the invoice prices, was accounted for to Grandi by Low, 30 after deduction of the expenses which he had paid on Grandi's behalf." That would be a natural way to do it? A. Yes.

Q. Now listen to this: "During the Savard period Low, as an individual, had an agreement with him under which the balance of the prices received from the sub-purchasers,"—those are the people who bought from Savard—"after deduction of the appellant's invoice price and the expenses paid by Low on behalf of the purchaser, was divided between him and Savard"? A. Yes.

Q. And that is in connection with the beer business? A. Yes.

Q. The Carling Company's business? A. No. 40

Q. The Carling Export Company's business? A. No.

Q. Why? A. Savard bought the goods directly from the Carling E.B.M., London, Ontario, for a fixed price and there was a private arrangement made with Mr. Harry Low that the difference between the price paid and the price sold, deducting expenses, the net profit, be divided into two equal shares, half to Mr. Low and half to Mr. Savard, and this

half of Mr. Low's was divided into three equal shares between Low, Leon and Burns.

Q. Let me be sure that I have understood it, and see whether you have it right. You say that that was not company's business because the company sold at a fixed price at London? A. Yes.

Q. And that Savard had a private arrangement with Low that after the expenses were paid the profit that Savard made would be divided fifty-fifty between him and Low? A. Yes.

10 Q. And Low, in his turn, divided his half share equally between his other two partners and himself? A. Yes.

Q. So that therefore you say it is not the company's business? A. Yes.

Q. That is one way of looking at it, but I did not mean that. I meant that it was Carling Export beer that was dealt with in that way? A. Yes.

Q. The beer from your company? A. Yes.

Q. The liquor business was done in the same way, was it not? A. Just a minute: The arrangement made with Harry Low and Savard was not done in Carling beer only but any other beer sold by Savard on the
20 other side.

Q. Any beer and any liquor? A. No liquor.

Q. Who did you sell your liquor through? A. I do not know who they were selling the liquor through.

Q. You do not know whether the whole business, beer and liquor was, or was not, dealt with in precisely the same way? A. Are you referring to the division of the profits?

Q. I am referring first to the channel through which they were sold? A. Yes, the same way.

Q. The same channel? A. Yes.

30 Q. That is, Savard in his time? A. Yes.

Q. And Grandi in his time? A. I do not know about Grandi; that is 1923 and 1924, and I do not remember.

Q. That is too far back for you to remember? A. I do not remember.

Q. And the liquor that came from Vancouver, you say, was sold through Savard, and was there the same sort of bargain with Savard that after paying the cost of the liquor and the expenses the profit made on the re-sale was to be divided half and half with Low? A. No.

40 Q. What was the arrangement there? A. There was no arrangement referring to the hard liquors with Savard.

Q. They were sold through him? A. He bought it and sold it and the profit was kept by Savard.

Q. You did see the boats going across the river with the beer? A. Yes.

Q. That was a familiar sight? A. Yes, there were about 25 docks.

Q. Up and down the river? A. Yes.

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Record.
 In the
 Supreme
 Court of
 Ontario.
 —
 No. 11.
 Plaintiff's
 Evidence.
 Marco Leon,
 Cross-
 Examination.
 —continued.

Q. And from those docks you would see these departing vessels clearing at Customs and taking both beer and liquor? A. Yes.

Q. Taking both beer and liquor? A. Yes.

Q. And was the money for the liquor paid in at the same place as the money for the beer? A. No; the money for the liquor was put in the Low, Leon and Burns' account in the Dominion Bank.

Q. I am not asking where they got to in the end, but whether the men who brought the price of the liquor handed it in at the same place as they handed in the price of the beer they bought? A. I do not know anything about that. 10

Q. It was at the dock? A. I do not know.

Q. Do you know whether or not there was a person to receive cash at the dock? A. Yes.

Q. Did that person receive cash both for liquor and beer? A. I do not know that; I saw money paid, but whether it was for liquor or beer I did not know.

Q. There was only one place where they paid? A. Mr. Tilley—

Q. Was there only one place at each dock at which they paid? A. One place, yes.

Q. And they would pay there both for liquor and beer? A. Yes. 20

Q. That took some time, and you might at least have answered that question without so much trouble. Why then did you not tell me some time ago that you saw these people who came over for the liquor handing the money in for it? A. As a visitor around there I could not see very many people.

Q. Those who were not there could not see it, but you knew that is what was going on? A. Yes.

Q. Why did not you say so when you were asked about it before? A. I do not know if you asked me about that.

Q. After the money got into this common spot or to the one person 30 who was receiving the money did it become divided and did the liquor money go into one account and the beer money into another? A. I cannot answer that question.

Q. You do not know whether the monies went into a single bank account or whether they were separate? A. You refer to our own personal business?

Q. I am referring to the spirituous liquor business that you were carrying on where you got the money, from the Consolidated Exports, and the beer business that came from Carlings? A. The money coming from the liquors was put in Low, Leon and Burns' account, and the 40 money coming from the beer was put in the Carling E.B.M. account.

Q. That is the plaintiff's account? A. Yes; I knew there were two accounts in the Dominion Bank.

Q. You knew there were twenty accounts in the Dominion Bank? A. No.

Q. Would you be surprised to know there were over a dozen? A. No, I do not know that.

Q. When you speak of the money going to Low, Leon and Burns, you mean into an account in Windsor? A. Yes.

Q. And when you speak of the money going into the Carling E.B.M. account you also mean an account in Windsor? A. Yes.

Q. Did you personally have anything to do with making the division between the two accounts? A. No.

10 Q. The money could be put into either account, depending on what the man was told to do with it, could it not? A. With the bookkeeping system we had in Windsor I do not think there was any mistake by taking money from the liquor and putting it into the beer account or from the beer account into the liquor account.

Q. Any person who had the money could be told to put it into either account? A. I do not know that.

20 Q. Explain the system? A. The system was that we had two accounts, the Low, Leon and Burns' account which was receiving all the money for the hard liquor sold and the profit made with Savard, which was divided with Harry Low fifty-fifty, and the Carling E.B.M. account was receiving all the money coming in for the beer sold, the Carling goods. This money from Windsor was transferred to London to pay for the goods sold.

Q. Let me see if I follow you there. You say the Low, Leon and Burns' account had in it all the monies received for the spirituous liquors? A. Yes.

Q. Plus what Mr. Low got through his arrangement with Mr. Savard about the beer? A. Yes.

Q. And the Carling Company's account had in it the \$1.75 or whatever the price was to Savard? A. Yes.

30 Q. Did the money that was received for the beer go in to the Carling E.B.M. account and then become divided between Low, Leon and Burns and Savard, or was only the \$1.75 put in the Carling E.B.M. account? When I say "\$1.75" I mean when \$1.75 was the price? A. The price at which the beer was sold at London was put in; if it was sold at \$1.75 per case the Carling E.B.M. Windsor account received \$1.75 for every case sold.

Q. Supposing a man who was taking liquor across the river gave \$3.00 for a case of beer,—I do not know whether that price is high or low, but probably you got those prices, \$3.00 a case? A. Yes, possibly.

40 Q. —to the sub-purchaser, the man who had the boat? A. Yes.

Q. Then \$1.75 of that was for the Carling Company at London? A. Yes.

Q. Was the \$3. paid into the Carling account at Windsor and then \$1.75 of it sent to London, or was \$1.75 put in at Windsor and the balance into a different account and never in the Carling account? A. I do not know that.

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Record.

*In the
Supreme
Court of
Ontario.*No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Q. You do not know how the accounts were kept? A. No.

Q. The books would show all these things? A. The books of the Carling E.B.M. London would show that.

Q. Listen to me for a moment: The books of the Carling Company plus the books of Low, Leon and Burns would show these things? A. Low, Leon and Burns have nothing to do with the brewery, to my knowledge.

Q. But it would require an examination by a competent person of both sets of books to tell how the transactions were really carried through, would it not? You agree with that, don't you, that it would require an examination of both sets of books by some competent person to be able to check up how you carried on your business? A. Yes. 10

Q. Yes, you would say so? A. Yes.

Q. Is that why you did not want them examined by an auditor? A. They were examined by an auditor.

Q. They were examined by the Government auditor but never examined by the Dominion Bank's auditor? A. The books were examined by Mr. Scott, an auditor appointed by me.

Q. I did not know that you meant we should take your auditor. Did you produce the reports that Mr. Scott made to you for inspection?

MR. ROBERTSON: Where? 20

MR. TILLEY: In this litigation.

WITNESS: Mr. Scott was presenting every month a financial statement showing the profit made in the Low, Leon and Burns' account.

HIS LORDSHIP: Q. Who is Mr. Scott? A. An auditor in Windsor.

MR. TILLEY: Q. Did he examine the brewery books? A. I did not give any instructions to have anything to do with the brewery.

Q. And he was auditor for Low, Leon and Burns, or for Leon? A. No, for Low, Leon and Burns.

Q. Now let us go back to the Privy Council judgment, Mr. Leon: "To enable him (Low) to pay the purchaser's expenses at the river side Low opened a bank account known as the 'Harry Low Special Account,' which he financed by drawing on the appellant's account"—that is the Carling E.B.M. account; is that so? A. That is the detail of which I do not know so much. 30

Q. How many persons did it require to sign cheques for the Carling Company? A. Two.

Q. Do you know whether an account was opened by Harry Low, a special account, so that he could sign when there was no person else to sign? A. No. 40

Q. Did you know there was a Harry Low Special Account? A. I know there was a special account, but may be it was his own account.

Q. You do not know whether it is a company account? A. No.

Q. And you do not know whether Low, Leon and Burns' money went through it? A. I do not know.

Q. Did any of their money go through it? A. I do not know.

HIS LORDSHIP: Q. I suppose the auditor, Mr. Scott, would know? A. Yes; but from the financial statements we were receiving every month it did not show that the Harry Low Special Account is a creditor or a debtor.

Record.
In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examiner

—continue

MR. TILLEY: Q. We have not the reports which were made to you each month. These books and documents are supposed to have nothing to do with this case, according to your contention. Then: "Soon after the beginning of this agreement with Savard, Low began to divide his share of the profits with Leon and Burns, who along with him were the real proprietors of the appelland company."—that is the Carling Company?

10

A. (No answer)

Q. Is that right? A. (No answer)

Q. I will read it to you again: "Soon after the beginning of this agreement with Savard, Low began to divide his share of the profits with Leon and Burns, who along with him were the real proprietors of the appelland company"? A. At that time, yes.

Q. That is down throughout the Savard period? A. Yes.

20

Q. I think that is all that is said in the judgment about the methods adopted. Let us follow how you got into this company. At the time you came into the Carling Company, the stock was held by various shareholders scattered all over? A. Yes.

Q. And you started in to buy it up? A. Yes.

Q. And whatever capital stock was got was the amount outstanding in the hands of these people? A. Yes.

Q. About how much? A. I do not remember.

Q. You do not know how much capital stock they had out? A. I do not remember.

Q. At any rate, you bought them out? A. Yes.

30

Q. And then, having bought them out, did you make advances to the company? A. Yes.

Q. When I say you I mean the partnership or you three individuals, I do not care which? A. I am talking for myself.

Q. That is all right. You mean that you personally did? A. With some other people.

Q. Some other people let you have some of the money? A. Yes.

Q. You put the money in as yours? A. Yes, in trust.

Q. And then did Burns and Low put in money? A. Yes.

Q. For what purposes? A. For starting to work the brewery.

40

Q. You had to get the business going? A. Yes.

Q. I believe the business had been closed down? A. It was closed down when we bought it, yes.

Q. And you would have to do some alterations, no doubt? A. Re-opening it.

Q. And get it on its feet again? A. Yes.

Q. How much money did the three of you put in? A. The books show.

Record.

*In the
Supreme
Court of
Ontario.*

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Q. Do not tell me the books show, because we have not got the books. Let us get on as well as we can without the books. How much did you put in? A. I cannot say.

Q. \$10,000 or \$100,000 or \$500,000? A. We put in in trust \$170,000.

Q. \$170,000? A. In trust.

Q. What do you mean by "in trust"? A. There was an account of Low, Leon and Burns with the ladies together for \$170,000 in trust.

Q. In the books? A. Yes.

HIS LORDSHIP: Q. Does that mean that Low, Leon and Burns together put in \$170,000? A. That was a loan to the corporation. 10

MR. TILLEY: Q. Did you take any stock for it? A. We got the stock, and in 1923 I got only one share; there was no stock issued.

Q. No, because you were buying it up from other shareholders? A. Yes.

Q. But there was no new issue of stock by the company? A. No.

Q. So you did not get any capital stock for it? A. No.

Q. You say it was just put in as a loan? A. Yes.

Q. Did you assume a mortgage or pay off a mortgage as well? A. Yes, there was a mortgage there.

Q. How much was the mortgage? A. \$75,000 or \$175,000; I do not 20 remember.

Q. Or \$180,000? A. Yes, I do not remember.

Q. And did the three of you pay this mortgage off? A. Yes.

Q. Individually? A. I do not know; I invested money in the company; the only party who took an active part in this affair was Mr. Burns. I do not remember how it was paid.

HIS LORDSHIP: Q. Did you pay off a mortgage as well as loan \$175,000 (sic) or was the mortgage paid? A. I know it was paid.

MR. TILLEY: Q. Did you put up \$170,000 or \$175,000 to get the company started, and in addition to that later on pay off a \$180,000 30 mortgage, or is the \$180,000 the whole thing? A. It was paid later on.

Q. Then you put up about \$170,000? A. Yes.

Q. And, secondly, you paid off a mortgage that was on the property when you bought it? A. Yes.

HIS LORDSHIP: Q. With other money? A. Yes.

MR. TILLEY: Q. With other money of yours? A. No, I think it was paid from the business.

Q. Do you know? A. No.

Q. Again I suppose the books would show that? A. Yes.

Q. They ought to show it? A. Yes, they got to show it. 40

Q. They ought to show it. The books cannot be compelled to show anything you do not put in them. I was wondering whether you were able to say it is in the books? A. I knew one item in trust, \$170,000.

Q. What do you mean by that? Looking at Exhibit 26 I observe a reference to the postponement of a claim from Charles Burns, H. Low and

Marco Leon, \$165,000,—is that what you refer to? A. I do not know much about that; I would have to see it to understand it better.

Q. I do not see anything about "in trust." Was "in trust" written on it? A. In trust.

MR. ROBERTSON: There is a statement of affairs.

MR. TILLEY: That is the earlier one.

Q. I show you Exhibit 16 which shows: "Accounts payable, special loan, Leon, Burns and Low, \$177,000"? A. It was a liability to the Dominion Bank.

10 Q. No, it is an account of the Carling Company owing put in here at \$177,000 and is shown as a special loan, Leon, Burns and Low. Do you know if that is it? A. No.

Q. I see it is \$177,000 in 1924 and \$163,257 odd in 1925, but you cannot say? A. No.

MR. ROBERTSON: It disappeared the next year.

MR. TILLEY: I am not concerned about it disappearing, but I am trying to find out if I can get anything accurate about it from this witness.

Q. You cannot say what that means? A. No.

20 Q. Do not look so worried. I am taking your answer and going ahead for the present. Let us deal with one thing more: Did you use any of the monies at Windsor to buy bonds with? A. Low, Leon and Burns, yes.

Q. Any of it come out of the brewery accounts? A. Excepting \$420,000 of bonds were bought by the Carling E.B.M.

Q. We know about those? A. That is all I know.

Q. Only those? A. Yes.

30 Q. Then the bonds would be bought out of the accounts where the profit that was divided with Savard on the beer would be?

MR. ROBERTSON: Which bonds?

MR. TILLEY: Please do not cross-examine me about it. Watch the witness, but do not stop him and you will find out.

MR. ROBERTSON: He does not understand. My friend has referred to two entirely distinct lots of bonds, and if his question is related to the last ones mentioned—

HIS LORDSHIP: You will have the opportunity of segregating them.

40 MR. TILLEY: Q. You appreciate that I am putting the \$400,000 of bonds that went into the Dominion Bank out of the question for the present. We will come to that later. I want other bonds bought either with the funds of the Carling Company or the funds of Low, Leon and Burns? A. Low, Leon and Burns bought through the Dominion Bank \$300,000 or \$400,000 of bonds, I do not know exactly the amount, and the Carling E.B.M. bought bonds to deposit in the hands of the bank as security for the action taken by the Dominion Government against the company.

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued

Record.

In the
Supreme
Court of
Ontario.No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Q. Did either the company or Low, Leon and Burns buy other bonds? A. No, I do not know.

Q. Do you say they did not? A. I say I know I bought only two, two items.

Q. Did they use any of the money to pay for real estate? A. Low, Leon and Burns?

Q. Yes? A. Yes.

Q. Where did they get that money? A. Our own money; we had assets, plenty.

Q. You had plenty of assets? A. Yes. 10

Q. When did you commence buying real estate? A. In 1926 or 1925, in Windsor.

Q. What property did you buy in Windsor? A. I do not know the properties.

Q. What kind of property? A. I do not know much about the property in Windsor.

Q. I am not asking you how much, but tell us what you do know? A. I know they bought some.

Q. Tell us what you know about the property? A. I know Mr. Low bought for Low, Leon and Burns some property in Windsor. 20

Q. What was it, a church? A. I do not know.

Q. Or a whiskey dock? A. I do not know that

HIS LORDSHIP: Q. Did you see this property in Windsor or any of it that was bought, during any of the visits you made to Windsor? A. No.

MR. TILLEY: Q. Did not he show you what he bought when you were there? A. Yes, he showed me.

Q. What was it, a church? A. No.

Q. What was it? A. It was a residential property.

Q. Where was it? A. One was in Sandwich, on the river side; I know how to go there; and I think there was a property in Ford City. 30

Q. On the river side? A. Yes.

Q. To be used for residing purposes? A. Yes.

Q. For a residence on the river side? A. Yes.

Q. Any other property that he bought? A. Further up west.

Q. What was it? A. A small house there.

Q. Was it river side property? A. Yes.

Q. Any other property? A. I do not remember.

Q. Was there a dock on either of these properties? A. I do not know. 40

Q. Did you have a lawsuit about a dock? A. Yes; I heard about a lawsuit, but I do not know anything about the details.

Q. Who bought the property or who had the lease? A. Mr. Low.

Q. Was it Low, Leon and Burns' lease? A. I am under the impression that Mr. Low bought first and transferred it to Low, Leon and Burns.

Record.

In the
Supreme
Court of
Ontario.No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Q. But it was Low, Leon and Burns? A. Yes.

Q. Was it used for liquor going out to the States? A. I do not know that.

Q. Where else did you buy land? A. In Toronto.

Q. Where in Toronto? A. Somewhere west on King or Queen Street, around the new Eaton building.

Q. You could very quickly tell us that. How much did you buy in Toronto? A. I do not remember.

Q. Might it have been a million dollars' worth? A. Maybe \$500,-
10 000 or \$300,000, I do not remember the amount.

Q. It might have been a million? A. It might be.

Q. Where did that money come from? A. From Low, Leon and Burns.

Q. From this account at Windsor? A. From our personal accounts.

Q. Did you put it up individually, or take it out of Low, Leon and Burns' account in Windsor? A. Some from Low, Leon and Burns' account and some from personal accounts.

Q. How much did you take out of Low, Leon and Burns' account for
20 it? A. I do not know the figures.

Q. And then you bought property in Montreal? A. Yes.

Q. How much? A. We bought about \$3,000,000 of property, the land.

Q. You are not now including the building in that? A. No.

Q. About \$3,000,000 of land? A. Yes.

Q. Where did you get that money? A. Our own accounts.

Q. Low, Leon and Burns'? A. Yes.

Q. What monies did you get out of the Carling Company? A. I do not know exactly the amount.

30 Q. I am not asking you exactly. How much money did you get out of the Carling Company? A. From the Carling E.B.M.?

Q. Yes, from the time you acquired it down to the end? A. From the Carling E.B.M. account we did not take any money for real estate.

Q. For any purpose? A. For ourselves, yes.

Q. How much did you get out of the Carling Company's account? A. I cannot say the amount,—maybe \$600,000 or \$700,000.

Q. After clearing everything up, after paying the debts and straightening up the liabilities? A. Yes.

Q. \$600,000 or \$700,000? A. Yes.

40 Q. When did you next commence to get money out of the Carling Company by way of division of profits, or anything? A. I think in 1927.

Q. What did you get then? A. I do not know what the amount is, but we got some money out.

Q. Did you get \$1,000,000? A. It was our own money.

Q. What do you mean by your own money? A. Our own money.

Q. It was the profit from the business? A. What do you mean?

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Q. It was profit of the Carling Company? A. Profit in selling goods?

Q. Yes. A. No.

Q. What was it? A. Carling E.B.M. was sold to Carling Breweries Limited and we got part cash.

Q. How much did you get cash? A. I can not say exactly the amount.

Q. About how much? A. About \$700,000 or \$800,000 or \$600,000, very hard to say; I do not know exactly the amount.

Q. What else did you get? A. That is all; we had 60,000 shares 10 which remained in the Carling E.B.M. treasury.

Q. What do you mean by that? A. That was stock belonging to the shareholders, plus \$420,000 which was in the hands of the bank as collateral for the case taken by the Government.

Q. That is to say, there was \$600,000 left in the company? A. 60,000 shares.

Q. What do you mean by that? A. The Carling E.B.M. sold part cash and part stock and there was so much money, \$600,000 or \$700,000 cash.

Q. And how much did they pay in cash, \$2,000,000? A. That was 20 a transaction with Mr. Burns, because he had to give assets and no liabilities to the new company.

Q. He is the one who can tell? A. Yes.

Q. You cannot tell? A. No.

Q. We have a special account (Exhibit 25) and there is a general account, a bulky document which may not have been put in. We will take this one sheet for the present, the account from the London office, Carling Export Brewing Company, a special deposit of \$1,000,000 on July 14, 1927. Do you know about that? A. No, Mr. Burns has got to know.

Q. At least he ought to know? A. Yes. 30

Q. And then \$200,000 in the next month making \$1,200,000., and then I see Leon got \$100,000? A. Yes.

Q. And Low got \$100,000? A. Yes.

Q. Do you remember Leon getting \$100,000? A. Yes.

Q. What was that for? A. My personal account.

Q. What did you do with it, use it personally? A. Yes.

Q. Low got \$100,000 for personal account? A. Yes.

Q. And Burns got \$100,000 for personal account? A. Yes.

Q. And then \$199,000, almost \$200,000., to the Dominion Bank, and opposite, put on by who I do not know: "For credit of M. Leon"—do you 40 know about that? A. What date?

Q. February 2nd, at the time you were getting the \$100,000 each? A. I do not know about that.

Q. \$100,000 was charged to Leon, \$100,000 to Low and \$100,000 to Burns, and then there is approximately \$200,000— "Cheque to Dominion Bank"—and in the margin "for credit M. Leon." Do you know about

that? A. No, I do not know anything about that.

Q. "April, M. Leon, \$215,000"—what is that for? A. That may be money that we drew ourselves, that belonged to us.

Q. Because what? A. Maybe this money belongs to us and is the money we drew out.

Q. Is it the money you drew out? A. My private account in the Dominion Bank will show that.

Q. I presume it does. It says: "\$215,000 from 15174 Spcl a/c, M. Leon"? A. It was charged to my private account.

10 Q. Paid over for you? A. Yes.

Q. "Charles Burns, Trust Account, \$40,000"—do you know what that is? A. No; it says "Special Account"; Mr. Burns can tell you about that. That is from London?

Q. Yes? A. Let Mr. Burns tell you about it.

Q. Then there is an item taken from this account and transferred to another special account on January 14, 1928: \$42,448.64? A. (No answer)

MR. TILLEY: Have you got that account?

20 Q. Here is that account: "Carling Export Brewing & Malting Company Special Account"—another special account, apparently — which opens with \$42,448.64 transferred to it from account No. 4916. Do you know anything about that? A. No; that is business done in London, Ontario, so I do not know.

Q. Let us look at this and see if it refreshes your memory about anything: There is an item of \$110,000 "balance M. Leon trust account"—do you know what that means? A. No; it is marked here "from M. Leon paid current account" and I have no current account.

Q. At any rate, you cannot help us? A. No.

30 Q. "July 5, 1928, bonds sent for sale, \$60,000" and in pencil "M. Leon"? A. I had \$60,000 bonds in City of Montreal, and I gave instructions to sell them there, but I do not know anything about the London account.

MR. TILLEY: Let me have the minute book of the company. I think you did not show us that.

Q. Is this the minute book of the plaintiff company? A. Yes.

Q. Did you keep it, or who kept it? A. It was kept in London.

Q. It was not kept by you in Montreal as secretary? A. No, but kept in London by Mr. Burns.

40 —EXHIBIT NO. 30: Minute Book of Carling Export Brewing & Malting Company, Limited.

Q. Let me draw your attention to one or two things here.

"10. The president shall preside at all Meetings of the Shareholders and Directors. He may call Meetings of the Shareholders or of the Board of Directors when necessary or expedient. He may execute

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Record.
*In the
 Supreme
 Court of
 Ontario.*
 —
 No. 11.
 Plaintiff's
 Evidence.
 Marco Leon,
 Cross-
 Examination.
 —continued.

“bonds, mortgages and other contracts on behalf of the Company and
 “affix the corporate seal to any instrument requiring the same and
 “the seal, when so affixed and attested by his signature and the signa-
 “ture of the Secretary, shall be valid and binding on the Company.
 “He shall, with the Secretary, sign certificates of stock.”

Q. Looking through this book I see nothing authorizing any agree-
 ment with either Savard or Grandi. You told us yesterday that that was
 for the sale of all—did you say all the beer? A. Do you refer to the
 profits?

Q. No. I think you told me yesterday that you had a contract that 10
 Grandi was to take all your beer from London; I do not know whether you
 said all the beer that was exported or all the beer? A. I do not remember
 if I said that.

Q. I thought you did. Tell us what was the understanding,—was he
 to make a contract with you for all the beer? A. If there was any contract
 made it was made in London by Mr. Burns and Mr. Low or by Mr. Burns
 himself, I do not know.

Q. That is to say, whatever had to be done they did it? A. Yes.

Q. You just left it to them? A. Yes, because as far as trying to sell
 goods, I do not think it is necessary to submit it to the Board of Directors. 20

Q. I would have thought that in an ordinary company, if the direc-
 tors were going to get half the profit on the resale and there were outside
 shareholders, it would be well to have something in the minutes? A. We
 did not sell the beer cheaper than any other brewery.

Q. That is, so long as you got the same price as other breweries got,
 that was sufficient? A. Prices were fixed up by the market prices. If the
 market was \$3. a case the contract would be with Grandi for \$3. a case.

Q. We have it that Mr. Low said they were going to bring down the
 price or bring down the returns, and then there was a price of \$1.75? A.
 That was the price at that time. 30

Q. Did you have to do with the making of that contract? A. No.

Q. At any rate, for what it is worth, this book shows all the meet-
 ings, so far as you know? A. Yes.

Q. And everything that was done at other directors' or shareholders'
 meetings? A. Yes.

Q. So we have the whole story here so far as official action is con-
 cerned? A. Yes.

Q. I will not delay to go through it in detail. Then I see that in the
 minutes of October 12, 1923, the officers were appointed: Mr. Burns, presi-
 dent; Mr. Low, vice-president and managing-director, and Mr. Leon, sec- 40
 retary treasurer? A. Yes.

Q. And you continued to occupy those positions down to the end?
 A. Yes.

Q. And at the same meeting it was moved by Mr. Low, seconded by
 Mr. Leon—“that any two of the officers of the company are empowered
 to sign, under seal or otherwise, any documents necessary for the carry-

ing on the affairs of the company"? A. Yes.

Q. And certain salaries were fixed, \$4,000 for each of you? A. Yes.

Q. By-law No. 51 on page 95, which apparently was made a schedule to the minutes of the meeting of directors held on the 10th June, 1927, recites:—

"Whereas the Company has agreed to sell its assets and undertaking to
"Carling Breweries Limited.

"Now therefore be it enacted and it is hereby enacted a by-law of
"the company

10 "That this Company do sell and dispose of its undertaking and
"assets (save and except accounts receivable and cash on hand and in
"Bank) to Carling Breweries Limited, free and clear from all in-
"cumbrances, outgoing, liens, taxes and liabilities for the considera-
"tion and upon the terms and conditions set out in the Agreement
"dated the 14th day of June, 1927 . . ."

Do you know whether the agreement is in the minutes? A. No, I do not know; they might have a separate agreement.

20 Q. Then on May 20, 1931, instructions were given on motion by Mr.
Low, seconded by Mr. Leon, to write to the Dominion Bank to confirm the
verbal instructions given by 'phone on or about the 28th or 29th April by
Mr. Harry Low, that no monies be paid to the Dominion Government or
other parties without written instructions given by E.B.&M. Company,
Limited. Then:—

"It was moved by Mr. Harry Low, seconded by M. Leon and re-
"solved

"In view of the judgment rendered by the Privy Council in the case
"of His Majesty the King vs. Carling Export Brewing & Malting
"Company, Limited, as regards liability of the latter company for sales
"and gallonage tax to the Government of the Dominion of Canada,

30 "That the President and Secretary of the Company, or either of
"them, be and he is hereby authorized to consult with Mr. R. S. Rob-
"ertson, K.C. of Toronto, Ontario, with a view to obtaining the lat-
"ter's opinion regarding this Company's right to recover the monies
"amounting to approximately \$400,000 . . ."? A. Yes.

Q. That is, you took action that brought about this litigation? A.
Yes.

Q. You have spoken of some other persons being interested in your
stock? A. Yes.

40 Q. It is just a little difficult to follow, and I will have to ask you a few
more questions about that. First, it seems to be clear that you bought the
stock of other shareholders and they endorsed their certificates and turned
them in? A. Yes.

Q. And you did not take out any new certificates for some time? A.
Yes.

Q. They just lay there. You think there was a stock register or a

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Record.
 In the
 Supreme
 Court of
 Ontario.
 —
 No. 11.
 Plaintiff's
 Evidence.
 Marco Leon,
 Cross-
 Examination.
 —continued.

proper shareholders' register. Are you sure whether there was or not? A. I am not sure.

Q. It may be that this book with the stock certificates and stubs is all there ever was in your day? So far as you can say, that is all? A. What do you mean?

Q. That there was no other book in which you kept a record of these transfers? A. No.

Q. That you would have to search through the stubs to find out what was done. That is what you thought? A. No; I cannot get your question. Explain it better.

Q. When you have a book of this kind (Exhibit 28) showing transfers of certificates, and so on, you usually have another stock register to keep an account of the stock and to show in whose name it is standing and who are the shareholders? A. Yes, there was a book.

Q. But you do not know where it is? A. No.

Q. And you cannot help us to locate it? A. I cannot; I tried my best.

Q. You first told us that Mrs. Leon had a half interest. Let us go back to the beginning: I think you first told us about Mr. Podolsky? A. Yes.

Q. And you said there were 1000 shares in trust? A. Yes.

Q. What did you mean by 1000 shares in trust? A. I meant that he told me that I can keep the stock in my name.

Q. He said: "I do not want you to transfer it to me. You keep it in your name"? A. Yes.

Q. So that you did not have a transfer made from yourself to yourself in trust? A. No.

Q. What you mean by that is that he relied on your honour to see that he got his shares if he ever wanted them? A. Yes.

Q. How did he come to get any interest in the stock at all? A. I knew him for many, many years, and I made him a proposition to invest around \$15,000 in 1923 when we bought the brewery, so he agreed to advance \$15,000 and take 1000 shares preferred.

Q. Have you any letter about that? A. No; it was a cheque given to me.

Q. Have you got the cheque? A. He issued the cheque to me.

Q. He did not write you a letter about it and you did not write him a letter about it? A. No.

Q. No letter at all? A. No.

Q. Where was he living at that time? A. Brooklyn, N.Y.

Q. Is he related to you or your wife? A. No, no relation.

Q. And that was in 1924? A. The end of 1923 or the beginning of 1924.

Q. And he gave you a cheque and you cashed the cheque for \$15,000 and except for that cheque there is no piece of paper that refers to that transaction at all? A. No.

10

20

30

40

HIS LORDSHIP: Q. Do you keep any personal cash book, or did you at that time? A. Yes, I had a distinct savings account book, and it went through that account.

Record.
In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

MR. TILLEY: Q. You had large transactions, and I am not saying that you cannot go through your book and find an entry of \$15,000, but I am asking you a little deeper than that, whether there was anything to show you ever got \$15,000 from Mr. Podolsky except his cheque which you have not got? There is not a piece of paper to show that you got it as a loan, if you did get it from him, or whether you got it for stock, not a
10 scrap of paper to show. A. Yes.

Q. And this was a verbal talk you had with him? A. Yes.

Q. And has the matter stood that way ever since. A. Yes.

Q. Where does he live now? A. In Jamaica.

Q. How long has he lived in Jamaica? A. The last two years.

Q. And prior to that he lived in Brooklyn? A. Yes.

Q. And you have never written to him since about it? A. No; I was there many times.

Q. And he has never written to you? A. No.

Q. And you have never seen him since he went to Jamaica? A.
20 Once, I think.

Q. Where? A. I am not sure; I think in New York.

Q. So that the transaction has never been referred to between you since by way of letter or correspondence? A. No.

Q. And he has never been paid a cent of interest? A. Yes; I paid him
\$4500.

Q. When? A. I think in 1925 or 1927, I do not remember exactly the time.

Q. So you paid him \$4500.? A. Yes.

Q. In cash? A. Yes.
30

Q. Not by cheque? A. No.

Q. What was the \$4500.—interest? A. Past dividends.

Q. Dividends from where? A. On the stock that he bought with his
\$15,000.

Q. That is to say, past dividend on the stock he was supposed to own? A. Yes.

Q. That you say he had an interest in? A. Yes.

Q. Did the company pay a dividend? A. The company paid a dividend but the Dominion Bank got \$125,000 of that dividend.

Q. I am not asking what they got. First, did they pay a dividend?
40 A. Yes.

Q. What dividend did they pay? A. \$2. a share.

Q. When? A. In 1927, I think; I am not sure.

Q. What time of the year? A. I do not remember; I think it was paid at the end of 1927 or the beginning of 1928 after the Carling Brewery took possession.

Q. Is that when you gave this man Podolsky the \$4500.? A. Yes.

Record.
*In the
 Supreme
 Court of
 Ontario.*
 No. 11.
 Plaintiff's
 Evidence.
 Marco Leon,
 Cross-
 Examination.
 —continued.

Q. What dividend was that, Carling Breweries' or Carling E.B.&M.?
 A. Carling Breweries.

Q. You never gave Mr. Podolsky any stock in the Carling Breweries?
 A. No.

Q. You have never given it to him yet?
 A. No.

Q. There has never been any correspondence about it?
 A. No.

Q. Does he know that Carling E.B.&M. has sold out to the Carling Breweries?
 A. Yes.

Q. When did you tell him that?
 A. Before the transaction was done.

Q. By way of casual conversation?
 A. I was in New York at that time.

Q. And you told him it was going to happen?
 A. I went to see him.

HIS LORDSHIP: Q. What was his occupation at that time?
 A. (No answer)

MR. TILLEY: Q. What was his business?
 A. He has a store of leather goods.

Q. What has he now?
 A. The same thing.

Q. In Jamaica?
 A. Yes.

Q. Carrying on business there?
 A. Yes.

Q. Is that Jamaica, New York?
 A. Yes.

Q. Another place in the state of New York?
 A. Yes.

HIS LORDSHIP: Q. Close by New York City?
 A. Yes.

Q. Not far from New York City?
 A. No, not far, about half an hour or three-quarters of an hour by subway.

MR. TILLEY: Q. Why did you give it to him in cash?
 A. I was at that time in New York under the doctor's care for my ears, and I called up my wife, Mrs. Leon, and told her when she comes down to bring \$4500. in cash—she had her own account—because I wanted to give it to Mr. Podolsky.

Q. "You had better bring down \$4500. when you come because I want to give it to Mr. Podolsky"?
 A. Yes.

Q. Did he faint when you handed it to him?
 A. No, he did not faint.

HIS LORDSHIP: Q. Do you still hold any of this stock for him?
 A. Yes.

MR. TILLEY: Q. In Carling Breweries?
 A. In Carling E.B.&M. stock.

Q. Why did you give him a dividend on Carling Breweries stock if he has not got Carling Breweries stock?
 A. I told you he bought in the beginning 1000 shares preferred; later he told me to change the preferred stock into common stock and reserve him 3000 shares of \$5. par value, which makes \$15,000., and I figured that on the dividend which Carling Breweries paid of \$2. a share Mr. Podolsky was entitled to \$2. on the \$3000., but at that time I could not give him more than \$4500. as dividend.

Q. Why not? A. Because I could not give it to him; the bank took away from us \$125,000.

Q. Why was he entitled to a dividend on any stock except the Carling? A. The Carling E.B.&M. stock was kept in trust.

Q. It was not to be split up? A. No.

Q. But he could have the Breweries stock. Did you propose to give him Breweries stock? A. I did not propose anything.

Q. Are you going to give him Breweries stock or have you decided yet? A. No.

10 Q. You are not going to give him that? A. If I decide, I will give it to him.

Q. You do not know what you will do yet? A. No.

Q. Until you see him? A. Yes.

Q. You got \$15,000 and that was paid to you personally? A. Yes.

Q. And you say he has got \$4500, from you, but there is not a scratch of a pen on paper except signing a cheque for \$15,000? A. Yes.

Q. And he does not know this litigation is on? A. Yes; I told him a year ago.

20 Q. I thought when you were examined for discovery you said he did not know anything about it? A. By a year ago I mean before the examination.

Q. You were examined in 1933? A. Yes.

Q. You were examined twice, and I am referring to the second occasion. On your examination for discovery you were asked at the bottom of page 80, question 810—I hope all those questions were not put to you only—

“810. Q. Did he know you had sold out to the Breweries? A. Yes, “he knew.

“811. Q. Has he been after you for the money at all? A. No.

30 “812. Q. Does he know anything about this action? A. I don’t “think that he knows about this action.”

Those were your answers on February 14, 1933? A. I said a year ago.

Q. This is your evidence in February, 1933, in which you say: “I don’t think that he knows about this action”? A. I said that, but still I am under the impression that I told him.

Q. You would know better in February last whether you told him or not? A. Yes; but it is a year ago from February; but I think I told him.

Q. When? A. Before I was examined.

40 Q. Then why didn’t you say so when you were examined? A. I did not know, but I am sure I told him.

Q. A little nervous? A. Possibly.

Q. Possibly a little nervous? A. (No answer)

HIS LORDSHIP: Read the next question.

MR. TILLEY:—

“813. Q. You have never told him? A. I don’t think that I told him

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

“anything because I didn't see him. I don't think I saw him after the
“action.”?

A. After the action?

Q. Yes? A. But I said that before the action I told him.

Q. How could you tell him about the action? A. I knew that the
bank refused to pay.

Q. Pay what? A. To credit the account.

Q. Let us keep to Podolsky. Can you say now whether you told him
about the action, and when? A. I told him about a year ago, say three
months before I was examined; I am under the impression that I told him. 10

Q. You are under the impression that three months before last
February you told him about the action? A. Yes.

Q. But you are not sure? A. No, I am not sure.

Q. Then we will leave that at that. You spoke about your wife, and
I think she had a fifty per cent interest in your stock? A. Yes.

Q. I think you referred to something of the kind on your examina-
tion. Let us see if we can find that. At page 86, question 889:—

“889. Q. Now, you say your wife had an interest in some shares? A.
“Yes.

“890. Q. How did she get an interest? A. I got money from her. 20

“891. Q. When? A. In the beginning, 1923.

“892. Q. How much did she put up? A. Oh, I don't know. I can't
“tell you that, but I got over around \$50,000.

“893. Q. From her? A. Yes.”

Is that what you said before? A. Yes.

Q. You did not know where she got the money? A. I got the money
by cheque; she had her own money.

Q. Where did she get the money? A. She had her own money, and
before I always give her some money every month, and she was saving it.

Q. Then:—

“899. Q. Then how many shares did she get an interest in? A. Mr.
“Carson, I never divided the stock with her but I had a conversation
“with her that I will give her half of the preferred and the common,
“that she would be fifty-fifty interested, but I didn't make any paper
“and I told her to take a chance as I am taking a chance.” A. Yes.

Q. What was she taking a chance on? A. We did not make any
paper between ourselves.

Q. Again there is nothing at all between the two of you to show her
interest? A. No.

Q. Let us see what else you said about this matter. Let us go back 40
to when you were examined the first time on October 25, 1932, com-
mencing at the top of page 16:—

“136. Q. But up until nearly the end of 1928 you had the entire
“interest in the 16,666 shares of common? A. With my wife.

“137. Q. Well, she had one share and you had 16,666? A. She had
“one share on paper but she had an interest.

"138. Q. What interest did she have in your shares? A. Half.
 "139. Q. Why? A. Because I got money from her.
 "140. Q. How much did you get from her? A. I don't remember
 "at this time.

"MR. PORTER: You don't need to answer that anyway.

"141. Q. What is your answer? A. Well, I don't remember.

"142. Q. Was it \$10,000 or \$100,000.? A. It was more than
 "\$50,000.

"143. Q. Was it \$100,000? A. No.

10 "144. Q. Was it \$75,000? A. Around \$50,000.

"145. Q. And did she give you a cheque for that? A. I don't re-
 "member that."

Do you remember that now? A. I do not remember, but I think it was
 a cheque.

Q. You have said so, but you do not know, do you? A. I do not
 remember.

Q. Then:—

"146. Q. In what way did you get the money from her? A. What
 "do you mean in what way?

20 "147. Q. In what form did you get the money from your wife? A.
 "I don't remember—possibly by a cheque.

"148. Q. Did she have money of her own? A. She had, yes.

"MR. PORTER: You cannot go into what his wife had.

"MR. CARSON: I am not going to trial in the dark about that
 "stock certificate.

"MR. PORTER: He has told you approximately what the inter-
 "est was. He says it was paid to him in money and it was his wife's
 "money.

"MR. CARSON: I want to know all about it.

30 "149. Q. Where did your wife get the money she gave you?

MR. PORTER: You don't need to answer that.

"Ruling that question should be answered.

"Witness declines to answer on advice of Counsel.

"150. Q. Did you have a written agreement with your wife about
 "that money?

"MR. PORTER: In what way about that money?

"MR. CARSON: I don't know. I want to know whether there
 "was a written agreement between Mr. Leon and his wife about the
 "money she supplied.

40 "151. Q. What is your answer? A. No written agreement.

"152. Q. Is your wife alive today? A. Yes.

"153. Q. You live in Montreal and she is living in Montreal? A.
 "Yes.

"154. Q. What is your wife's name? A. Freda Leon.

"155. Q. What proportion of the 16,666 shares did she have an in-
 "terest in? A. I don't know.

Record.

*In the
 Supreme
 Court of
 Ontario.*

No. 11.
 Plaintiff's
 Evidence.
 Marco Leon,
 Cross-
 Examination.

—continued.

Record.
 In the
 Supreme
 Court of
 Ontario.
 —
 No. 11.
 Plaintiff's
 Evidence.
 Marco Leon,
 Cross-
 Examination.
 —continued.

"156. Q. Did she have it in whole or in part or less than half of it, or what? A. The book shows what she had.

"157. Q. The book doesn't show anything but a certificate for 16,666 shares, as far as you have told me? A. Yes.

"158. Q. Now, what interest did she have in the 16,666 shares? A. It wasn't divided.

"159. Q. And it was never divided? A. Never divided.

"160. Q. She just gave you the money to put into this Company? A. Yes.

"161. Q. And nothing was done about the shares? You have been shaking your head indicating your answer is 'no'? A. I say it was never divided.

"162. Q. And nothing was done about the shares? A. No.

"163. Q. And you never told her whether she had an interest in the shares or not?

"MR. PORTER: He doesn't need to give that. It is a communication between husband and wife.

"MR. CARSON: Is that the ground for that objection, that is is a communication between husband and wife?

"MR PORTER: That is what I said.

"Ruling that question should be answered.

"Witness declines to answer on advice of Counsel.

"164. Q. Was her interest in the shares at any time ever defined? A. What is that?

"165. Q. Was it at any time defined or declared or stated? A. No.

"166. Q. No one else had any interest in your common shares . . ." and so on.

That is the way you told it before, that what her interest was or was to be was never defined? A. Never divided.

Q. I am not saying "divided" but "defined"? A. No.

Q. There was no exact arrangement with her? A. No, no written arrangement.

Q. And no verbal arrangement? A. Yes, a verbal arrangement.

Q. What was the verbal arrangement? A. That the common stock and preferred stock which are in my name she will have half interest in.

Q. When? A. From the beginning.

Q. When were you to give it to her? A. I told her I can have better control myself by having the shares in my name and saving the tax for transferring.

Q. That is to say, you could have better control how? A. I had the shares in my name, and to have the tax which I had to pay, about 5 cents tax to the Federal Government coming to around \$2,000., I kept the stock in my name.

Q. Did you tell her it would give you better control to leave the stock in your name? A. No.

Q. That is what you said. Was that a little slip?

A. What I meant is to have the stock in my possession.

Q. You cannot have the stock in your possession, you can only have a certificate in your possession? A. Have the certificate in my possession.

Q. You have nothing at all from your wife about it. Your wife is alive, is she? A. Yes.

Q. And you have nothing in writing and you have never transferred it to her yet? A. No.

Q. Have you ever paid her any dividend on it? A. I never got it myself.

10 Q. So she has never been paid any interest or dividend? A. No.

Q. And you think there was a cheque, but you do not know, and that is all we have to check up that story with? A. I do not remember.

Q. And you have not looked to see,—or have you? A. Yes.

Q. Have you looked to see whether there was a cheque? A. Yes, I looked.

Q. When did you look? A. From the examination.

Q. After the examination? A. Yes.

Q. Did you bring the cheque A. I cannot find it because the Bank of Montreal lost the cheque.

20 Q. A cheque given? A. I can bring you a letter if you like.

Q. Oh, no.

HIS LORDSHIP: Q. Did you look in the bank's books to see if you could find any trace of it? A. Yes, and found two items: one cheque of \$50,000 to my name, but unfortunately the bank manager cannot find the cheque; in the book they found the \$50,000 issued to me.

MR. TILLEY: Q. You mean that he found \$50,000? A. In the ledger of M. Leon.

Q. From your wife's account? A. Yes.

Q. Deposited to your account? A. No, a cheque to me.

30 Q. What did you do with it? A. Put it in the Carling Company.

Q. So you got from your wife at that time \$50,000, an exact sum of money? A. Yes.

Q. On your examination you could not remember whether it was \$50,000 or not? A. No; but I found out later.

Q. You got \$50,000 to help you to get control of the Carling Company? A. No, \$50,000 to help me to get that stock.

Q. Now, tell me why in 1923 you would have to pay 5 cents per share to transfer it to your wife? A. Because I understand it had to be paid by tax.

40 Q. There was no transfer to you at that time. You only had one share in your name at that time and the rest were just endorsed certificates in blank? A. Yes.

Q. And they stayed that way until when? A. Until December, 1926.

Q. Is it not perfect nonsense for you to say that you told your wife: "I do not want to transfer it because I would have to pay 5 cents tax to

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Record.

*In the
Supreme
Court of
Ontario.*

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

transfer it from me to you"? It was not in your name, and it was just as cheap to transfer it to her as to you? A. I was under the impression that I had to pay 5 cents transfer tax.

Q. But you knew that all the company had were these endorsed certificates? All there was to show your title or any person's title were certificates endorsed in blank? A. Yes.

Q. And you had never separated them out between yourself and Low and Burns? A. Yes.

HIS LORDSHIP: Q. Were there a number of certificates? You bought stock from several people? A. Yes. 10

Q. And therefore you would have a considerable number of certificates? A. Yes.

Q. And those were endorsed in blank? A. What do you mean?

Q. Handed to you in a way that you could use them. The persons from whom you purchased endorsed them? A. Yes.

Q. And you could have given some of those to your wife to represent what she paid to you? A. I did not do nothing.

Q. But you could have done it? A. Possibly, but I did not know that.

Q. What business were you in before you started in the brewery 20 business? A. I was in the liquor business.

MR. TILLEY. Q. Turn up certificates 86 and 87 in Exhibit 28, the preferred shares? A. Here is 86.

Q. And then 87? A. Yes.

Q. Take, first, certificate 84 in your favour for all the shares, 7543? A. Yes.

Q. That document is dated 30th December, 1926? A. Yes.

Q. And that is the first time any certificate was issued to any person for those shares? A. Yes.

Q. And did you get it on that date? A. Yes, I got it on that date. 30

Q. And did you keep that certificate yourself until 1928? A. Yes.

Q. Was that the first time Mrs. Leon's name appears in the books?

A. That is Marco Leon.

Q. The next one is your wife? A. Yes.

Q. That is the first time? A. Yes.

Q. That certificate was not issued at all? A. No, it was cancelled; not one of those was issued.

Q. Neither one of those two was issued? A. Not one,

Q. You did not go through with that? A. No, it was a mistake.

Q. It is in the book, and she has not endorsed it and never had it? 40
A. No.

Q. And at that time you put six thousand shares in her name,—if it had gone through? A. It did not go through.

Q. Why put six thousand shares there? A. Because it was a mistake and was cancelled.

Q. Why not change it to three thousand shares or half? A. I asked my lawyer and he told me that it was illegal to transfer it.

Q. Who was your lawyer? A. Mr. Weinfield. He could not give me a reason, but said it was illegal for me to transfer to my wife or any person in my family.

Q. Any member of your family? A. Yes.

Q. Did he tell you why? A. No.

Q. So that the six thousand shares was a mistake? A. Yes.

10 were a mistake? A. Yes, the figures should have been half.

Q. I mean apart from not being able to do it at all legally the figures sign the certificate as secretary? A. Yes.

Q. Is the certificate in your writing? A. Yes.

Q. And your wife's name written by you? A. Yes.

Q. And your own name written by you, and yet you say it should not be six thousand but the half of— A. It was not of any use, it was a mistake.

Q. Are you accustomed to making mistakes of that kind? A. Especially now since the depression I have enough worries.

20 Q. You are worried to death? A. Yes.

Q. I thought people engaged in your business never worried at all, but you say they do, so much so that you make mistakes in writing out stock certificates, and give your wife a couple of thousand shares more than she was entitled to? A. (No answer)

Q. That is all you have to say about that. Now, you were speaking of another gentleman, your nephew Harry Leon. Where does he live? A. Windsor.

Q. What is his business? A. In the liquor export business.

30 I do not know how many years. Q. How long has he been in the business? A. For a long time;

Q. Prior to 1923? A. Yes, up until the export was closed.

Q. And connected with the Carling Company? A. No.

Q. On his own account? A. Yes.

Q. How old is he? A. Over 37.

Q. And in a big way in the export business? A. I do not know.

Q. You do not know? A. No, just doing business.

Q. And you do produce some letters about that transaction? A. Yes.

Q. Is that the first of them? A. That is the first one.

40 sor, Ontario" on the top? A. No, I do not know.

MR. TILLEY: The letter is as follows:—

"Windsor, Ont., June 25th, 1928.

"Dear Uncle:

"After considering our conversation in my last visit to Montreal
"I am quite willing to loan you from time to time any sum of money

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued

Record.
*In the
 Supreme
 Court of
 Ontario.*
 No. 11.
 Plaintiff's
 Evidence.
 Marco Leon,
 Cross-
 Examination.
 —continued.

“you may require and you will assign to me your 7543 preferred shares
 “of Carling E.B.&M. as collateral security which shares you’ll deliver
 “to me at your next trip to Windsor and I also find that I shall be
 “able to let you have amounts totalling the sum of \$70,000 at any
 “time within the next 8 or 9 months. At present I enclose cheque
 “for \$30,653.20 and it is of course understood that you are to pay me
 “interest at the rate of 7% per annum. I realize that you are present-
 “ly in need of money and assure you that I shall be only too glad
 “to give you any assistance I can. Uncle do you remember me tell- 10
 “ing you about Anna’s dancing, well she is going to be in a recital,
 “she seems to be doing very well. How is Auntie & Ella love from
 “us all.

(sgd) “Harry.”

That is a little affectionate touch at the end.
 The next letter reads:—

“Windsor, Ont. Dec 20, 1928

“Dear Uncle & Auntie

“Just a line to say hello and tell you how lovely our new home
 “is coming along. We got some very fine new furniture. I also
 “know you’d go for our dining room set in a big way, its so massive 20
 “and you always did like that class of stuff.

“Esther is very much pleased with it all and does Anna love her
 “new mother goose bedroom set don’t ask. I sure am glad I could
 “make them so happy. Business is getting on pretty well thank God
 “and everything is just great. I hope everything is getting along
 “fine with you.

“You certainly are pretty lucky getting a loan from the bank of
 “\$1,000,000 dollars. Everybody is talking about it here. I hope you
 “were just as successful in trying to get that second mortgage in
 “New York as I understood that is what you went there for. In 30
 “reference to the money I have advanced you I am enclosing a state-
 “ment in full to date which I hope you’ll find correct.

“June 25/28 by cheque	30,653.20
“August 15/28 ” cash	5,000.00
“September 5/28 by cash	8,000.00
“October 22/28 ” ”	6,500.00
“December 10/28 ” ”	4,700.00

54,853.20

“Nothing else at present, love to you all from us all.

(sgd) “Harry.”

40

Then on the back of the first letter of June 25, 1928, there is a list of

the same items headed: "From Harry" and you have added two more or three more:—

"January 14—1929 3000.00 cash
 "February 7—1929 4200.00 cash
 "March 25—1929 5400.00 cash,"

and those items totalled with the others make the sum of \$67,453.20.

Record.
 In the
 Supreme
 Court of
 Ontario.
 —
 No. 11.
 Plaintiff's
 Evidence.
 Marco Leon,
 Cross-
 Examination.
 —continued.

—EXHIBIT NO. 31:

- (a) Letter dated June 25, 1928, from Harry Leon to Marco Leon.
- (b) Letter dated December 20, 1928, (two sheets) from Harry Leon to Marco Leon.

10

HIS LORDSHIP: Whose writing is that?

MR. TILLEY: Q. That on the back is your writing, I assume?

A. Yes.

Q. Again all that you have for documentary proof is the proof afforded by these letters in connection with a transaction with regard to \$30,653.20 which I assume would appear in your account, for which he says he is sending you a cheque. Why were you getting that cheque? A. I needed it for buying hard liquors for export.

20 A. Q. I thought you said you were not in the hard liquor business? I?

Q. I thought you said you did not have anything to do with exporting hard liquors? A. I was buying from Montreal, from Quebec.

Q. Hard liquors? A. Yes, to be shipped.

Q. To where? A. To Windsor.

Q. So that there would be cheques going through from Windsor to you for hard liquor? A. Yes.

Q. For the Low, Leon and Burns account? A. Yes.

30 Q. Was this a Low, Leon and Burns transaction? A. No; it was personal, because part of the money was for the hard liquors and part of the money I used to cover the expenditure on the Dominion Square Building.

Q. A part of that went into hard liquors? A. Yes.

Q. Was that for Low, Leon and Burns? A. Yes.

Q. And were you buying liquor in Quebec and shipping it up? A. Yes.

Q. Are you still in that business? A. No.

Q. When did you stop it? A. 1930, the moment the Canadian government stopped exportation.

Q. When was that? A. 1930, June, I think.

40 Q. You say you have not been exporting since? A. Yes.

Q. At least, there is nothing going through the Customs since? A.

No.

Q. There would be a little difficulty in having it go through the Customs now? A. Yes.

Record.
*In the
 Supreme
 Court of
 Ontario.*
 No. 11.
 Plaintiff's
 Evidence.
 Marco Leon,
 Cross-
 Examination.
 —continued.

Q. Why were you getting money from this nephew of yours, because this might be for some of his own business purposes except for the reference to it in this letter. What have we to show what you did with the money,—anything? A. What can I show?

Q. Yes? A. I can show items of money that I advanced on Dominion Square, which is a personal affair.

Q. How much? A. Over \$140,000 more than my partners each contributed.

Q. What do you mean? A. I mean I advanced \$140,000 more than my associates put up. 10

Q. How much did they put up? A. Less \$140,000.

Q. How much did the whole of you put up? A. Over \$1,000,000.

Q. And you put up more than they by \$140,000? A. Yes.

Q. But how do these letters trace that money into the Dominion Square Building? A. I have my own items showing how the money was expended.

Q. Were you hard up at the time? A. Naturally, I was over-expanded.

Q. That is a bad state to get into? A. (No answer)

Q. Here is your account in the bank at Montreal, and the first item 20 is dated June 5, 1928. Let us see how you stood at that time. I do not know how far you would like to go back to start.

HIS LORDSHIP: Is that the Dominion Bank?

MR. TILLEY: Yes.

Q. Let us take the month of May, 1928. Speaking generally through May the credit balance was \$37,000? A. Yes.

Q. On May 9 it got up to \$44,000 odd? A. Yes.

Q. And it ran along about \$40,000 until the end of the month when it was \$65,000? A. Yes.

Q. And every day along there there was a large balance, about \$68,- 30 000, and then on the 7th June it was \$67,000 odd and on the 13th June about the same and on the 14th June about the same, keeping along rather steadily, and on June 20 it was \$91,728., and on June 25 it was \$78,700 and on June 29 \$163,900 odd and on June 30 \$164,000 odd, and then it ran about \$163,000 for some time and on July 3 there are cheques for \$11,000, \$100,000 and \$174,000 issued, which brings it down to \$17,556, and then you put in on the three days afterwards enough money to bring it up to \$97,000? A. Yes.

Q. And by July 13 it is down to \$46,000 odd, and so on That does not indicate to a lawyer that you were very hard up at that time? A. I 40 was hard up, because you have to look where the money went; I was preparing my accounts to start to pay out.

Q. Why did you want to get from your nephew some seven per cent money? A. Because I was short of money; I knew what I have to pay.

Q. You are satisfied that this statement correctly shows your account? A. Yes, but let me go farther down and take the balance in

September, 1928 and later on October 8, when it amounted to \$5,311.85.

Q. That is not ruinous, is it? A. Mr. Tilley, with my financial responsibilities even \$20,000 was not sufficient.

Q. Mr. Leon, I am suggesting to you that—I do not know what your \$30,000 cheque represents—it is rather ridiculous to say you were getting some seven per cent money from your nephew? A. (No answer)

Q. You seem to be looking for something? A. I am.

Q. For the \$30,000? A. Yes.

10 Q. It was on the 25th June. I am not saying that \$30,000 or any other sum of money would not pass between your nephew up in Windsor and you, because both of you were in the Export liquor business, but I am putting it to you that I am rather suspicious of letters written between you as to why the payment is made. I do not know what may be behind it? A. I observe here \$1,500,000.

Q. That is the loan from the Dominion Bank that went through your account? A. It means that this money was going out that was not really my money.

20 Q. That \$1,500,000 is a loan which went through your account and was checked out at once,—\$11,000, \$100,000, \$174,000—you commenced checking it out at once? A. Yes.

Q. I am not saying that money did not go through? A. In July—

HIS LORDSHIP: Q. Mr. Leon, what did that large credit in that account have to do with this \$30,000 which you say you got from your nephew? A. (No answer)

MR. TILLEY: Q. You see, the bank advanced \$1,500,000 at one time, and I am assuming that that is the item? A. Yes.

Q. It went through your account? A. Yes.

30 Q. And your account still remained in a nice condition? A. At the same time I knew certain payments were to be made, and I needed the money, and I was getting prepared in advance to pay what I owed, because in October, three months later, I have only \$5,000, and later on I have nothing.

Q. Was that letter really written on the date it is dated? A. Yes.

Q. It seems to strike me as a rather peculiar letter, but all we have is that you produce the letter. You do not happen to have the envelope, do you? A. You never find in my house any envelopes.

Q. And you were in Windsor every once in a while? A. Yes.

40 Q. And yet he writes you this letter to tell you he is going to let you have any money you want and he is rather sorry you are so hard up. Did you ever pay him any interest on that loan? A. Yes, I gave him a note for \$1900. or something like that.

Q. You gave him what? A. A note.

Q. When? A. Two years ago.

Q. Your own note? A. Yes.

Q. Payable to him? A. Yes.

Q. For how much? A. About \$1900.

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Record.

In the
Supreme
Court of
Ontario.No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

- Q. Why? A. Because he asked me for some money.
- Q. Did you pay the note? A. No; he discounted the note, but it is not yet paid completely.
- Q. Did the note come due? A. Yes, and the bank renewed it.
- Q. Are you keeping it renewed? A. Yes.
- Q. What bank? A. The Provincial Bank of Canada at Windsor.
- Q. And you gave him a note for \$1900. Did you make the note or did you endorse it? A. I signed the note; I made the note myself.
- Q. Did you endorse it? A. Yes.
- Q. To him? A. Yes. 10
- Q. And you have kept on renewing it? A. Yes.
- Q. And there is nothing in writing between you and your nephew?
- A. No.
- Q. And it was a loan? A. No, it was payment on account.
- Q. But the money was loaned to you? A. Yes.
- Q. And he was to get the stock? A. Yes.
- Q. Why did not he get it? A. He got it.
- Q. What did he get? A. The preferred stock.
- Q. When? A. One month after he sent down the cheque. 20
- Q. Is it preferred or common? A. Preferred.
- Q. What is the number of the certificate? A. No. 84.
- Q. That is the certificate to you? A. 7543 shares.
- Q. That is the certificate to you? A. It was cancelled.
- HIS LORDSHIP: Q. That was yours before? A. (No answer)
- MR. TILLEY: Yes.
- WITNESS: Here is the original certificate turned in, and the certificate was issued to him on February 9, 1931.
- MR. TILLEY: Q. That is when he got the stock? A. The new stock, the new shares.
- Q. What new shares? A. One month after I received the cheque 30
I endorsed my original stock certificate No. 84 and gave it to him in his hand.
- Q. Did you get a receipt for it? A. No.
- Q. And it stayed in that position until 1931. A. Yes.
- Q. And you have nothing at all of a documentary character to show that you did that? A. Except what the letter says.
- Q. The letter does not say you sent him the stock? A. I have no letter.
- Q. At the time you transferred that stock to him in 1931 the Carling Company had not anything at all? A. The Carling E.B.&M.? 40
- Q. Yes. A. What do you mean by saying they did not have anything?
- Q. They did not have any assets? A. They had bonds amounting to \$320,000 in the Dominion Bank.
- Q. Anything else it had? A. No. Pardon me, 1931?
- Q. Yes? A. No, it did not have anything else then.

Q. So that in 1931 you gave him a stock certificate, if this record is correct, and I am not saying that it is, in a company that had not any assets except what it might get as the result of this litigation? A. Yes.

Q. Where were the rest of the assets? A. The Dominion Bank took the 60,000 shares and sold them.

Q. The 60,000 shares that were hypothecated were sold? A. Yes.

Q. That was gone? A. Yes.

Q. Where were the bills receivable, had they collected them? A. Mr. Burns knows that.

10 Q. At any rate, that was the condition of the company? A. Yes.

—EXHIBIT NO. 32: Statement of joint account of Marco or Freda Leon in The Dominion Bank, Montreal (16 sheets).

—Witness stood aside.

—Whereupon the court adjourned at 12.55 o'clock p.m. until 2.10 o'clock p.m.

—Upon resuming at 2.10 o'clock p.m.

MARCO LEON Resumed the Stand.

CROSS-EXAMINATION CONTINUED BY MR. TILLEY:

20 Q. I want to ask you a word or two about the 12th July, 1929, the day when you signed the document with regard to the \$400,000. You remember that? A. Would you be so kind as to talk a little louder?

Q. I want to ask you a few questions about the 12th July, the day the document was signed at the bank. You say the document was ready for you to sign when you came? A. Yes.

Q. Did you sign any other documents that day? A. Two documents.

Q. What were they? A. In the Dominion Bank office.

30 Q. What documents were the two? A. One was a hypothecation of all our real estate to the Dominion Bank, and one was referring to the \$320,000 which was left in the bank.

Q. So that you signed the hypothecation of the real estate at the same time? A. Yes.

Q. Was Mr. Springsteen your solicitor? A. I do not know if he was our solicitor at that time.

Q. To what firm did he belong? A. McTague, Clarke & Racine.

Q. Were they your solicitors? A. They were the company's solicitors.

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Record.

*In the
Supreme
Court of
Ontario.*No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Q. Did they act for you personally, too? A. No.

Q. Just the company? A. Yes.

Q. Did they act for Low, Leon and Burns? A. Yes.

Q. Then they acted for the company and for Low, Leon and Burns as a partnership? A. Yes.

Q. But not personally or individually for you? A. No.

Q. And Mr. Springsteen would be there as a member of that firm?

A. Yes.

Q. And you say he was not there on the 12th July? A. He was not there.

Q. You are quite positive about that? A. I am positive.

Q. Is that one of the documents you signed that day, a mortgage of real estate dated the 20th June, 1929? A. No, not this one.

Q. This one was not? A. No.

MR. TILLEY: Are there others?

Q. To what are you pointing? A. Mrs. Leon did not sign in Toronto.

Q. But was it signed by Harry Low and Marco Leon on the 12th July? That is the important thing? A. Not this document.

Q. Why not? A. Because it was not this document.

Q. How can you tell it was not that document? A. Because Mr. Springsteen was not there.

HIS LORDSHIP: Q. Is your signature on the document which is now being shown to you by Mr. Tilley? A. Yes, it is my signature.

MR. TILLEY: Q. But you say you did not sign it on that date? A. No.

Q. Because Mr. Springsteen was not there? A. No.

Q. Turn over the next page and you will see that Mr. Springsteen makes an affidavit that he saw you sign it, and it is sworn to on that date, the 12th July, before Mr. Milliken? A. The 12th June.

Q. Look at it? A. There is nothing to show that it was signed on the 12th July. That was not signed there in the Dominion Bank on the 12th July. If the date is changed, it is not my fault.

Q. No, I would not blame it on you. Then the other document is an affidavit by some person in Montreal that he saw your wife sign, and that is sworn on the 20th July, also having been changed from June? A. Maybe Mrs. Leon has signed it then.

Q. That is a week after the 12th July? A. That was not the document on the 12th July in the Dominion Bank.

Q. When did you sign this document? A. I do not know when.

Q. Where did you sign it? A. I do not know where.

Q. The only thing you know is that you did not sign it on the 12th? A. No.

Q. And you know that because Mr. Springsteen was not there on the 12th? A. He was not there.

HIS LORDSHIP: Q. Do you know if you signed at any time or

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times more than one copy of that document? A. I know I signed two documents, but not this one. I cannot hear you.

Q. You say you know you signed two documents like that which Mr. Tilley has before him now? A. (No answer)

MR. TILLEY: Q. Did you sign two like that? A. No, not two like that.

Q. You signed no document like that on the 12th July? A. No.

HIS LORDSHIP: Q. When do you think you signed this particular document? A. It seems to me that I signed it on the 20th June.

10 Q. Why do you say that? A. Because there is the date on there.

—EXHIBIT NO. 33: Mortgage dated 20th June, 1929, from Harry Low, et al. to The Dominion Bank, re Windsor property.

Q. Is this the mortgage of the property at Windsor? The first parcel is on Goyeau Street and Wyandotte. That is Windsor property? A. Yes.

Q. The second parcel is on Dewar Terrace. Do you know where that is? A. No; it is in Windsor.

20 Q. The third parcel also in Windsor. Apparently they are all in Windsor. I have not checked every one, but there are some different parcels of real estate? A. Yes.

Q. In Windsor? A. Yes.

Q. It looks as if you had some rather important transactions in Windsor real estate? A. Yes.

Q. I thought this morning you did not know much about it? A. I do not know; I did not see some of the property; Mr. Low is the man who bought them.

Q. Did you sign a mortgage of the Toronto properties at the same time? A. I do not remember.

30 Q. I would like you to remember something? A. I know I do not remember that I signed more.

Q. Here is another document hypothecating the Toronto real estate? A. Yes.

Q. And again you have an affidavit of execution before Mr. Milliken by Mr. Springsteen on the 12th July? A. They were not signed on that day.

Q. You could not have signed them on that day because Mr. Springsteen was not there? A. How many documents are there?

40 Q. Do not cross-examine me? A. You showed me three documents, it seems to me.

Q. I have shown you two? A. Together with the letter we signed as to the \$320,000 that makes three documents, and I never signed them; I know I signed two and never signed three.

Q. I am suggesting that you signed a copy of each of these and a

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

Record.

*In the
Supreme
Court of
Ontario.*No. 11.
Plaintiff's
Evidence.
Marco Leon,
Cross-
Examination.

—continued.

copy of the hypothecation and a separate document that you did not return? A. I never had any papers in my possession.

Q. Probably Mr. Burns had? A. I am going to explain one point: Maybe I did not know anything about the business done in the brewery or in London, but I know that Mr. Springsteen was not there on the 12th July, 1929.

HIS LORDSHIP: Q. Do not get excited about it. You should not make that statement, because you have already sworn you did know something about the business. Do not become confused. Take your time? A. (No answer) 10

MR. TILLEY: Q. That is as you remember it? A. (No answer)

HIS LORDSHIP: Does he admit his signature to that document (Exhibit 34)?

MR. TILLEY: Q. Is this your signature? A. Yes, but I say it is changed from June to July without my signature after the date is changed.

HIS LORDSHIP: Q. All you are asked at the present moment is: Is that your signature to that document? A. Yes, it is my signature.

MR. TILLEY: Q. Do not get so worked up. This is not a directors' meeting of the Carling Export Company? A. (No answer) 20

—EXHIBIT NO. 34: Mortgage dated June 20, 1929, from Harry Low, et al. to The Dominion Bank re Toronto property.

Q. I have forgotten just how much you said you and Burns and Low took out of the Carling Export Company when the sale took place to the new company The Breweries Limited? A. I said we took maybe \$600,000, \$700,000 or \$800,000.

Q. That is for division amongst yourselves? A. Yes.

Q. That is, first you got 60,000 shares of stock in the new company for the Carling Export Company? A. Yes. 30

Q. And then you had cash, but you cannot say how much cash? A. I do not know exactly.

Q. You do not know whether it was \$2,000,000 or \$1,500,000. A. No.

Q. But you know that after paying off the company's liabilities you had \$600,000, \$700,000 or \$800,000 for yourselves? A. Yes.

Q. And did that include the three sums of \$100,000 each or was that in addition to the three sums of \$100,000 each? A. I do not know that.

Q. Whether the three sums of \$100,000 each were included you do not know? A. No, I do not remember. 40

RE-EXAMINATION BY MR. ROBERTSON:

Record.

*In the
Supreme
Court of
Ontario.*No. 11.
Plaintiff's
Evidence.
Marco Leon,
Re-
Examination.

Q. I produce to you a cheque. Does your name appear on the back of it? A. Yes.

Q. What is this cheque? A. That was a cheque signed by Harry Leon for \$30,653.20, part of the money advanced by Leon to me as a loan.

Q. Then this cheque was put where by you? A. It went through the Dominion Bank, Montreal, my account.

Q. On what date? A. June 29, 1928.

10 MR. ROBERTSON: I will ask your Lordship if you will look at Exhibit 32 and see if that deposit appears on that date.

HIS LORDSHIP: June when?

MR. ROBERTSON: June 29.

HIS LORDSHIP: Give me the particulars of that cheque?

MR. ROBERTSON: The cheque is dated June 25, 1928, for \$30,653.-
20. It is the cheque of Border Cities Exporters Co., payable to one T. J. Haley and endorsed by Haley per H. Leon, and the endorsement guaranteed by the makers of the cheque, and then it is endorsed by Marco Leon and has the bank's stamp on that endorsement and then stamped: "Do-
20 minion Bank, Montreal. Received June 29, 1928; cleared June 30, 1928," and stamped on the face: "Paid at Windsor July 3rd, 1928." It is a cheque on the Dominion Bank at Windsor.

—EXHIBIT NO. 35: The Dominion Bank cheque No. 115 dated Windsor, Ontario, June 25, 1928 drawn by Border Cities Exporters Company in favour of one T. J. Haley or order for the sum of \$30,653.20; endorsed by T. J. Haley per H. Leon in trust, and by Marco Leon.

30 Q. Now, on the same date, June 29, 1928, the date that cheque was received by the bank, there is shown a deposit in this account (Exhibit 32) to your credit of \$85,653.20? A. Yes.

Q. What do you say about that? A. I say I deposited it.

Q. Deposited what? A. The money, \$85,000 odd.

Q. Is there any connection between the deposit and the cheque?

A. It is very possible that the \$30,653.20 is included in the deposit of \$85,653.20.

RE CROSS-EXAMINATION BY MR. TILLEY:

40 Q. When you spoke of the \$600,000, \$700,000 or \$800,000, you are not sure whether that included the \$300,000 or did not include it? A. Which \$300,000?

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Re-Cross-
Examination.

Record.

In the
Supreme
Court of
Ontario.No. 11.
Plaintiff's
Evidence.
Marco Leon,
Re-Cross-
Examination.

—continued.

Q. That is the three \$100,000 cheques which were given to you? A. No, I am not sure.

Q. That is left in doubt, but the balance of it other than the three cheques of \$100,000 or possibly some other, a good bit of it, was kept for Low, Leon and Burns and put into real estate? A. Yes.

Q. You do not know whether that would be \$500,000, \$600,000, \$700,000 or \$800,000, but a good bit of what you got out of the Carling Company was put into real estate? A. No, Low, Leon and Burns got some money which we thought belonged to us, giving to the shareholders 60,000 shares of Carling Breweries plus \$420,000 which was deposited in the bank, and we thought that that money with the stock was sufficient for the shareholders, and we drawed money for ourselves and put that money in our own account. 10

Q. I just want to make clear exactly what you are saying: You got, when you sold the company out, cash and shares in the new company? A. Yes.

Q. You thought the shares in the new company were sufficient to represent the capital stock? A. Together with the money deposited in the bank in the guarantee for the Government.

Q. That money would depend on whether you had any lawsuit or not? A. But at that time that money belonged to the Carling Company. 20

Q. You assumed that the 60,000 shares and whatever interest you had in the \$300,000 would be sufficient to make the capital one hundred cents on the dollar for the shareholders of the Carling Export Company? A. Yes.

Q. And that left you for yourselves over \$600,000 or \$700,000 and possibly more, depending on whether the three \$100,000 cheques are included or not that you thought was velvet for yourselves? A. Yes.

Q. And that money you put into real estate? A. No. That money we put into our own account and took some money from Low, Leon and Burns' account, sold some bonds that Low, Leon and Burns had, and some money that we had of our own, and put it in the real estate business. 30

Q. The money got into the real estate business? A. Our own money, not the Carling E.B.&M.

Q. The money that you got out of the cash paid by the Breweries Company to the Carling Export, the money that came to you three individually, you put into real estate? A. We put into our own accounts.

Q. You first put it into your own accounts? A. Yes.

HIS LORDSHIP: Q. Out of what account did you pay for the real estate? A. From Low, Leon and Burns, Windsor, Ontario, from Marco Leon, London branch and Montreal branch. 40

Q. Did you pay it out of the accounts in which you put that \$600,000 or \$700,000? A. I got my share in my own account.

Q. I know you say you did. Did you pay for the real estate out of the accounts where you put the \$600,000 or \$700,000? A. (No answer)

MR. TILLEY: Q. Mr. Leon, if you will follow me for a moment, we have got it to the point where you had certain cash and 60,000 shares of stock? A. Yes.

Q. And you say you intended to leave 60,000 shares of stock in the old company to represent its capital with whatever interest it had in the \$300,000? A. Yes.

Q. Then you had the cash out of which you had to pay the liabilities and you had a balance? A. Yes.

10 A. Q. And you three men regarded that balance as being your own? A. Yes.

Q. And that balance was \$500,000, \$600,000, \$700,000 or \$800,000 and possibly three sums of \$100,000 in addition? A. Yes.

Q. And that money you took from the Carling Company and put into these special accounts or Low, Leon and Burns' account—we have \$1,000,000 that went into a special account on July 14, 1927 (Exhibit 25); that would be \$1,000,000 you got from that sale? A. Yes.

Q. And put into this special account called "Carling Export Brewing & Malting Company account"? A. Yes.

20 Q. That \$1,000,000 would be part of the cash? A. Yes.

Q. And you had to disburse certain things? A. Yes.

Q. And ultimately all that was saved of the cash after paying the liabilities you people treated as your own? A. Yes.

Q. And that money, when you got it, you put through your own accounts and used it with other monies of your own to buy real estate? A. I see from this statement we took out from the Carling Export Brewing & Malting Company different amounts to our own personal and private accounts.

Q. That is for the three \$100,000 cheques? A. Yes.

30 Q. But in addition to that in some way or other the balance of the money not needed to pay off liabilities you three persons, thinking it was your own and that you were entitled to it, took and put into your accounts? A. Yes.

Q. And used it with other monies of your own to buy the real estate? A. Yes.

Q. And the real estate would be the Montreal real estate? A. Montreal, Windsor and Toronto.

Q. Windsor had been bought some time before? A. We bought after that, bought in Toronto after that.

40 Q. The big purchase was in Montreal in July, 1928? A. We bought—

Q. Please do not be stupid about it. Just answer the question, in July, 1928, the real estate you were then buying at that time was Montreal real estate? A. Yes.

Record.

In the
Supreme
Court of
Ontario.

No. 11.
Plaintiff's
Evidence.
Marco Leon,
Re-Cross-
Examination.

—continued.

Record.

*In the
Supreme
Court of
Ontario.*No. 11.
Plaintiff's
Evidence.
Marco Leon,
Re-
Examination.

FURTHER-EXAMINED BY. MR. ROBERTSON:

Q. Referring to the account Mr. Tilley was just showing you, Exhibit 25, I see on the 13th October, 1927, a debit of \$415,000 marked "Doherty-Easson"? A. Yes.

Q. What is that for? A. To buy bonds to deposit with the Dominion Bank as collateral security for the trial that the Canadian Government had against Carling E.B.&M.

Q. You have told my friend that you and Mr. Burns and Mr. Low drew monies from this account as shown here and used it for your own purposes? A. Yes. 10

Q. Will you explain why you considered that you were entitled to that money? A. When Carling E.B.&M. sold to the Carling Breweries Carling E.B.&M. got 60,000 shares and an amount of money. From this money was deposited in the bank \$415,000, so we figured that by leaving 60,000 shares of Carling Breweries for the shareholders of Carling E.B.&M. and \$415,000 deposited in the bank there was sufficient money down there for the shareholders, and that Low, Leon and Burns were entitled to the cash money which remained.

Q. You are not answering the question at all.

MR. TILLEY: Yes, he is. 20

MR. ROBERTSON: Q. My question is, on what ground did you think that Low, Leon and Burns were entitled? Were you any party to the transaction, to the sale?

MR. TILLEY: Please. I think the question is objectionable.

HIS LORDSHIP: Let him tell it in his own way.

MR. ROBERTSON: Q. On what ground were you and Burns and Low entitled to draw the money that you say you did draw? We know you did it, and I want to know why you did it? A. Because we thought we were entitled to it.

Q. On what ground? A. (No answer) 30

HIS LORDSHIP: Q. Why did you think you were entitled to it?

A. Because we had the contract with Doherty, Roadhouse & Company by which we were tied up for five years that we were not going to do business with any other brewery in Ontario; in other words, for five years we could not go into the brewing business even if it was our job.

MR. TILLEY: May we have the agreement?

MR. ROBERTSON: I am going to ask about it.

MR. TILLEY: The witness has referred to an agreement.

MR. ROBERTSON: I am going to ask about it.

MR. TILLEY: That is one of the documents we were refused. 40

MR. ROBERTSON: I do not know anything about it.

Q. Was there an agreement in writing covering the matter you are speaking about? A. Yes.

HIS LORDSHIP: Q. With Doherty, Roadhouse & Company was there an agreement in writing? A. Yes.

MR. ROBERTSON: Q. Do you know where that agreement is?

A. I think Mr. Burns has it.

Q. Who is Mr. Burns? A. The president of the Carling Company.

MR. TILLEY: It is the agreement where you sold out the old company to the new company? A. Yes.

MR. TILLEY: We have asked for it and were told it had nothing to do with our case, and production was refused.

MR. ROBERTSON: I do not know anything about it.

HIS LORDSHIP: There is an answer given to you, Mr. Robertson, which you thought important and which brings in that document. The witness has made his answer and has involved this document in it.

MR. ROBERTSON: It was not until my friend got up for a second re-examination that the matter was mentioned.

HIS LORDSHIP: Evidently he is depending on the document and therefore it should be produced.

MR. ROBERTSON: I am still of the opinion that it is very remote to the question here. That document is not available here, Mr. Burns says.

HIS LORDSHIP: Then if it is not, it cannot be produced today.

20 Q. Mr. Leon, looking at those two letters that passed between you and your nephew (Exhibit 31), I see in one of them there is an enumeration of monies said to be advanced to you, one of them being this cheque of \$30,000 odd? A. Yes.

Q. Then the letter says there are four items on various dates respectively in cash. How did you come to get cash and not cheques in those cases? A. I probably was in Windsor and my nephew gave me cash or he was in Montreal and brought me cash.

Q. Your nephew gave it to you in cash either in Windsor or Montreal, is that right? A. Yes.

30 Q. You did not deposit those sums? A. I do not know. Maybe some were deposited.

Q. I cannot identify those sums in your bank account if you think you deposited them in the Montreal branch of the Dominion Bank. I do not see anything specifically identifying them with the sums. Do you know what you did with them? A. I cannot hear you?

Q. Do you know what you did with these sums of cash. Did you deposit them any place? A. I do not remember; maybe I deposited some of the amounts and maybe with some amounts I bought merchandise. The books show.

40 Q. The books do not show any deposit of these sums or any sum of which they might be a part at or near the dates? A. I bought liquors. If you buy liquors in the province of Quebec you cannot give cheques; the Liquor Commission does not take cheques; we have to pay cash. All the goods bought from the Liquor Commission had to be paid in cash, not by cheque.

—Witness withdrew.

Record.
In the
Supreme
Court of
Ontario.
—
No. 11.
Plaintiff's
Evidence.
Marco Leon,
Re-
Examination.
—concluded.

JACK ESAR, Sworn.

Record.

In the
Supreme
Court of
Ontario.No. 12.
Plaintiff's
Evidence.
Jack Esar,
Examination.

EXAMINED BY MR. ROBERTSON:

Q. Where do you live? A. Montreal.

Q. Are you at the present time a shareholder of the Export Brewing & Malting Company? A. Yes.

Q. Do you hold any shares? A. Yes.

Q. How did you come to be interested in the shares of that company? A. Mr. Leon asked me for a loan.

Q. When? A. In 1928.

Q. Yes? A. And I made a loan to him and as security he has given me shares. 10

Q. What kind of shares? A. Of the Carling E.B.&M.

Q. Preferred or common? A. Common.

Q. Were the shares in your name? A. No, in Mr. Leon's.

Q. What were you given? A. I do not understand.

Q. What did you get? You did not have any shares in your own name. What did you have? A. He gave me his shares, gave me security of shares of the Carling E.B.&M.

HIS LORDSHIP: Q. In what form did he give them to you? A. 20
He endorsed some shares that I believe were made out in his own name and gave it to me as collateral security.

MR. ROBERTSON: Q. Was there any document relating to the matter? A. Yes.

Q. What is this I show you? A. That is the arrangement.

Q. I beg your pardon? A. That is the document.

Q. Signed by who? A. By Mr. Leon and myself.

Q. Dated November 29, 1928, at Montreal, and addressed to Jack Esar. That is you? A. Yes.

MR. ROBERTSON: This document reads:—

"Montreal, Nov. 29th, 1928. 30

"Mr. Jack Esar:

"Dear Sir:

"Referring to our understanding, it is agreed that I will deposit
"with you 16,666 common shares of Carling E.B.&M. Co. Limited,
"endorsed by me, as security for loans that you agree to make to me
"from time to time, to a total sum of not more than \$65,000.00 inter-
"est on loan to be paid to you at the rate of 6 percent per annum,
"figured on the different amounts loaned to me, and for the actual
"time of loans. 40"It is also agreed that should I not repay to you the full amount
"that you may have loaned to me, plus interest, within two years from
"date, then I agree to instruct the company to issue to you, in your

"own name, common stock for the unpaid balance plus interest, valuing the common stock at a price agreeable to both of us.

"Yours truly,
(sgd) "MARCO LEON.

"Accepted
"(sgd) Jack Esar."

Record.
In the
Supreme
Court of
Ontario.
—
No. 12.
Plaintiff's
Evidence.
Jack Esar,
Examination.
—continued.

On back of 36:—

"From J. Esar

10

"November 29—1928	\$15,000.00
"December 10—1928	\$20,000.00
"January 23—1929	\$12,000.00
"March 17—1929	\$15,000.00
	<hr/>
	\$62,000.00"

—EXHIBIT NO. 36: Letter dated November 29, 1928, from Marco Leon to Jack Esar.

Q. Then I show you Exhibit 29, which is the Certificate Book for the Common Shares, and the stub of Certificate 101. Is that your signature? A. Yes.

20 Q. And you have signed a receipt for certificate No. 101, and that stub has on it the date February 4, 1931? A. Yes.

Q. Did you get the certificate? A. Yes.

Q. And you have it still, have you? A. Yes.

Q. How about the date? A. Somewhere around that time.

Q. Around February 4, 1931? A. Yes, perhaps a little later; I do not know.

Q. And that is said to be in exchange for certificate No. 88.

HIS LORDSHIP: Q. Have you the certificate now? A. Yes (produces certificate).

HIS LORDSHIP: Put it in as Exhibit No. 37.

30 —EXHIBIT NO. 37: Carling Export Brewing & Malting Company Limited certificate No. 101 for 16,000 fully paid up common shares, dated February 4, 1931.

MR. ROBERTSON: Q. And certificate No. 88 is returned and pasted in the book? A. Yes.

Q. Now, Mr. Esar, so much for the certificates. Did you make any loan or loans to Mr. Leon? A. Yes, sir.

Q. Upon this security? A. Yes.

Q. What did you do in that way, what loans did you make? A. Different items, of \$62,000.

40 Q. \$62,000 in different items? A. Yes.

Record.

In the
Supreme
Court of
Ontario.No. 12.
Plaintiff's
Evidence.
Jack Esar,
Examination.

—concluded.

Q. I see on the back of Exhibit No. 36 are certain items? A. Yes.
MR. ROBERTSON: Exhibit 36 is the hypothecation document, my
Lord.

Q. The first is: "November 29, 1928, \$15,000"? A. Yes.

Q. And then follow three other items, the last of them being dated
March 17, 1929. What do you say with reference to those items? A.
I gave that to Mr. Leon.

Q. And has it been repaid? A. No.

CROSS-EXAMINATION BY MR. TILLEY:

Q. Are these items on the back of Exhibit 36 written by you? A. 10
By Mr. Leon.

Q. How do you know? A. I was with him and gave it to him,
gave him the money.

Q. Do you mean to say that this was written on it at different
times? A. Yes.

Q. Written on at different times? A. Yes.

Q. It was not all written at one and the same time? A. No.

Q. Did you keep the document? A. This one Mr. Leon kept, I
presume. I never had this one.

Q. You never had Exhibit 36? A. No; I have a copy. 20

Q. Let me see your copy? A. (Witness produced copy)

HIS LORDSHIP: Signed or unsigned?

MR. TILLEY: Signed.

MR. ROBERTSON: It is not a copy, it is a duplicate.

MR. TILLEY: He calls it a "copy." On the back of it is writ-
ten:—

"Received from Mr. Jack Esar

"November 29, 1928, fifteen thousand (\$15,000) Marco Leon

"December 10, 1928, twenty thousand (\$20,000) Marco Leon

"January 23, 1929, twelve thousand (\$12,000) Marco Leon 30

"March 17, 1929, fifteen thousand (\$15,000) Marco Leon

—————
\$62,000."

MR. TILLEY: That will be Exhibit 38.

—EXHIBIT NO. 38: Duplicate of Exhibit 36 with memorandum on
back.

Q. Was that document in your possession? A. Yes.

Q. That document has always been in your possession? A. Yes.

Q. Did you get anything else from him,—a promissory note? A. I
just received the stock.

Q. You just received the stock. Tell me what stock you received? 40

A. 16,666 shares of the Carling E.B.&M.

Q. When did you get it? A. In 1928.

Q. What time? A. About the time that we have mentioned, according to this letter.

Q. What time was that? A. I believe it was in November.

Q. How soon did you get the stock after you say you signed this letter or he signed it? A. A few days later, I believe.

Q. Was it preferred stock or common stock? A. Common stock.

10 Q. Now find me the certificate you had in Exhibit 29? A. (Witness examined Exhibit 29) There is one attached.

Q. Have you seen it since? A. No.

Q. How do you know there is one attached? A. (No answer)

Q. Why do you say there is one attached? A. I do not remember.

Q. Why do you say there would be one attached? A. I am not sure; I think there was one attached.

Q. Attached to what? A. To the stub; I am not sure.

Q. Did you see the book before? A. Yes.

Q. When? A. Do you mean this book (Exhibit 29)?

20 Q. Yes? A. I cannot remember exactly; Mr. Leon gave me the shares.

Q. We are on the question of when you saw this book before. Can you answer that? A. I think when we changed the shares.

Q. Where did you see it? A. I do not remember exactly, I do not remember.

Q. But you did see it? A. At a meeting of the Carling E.B.&M.

Q. When? A. Two years ago.

Q. 1931? A. Yes.

Q. After you got the certificate? A. After I got the certificate.

30 Q. What were you doing there? A. I was included as a director.

Q. That will be interesting. Let us see the book. What business are you in? A. Liquor business.

Q. Export liquor business. A. Yes.

Q. Where do you live? A. Montreal.

Q. Where do you export to? A. We did some export through Windsor to Detroit several years ago.

Q. Connected with Mr. Leon? A. Sometimes I would buy some liquor for him.

4) Q. And sometimes he would buy some for you? A. I could not say that he bought some for me. I used to buy some liquor for Mr. Leon from the Liquor Commission.

Q. What does that mean, that you go and get delivery of it and take his cash? A. He would give me cash and I would get the liquor from the Liquor Commission.

Q. And deliver it to him where? A. He would load it up in carloads.

Record.
 In the
 Supreme
 Court of
 Ontario.
 No. 12.
 Plaintiff's
 Evidence.
 Jack Esar,
 Cross-
 Examination.
 —continued.

- Q. To send it where? A. Send it to Windsor for export.
- Q. Is that the business you were in? A. Yes.
- Q. Were you exporting yourself? A. Yes.
- Q. Did you have some deals when the two of you exported on your joint account? A. No.
- Q. Never any joint deals at all? A. No.
- Q. Were you in with his nephew? A. No.
- Q. Do you know him? A. Yes.
- Q. But you never were in any deals with him? A. No.
- Q. What is the date of the meeting you were at? A. June or 10 July, 1931.
- HIS LORDSHIP: Of what company does he say he is a director?
- MR. TILLEY: The plaintiff company, the Carling Company, my Lord.
- Q. Is this the meeting, 17th June, 1931? A. Yes.
- Q. Is that the time you got your stock certificate? A. Before that.
- Q. Did not you get it when you went to that meeting? A. I believe I had the other one before.
- Q. But you got this one (Exhibit 37) when you went to this meeting? A. Before the meeting. 20
- Q. How long before? A. I believe about two or three months.
- Q. Two or three months before June, 1931. Are you sure it was before? Was it as much as a week before? A. I think it was in February or March I got that certificate.
- Q. What did you do with it then? A. I held it.
- Q. Did you borrow money on it? A. No.
- Q. Did you put it in any bank? A. No; I kept it in my own safe.
- Q. Why did you endorse it? A. No reason.
- Q. Why, if there was no reason? A. Because it belonged to me. 30
- Q. Why endorse it? I would suggest that it belonged to Mr. Leon, and you endorsed it and gave it back to him? A. (No answer)
- Q. Why did you endorse it? A. I believe I was holding that, and why should I not endorse it?
- Q. What is the point of endorsing it? A. There is no special reason.
- Q. At any rate, the first meeting you attended was in June, 1931, and I suppose at that time you knew the trouble that was on at the Dominion Bank? A. I presume, yes.
- Q. Did you or did you not? A. Yes. 40
- Q. You knew that for months before? A. Yes.
- Q. How many months before? A. I believe a few months before.
- Q. Before you got the certificate? A. Before I got the certificate.
- Q. You say you had a certificate before that for 16,000 common shares, and you say it is attached. I presume you have seen it here? A. I have had it.

Q. And you have seen it attached to some stub? A. I think so, because I signed something.

Q. This is the common shareholders' book, and there is Certificate No. 88. Is that the one you had? A. I believe so.

Q. Is it the one? A. Yes, 16,666 shares.

Q. And was that signed by Marco Leon? A. (No answer)

Q. Was it endorsed by Marco Leon? A. Yes.

Q. You know what it means to have a certificate endorsed? A. Yes.

10 Q. I do not suppose you can show any receipt you gave for this certificate at the time? A. No.

Q. You cannot show any receipt you gave for it and all we have to go on is that you have these two documents you produce, and you say you had that certificate endorsed by Mr. Leon for a time and then at a later date you were given Exhibit 37 and you endorsed it as soon as you got it? A. Yes.

Q. Where did you get it? A. Mr. Leon brought it to me I guess.

Q. He what? A. He brought it by himself to my house.

Q. In Montreal? A. Yes.

20 Q. Personally? A. Yes.

Q. I suggest to you that he brought it to you personally and you endorsed it and he took it away. What do you say to that? A. No, sir.

Q. You endorsed it when he was there? A. I held it.

Q. But you endorsed it as soon as you got it? A. Yes.

Q. While Mr. Leon was there? A. I could not say.

Q. You cannot say whether you endorsed it while he was there or not? A. No; but I held it in my safe.

Q. Where was your safe? A. In my house.

30 Q. Did you ever get any interest on the loan? A. Yes.

Q. When? A. In the last five months, different items.

Q. Which five months? A. He gave me some money in March of this year.

Q. How much did he give you this year? A. Altogether, \$800.

Q. Is that all you have ever got? A. That is all.

Q. And that is interest on your loan? A. Yes.

Q. This certificate, you say, you held as collateral? A. Yes.

Q. But it is a loan between you and him? A. Yes.

Q. So from the date when this loan was first made in 1928 you got no interest on it until about five years later, 1933? A. Yes.

40 Q. Did you ask him for interest? A. Yes, he did not have it.

Q. But he started to pay you interest lately? A. Yes.

Q. Has he promised you some more? A. Yes.

Q. What has he promised you? A. As soon as he can get some money he will pay me.

Q. It is nice to have a definite date like that fixed. A. (No answer)

Record.
*In the
 Supreme
 Court of
 Ontario.*
 No. 12.
 Plaintiff's
 Evidence.
 Jack Esar,
 Cross-
 Examination.
 --continued.

Q. How many shares were put in your name by the new certificate? A. 1600.

Q. 1600? A. 16,000, pardon me.

Q. Why did you change the number? A. Mr. Leon told me if I would not give him some shares he would not have any voting power, and therefore I let him have 666 shares and I took the 16,000 shares.

Q. Which company was it you had stock in? A. The Carling E.B. & M.

Q. What does that mean? A. Carling Export Brewing & Malting Company Limited. 10

Q. Have you any stock in the Distilleries Company? A. No.

Q. None at all? A. No.

HIS LORDSHIP: Q. What do you say the name of the company was? A. I know they call it the Carling E.B.&M.; it is the Carling Export Brewing & Malting Company, Limited.

MR. TILLEY. Q. Did you have any business relations with Mr. Burns? A. No.

Q. Do not you people go into little joint ventures together once in a while? A. No.

Q. What about Mr. Low? A. No. 20

Q. You do not do any business with him? A. No.

HIS LORDSHIP: Q. Can you give me the dates, or any of the dates that you bought liquor for Leon and shipped it to him? A. I cannot remember the dates now.

Q. Approximately? A. In 1923, 1924.

Q. Not later than that? A. And I believe in 1926 and 1927.

Q. What about the later years? A. I do not think I did any business with him lately, that is until 1930. Perhaps we bought in 1927—no, I do not think he was shipping it at that time.

Q. Did you buy any in 1928? A. No. 30

Q. 1929? A. No; but I believe he bought some.

Q. I am talking about his buying from you? A. No.

Q. You did not sell him any in 1928 or 1929? A. No.

Q. How often did you ask for interest? A. Once in a while.

Q. At what intervals, approximately? A. I used to meet him quite often.

Q. That does not answer the question. About how often did you ask him for interest in those five years that he owed you money? A. Once in five or six months.

Q. Once in what? A. Five or six months. 40

Q. And his answer was what? A. That he was tied up and as soon as he gets some he will let me have it.

Q. Would you be surprised to know that his bank account in the Dominion Bank at Montreal during all this time showed a very substantial balance? A. I never checked up his bank account.

Q. Did you believe he was so hard up that he could not pay you interest? A. I do not know.

Q. I am asking what your belief was? A. I cannot say.

Q. How did you pay him these sums, in cash or cheque? A. In cash.

Q. Have you the cheques with you? A. Yes (Witness produces four cheques): There is one cheque here I had drawn out a few days before when he asked me for money, and he left town for a couple of days and I gave it to him on his return.

10 Q. You produce four cheques purporting to be signed by you for the respective amounts appearing on the back of Exhibit 36, all drawn by you payable to cash and endorsed only by you. How do you connect Leon with them? A. All our business was generally done in cash; we used to receive cash money often.

HIS LORDSHIP: Put those cheques in.

—EXHIBIT NO. 39: Four cheques drawn upon The Provincial Bank of Canada to Cash each signed and endorsed "J. Esar":

20 November 29, 19—, \$15,000
December 10, 1928 \$20,000
January 23, 1929, \$12,000
March 13, 1929 \$20,000

MR. TILLEY: I do not know whether your Lordship's question to the witness included this:

Q. Whether you bought any liquor from Leon, or whether he bought liquor from you in 1928 and 1929? A. No.

HIS LORDSHIP: That is the question I asked. Do you want it both ways?

30 Q. Were there purchases one way or the other between you and Leon? A. Not in 1928, and I do not believe in 1927 either.

HIS LORDSHIP: I asked him if he had sold Leon any liquor.

Q. You say no? A. No.

—Witness withdrew.

No. 13.

JOSEPH HYMAN MAGID, Sworn.

EXAMINED BY MR. ROBERTSON:

Q. Where do you live? A. Montreal.

Q. What is your business? A. Merchant.

Record.

In the
Supreme
Court of
Ontario.

No. 13.
Plaintiff's
Evidence.
Jack Esar,
Cross-
Examination.
—concluded.

No. 13.
Plaintiff's
Evidence.
J. H. Magid,
Examination.

Record.

In the
Supreme
Court of
Ontario.No. 13.
Plaintiff's
Evidence.
J. H. Magid
Examination.

—continued.

Q. Have you at any time been interested in the shares of the Carling Export Brewing & Malting Company, Limited? A. Yes, sir.

Q. What did you have to do with shares of that company, and when? A. First in 1929 I received a block of stock as collateral against some monies that were due to me.

Q. From whom? A. Mr. Burns.

Q. Mr. Charles Burns? A. Yes.

Q. How many shares and what kind of shares? A. Both preferred and common shares.

Q. How many preferred? A. Roughly about 16,000 of common and 10 7500 of preferred.

Q. Were those shares put in your name at that time? A. No, just endorsed in blank.

Q. What was endorsed in blank? A. The two certificates were.

Q. Was anything done about that subsequently? A. Yes. These were at my request changed to my own name.

Q. When was that done? A. 1931.

Q. I show you Exhibit 29, the Certificate Book for the common shares, and Certificate stub No. 99 for 16,000 shares, showing the issue to you of the certificate under the name of J. H. Magid under date January 20 6, 1931. Is this your signature at the foot of that stub? A. Yes.

Q. When did you get the certificate? A. Just about that date.

Q. That stub says "Replacing certificate No. 87" which is here and was issued to Charles Burns on the 30th December, 1926, for 16,666 shares? A. That is correct.

HIS LORDSHIP: Q. Is that the common certificate? A. Yes.

MR. ROBERTSON: Q. Then let us look at the preferred certificate book Exhibit 28: The stub is here for certificate No. 95. Is that your signature at the foot of the stub? A. Yes.

Q. For 7543 shares The date on the stub is January 6, 1931, and this 30 certificate replaces certificate No. 83. Certificate No. 83 is here for the same number of shares issued to Charles H. Burns on the 30th December, 1926. Was there any document in writing relating to the transaction under which you, first of all, received the certificates in Burns' name? A. Yes.

Q. A document in writing? A. Yes.

MR. ROBERTSON: Have you got that document?

MR. PORTER: Yes.

MR. ROBERTSON: Q. My friend Mr. Porter hands me this document. Is that the first of the series? A. That is correct.

Q. This is a letter dated January 23, 1929, from Charles Burns to 40 you? A. Yes.

Q. I see you both signed. You have signed it on one side? A. As an acceptance.

Q. It is on the letter-head of Pure Food Stores Limited. Were you connected with that? A. I was general manager of the company.

MR. ROBERTSON: This letter reads:—

"Jan. 23rd 1929.

Record.

In the
Supreme
Court of
Ontario.No. 13.
Plaintiff's
Evidence.
J. H. Magid.
Examination.

—continued.

"Mr. J. H. Magid,
"c/o Pure Food Stores, Limited,
"Montreal.

"Dear Joe:

"This will confirm our understanding reached today in regard to
"my joining you and your group, in your stock market and invest-
"ment operations.

10 "It is understood that I am taking over fifty percent (50%) of
"your holdings, as per statement attached, and that I will participate
"in all future profits of losses on your operations, to the extent of
"fifty (50%) per cent.

"I will leave it entirely to you to buy or sell such securities as
"you may see fit, from time to time. It is understood that this arrange-
"ment holds good until mutually cancelled, and that in the event of
"the desire on the part of either yourself or myself to cancell such
"arrangement, one months notice must be given to the other party.

20 "As agreed I hand you herewith the following securities as col-
"lateral against my share of the holdings;

"Certificate No. 83, in name of Charles H. Burns, for 7543 Pre-
"ferred Shares in Carling Export Brewing and Malting Company,
"Limited.

"Certificate No. 87, in name of Charles Burns, for 16,666 shares
"Common stock, in Carling Export, Brewing and Malting Co. Lim-
"ited.

30 "I agree that in the event of the operations showing a loss I will
"pay you in cash or equivalent my share of such loss when called
"upon, and if I fail to do so, you are to have the right to use the
"above shares, in such manner as you may see fit, so as to protect the
"interests of the holdings, as they may appear, but not without pre-
"viously giving me notice to that effect.

"I have endorsed these certificates in Blank, as requested.

Yours truly,
(sgd) "Chas. Burns.

"(sgd) J. H. Magid."

Attached is a slip dated January 23, 1929, on the paper of Pure Food
Stores, Limited, reading:—

"Montreal, Jan. 23, 1929.

"Mr. C. Burns.

40 "List of Securities held by J. H. Magid, with MacDougal and
Cowans, as at this date.

Record.
 In the
 Supreme
 Court of
 Ontario.
 —
 No. 13.
 Plaintiff's
 Evidence.
 J. H. Magid.
 Examination.
 —continued.

“2000 shares International Nickel value per share, \$71.50	143,000.00
200 shares National Steel Car value \$134.00 per share	26,800.00
	<hr/>
	\$169,800.00

“J. H. Magid. (sgd) “Chas. Burns.”

Q. And that is signed by both you and Burns? A. Yes.

Q. Has this letter anything to do with the transaction? A. Yes.

Q. Who is “Joe”? A. That is me.

Q. And “Shoyl”? A. Mr. Burns.

Q. That is for “Charles”? A. Yes.

MR. ROBERTSON: This letter reads:—

“May 13th, 1929.

“Dear Shoyl:

“Just a few lines to let you know that I am working actively on
 “the Consolidated stock and expect by the end of the month to have
 “picked up between seven and eight thousand shares.

“I believe they will not cost me on the average more than about
 “\$8.50 to \$9.00 a share, which I think is good value.

“If we don't clean up on this boy, we never will.

“DJA' watch the market yesterday? Talk about action, that's real
 “action for you, what say?

“Everything here is coming along fine. How is Bennie? I hope he
 “is feeling better.

“Mother and Sara send their best regards. Max was here for some
 “time and gave me a report of your doing. Congrats, and best of luck.

“Sincerely,
 (sgd) “Joe.”

Q. Was that about some market transaction you were having? A. Yes.

Q. What had Burns to do with this? A. This was for our own account.

Q. This joint account referred to in the other letter? A. Yes.

HIS LORDSHIP: Are these letters part of the same sequence?

MR. ROBERTSON: Yes, my Lord.

Q. Then this is a letter from you to Mr. Burns? A. Yes.

MR. ROBERTSON: This letter reads:

“Jan. 3, 1931.

“Mr. Chas. Burns,
 “835 Richmond St.,
 “London, Ont.

“Dear Shoyl:

“I am sending you herewith copy of letter I sent to Mr. Leon this
 “afternoon.

"As already advised you, I was hoping against hope, all these months, that it may not be necessary to touch this collateral, but what with all these pressing matters reaching an acute stage, I had no alternative but to try and adjust matters as best I can with these shares.

"I have a promise from two friends of a substantial advance on these shares, for a period of about two years. I am hopeful that it will be long before that things will take a turn, and come back to normal, and perhaps we will be able to liquidate and regain some of the losses.

10

"With kindest regards, and best wishes, I am,
(sgd) "Joe."

The attached copy of letter to Mr. Leon is addressed to Mr. Leon on the same date:-

"Jan. 3rd, 1931.

"Mr. M. Leon, Sec. Treas.
"Carling E.B.&M. Ltd.,
"2174 Sherbrooke St. West,
"Apt. 11, Montreal.

20

"Dear Mr. Leon:

"This will confirm our telephone conversation of this day, in regard to transferring of shares held by me in your Company.

"I am sending you herewith the following certificates;

"Certificate No. 83, 7543 shares, preferred, in name of Charles H. Burns.

"Certificate No. 87, 16,666 shares, common, in name of Charles Burns.

"Both of these certificates are endorsed by Mr. Burns in blank.

"Will you kindly issue new certificates, as follows:

30

"In name of J. H. Magid, 7543 Preferred shares.

"In name of J. H. Magid, 16,000 common shares.

"In name of Charles Burns, 666 common shares.

"Please complete these certificates in due legal form and forward them to me promptly care P.O. Box 30, Station B., Montreal.

"Thanking you for your kind attention to this matter, I am.

"Yours very truly,"

Q. Here is another letter which Mr. Porter hands me. Is that a letter from you to Mr. Burns? A. Yes.

MR. ROBERTSON: This letter reads:

40

"Dec. 27th, 1930.

"Dear Shoyl:

"I was extremely sorry that you were unable to give me some time, when you were here this week.

"I phoned you at Freda's several times, and left word for you to

Record.

In the
Supreme
Court of
Ontario.

No. 13.
Plaintiff's
Evidence.
J. H. Magid.
Examination.

—continued.

Record.
 In the
 Supreme
 Court of
 Ontario.
 —
 No. 13.
 Plaintiff's
 Evidence.
 J. H. Magid.
 Examination.
 —continued.

"call me, but I didn't hear from you at all.

"I really want to impress upon that the fact that things with me here have reached a very critical stage, and unless I can do something within the next few days, (not later than Saturday next, in any case) I am going to be in an awful predicament.

"Surely you have some way of raising enough funds to take care of me now. Even a part payment will, I feel, sure stave off, for the time being, any undesirable action and with a few months breathing spell, something may turn, either in your finances or in mine, to help me get things definitely arranged. 10

"In any event, you know how I feel about the matter. I have hoping against hope all this time, that I will be able to arrange things myself, but nothing has materialized and I have no one left, but yourself, to fall back on.

"I hate to use those shares, as much as you hate me to do it, but unless you can see your way clear to do something in time, I'll have no other course left.

"Please wire me, or phone me immediately upon receipt of this letter, as I am at my wits ends to know what to do. I am sending you this letter by special delivery, so you can get it quicker. 20

"Yours,

(sgd) "Joe.

"P.S. And with all my troubles, had afternoon tea with your Arthur today . . . The boy is doing well in school and looks fine. Regards from everybody home.

(initialled) "M."

- EXHIBIT NO. 40: (a) Letter dated January 23, 1929, from Charles Burns to J. H. Magid, with list of securities held by J. H. Magid attached.
- (b) Letter dated May 13, 1929, from J. H. Magid to Charles Burns. 30
- (c) Letter dated December 27, 1930, from J. H. Magid to Charles Burns.
- (d) Letter dated January 3, 1931, from J. H. Magid to Charles Burns.
- (e) Copy of list of certificates from Direct Sales Corporation Limited, Dominion Square Building, Montreal, to Mr. M. Leon, Secretary-Treasurer Carling E.B.&M. Limited.

MR. ROBERTSON: Q. Now, in connection with the market transactions that your arrangement with Mr. Burns related to, were there losses or gains in the result? A. Losses. 40

Q. Were they substantial? A. Yes.

Q. Did Mr. Burns take care of his end of the losses? A. To a very small extent only.

Q. I beg your pardon? A. Only to a very small extent, approximately \$10,000.

Q. Is that what he took care of, or did not take care of? A. That is what he took care off.

Q. How much did he not take care of? A. The total losses were around \$140,000 and his share was about \$70,000 or \$75,000.

Q. Has that ever been made up to you? A. No, sir, except through
10 the transfer of the certificates.

CROSS-EXAMINATION BY MR. TILLEY:

Q. You are not the secretary of the company? A. Yes.

Q. The minute book shows you got some stock in your name and then you became the secretary? A. Yes.

Q. And you knew, did you, that the 60,000 shares of Breweries stock that had been owned by the company was sold, it having been put up as collateral? A. I did not.

Q. When did you learn that? A. I learned it subsequently to my joining the company.

Q. That is, subsequently to your getting the certificate in 1931? A.
20 In 1929.

Q. Is that what you call joining the company? A. That is the first time I had an interest in the company.

Q. I just want to define terms. I am not particular about a word you use, if you like to use the expression "joining the company" when you get a certificate endorsed in blank. That is what you mean by joining the company? A. (No answer)

Q. You are nodding? A. The answer is Yes.

Q. How soon after this date that you joined the company did you
30 know that the shares of the Breweries Limited had been sold? A. I could not tell you exactly how soon; it was some time between January, 1929 and January, 1931.

Q. Why do you say January, 1931? Why do you fix that date? A. Because that was the date when I insist that the certificates be transferred over to me in my name.

Q. And that is a period of two years. Was it nearer to January, 1929, or January, 1931? A. I would say it would be nearer to January, 1931.

Q. So that you knew that had been done. You knew that the \$400,000 of bonds or the proceeds were standing in the bank as security first for
40 the government claim, if any, that might be established? A. Yes.

Q. And you knew that might exhaust the whole sum of money?
A. There was a possibility, but it was not probable.

Q. Why do you say not probable? A. We had a good lawyer.

Q. Don't be smart. There was a judgment of the Supreme Court to

Record.

In the
Supreme
Court of
Ontario.

No. 13.
Plaintiff's
Evidence.
J. H. Magid.
Examination.

—concluded.

No. 13.
Plaintiff's
Evidence.
J. H. Magid.
Cross-
Examination.

Record.
 In the
 Supreme
 Court of
 Ontario.
 No. 13.
 Plaintiff's
 Evidence.
 J. H. Magid.
 Cross-
 Examination.
 —continued.

that effect? A. I am not being smart. I am giving you my answer.

Q. There was a judgment of the Supreme Court to that effect? A. Correct; and upon the expert advice of our attorneys the company had reason to believe that that judgment would eventually be in favour of the company, so that those funds would be released.

HIS LORDSHIP: Q. After the Privy Council judgment? A. No, before; and before Mr. Tilley was engaged.

MR. TILLEY: Q. How long before? A. A year or two years.

Q. Any value in that asset depended on the result of the lawsuit? A. Which asset? 10

Q. The \$400,000 of bonds or proceeds standing in the bank? A. Correct.

Q. So that in 1931 the situation was that the Privy Council still had the matter under consideration, or had it given judgment? A. As of what date?

Q. The date you got your certificate? A. My first certificate in the name of Mr. Burns?

Q. In the name of Mr. Magid? A. Yes, the Privy Council had already given its verdict.

Q. How long before? A. I could not say how long before. 20

Q. Then I assume that the stock was put in your name in view of this possible litigation? A. Correct.

Q. And you were made the secretary of the company for that reason? A. No; that is not the reason I was made the secretary of the company.

Q. So that when you got your stock in your own name and became a member of the company in that way the Privy Council had given its judgment? A. Yes.

Q. Have you got your certificate? A. I have.

Q. Has it been produced? A. No. 30

Q. Have you got it here? A. I have it, but I would not like to leave it here.

Q. Would you produce it, please? A. I will be glad to do that (produces two certificates).

Q. You produce certificates which you say you do not want to leave, so we will take the numbers: Certificate No. 95 for Preferred Stock and Certificate No. 99 for Common Stock? A. Yes.

Q. And they are dated January 6, 1931? A. Yes.

Q. They must have been issued to you some time after that date because the Privy Council Judgment was not issued until January 19, 1931? 40
 A. I do not know the exact date of the Privy Council judgment, but I know that January 6, or one day later I received the certificates.

Q. But you said it was after the Privy Council judgment came out?
 A. If I did, I was wrong.

Q. You could not be mistaken about a thing like that, could you?

A. Yes, I could; I was more familiar with the date of the certificate than I was with the date of the Privy Council judgment.

Q. As a matter of fact, it was February 19, 1931, even a month later? A. (No answer)

Q. This seems an odd sort of transaction that you put forward here. You were already dealing in these shares with MacDougal & Cowans?

A. Yes.

Q. Were other people besides you interested? A. Yes.

10 Q. And at the date of the first document, May 15, 1929, how many persons were interested in this account? A. Several

Q. How many? A. About three.

Q. January 1929 was the first; they are not here in order of date. Mr. Burns was to take over 50% of the holdings? A. Yes.

Q. Was he alone in that transaction or was he representing himself and Mr. Leon and Mr. Low? A. Absolutely alone; as far as I knew my dealings were with him alone.

20 Q. How do you work it out when he says: "I will take a half interest and participate to the extent of 50%"? Does that mean that if the stocks should go up from that time that he gets 50% of the increase? A. Of the profit.

Q. And if they go down he gets 50% of the loss? A. Yes.

Q. And from that time how did they go, up or down? A. Down.

Q. In January, 1929? A. They went up for a period and then consistently went down.

Q. They went up practically uniformly, did they not, until October, 1929, the beginning or middle of October, and the crash came on the 29th October? A. Since you mention the dates, yes; but you did not mention any dates in your first question. From that time on to this date they most decidedly went down.

30 Q. But for a time they went up? A. Yes, for a time they went up.

Q. So in, say, June, 1929, instead of having a liability to you, Mr Burns had the liability the other way, it was to him, because he was making money? A. I would not say Yes or No because I do not know as of what particular dates we made a profit or a loss.

Q. And it all depended upon the fluctuations of the stock market whether there would be a loss or profit? A. Yes.

Q. Then the two stock certificates were handed to you at this time, January, 1929, were they? A. Yes.

Q. They were in the name of Mr. Burns? A. Yes.

40 Q. What did you do with them? A. Kept them.

Q. Where? A. In the vault.

Q. Did you ever give a receipt for them? A. I think the receipt is in that letter, I am not sure; in one of the letters.

Q. Whatever is here is all there is in writing? A. Yes.

Q. There is no checking done by any person of your securities that

Record.

In the
Supreme
Court of
Ontario.

No. 13.
Plaintiff's
Evidence.
J. H. Magid,
Cross-
Examination.

—continued.

Record.
 In the
 Supreme
 Court of
 Ontario.
 No. 13.
 Plaintiff's
 Evidence.
 J. H. Magid.
 Cross-
 Examination.
 —continued.

would show by some independent person that these stock certificates were there? A. No; I did not have enough securities for that.

Q. Things were so rosy then that you did not care much about these things? A. You are right.

Q. Was it understood that you were not to have it transferred into your name? A. (No answer)

HIS LORDSHIP: On the books of the company?

MR. TILLEY: Yes.

Q. What do you say? A. There was no discussion about it at all.

Q. Were you at liberty to walk in and have them transferred? A. I 10
 imagine I would be; as I told you, we had no discussion, so I cannot say; but I imagine my rights would have been those if I had wanted to exercise them.

Q. Why did not you have them transferred? A. Because I was not particularly worried about it at that time; I had the bearer certificate endorsed in blank.

Q. And you say that you held that as collateral in your own box and that all these documents are all that came into existence in regard to it, is that right? A. Well, as far as I know, yes; I may have mentioned the item of monies in other letters; I do not know. 20

Q. When did you first make a demand on Mr. Burns for some money in connection with the account? A. Around October, 1929.

Q. What time of the month? A. I do not remember; just at the crash.

Q. Towards the end of the month? A. Yes.

Q. Because there was a sudden drop? A. Yes.

Q. Did you get any money? A. I think I got \$5,000 around November or December, I am not sure which.

Q. Then did you go on? A. I got nothing further that year.

Q. When did you get some more? A. Some time around within 30
 the next six months, I am not sure; I would have to look up my receipts for it.

Q. When did you first know that the bank had this security subject to the prior security in favour of the government? A. My knowledge never actually was as you have stated. I learned there was some trouble; I was not very familiar with the inside of the company, but I learned there was some trouble around December 1930.

Q. From whom did you learn that? A. Mr. Burns.

Q. What did you learn from him, that they were going to attack the 40
 bank? A. No; I learned that there was some litigation with the bank which might mean that the moneys would be tied up for a period of time, and as the result of that I would not be able to collect the money on the certificates.

Q. And was this the idea, that when you got these certificates the old Carling E.B.&M. had been sold? A. I believe so.

Q. And these certificates were to ensure what, that you would get

something out of the proceeds? A. I would not say exactly something out of the proceeds.

Q. The first thing in the minutes in regard to that litigation is a meeting of the 20th May, 1931, and we are told so far that that was the first intimation that there was any dispute about the bank's security.

MR. ROBERTSON: Who said that?

MR. TILLEY: Mr. MacAgy said it, and Mr. Leon said it, and I think they are the only two witnesses we have had.

MR. ROBERTSON: I do not think either one said it.

10 MR. TILLEY: Q. Did you hear any dispute before that date, May, 1931? A. What do you mean by "dispute"?

Q. That somebody was disputing the bank's security? A. Not in exactly the same way. I constantly kept demanding by money from Mr. Burns.

Q. Throughout what period? A. From October, 1929, until this date.

20 Q. You are still at it? A. Yes; and around December, 1930—I found it previously difficult to get together with him, but I got together with him and then he sprung the news on me that he could not get the money out of the bank. Up to then I was under the impression that he could get it.

Q. May we put it this way, that from the time you first wanted money, from October, 1929, on to December, 1930, you were saying in effect: Now, when are you going to get this closed up and get the money released and let me have some money? Is that it? A. Yes.

Q. Did he tell you there were bonds with the bank? A. He told me there was some security with the bank; he did not say bonds.

30 Q. And about December he said there was some difficulty about them? A. No; he said up to then that as soon as the Privy Council case was settled he would be able to lay his hands on the cash, and at that time he told me that even though the case might be settled in our favour he doubted very much that we could lay hands on the cash for some time.

Q. Why? A. At that time he did not give me his reasons.

Q. When did you get any further information than that? A. In regard to what?

Q. In regard to this fund or security? A. I would say this would be some time in 1931.

Q. What period in 1931? When did you get this certificate? A. The 6th January, 1931.

40 Q. Did you know about it when you got the certificate? A. Did I know what?

Q. Did you know there was going to be any dispute with the bank? A. No, but Mr. Burns warned me or told me at that time not to count on getting the money as soon as the case was settled, because there was able to be considerable delay.

Record.

In the
Supreme
Court of
Ontario.

No. 13.
Plaintiff's
Evidence.
J. H. Magid.
Cross-
Examination.

—continued.

Record.

In the
Supreme
Court of
Ontario.

No. 13.
Plaintiff's
Evidence.
J. H. Magid.
Cross-
Examination.

—concluded.

Q. When did you know it was turning into the form of litigation?
A. Around the summer of 1931.

Q. From whom did you learn it then? A. Mr. Burns.

Q. Down to that time you had not been told what the dispute was, or that there was litigation, but that there might be delay? A. Yes, that there might be delay.

Q. And all the time that you held the stock you knew it was merely a case of realizing the assets of Carling Export Brewing & Malting Company because that company had been sold? A. No, that was not the reason at all.

Q. But the company was being wound up, as you understood it?
A. Yes.

Q. Closed up? A. Yes.

Q. It had sold its business? A. Yes.

Q. And it had got certain shares and cash, and was adjusting its affairs, and money was coming out that Low, Leon and Burns would be entitled to, and you thought your share certificates protected you so that you would get what would be coming to Mr. Burns? A. That was an eventuality that might happen; originally the certificates were left with me as security, but at the same time Mr. Burns was still responsible to me for his other assets.

Q. According to your story you could collect from him personally?
A. Yes.

Q. But as to your security you knew the company in respect of which you held these shares was a company being wound up and distributing its assets? A. I was not very intimate with the details of the status of the company.

Q. But in a general way you knew that? A. In a general way I knew the securities were very valuable.

Q. You knew the company was successful? A. Yes; and that the scrip turned over to me was worth thousands of dollars.

Q. And you have had a little disappointment? A. Tremendously.

Q. Did you know that Low, Leon and Burns had taken out \$600,000, \$700,000 or \$800,000, with an additional \$300,000 for themselves? A. No.

Q. When did you first hear that? A. In court today.

Q. Quite a medium of educating you with regard to your securities?
A. Quite.

Q. You did not know that had happened? A. No.

Q. Did he tell you he was getting the money out for you? A. No.

Q. At any rate, they did not take care of you? A. It is not a question of "they", but Mr. Burns; he has not paid the money he owes me.

Q. He did not tell you until you came into court that the company was being wound up in that way? A. No.

—Witness withdrew.

DEFENCE

No. 14.

WILLIAM B. MILLIKEN, Sworn.

Record.

*In the
Supreme
Court of
Ontario.*No. 14.
Defendant's
Evidence.
W. B. Milliken,
Examination.

EXAMINED BY MR. TILLEY:

Q. You are a member of the firm of Mulock, Milliken & Company?

A. Yes.

Q. Solicitors for the Dominion Bank? A. Yes.

Q. Were you present on the 12th July when a certain security that we are concerned with here was taken? A. I was.

10 Q. Did you draw that document? A. I did.

Q. Was it drawn before the parties met or was it drawn after they met? A. Drawn that day, not before that day; after they had met, but before I got there.

Q. It was not drawn before you got there, I presume. You mean the meeting had taken place before you got there? A. Part of the meeting, at least.

Q. Did you meet the parties before you drew the document? A. Yes.

Q. Was it drawn in accordance with your instructions? A. Yes.

20 Q. Was any person there representing the company and Low, Leon and Burns? A. Mr. Springsteen of Windsor, I understood, represented them.

HIS LORDSHIP: Q. Was he there? A. He was there.

MR. TILLEY: Q. Did you meet him? A. I met with him in my office just below the head office of the bank where that document was prepared.

Q. Was he there at the time? A. Yes.

Q. Was the document satisfactory to him? A. I do not recollect any objection on his part.

30 Q. Was any objection made by any of the parties to the transaction? A. Not to my knowledge.

Q. Was any made in your presence? A. No.

Q. It is said here that Mr. Leon was presented with the papers, that they were read for him and that he signed and left in disgust. Did anything of that kind happen? A. I do not remember him leaving in disgust. He was there certainly, and signed the papers.

Q. Here are certain mortgages (Exhibits 33 and 34): Were they signed on that occasion? A. They were signed by three of them.

Q. On that occasion? A. On that occasion.

40 A. Completed by Mr. Springsteen and sworn before me.

Q. And the change from June to July initialled by you? A. Yes.

Record.
 In the
 Supreme
 Court of
 Ontario.
 —
 No. 14.
 Defendant's
 Evidence.
 W. B. Milliken,
 Examination.
 —concluded.

Q. Is that the usual way in which these things are done here? A. So far as I know; that is my usual way.

Q. That is your usual way, at any rate? A. Yes.

Q. Were those documents read before the meeting or were they prepared that day? A. They were read; they had been prepared by the bank's solicitors.

HIS LORDSHIP: Q. Speaking now of the mortgages? A. Yes; they had been prepared by the bank's solicitors in Windsor and; as I understood it, submitted to the solicitors for the company and Low, Leon and Burns there. 10

MR. TILLEY: Q. That is, the bank had solicitors in Windsor and had your firm in Toronto and solicitors in Montreal to look after certain transactions that took place down there with regard to the Dominion Square business? A. Yes.

HIS LORDSHIP: Q. How and when did the mortgages get down to your office? A. They were up in the library room in the bank, and I am not sure whether Mr. Springsteen swore those before me up in the library of the bank or in my office.

Q. When and how did they get to your possession? A. They were given to me that day from the head office of the bank building. 20

No. 14.
 Defendant's
 Evidence.
 W. B. Milliken,
 Cross-
 Examination.

CROSS-EXAMINATION BY MR. ROBERTSON:

Q. The mortgages that are spoken of, when did you see them first? A. Prior to that some time, during the month of June, I think.

Q. You said to my friend Mr. Tilley that you had understood that they had been to the solicitors for the company and Low, Leon and Burns. You had nothing to do with that, I suppose? A. Not personally.

Q. And you do not know anything about that? A. Except what was told to me by the solicitors for the bank.

Q. By who? A. By the bank officials and their solicitors.

Q. And the mortgages were drawn by solicitors in Windsor? A. 30 Yes.

Q. Their name is on them, I suppose? A. Yes, Messrs. Kenning, Cleary & Williams.

Q. And there were some mortgages on some Toronto property, were there not? A. Of these two documents produced to me now one covers Windsor property and one covers Toronto property.

Q. The one covering Toronto property was drawn where? A. In Windsor.

Q. Did your office have anything to do with the Toronto mortgage? A. We had to do with looking into the title and registering the Toronto 40 mortgage and reporting to the bank on the encumbrances.

Q. Were there any other papers there for these people to sign giving the bank security? A. There was a document hypothecating the interest

in money and assets held by the bank as security for the judgment of the Crown.

Q. But anything else from the parties themselves, from Low, Leon and Burns, any other document they were signing giving security in the name of Low, Leon and Burns or the individuals? A. Outside of the mortgages which were in duplicate and the hypothecation and a collateral agreement relating to the rights of the bank in connection with the bonds, there were no other documents for them to sign that I recollect.

10 Q. Have you looked up your docket to refresh your memory? A. Yes.

Q. Perhaps that did not tell you what documents there were? A. It would tell me enough to justify making the charge to the bank.

Q. If you drew the documents? A. No, I did not draw them; but there is an entry that I drew the hypothecation of the bonds.

Q. The document we are now disputing? A. Yes.

Q. Were you at the first part of the meeting they had? A. I got to town about noon; I think they had met before noon, but of that I am not positive.

Q. And you were called in by the bank? A. Yes.

20 Q. Do you recall where you met Mr. Springsteen? A. I met him first, I think, in the library of the bank.

Q. I want to suggest to you—I was not there, so do not think I am suggesting that I know—that your meeting with Mr. Springsteen was in your office? A. The first meeting? I would not say positively on that; certainly I met him that day, I think in both places, in my own office and in the bank library.

30 Q. And I call your attention to this, further, that Mr. Springsteen while signing as a witness to these mortgages does not sign as a witness to the hypothecation of the security we are disputing about? A. I believe that is so.

Q. Does that help you any? A. That was to be taken away by Mr. Burns to have the company's seal attached.

Q. We understand that; but it had the signatures on it, apparently, and I am suggesting to you that Mr. Springsteen, if in the library at all, was certainly not there very much, and that his attendance was largely with you in your office? A. He went away to fill some other engagements; I remember that; but he was in both places; I am sure of that.

Q. But at what particular time you cannot say? A. He was in the bank library when I was there, and that was in the afternoon.

40 Q. How long were you in the library? A. In the library alone I could not say exactly, but I was engaged in the whole thing a little over three hours.

Q. Oh, in the afternoon? A. Yes; I was up in Southampton and did not get down here until noon.

Q. Have you any recollection at all about Leon finally leaving the place? A. No.

Record.
In the
Supreme
Court of
Ontario.

No. 14.
Defendant's
Evidence.
W. B. Milliken,
Cross-
Examination.
—concluded.

Q. Possibly you were not there when the meeting broke up? A. I would not be sure about that.

Q. Is this not possible, Mr. Milliken, that the mortgages that Mr. Springsteen signed as a witness were signed at an earlier date, and he simply completed them by making the affidavit before you that day? A. Not according to my recollection, Mr. Robertson.

RE-EXAMINATION BY MR. TILLEY:

No. 14.
Defendant's
Evidence.
W. B. Milliken,
Re-
Examination.

Q. You were asked if you had looked at your records to refresh your memory. Do your records confirm your statement that Mr. Springsteen was there? A. Yes. 10

Q. They state that he was there? A. They state that I had a conference that day at which Mr. Springsteen was present, and others present were: Messrs. Low, Leon and Burns, Mr. MacAgy and Mr. Ashforth and, I think, Mr. Cowie of the bank; they were all present on that day.

HIS LORDSHIP: Q. Mr. Leon said yesterday, referring to what happened at the time the documents were signed, something to the effect that "We first refused to sign but at the last minute we were forced to sign." Does that bring anything to your recollection? A. Nothing definite; I know there was discussion, but not what its nature was.

Q. Did you sense anything in the nature of forcing them to sign? A. No, I did not sense that at all. 20

Q. Were you there at the end, at the last minute before the signing was done, if it was done, and if so, what do you say as to whether there was that sort of pressure applied? A. My recollection is vague on that; I do not recollect anything out of the ordinary; I know there had been discussions about their loan not having been met as it should have been, and that they should give security.

MR. TILLEY: That is all.

—Witness withdrew.

[HIS LORDSHIP: Have you any further evidence? 30

[MR. TILLEY: Yes, my Lord.

No. 15.
Defendant's
Evidence.
A. C. Ashforth,
Examination.

No. 15.

ALBERT CLIFFORD ASHFORTH, Sworn.

EXAMINED BY MR. TILLEY:

Q. Are you an official of the bank? A. I am a supervisor at the head office of the bank.

Q. Are you the Mr. Ashforth whose name has been mentioned as being present on the 12th July, 1929 at a conference? A. Yes.

Q. Tell us who were at the conference? A. The conference started in the library of the head office of the bank, and Mr. MacAgy, Mr. Low, Mr. Leon, Mr. Burns and Mr. Springsteen were present. The meeting commenced, as I recall, a little after eleven o'clock, and we were joined subsequently by Mr. Milliken. We adjourned for luncheon, and Mr. Milliken and Mr. Springsteen retired to Mr. Milliken's office. We reconvened at a little after two o'clock in the afternoon, and we were there perhaps until
10 about half past three or four o'clock. The mortgages were presented for signature in the morning and the hypothecation which was drawn up at the noon day session with Mr. Milliken and Mr. Springsteen (sic) were presented for signature in the afternoon, and they were signed by the three individuals at that time before they left. The document was taken away by Mr. Burns to be signed by the company and to attach the seal. He took it away and we received it back through our London office about ten days after the signing of the document on the 12th July.

Q. Was there any objection to signing it? A. None at all. As a matter of fact, I thought from Mr. Low's action that he was very agreeable at that time to give us any security that he could. The loan was
20 past the date when they had promised to pay, and he seemed quite agreeable at that time to secure the bank for the indebtedness, and there was no intimation that I could see in the three of them that they had any reluctance to sign.

Q. Leon says he objected and was practically forced to sign? A. Not in my presence, and I was there during the whole of the conversations.

Q. And that applies to the others? A. Yes; they seemed to be quite agreeable to having this document executed and placed with the bank.

30 CROSS-EXAMINATION BY MR. ROBERTSON:

Q. This little meeting was arranged at the request of the bank? A. They had agreed to give mortgage security to the bank—

Q. Perhaps you will answer the question? A. I could not say who called the meeting.

Q. You do not know? A. No.

Q. And was the meeting a surprise to you? A. No.

Q. Did you expect to see Low, Leon and Burns? A. Yes.

Q. Had you had anything to do with making any demands upon them prior to this? A. No; I took no part in the conversation.

40 Q. Prior to this? A. No.

Q. There was some conversation at the meeting? A. Yes.

Q. Was anything said on the part of the officials of the bank as to what would be done if their wishes were not met? A. No.

Record.

In the
Supreme
Court of
Ontario.

No. 15.
Defendant's
Evidence.
A. C. Ashforth,
Examination.

—concluded.

No. 15.
Defendant's
Evidence.
A. C. Ashforth
Cross-
Examination.

Record.
In the
Supreme
Court of
Ontario.

No. 15.
Defendant's
Evidence.
A. C. Ashforth,
Cross-
Examination.
--concluded.

Q. You do not agree with Mr. MacAgy? A. I do not recall Mr. MacAgy having made any threat.

Q. I did not say "threat"? A. Any demands.

Q. I did not say "demands." I said what would happen if they did not give the security that was being asked? A. I do not recall any conversation about that.

Q. Perhaps your memory of the conversation is not very good? A. I would not say that.

Q. The conversation before Mr. Milliken arrived had been going on for some time, had it not? A. We had had some talk, yes. 10

Q. For some considerable time? A. Yes, perhaps an hour.

Q. Now, the mortgages that were being obtained were already prepared? A. Yes.

Q. And that was not a matter for discussion or debate at all? A. No.

Q. The only other thing that was not (sic) talked about was this security that we are now disputing about? A. Yes. We had conversations at that time about the position of the real estate; we were obtaining particulars as to how these properties stood.

Q. You are not suggesting that these people were tumbling over each other to hand over everything they could sign away to the bank, are you? A. No. They seemed agreeable to do whatever they could to give security to the bank for the advances received. 20

Q. That is the way it struck you? A. Yes.

Q. They were not getting any advances then? A. No; they had received the money.

Q. Looking at Exhibit 32, you see the letters "OD" on the right hand side under the column "New balance"? A. Yes.

Q. Indicating overdraft? A. It indicates overdraft, yes.

MR. TILLEY: What is that? 30

MR. ROBERTSON: I think some of the amounts taken as substantial balances are overdrafts.

RE-EXAMINATION BY MR. TILLEY:

Q. Where is "overdraft"? A. Here,—\$17,000. It means that the account was overdrawn from the 24th August, 1928 until—this statement shows it was overdrawn from the 1st July to the 6th July, 1928, the maximum amount being \$17,916.

MR. ROBERTSON: I do not see why we should waste the time of the witness over this when we can read the document.

THE WITNESS: In the month of May, 1928, the account was credited during the whole of that month to the maximum amount of \$65,000, and in June it was credited from the 1st to the 30th to the extent of \$164,000 without overdraft. Then on the 3rd July— 40

No. 15.
Defendant's
Evidence.
A. C. Ashforth,
Re-
Examination.

MR. TILLEY: You have told us that from the 3rd to the 6th July was overdraft? A. The maximum amount was \$17,916.

MR. ROBERTSON: For weeks at a time it was overdrawn.

MR. TILLEY: Perhaps you can show us any material date when it was overdrawn.

MR. ROBERTSON: I will, when the time comes. I am not going to waste the time of the witness.

HIS LORDSHIP: The document is self-explanatory when the letters "OD" are explained.

Record.
In the
Supreme
Court of
Ontario.
—
No. 15,
Defendant's
Evidence.
A. C. Ashforth,
Re-
Examination.
—concluded.

10 —Witness withdrew.

MR. TILLEY: That is the Defence, my Lord.

HIS LORDSHIP: I will hear argument tomorrow morning at ten o'clock.

—Whereupon the Court adjourned at 4.45 o'clock p.m. until 10.00 o'clock a.m. on Friday, September 22, A.D. 1933.

—Upon resuming on Friday, September 22, A.D. 1933, at 10.00 o'clock a.m.

—Argument.

—Judgment Reserved.

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Certified to be correct,
SYDNEY W. BROWN,
Official Reporter, S.C.O.

Record.

*In the
Supreme
Court of
Ontario.*No. 16.
Reasons for
Judgment of
Kelly, J.,
January 4th,
1934.REASONS FOR JUDGMENT OF KELLY J.
DELIVERED JANUARY 4th, 1934.

In 1927 plaintiff (then called the Carling Export Brewing and Malt-
ing Company Limited), a company incorporated by Dominion Letters
Patent, sold its business and undertaking to Carling Breweries Limited.
At that time, there was deposited with the defendant, the Dominion Bank,
\$400,000 (par value) of Dominion of Canada Victory Loan 5½% Bonds
due on 1st November, 1934, as security to the bank in respect of a guar-
antee given by it that any final judgment that might be obtained by the
Dominion Government against plaintiff in an action then pending for (or
with reference to) Sales and Gallonage Tax claimed to be due by it would
be paid. At that time also plaintiff, through its president (Burns), wrote
to defendant that plaintiff and Messrs. Low, Leon and Burns (herein de-
fendants by counterclaim) had agreed to indemnify Carling Breweries
Limited in respect of payment of such Sales and Gallonage Tax. 10

On or about June 30th, 1931, The Dominion Bank paid to the Do-
minion Government out of the securities which had been so deposited with
it, the sum of \$88,073.17 in settlement of the final judgment which then
recently had been recovered against plaintiff in respect of said Sales and
Gallonage Tax, and soon thereafter plaintiff demanded payment and de-
livery to it of the balance of the security which had been so deposited with
the bank (some of which in the meantime had by arrangement been con-
verted into money); and it has brought this action to compel such delivery
and payment. 20

The right to succeed depends mainly on whether an agreement of 12th
July, 1929, (Exhibit 11 at the trial) which was made by plaintiff and Low,
Leon and Burns with the defendant bank was valid and binding upon the
plaintiff, by which it and these three parties purported to assign, transfer and
set over unto the defendant bank "all the right, title and interest of them
and each of them of, in and to the said hereinbefore mentioned bonds and
proceeds thereof, subject however to the payment thereof of the amount
of any final judgment that might be obtained by the Dominion Govern-
ment against the undersigned company in respect of the action above men-
tioned", (the bonds referred to being the \$400,000 bonds already mentioned
and the "undersigned company" being the plaintiff). This document pro-
ceeds as follows: "It is understood and agreed that the said Bank shall
hold the said Bonds and proceeds thereof to the extent to which the same
are hereby assigned to the said Bank as further continuing, additional
security for the payment of the joint and several indebtedness from time
to time of the undersigned individuals to the said Bank, and interest
thereon, and that in connection with the said bonds and proceeds thereof 30
40

hereby assigned to the said Bank it shall have all the powers, rights and privileges contained in a certain agreement of even date herewith executed by the undersigned company and individuals." It bears the signature of the plaintiff by Charles Burns its president and Marco Leon its secretary with its corporate seal, and the personal signatures of said Low, Leon and Burns.

Record.
In the
Supreme
Court of
Ontario.
—
No. 16.
Reasons for
Judgment of
Kelly, J.,
January 4th,
1934.

—continued.

Extending over a very considerable period of time plaintiff had been a customer of the defendant bank which at times had made advances to it. Low, Leon and Burns also had accounts and dealings with the bank in
10 London and in Windsor and in Montreal. These three parties were largely indebted to the bank, and for a considerable time prior to July 12th, 1929 were unable to substantially reduce their indebtedness, and the bank was pressing for payment or security. On this date Low, Leon and Burns went to the head office of the bank in Toronto, and a conference took place at which they, officers of the bank, and the bank's solicitor, Mr. Milliken, were present. Mr. Springsteen of the legal firm which was the solicitors of Low, Leon and Burns and of the plaintiff was also present. Leon, the only one of these three persons who gave evidence at the trial, swore that
20 Mr. Springsteen was not at the bank on that occasion. In this, to say the least of it, he was mistaken. Not only from the evidence of other witnesses but also from Mr. Springsteen having on that day (July 12th, 1929) made in Toronto and before Mr. Milliken, the bank's solicitor, an affidavit of execution of a mortgage by four of the parties thereto, of whom Leon, Low and Burns were three, I find that Mr. Springsteen was there, and appeared either for the company or for Low, Leon and Burns. I do not mean by that that he took an active part in the negotiations.

In connection with the giving of this document (Exhibit 11) the powers conferred upon and held by the plaintiff and the directors and officers thereof as well as the business relationship then and theretofore
30 existing between plaintiff and Low, Leon and Burns are important to be considered. The Dominion Letters Patent incorporating plaintiff were issued on 8th May, 1922. The powers thereby conferred are of the broadest, most general and exhaustive character, including power to carry on the business of brewers and malsters in all its various branches and the business of manufacturers of and dealers in aerated and mineral waters and other beverages, and as wine and spirit merchants and manufacturers; and proceeding with the enumeration at great length of provisions too lengthy and numerous to be repeated here, but including the right to acquire by
40 purchase, lease, exchange or otherwise . . . and otherwise deal in lands tenements, hereditaments, immovables or interests therein and to erect, alter, repair and maintain buildings upon any lands in which the company may have any interest, either as principal or agent, or upon any other lands and to deal in building materials of all kinds;

Record.

*In the
Supreme
Court of
Ontario.*

No. 16.
Reasons for
Judgment of
Kelly, J.,
January 4th,
1934.

—continued.

(e) To acquire and take over as going concern or otherwise the undertakings, assets and liabilities of any person or company carrying on any business in whole or in part similar to that which the company is authorized to carry on or possessed of property suitable for the purposes of this company, and with a view thereto to acquire, all or any of the shares or liabilities of such companies:

(h) To enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which the company is authorized to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the company; and to lend money to, guarantee the contracts of, or otherwise assist any such person or company, and to take or otherwise acquire shares and securities of any such company and to sell, hold, re-issue, with or without guarantee or otherwise deal with the same; 10

(n) To lend money to customers and others having dealings with the company and to guarantee the performance of contracts by any such persons;

(s) To raise and assist in raising money for, and to aid by way of bonus, loan, promise, endorsement, guarantee of bonds, debentures or other securities or otherwise, any other company or corporation, with whom the company may have business relations, and to guarantee the performance of contracts by any such company, corporation, or by any such person or persons; 20

(x) To do all such other things as are incidental or conducive to the attainment of the above objects or any of them; and (y) To do any and all things set forth as its objects as principal, agent, contractor or otherwise, and to carry out any or all of the foregoing objects as principals, agents, sub-contractors or otherwise, and by or through trustees, agents, sub-contractors, or otherwise and alone or jointly with any other corporation, association, firm or person, and to do all and everything necessary or incidental for the accomplishment of any of the purposes or the attainment of any one or more of the objects herein enumerated or incidental to the powers herein named, or which shall at any time be necessary or incidental for the protection or benefit of the company. 30

At the time Exhibit 11 was given and long prior thereto Low, Leon and Burns were the owners of all of the shares of the capital stock of the plaintiff, but two of said shares were held one each by two other parties as qualifying shares. In that very document it is declared that Low, Leon and Burns "own the total issued capital stock of the Carling Export Brew- 40

ing and Malting Company Limited." That seems to have been the condition in any event until 1927 when, according to Mr. MacAgy, a witness called on plaintiff's behalf, these parties said they were the owners of the (plaintiff) company; that continued afterwards as well. They or some of them were procuring liquor from a point or points in western Canada and were carrying on business as officers of the brewery, they themselves also carrying on business exporting liquor and beer at Windsor and other places. Exporting liquor continued after the Carling Company had been sold. Leon says he was engaged in the liquor business before he became
 10 engaged in the brewery or beer business.

An attempt was made at the trial (largely on the evidence of Leon) to show that shares of the capital stock of the plaintiff were held by others than Low, Leon and Burns and the two persons who held the two qualifying shares; and to support this evidence and that of others there were produced share certificates and stubs of share certificates which indicated a passing around and shuffling of these certificates, and cancellation of some of them; but no Share Register was produced, the very significant statement being made by this witness that the company had a Share Register until the sale in 1927 to the new company,—Leon being then
 20 secretary of the company,—and that it was Burns, the President, who took care of or had charge of the Share Register. Why was no record kept after that time? or if kept why was it not produced at the trial? More than once during the trial it was stated that Burns was in court; and since, at considerable expenditure of time, evidence in regard to stock certificates was put forward in support of plaintiff's claim, one would reasonably expect that Burns, who might have been expected to throw some light upon this more than obscure part of the evidence, would have been called upon for an explanation—if any explanation were possible and if these shares were in fact dealt with at all, which I more than doubt. Is it not a reasonable
 30 inference that these three persons were the sole owners of the shares of the plaintiff company's capital stock, and carrying on business in connection with the company in a sort of partnership or association in a common business enterprise, no longer needed, or in any event deemed they no longer needed, to keep a Share Register, no one but themselves being concerned therein. This appears to me to be one of the significant indications that there was a community of interest between, and of operation in the business carried on by, plaintiff and by Low, Leon and Burns the benefit resulting from each accruing to these three persons, whether carried on in the name of or by the plaintiff, or in the name of or by these
 40 three. In my opinion there was no real transfer of shares to any of the parties named. Not only that, but there was no attempt to follow or comply with the requirements of section 77 of chapter 27 of The Dominion Companies Act, R.S.O. 1927, which one would reasonably assume would have been the case if any bona fide transfer of any of these shares had taken place or been intended. Without going into lengthy or detailed recital of

Record.

In the
Supreme
Court of
Ontario.No. 16.
Reasons for
Judgment of
Kelly, J.,
January 4th,
1934.

—continued.

all Carling
Notes

C

Record.

*In the
Supreme
Court of
Ontario.*No. 16.
Reasons for
Judgment of
Kelly, J.,
January 4th,
1934.

—continued.

parts of the evidence thereon, I am convinced that Low, Leon and Burns, being the owners of all the outstanding capital stock of the plaintiff company, treated its business operations as their own—as one and the same in regard to the dealing in and sale and export of the beer and spirituous liquors which were being exported (via Windsor especially) to the United States. The operations were not kept strictly separate and distinct one from the other. The method of handling and exporting the commodities and the manner of receiving and applying the proceeds therefrom afford instances of a unity of interest between the plaintiff and these three persons.

10

When the meeting took place at defendant's head office on July 12th, 1929, these were the conditions. Low, Leon and Burns were then heavily indebted to the bank, a substantial part of which was in connection with the erection of a large building in Montreal. The meeting on that date was in consequence of the bank's insistence on payment of the indebtedness or a substantial part of it, or security therefor. The bonds (or partly these and partly money realized from the sale of some of them) were still in the possession of the bank. Final judgment had not been given in the Government's action against the plaintiff, and at that time no one could reasonably forecast what the amount of such final judgment would be. 20
The judgment was not delivered until 1931. So far as the evidence shows, the plaintiff's sole indebtedness was in respect of said Sales and Gallonage Tax. The benefit of any surplus of the bonds or the money so held by the defendant in excess of what would be necessary to pay this final judgment when delivered would enure to the plaintiff, and through it to these three persons who owned all the capital stock of the plaintiff, with which they were so intimately associated in the business in which they were both engaged. To remove any doubts on the matter I should say here that I did not and do not accept the evidence that persons such as Magid and Harry Leon or Esar held any of the shares of the company. It may 30
be, I think it is so, that there were financial dealings between Low, Leon and Burns, or some of them, with these others or some of them but such persons did not acquire or become owners of the shares in the plaintiff company. Magid in cross-examination admitted that the shares of stock were put in his name in view of this possible (present) litigation; and if the truth were frankly told I believe the same would apply to the stock which Esar claims to hold.

At the 12th July meeting there was a lengthy discussion which resulted in an arrangement for the plaintiff and these three persons giving security in the terms of Exhibit 11. An adjournment then took place for 40
the time necessary for the defendant's solicitor to prepare the document. It was prepared and Low, Leon and Burns executed it at the defendant's head office. At that time Burns was still president of the plaintiff and Leon its secretary. The document was then taken by Burns to London, where

the plaintiff's head office was situated, for execution by the company. The right to execute and the validity of the mode of execution by the plaintiff being attacked, the powers and the authority conferred by plaintiff's By-laws are of importance. General By-law numbered 4 enacts that the Board of Directors should have the management of the business of the company; and that in addition to the powers and authority expressly conferred by the By-law "the Board may exercise all such powers of the Company and do all such lawful acts and things as are not by Statute or by these By-laws directed or required to be exercised or done by the shareholders." General

- 10 By-law numbered 10 provides that the president may call meetings of the shareholders or of the Board of Directors when necessary or expedient, and that "he may execute bonds, mortgages and other contracts on behalf of the company and affix the corporate seal to any instrument requiring the same, and the seal, when so affixed and attested by his signature and the signature of the secretary, shall be valid and binding on the company." General By-law numbered 13 enacts, amongst other things, that the secretary shall, with the president, execute Bonds, mortgages and other contracts on behalf of the company. Supplementary to these By-laws is special
- 20 By-law numbered 18 in relation to the Company's financial dealings with the Dominion Bank. The agreement of July 12th having been made the Bank, as was the purport of the meeting, allowed the indebtedness to run on. Because of the business connection between them to which I have referred this was an advantage to both the company, as such, and these three persons who owned it; and not until after the delivery in 1931 of the final judgment in the Dominion Government's action did plaintiff make any protest, objections, complaint or repudiation against or in regard to the giving of that document (Exhibit 11).

- As much reliance has been placed by plaintiff on Leon's evidence I consider it necessary to say here that I am altogether unable to credit it. He
- 30 was lacking in candour, and in regard to several important matters he was evasive and made statements which on further examination or cross-examination proved to be false. For instance, residing in Montreal he professed not to have been familiar with the business operations carried on in Windsor in which he was concerned, though he made not infrequent trips to Windsor remaining there for days at a time; but eventually he admitted knowing what was going on at Windsor. Likewise he professed an unbelievable ignorance in relation to parcels of real estate in Windsor in the purchase of which he and his associates had made heavy investments. His attempt to show that his wife is or was a part owner of the shares of stock
- 40 held by him in plaintiff company failed in view, amongst other things, of his evidence relating thereto taken on discovery (see particularly his answer to question 899). From such circumstances and from his manner of giving his evidence and his demeanour in the witness box I concluded, and I am still firmly of the opinion, that his evidence cannot be relied upon, and that he must have expected to be able to impose on the cred-

Record.

*In the
Supreme
Court of
Ontario.*

No. 16.
Reasons for
Judgment of
Kelly, J.,
January 4th,
1934.

—continued.

Record.

*In the
Supreme
Court of
Ontario.*No. 16.
Reasons for
Judgment of
Kelly, J.,
January 4th,
1934.

—continued.

ulity of the Court. Facts cannot be established on evidence such as his unless supported by a substantial amount of corroborative evidence. That being so one wonders why the evidence of his associates Low and Burns was not submitted if indeed they could have corroborated him.

While authorities are numerous on the questions involved herein, special reference to the following is sufficient. In *Bank of Ottawa vs. Hamilton Stove and Heater Company* (1918) 44 O.L.R. 93 (in the judgment in which *Union Bank of Canada v. McKillop*, 30 O.L.R. 87 and 51 S.C.R. 518, cited herein on behalf of plaintiff, was distinguished) the defendant, a company incorporated in 1910 by a charter of the Dominion of Canada, had, by the charter, power to manufacture, buy and sell hardware, &c. and “to guarantee the contracts of or otherwise assist” any business which the defendants were authorized to carry on, or “any business . . . capable of being conducted so as directly or indirectly to benefit” the defendants; it was held that the giving by the defendants of a guarantee of the account with the plaintiff bank of a company carrying on a business which the defendants were authorized to carry on, and conducted so as directly to benefit the defendants, was within the powers of the defendants under their charter.

There is a very decided parallel between the facts on which that decision was made and the circumstances of the present case; and there are other decisions to the same general effect. Special reference may also be made to *Royal Bank of Canada v. Fleming, et al* (1933) O.L.R. 601.

Then on the question of the propriety of the manner of the execution of Exhibit 11 this language of Gwynne, J. in *Hovey v. Whiting* (1886) 14 S.C.R. 515, at page 531, is applicable (it has been followed in later cases):—
“All deeds executed under the corporate seal of an incorporated company which is regularly affixed are binding on the company unless it appears by the express provisions of some statute creating or affecting the company or by necessary or reasonable inference from the enactment of such statute that the Legislature meant that such deed should not be executed; and the directors of the company have authority to affix the seal of the company to all such deeds not so, as above, forbidden by the Legislature to be executed, unless they are by the express provisions of, or by necessary or reasonable inference from, the enactments of such statute forbidden to affix the seal of the company to the particular deed for the time being under consideration without compliance with some condition precedent prescribed as being essential to the validity of such deed, and which condition precedent has not been complied with.” On the facts as I see them and on the authorities, my opinion is that the document attacked by the plaintiff was not ultra vires. In express terms plaintiff asks for return of the Bonds to the principal amount of \$100,000 with coupons, and payment of \$313,250.69 and accrued interest after crediting thereon the \$88,073.17.

Should the result of the reference hereinafter directed be that the defendants by counterclaim are indebted to the defendant (the Bank) in an amount exceeding what plaintiff so claims, plaintiff's action will be dismissed with costs. On the counterclaim there will be judgment in favour of the Bank (with costs) that to the extent to which the defendants by counterclaim, Low, Leon and Burns, were indebted to the Bank after the Bank had paid to the Dominion Government the amount of its said judgment, it (the Bank) was, and is, entitled to apply the balance which then remained in its hands against such indebtedness of Low, Leon and Burns; and there will be a reference to the Master to take an account of and ascertain the amount due to the Bank by the said defendants by counterclaim or any of them.

Record.
In the
Supreme
Court of
Ontario.
No. 16.
Reasons for
Judgment of
Kelly, J.,
January 4th,
1934.
—concluded.

Further directions and further costs are reserved until after the Master's report.

No. 17.

JUDGMENT OF KELLY, J.

No. 17.
Judgment of
Kelly, J.,
January 4th,
1934.

THE HONOURABLE } THURSDAY, the 4th day of
MR. JUSTICE KELLY } January, A.D. 1934.

1. THIS action coming on for trial on the 20th, 21st and 22nd days of September, 1933, at the sittings holden at Toronto for the trial of actions without a jury in the presence of counsel for all parties, upon hearing read the pleadings and hearing the evidence adduced and what was alleged by counsel aforesaid and judgment having been reserved until this day;
2. THIS COURT DOTH DECLARE that the Defendant Bank was entitled on 30th June, 1931, to apply the proceeds of the bonds in the Statement of Claim referred to less \$88,073.17 paid to the Dominion Government in or towards payment and satisfaction of the indebtedness of the Defendants by counterclaim, or any of them, to said Bank and DOTH ORDER AND ADJUDGE the same accordingly.
3. AND THIS COURT DOTH ORDER AND ADJUDGE that it be referred to the Master to take an account of the amount due by the Defendants by Counterclaim, or any of them, to the said Bank on 30th June, 1931, and at the date of the report.
4. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that if on the taking of said account the amount due by the Defendants by Counterclaim, or any of them, on 30th June, 1931, exceeded the proceeds of the bonds in the Statement of Claim referred to less \$88,073.17 paid to

Record.

In the
Supreme
Court of
Ontario.No. 17.
Judgment of
Kelly, J.,
January 4th,
1934.

—concluded.

the Dominion Government the Plaintiff's claim be dismissed with costs to be paid forthwith after taxation thereof.

5. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that if on the taking of the said account the Defendants by Counterclaim, or any of them, are found to be indebted to the Defendant Bank at the date of the said Report, the said Bank shall recover on its counterclaim from the parties so found liable the amount so found due with costs of the counterclaim to be paid forthwith after taxation thereof.

6. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that further directions and costs, so far as not hereinbefore disposed of, including the costs of the reference, be reserved until after the Master shall have made his Report. 10

Judgment signed this 6th day of February, 1934.

"D'Arcy Hinds
Registrar S.C.O."

Entered J.B. 56 page 554 & 5
February 7, 1934.
VC.

No. 18.

NOTICE OF APPEAL BY PLAINTIFF TO COURT OF APPEAL 20
FROM JUDGMENT OF KELLY, J.

TAKE NOTICE that the Plaintiff hereby appeals to the Court of Appeal from the Judgment pronounced herein by the Honourable Mr. Justice Kelly on the 4th day of January 1934, in so far as the said Judgment affects the Plaintiff, upon the following among other grounds:

1. That the said Judgment is contrary to law and evidence and the weight of evidence.
2. That the learned trial Judge erred in holding that the agreement of hypothecation dated the 12th day of July 1929, being Exhibit 11 at the trial, was binding upon the Plaintiff and should have held that the De- 30
fendant acquired no right thereunder to the property mentioned therein.
3. That the learned trial Judge erred in not holding that the said agreement was ultra vires of the Plaintiff and of the officers of the Plaintiff who assumed to execute the same in the name of the Plaintiff.

No. 18.
Notice of
Appeal
by Plaintiff
from
Judgment of
Kelly, J.,
January 19th,
1934.

4. That the learned trial Judge should have held that the said hypothecation agreement was executed in the name of the Plaintiff solely for the benefit of the Defendant and of certain of the Directors of the Plaintiff and not for any legitimate purpose of the Plaintiff, and that this was done at the instance of the Defendant who had full knowledge on its part of all the circumstances and the learned Judge should have held that such agreement was a fraud upon the Plaintiff and a fraudulent exercise of the powers of its officers and its execution was never duly authorized.

Record.

*In the
Supreme
Court of
Ontario.*No. 18.
Notice of
Appeal
by Plaintiff
from
Judgment of
Kelly, J.
January 19th,
1934.

—concluded.

5. That the learned trial Judge erred in ignoring the corporate existence
10 of the Plaintiff and the fact that others than the Defendants by Counter-claim were or might become interested in its affairs and in its assets.

6. Upon further and other grounds disclosed by the evidence and proceedings at the trial.

DATED at Toronto this 19th day of January, 1934.

Fasken, Robertson, Aitchison, Pickup & Calvin,
36 Toronto Street, Toronto,
Solicitors for the Plaintiff.

TO:

20 Messrs. Mulock, Milliken, Clark & Redman,
68 Yonge Street, Toronto,
Solicitors for the Defendant Dominion Bank.

No. 19.

REASONS FOR JUDGMENT OF COURT OF APPEAL

29th June, 1934.

RIDDELL, J.A.:—The facts of this case sufficiently appear in the carefully written Reasons for Judgment of the learned Trial Judge, whose findings of fact I accept.

No. 19.
Reasons for
Judgment of
Court of
Appeal.
Riddell, J. A.
June 29th,
1934.

30 The plaintiff company lodged with the defendant Bank certain bonds as security for the Bank in relation to the payment to the Dominion Government of a sum not then determined; the owners of nearly all the shares of the Company engaging in another business incurred liabilities to meet which they applied to the defendant Bank; purporting to act as the plaintiff company they hypothecated these Bonds for their own debt. The amount to be paid to the Dominion Government being ascertained, the Bank paid it; the plaintiff company demanding the return to it of the balance, the Bank claimed to hold the bonds as security for the debt of the said

Record.
in the
Supreme
Court of
Ontario.

shareholders; this action then was brought, resulting in the Bank's claim being sustained. The Company appeals.

No. 19.
Reasons for
Judgment of
Appeal,
Riddell, J. A.
June 29th,
1934.

Were there nothing more in the case than as stated above, I should be inclined to allow the appeal.

—continued.

It is true that in the document of hypothecation, prepared by the solicitor of the Bank, the three shareholders, Low, Leon and Burns, are said to "own the total issued capital stock of the company"; but the person who acted for the Bank knew that this was not the case, that there were "qualifying shares" in addition to those held by the three debtors. And the ownership of one share is sufficient to prevent these three acting as the Company, *Inland Revenue Commissioners v. Sansom*, (1921) 2 K.B. 492, esp. at p.511. This was in effect a gift to the three, which, were there nothing more in the case, would be considered ultra vires; *Brice on Ultra Vires*, 3rd. ed. pp.180, 181.

But a perusal of the evidence makes it quite clear to my mind that the Company was a "sham, simulacrum or cloak and that its business must be regarded as the business of these" three to use the language of (1921) 2 K.B. at p.504. This does not interfere with the decision in *Salomon vs. Salomon & Co.*, (1897) A.C. 22, for "There may, as has been said by Lord Cozens-Hardy, M.R., be a position such that although there is a legal entity within the principle of *Salomon v. Salomon & Co.*, that legal entity may be acting as the agent of an individual and may really be doing his business and not its own at all." *Commissioners of Inland Revenue v. Sansom* (1921) 2 K.B. at p. 503. That, I think, is the real position of this Company; and the three had the right and power to execute the document attached.

I would, therefore, dismiss the appeal and with costs.

No. 19.
Reasons for
Judgment of
Court of
Appeal,
Masten, J. A.
June 29th,
1934.

MASTEN, J. A.:—This is an appeal by the plaintiff from the judgment of Kelly, J., dated January 4th, 1934. By its statement of claim the plaintiff company seeks the return to it of certain bonds to the principal amount of \$100,000 with coupons and payment of the sum of \$313,250.69 and accrued interest, after crediting thereon the sum of \$88,073.17.

By its statement of defence and counterclaim the defendant Bank denies the plaintiff's claim and seeks to recover against the defendants by counterclaim, namely: (Low, Leon, Burns and the Export Brewing & Malting Company Ltd.)

"1—A declaration that it was entitled to apply the balance of the proceeds of the bonds remaining in its hands against the indebtedness of Low, Leon and Burns.

2—That an account be taken of the amount due to the Bank by the defendants by counterclaim or any of them.

3—Payment of the amount found due with interest”

The judgment a quo declares that the defendant bank was entitled on the 30th of June, 1931, to apply the proceeds of the bonds in the statement of claim referred to, less \$88,073.17 paid to the Dominion Government in or towards payment and satisfaction of the indebtedness of the individual defendants by counterclaim and refers it to the Master to take an account of the amount due by the defendants by counterclaim or any of them to the bank, make certain directions with respect to the results found in the Master's report and then reserves further directions and costs.

The facts and circumstances giving rise to the action are set forth in the reasons of the trial judge and in the reasons of my brother Davis and I therefore refrain from any detailed repetition of them.

The question turns on the effect of the last clause of an assignment dated July 12th, 1929, given under its seal by the plaintiff company to the Bank which reads as follows:

“EXHIBIT NO. 11.

“WHEREAS the undersigned individuals Harry Low, Marco Leon
20 “and Charles Burns are jointly and severally indebted to the Dominion
“Bank and own the total issued capital stock of The Carling Export
“Brewing and Malting Company Limited.”

“AND WHEREAS the undersigned THE CARLING EXPORT
“BREWING & MALTING COMPANY LIMITED on or about the 26th
“day of October 1927 deposited with the Dominion Bank \$400,000. of
“Dominion of Canada Victory Loan 5½ per cent Bonds due 1st of
“November 1934 to be held by the said Bank to meet any final judgment
“that might be obtained by the Dominion Government against the said
“Company in respect of the action then pending with reference to sales
30 “and gallonage tax on export sales.

“AND WHEREAS with the consent of the undersigned Company
“certain of the said Bonds have been converted into cash, and the pro-
“ceeds thereof deposited in the said bank in a special savings account in
“the name of the said Company.

“AND WHEREAS the said Bank has required from the undersigned
“individuals further security for the payment of the said indebtedness of
“the said individuals to the Bank, as the consideration for which the Bank

Record.

In the
Supreme
Court of
Ontario.

No. 19.
Reasons for
Judgment of
Court of
Appeal,
Masten, J. A.
June 29th,
1934.

—continued.

Record.

*In the
Supreme
Court of
Ontario.*No. 19.
Reasons for
Judgment of
Court of
Appeal,
Masten, J. A.
June 29th,
1934.

—continued.

“will refrain from immediately taking proceedings against the said under-
“signed individuals to recover the said indebtedness.

“NOW THEREFOR in consideration of the premises the undersigned
“company and individuals do and each of them doth hereby assign trans-
“fer and set over unto the said The Dominion Bank all the right title and
“interest of them and each of them of in and to the said hereinbefore
“mentioned Bonds and proceeds thereof, subject however to the payment
“thereout of the amount of any final judgment that may be obtained by the
“Dominion Government against the undersigned Company in respect to
“the action above mentioned.

10

“IT IS UNDERSTOOD AND AGREED that the said Bank shall
“hold the said Bonds and proceeds thereof to the extent to which the same
“are hereby assigned to the said Bank as further continuing additional
“security for the payment of the joint and several indebtedness from time
“to time of the undersigned individuals to the said Bank and interest
“thereon, and that in connection with the said bonds and proceeds thereof
“hereby assigned to the said Bank it shall have all the powers rights and
“privileges contained in a certain agreement of even date herewith exe-
“cuted by the undersigned company and individuals.

“DATED at Toronto this twelfth day of July, A.D. 1929.

20

“WITNESS: THE CARLING E.B. & M. CO. LTD.

	(Corporate Seal)
Per “Chas. Burns”	Pres.
“Marco Leon”	Sec.
“Harry Low”	(Seal)
“Marco Leon”	(Seal)
“Chas. Burns”	(Seal)

The appellant raises two points:

(1) That the assignment was not within the powers of the Company citing
Union Bank v. McKillop, (1915) 51 S.C.R. 518.

30

(2) That to appropriate the Company’s assets to the personal use of the
three directors, Low, Leon and Burns was a breach of trust by the direc-
tors to which the Bank was a party.

With respect to the first question, I think that the powers conferred
on the company by its constating instruments, viz., the Companies Act
and its charter empowered it under proper circumstances to become
surety for the debt of a third party, and for that purpose to pledge its

property. Consequently it becomes unnecessary and therefore undesirable to consider the application of the Bonanza Creek Case, (1916) 1 A.C. 566 and the subsequent cases, in which the powers of a Common Law Corporation are discussed.

The Companies Act, R.S.C. Cap. 27, sec. 32 confers on a company at sub-sec. (d) the following powers:

“(d) to enter into partnership or into any arrangement for sharing profits, union of interest, co-operation, joint adventure, reciprocal cession or otherwise, with any person or company carrying on or
10 “engaged in or about to carry on or engage in any business or transaction which the Company is authorized to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the Company; and to lend money to, guarantee the contracts of, or otherwise assist any such person or company, and to take or otherwise acquire shares and securities of any such company, and to sell, hold, or re-issue, with or without guarantee, or otherwise deal
“with the same:

“(k) to lend money to customers and others having dealings with the company and to guarantee the performance of contracts by any such
20 “persons;

“(q) to raise and assist in raising money for, and to aid, by way of bonus, loan, promise, endorsement, guarantee of bonds, debentures or other securities or otherwise, any other company or corporation with which the company may have business relations, and to guarantee the performance of contracts by any such company, corporation, or by any such person or persons;

“(t) to carry out all or any of the objects of the company as principals, agents, contractors or otherwise, and either alone or in conjunction with others;

30 “(u) to carry out such other things as are incidental or conducive to the attainment of the objects of the company.”

In and by its charter the plaintiff company is granted, among others, the following powers:

“(a) To carry on the business of brewers and malsters in all its various branches, wine and spirit merchants and manufacturers, and any other business auxiliary or incidental thereto or which can be carried on in connection therewith.”

Record.
In the
Supreme
Court of
Ontario.

No. 19.
Reasons for
Judgment of
Court of
Appeal,
Masten, J. A.
June 29th,
1934.

—continued.

Record.

*In the
Supreme
Court of
Ontario.*No. 19.
Reasons for
Judgment of
Court of
Appeal,
Masten, J.A.
June 29th,
1934.

“(c) To be a common carrier in accordance with Section 154 of the
“Canada Temperance Act, being chapter 152 of the Revised Statutes of
“Canada, 1906, as amended by chapter 8, of the Statutes of Canada, 1919,
“(second session)”:

By subsection (h) of the charter the provisions of clause (d) of section 32 of the Companies Act are repeated in the same words;

“(n) To lend money to customers and others having dealings with the
“company and to guarantee the performance of contracts by any such
“persons;

“(s) To raise and assist in raising money for, and to aid by way of bonus, 10
“loan, promise, endorsement, guarantee of bonds, debentures or other
“securities or otherwise, any other company or corporation, with whom
“the company may have business relations, and to guarantee the per-
“formance of contracts by any such company, corporation, or by any such
“person or persons;

“(y) To do any and all things set forth as its objects as principal, agent,
“contractor or otherwise, and to carry out any or all of the foregoing
“objects as principals, agents, sub-contractors or otherwise, and by or
“through trustees, agents, sub-contractors, or otherwise and alone or 20
“jointly with any other corporation, association, firm or person, and to do
“all and everything necessary or incidental for the accomplishment of
“any of the purposes or the attainment of any one or more of the objects
“herein enumerated or incidental to the powers herein named, or which
“shall at any time be necessary or incidental for the protection or benefit
“of the company.”

As I have already said, these several provisions of the constating instruments empowered the company to join with Low, Leon and Burns, as co-adventurers in the business of exporting beer and spirits to the United States, and I am satisfied from the evidence that the individual defendants by counterclaim, and the plaintiff company were co-adventur-30
ers in the business of boot-legging. That is the result of my perusal of the evidence, and I do not delay to quote that evidence at length. I point out, however, that by exhibit 21, Low, Burns and Leon in the year 1924 guaranteed the debt of the plaintiff company to the bank, and in the year 1925 by exhibit 20 postponed their own individual claims on the company to the claim of the Bank. Nothing altering these conditions was pointed out to us and as I understand the matter the defendants by counterclaim co-operated together in the boot-legging business down to the year 1929; the activities of the company being directed more especially to the manufacture and sale of beer and those of Low, Burns and Leon to the sale of spirits and 40
wine. But in the actual process of exporting, delivering and receiving pay-

—continued

ments, the individuals and the company acted in co-operation. In 1929 the plaintiff company sold its brewery, paid off its liabilities with the exception of a large claim on the part of the Dominion Government for excise taxes, which claim was then in contest. This claim had arisen out of the boot-legging joint-adventure above described. Low, Burns and Leon were interested both as shareholders and as guarantors to the Bank in the elimination or at least in the reduction of the amount of the judgment which had been given against the company in favor of the Dominion Government, which judgment if maintained in full would have exceeded the
 10 balance in the hands of the Bank and perhaps left the guarantors liable.

In my opinion the co-adventure of Low, Burns and Leon with the plaintiff company still continued at the time when exhibit 11 was executed, and that document was executed and delivered as a part of the winding-up of the co-adventure and was within the powers of the plaintiff company.

I turn now to the second ground of appeal:

Every one will agree with the observation of Atkin, L.J. (as he then was) in *Underwood Limited v. Bank of Liverpool*, (1924) 1 K.B. at page 796. "The Directors of a Company whether collectively or singly have not actual authority to steal the company's goods.

20 None the less, this second ground of appeal ought, in my opinion, to be rejected.

It must be kept in mind that in 1929 at the time when exhibit 11 was given to the Bank, Low, Leon and Burns were indebted to the Bank in a sum exceeding \$1,000,000. The Bank were pressing for payment and had it taken judgment against Low, Leon and Burns (as it was entitled to do) it could have seized their shares in the plaintiff company and wound it up so as to realize its claim out of the assets of the company. It was therefore desirable in the interests of the company itself that such a result should be avoided, and the co-operation of the Bank continued so that the
 30 company might contest in the Privy Council its liability to the Dominion Government.

These considerations lead me to the conclusion that the execution and delivery by the plaintiff company of exhibit 11 quoted above was not a fraudulent act, that it was not only within the powers of the company but was entirely proper and warrantable in the interests of the company itself; and that it was done as a part of the winding up of the joint adventure. As the agreement was within the powers of the Company, under its seal and executed by the proper officers, the Bank was entitled to assume its
 40 regularity and that all essential resolutions and by-laws had been duly passed. In consequence it gave time to Low, Leon and Burns with the

Record.
 in the
 Supreme
 Court of
 Ontario.

No. 19.
 Reasons for
 Judgment of
 Court of
 Appeal,
 Masten, J. A.
 June 29th,
 1934.

—continued.

Record.
In the
Supreme
Court of
Ontario.

No. 19.
Reasons for
Judgment of
Court of
Appeal,
Masten, J. A.
June 29th,
1934.

—continued.

result that the contest of the company with the Dominion Government proceeded to the Privy Council to the great advantage of the Company.

I am therefore of opinion

(1) That the execution and delivery of exhibit 11 was within the powers of the Company;

(2) That the execution and delivery to the Bank of exhibit 11 was not a breach of trust on the part of the directors of the company;

(3) That the Bank was entitled to rely on the document in question because duly executed by the proper officers under the seal of the company;

(4) That the appeal should be dismissed with costs.

10

Before parting with this case I desire to add one further observation.

Whether the company was a mere agent for certain individuals is a question of fact on which different minds may well take different views. In my own case the evidence leads me to the conclusion that the plaintiff company was not at first and never became a sham company or a mere cloak for Low, Burns and Leon.

I respectfully concur in the observations of Cozens Hardy, M.R. in the Gramophone Case (1908) 2 K.B. at p.96, where he says:

“I do not doubt that a person in that position (owner of all the shares) 20
“may cause such an arrangement to be entered into between himself and
“the company as will suffice to constitute the company his agent for the
“purpose of carrying on the business, and thereupon the business will
“become, for all taxing purposes, his business. Whether this consequence
“follows is in each case a matter of fact. In the present case I am unable
“to discover anything in addition to the holding of the shares which in any
“way supports this conclusion. The German company was not at first, and
“there is no evidence that it has ever become a sham company or a mere
“cloak for the English Company.”

No doubt a situation may exist where such a finding of agency may 30
be warranted but it must always demand for its support the clearest
evidence.

The grave risk of introducing confusion into the settled principles which apply to this branch of Company Law is well expressed in the judgment of Younger, L.J. (now Lord Blanesburgh) in *Commissioners of Inland Revenue v. Sansom* (1921) 2 K.B. 492 to which I refer without delaying to quote it.

LATCHFORD, C. J. A.:—I agree.
FISHER, J. A.:— I agree.

DAVIS, J.A.: On July 12th, 1929, the plaintiff company (its corporate name was subsequently changed) executed under its corporate seal and
10 by the hands of its President and Secretary and delivered to the defendant Bank an instrument in writing reading as follows:

“WHEREAS the undersigned individuals HARRY LOW, MARCO LEON and CHARLES BURNS are jointly and severally indebted to the Dominion Bank and own the total issued capital stock of The Carling Export Brewing and Malting Company Limited.

“AND WHEREAS the undersigned THE CARLING EXPORT BREWING AND MALTING COMPANY LIMITED on or about the 26th day of October 1927 deposited with the Dominion Bank \$400,000. of Dominion of Canada Victory Loan 5½% Bonds due 1st of November,
20 1934, to be held by the said Bank to meet any final judgment that might be obtained by the Dominion Government against the said Company in respect of the action then pending with reference to sales and gallonage tax on export sales.

“AND WHEREAS with the consent of the undersigned Company certain of the said bonds have been converted into cash, and the proceeds thereof deposited in the said Bank in a special savings account in the name of the said company.

“AND WHEREAS the said Bank has required from the undersigned individuals further security for the payment of the said indebtedness of
30 the said individuals to the Bank, as the consideration for which the Bank will refrain from immediately taking proceedings against the said undersigned individuals to recover the said indebtedness.

“NOW THEREFORE in consideration of the premises, the undersigned company and individuals do and each of them doth hereby assign transfer and set over unto the said The Dominion Bank all the right, title and interest of them and each of them of in and to the said hereinbefore mentioned Bonds and proceeds thereof, subject however to the payment thereout of the amount of any final judgment that may be obtained by the Dominion Government against the undersigned Company in respect to the
40 action above mentioned.

Record.
In the
Supreme
Court of
Ontario.

No. 19.
Reasons for
Judgment of
Court of
Appeal,
Masten, J. A.
June 29th,
1934.

—concluded.

No. 19.
Reasons for
Judgment of
Court of
Appeal,
Davis, J. A.
June 29th,
1934.

Record.

in the
Supreme
Court of
OntarioNo. 19.
Reasons for
Judgment of
Court of
Appeal,
Davis, J. A.
June 29th,
1934.

—continued.

“IT IS UNDERSTOOD AND AGREED that the said Bank shall hold the said Bonds and proceeds thereof to the extent to which the same are hereby assigned to the said Bank as further continuing additional security for the payment of the joint and several indebtedness from time to time of the undersigned individuals to the said Bank and interest thereon, and that in connection with the said bonds and proceeds thereof hereby assigned to the said Bank it shall have all the powers, rights and privileges contained in a certain agreement of even date herewith executed by the undersigned company and individuals.”

The instrument was also signed personally by the three individuals therein named. No one questions the authenticity of the corporate seal of the signatures of the President and Secretary of the company who were the proper signing officers of the company prescribed by its by-laws. 10

Subsequently on May 13th, 1931, the defendant Bank was advised by counsel for the Dominion Government that the Crown's claim as determined under the terms of the judgment of the Privy Council, dated February 19th, 1931) (1931 A.C. 435), amounted to the sum of \$87,222.52 with interest. This amount was paid by the Bank to the Receiver General of Canada under the terms of the earlier assignment of the bonds and proceeds thereof, to which assignment the above mentioned hypothecation was subject. The plaintiff company does not question in this action this payment by the Dominion Bank; the issue is solely as to the rights of the parties to the balance of the bonds or proceeds thereof amounting to over \$300,000. It was not until June 3rd, 1931, that the plaintiff company demanded the return of the balance of the security. 20

The defendant Bank refusing to hand over to the company the balance of the security, relying upon the hypothecation above set out of July 12th, 1929, this action was brought on October 21st, 1931, to recover the same. The defendant Bank pleaded the hypothecation by the company to it of July 12th, 1929, and an estoppel. In its reply the plaintiff company denied that it ever made the hypothecation and said that if there was any such agreement, which it did not admit but denied, such agreement was to the knowledge of the defendant Bank made without consideration, in fraud of the plaintiff and for the personal interest and advantage of certain of the plaintiff's officers and directors and is therefore null and void. 30

Both at the trial and on this appeal, counsel for the plaintiff treated its pleading as raising two points, (1) that the hypothecation agreement in question was null and void as beyond the power of the company, and (2) that, in any case, it was not binding upon the company in that it was, to the knowledge of the Bank, a fraudulent transaction for the benefit of the individual directors who signed it. 40

The action was dismissed at the trial and counsel for the plaintiff before us presented a very able argument, but to my mind he did not attempt to satisfy the onus that rested upon the plaintiff to dislodge the instrument in question that had been executed and delivered by the company to the Bank under the company's corporate seal and by the hands of its proper officers with its express representation that the three individuals were the owners of the total issued capital stock of the company. Counsel for the plaintiff put the burden of proof upon the Bank and argued his case before us upon that basis, but I think the burden of proof lay clearly upon the Plaintiff and that the case must be approached from that point of view.

The company was incorporated by Letters Patent under The Companies Act (Dominion) on May 8th, 1922, and its Charter contains very wide powers. Moreover the company possessed at the date of the execution and delivery of the instrument in question very wide statutory powers as incidental and ancillary to the powers set out in its Letters Patent. See Sec. 32 of The Companies Act R.S.C. 1927, cap. 27, introduced into the Act in 1924 (14-15 Geo. V, ch. 33, Sec. 8) and made applicable to this company by Sec. 2 (c) of the Companies Act R.S.C. 1927, ch. 27.

20 With such wide powers in the company it appears to me unnecessary to consider the decision of the Judicial Committee of the Privy Council in the Bonanza Creek Case (1916) 1 A.C. 566, and the judgment of Viscount Haldane, that the charter conferred on the company a status resembling that of a corporation at common law, subject to the restrictions which are imposed on its proceedings. While the Bonanza Creek Company was incorporated under The Ontario Companies Act, Viscount Haldane said at page 582 that "The Dominion Companies Act is, so far as Part I is concerned, framed on the same principle, although the machinery set up is somewhat different." He pointed out that "companies to which Part I applies are, like those under the old statute, to be incorporated by Letters Patent, the only material difference being that the Act enables these to be granted by the Secretary of State under his own seal of Office." But without deciding whether the principle of the decision in the Bonanza Creek case applies or not I think the wide specific powers set out in the Letters Patent together with the ancillary statutory powers possessed by it under the Act of its incorporation enabled the company to make the agreement in question. Whatever may fairly be regarded as incidental to or consequential upon those things which the Legislature has authorized, ought not (unless expressly prohibited) to be held by judicial construction to be ultra vires. Attorney-General v. Smethwick Corp. (1932) 1 Ch. 562 at page 576.

That disposes of the first point raised by counsel for the appellant that the instrument was ultra vires the company.

But it is contended that even if the transaction was intra vires the

Record.
In the
Supreme
Court of
Ontario.
—
No. 19.
Reasons for
Judgment of
Court of
Appeal,
Davis, J. A.
June 29th,
1934.

—continued.

Record.
In the
Supreme
Court of
Ontario.

No. 19.
Reasons for
Judgment of
Court of
Appeal,
Davis, J. A.
June 29th,
1934.

—continued.

company, it was a fraudulent transaction in that the directors deliberately used the company's assets for their own personal advantage. There are two phases to this branch of the case. The first arises out of the representation expressed upon the face of the instrument that the three individuals owned the total issued capital stock of the company. The evidence in the case not only shows that the representation was a substantially true statement, but in any case the Bank was entitled to rely upon it in the absence of actual knowledge to the contrary. That the wives of two of the directors had qualifying shares to complete the necessary five shareholders required by statute may have been known to the Bank but the Bank understood, as the fact was, that the three individuals were the actual owners of the total issued capital stock of the company. Any formalities, such as a meeting of the shareholders to confirm and ratify the transaction, were under all the circumstances mere formalities, the absence of which cannot destroy the substance of the transaction. These three individuals were in such control and ownership of the company as to entitle them to perfect by any formalities the substance of the transaction they put through in the name and under the corporate seal of the company. The Bank was entitled to rely upon the representation and the company is precluded from asserting anything to the contrary. *Bloomenthal v. Ford*, (1897) A.C. 156. A company is bound in a matter *intra vires* the company by the unanimous agreement of all its incorporators. If all the individual corporators in fact assent to a transaction that is *intra vires* the company, though *ultra vires* the Board, it is not necessary that they should hold a meeting in one room or in one place to express that assent simultaneously. *Parker and Cooper Ltd. v. Reading* (1926) 1 Ch. 975. 10

The other phase of this branch of the case is the contention that the transaction was of no benefit or advantage to the company but solely for the personal advantage of the three named individuals. The onus rested upon the company to establish this to be so, to the knowledge of the Bank at the time of the transaction. It does not appear by the evidence that the agreement was one from which the company could not derive any benefit directly or indirectly, and the Court should not assume that there was no benefit to be derived by the company. Whether an agreement of a company is for the benefit of the company or not is a matter ultimately for the shareholders. There is nothing to show that the company did not expect to derive directly or indirectly some benefit from the agreement which it thought adequate to induce it to enter into the agreement. It was for the company to measure the benefit to it of the agreement and the Court cannot assume that there was none. In any case the plaintiff did not satisfy the onus that rested upon it to prove that the transaction was fraudulent, in the interest solely of the three individuals and with no direct or indirect benefit or advantage to the company. The case to some extent resembles the case of *Ticonderoga Pulp & Paper Co. v. Cowans et al*, decided by the Privy Council (1925) 4 D. L. R. p. 1. In that case a firm of Montreal 30 40

brokers sued the company upon certain promissory notes made by the company and given to the brokers in satisfaction of or as security for the balance of the broker's account. The claim upon the notes was resisted in substance upon two grounds; first, that the transactions with the brokers were in the shares of a company called The Riordan Pulp and Paper Company and beyond the powers of the Ticonderoga Company; and second, that the directors or officers of the company who gave the orders for the purchase of the stock had no authority from the Board to give those orders and in giving them were acting, not in the interests of or for the purposes
 10 of the general body of the shareholders of the company, but in order to keep up the price of Riordan Pulp shares, in which they, the directors, had a personal interest. The principles laid down in that case by Lord Chancellor Cave in delivering the judgment of the Board appear to me to be applicable to this case.

I would dismiss the appeal with costs.

No. 20.

JUDGMENT OF THE COURT OF APPEAL

THE HONOURABLE CHIEF JUSTICE IN APPEAL, } FRIDAY,
 THE HONOURABLE MR. JUSTICE RIDDELL, } the 29th day
 20 THE HONOURABLE MR. JUSTICE MASTEN, } of June,
 THE HONOURABLE MR. JUSTICE FISHER, } A.D. 1934.
 THE HONOURABLE MR. JUSTICE DAVIS. }

1. UPON motion made on the 13th and 14th days of June, 1934, unto this Court by counsel on behalf of E. B. M. Company Ltd. by way of appeal from the judgment pronounced herein by The Honourable Mr. Justice Kelly on the 4th day of January, 1934, in the presence of counsel for the said E. B. M. Company Ltd. and The Dominion Bank, upon hearing read the said judgment and the evidence given at the trial herein and upon hearing what was alleged by counsel aforesaid and this Court having reserved
 30 judgment until this day;

2. THIS COURT DOTH ORDER that the appeal of the said E. B. M. Company Ltd. be and the same is hereby dismissed.

3. AND THIS COURT DOTH FURTHER ORDER that the said E. B. M. Company Ltd. do pay to the said

Record.
 In the
 Supreme
 Court of
 Ontario.
 No. 19.
 Reasons for
 Judgment of
 Court of
 Appeal,
 Davis, J. A.
 June 29th,
 1934.
 concluded.

No. 20.
 Judgment of
 Court of
 Appeal,
 June 29th,
 1934.

Record.
In the
Supreme
Court of
Ontario.

No. 20.
Judgment of
Court of
Appeal,
June 29th,
1934.

The Dominion Bank its costs of this appeal forthwith after taxation thereof.

"CYRIL RUDGE"
Asst. Registrar S.C.O.

L.C.L.
3.7.34
(Seal)

—concluded.

No. 21.

No. 21.
Order
Approving
Security
and
Admitting
Appeal
October 19th,
1934.

ORDER APPROVING SECURITY AND ADMITTING APPEAL

THE HONOURABLE
MR. JUSTICE MACDONNELL, } FRIDAY, the 19th day of 10
IN CHAMBERS: } October, 1934.

1. UPON the application of Counsel for the Plaintiff, E. B. M. Company Ltd., in the presence of Counsel for the Defendant, The Dominion Bank, upon hearing read the Judgment of the Court of Appeal for Ontario herein, dated the 29th day of June, 1934, the Reasons for said Judgment, the Affidavit of J. T. Garrow filed, and the Bond of the United States Fidelity and Guaranty Company dated the 17th day of October, 1934, filed, and upon hearing what was alleged by Counsel, aforesaid, and it appearing that the Plaintiff has under the provisions of the Privy Council Appeals Act, R.S.O. 1927, chapter 86, a right to appeal to His Majesty in 20 his Privy Council;

2. IT IS ORDERED that the said Bond be and the same is hereby approved as good and sufficient security that the Plaintiff herein will effectually prosecute its Appeal to His Majesty in his Privy Council from the said Judgment of the Court of Appeal, and will pay such costs and damages as may be awarded in case the said Judgment is affirmed, or in part affirmed.

3. AND IT IS FURTHER ORDERED that an Appeal by the said Plaintiff herein to His Majesty in his Privy Council from the said Judgment of the Court of Appeal be and the same is hereby admitted. 30

4. AND IT IS FURTHER ORDERED that the costs of this application shall be costs in the said Appeal.

"D'ARCY HINDS"
Registrar S.C.O.

Entered O.B. 144, page 365,
October 20, 1934.
"H. F."

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE KELLY. } Tuesday, the 14th day of May,
A.D. 1935.

Record.

In the
Supreme
Court of
Ontario.

No. 21a.
Judgment
of
Kelly, J.
May 14th,
1935.

BETWEEN:

E. B. M. COMPANY LTD.

Plaintiff,

—and—

THE DOMINION BANK,

Defendant,

AND BETWEEN:

10

THE DOMINION BANK,

Plaintiff by Counterclaim,

—and—

E. B. M. COMPANY LTD.

HARRY LOW, MARCO LEON and CHARLES BURNS,

Defendants by Counterclaim.

1. UPON motion made on the 27th day of March, 1935, unto this Court by counsel on behalf of The Dominion Bank, Defendant and Plaintiff by Counterclaim, in the presence of counsel for the said E. B. M. Company Ltd., Plaintiff and Defendant by Counterclaim, and the said The Dominion Bank, Defendant and Plaintiff by Counterclaim, no one appearing for the Defendants by Counterclaim Harry Low, Marco Leon and Charles Burns, though duly notified as appears by admission of service of the notice of motion herein upon the solicitors for Harry Low and by the affidavit of service of Arthur L. Marshall of such notice of motion upon the solicitors for Marco Leon and Charles Burns, filed, and upon hearing read the judgment of this Court dated the 4th day of January, 1934, the judgment of the Court of Appeal dated the 29th day of June, 1934, and the report of the Master herein dated the 26th day of February, 1935, and it appearing by the said report that there was due to the Plaintiff by Counterclaim on the 30th day of June, 1931, the following sums:—

20
30

By the Defendant by Counterclaim E. B. M. Company Ltd. \$ 8,808.00

By the Defendants by Counterclaim Harry Low Marco Leon
and Charles Burns jointly and severally 1,111,306.80

By the Defendant by Counterclaim Harry Low 14,844.96

By the Defendant by Counterclaim Marco Leon 96,537.42

making a total of \$1,231,497.18

and it further appearing by the said report that there was due to the Plaintiff by Counterclaim at the date of the said report the following sums:—

Record.

*In the
Supreme
Court of
Ontario.*

—

No. 22.
Order of
Middleton,
J.A.,
Amending
Style of
Cause and
Ordering
Further
Security
for Costs,
June 18th,
1936.

—continued.

within Ontario, whereas it was and still is in Montreal, and it further appearing that the Plaintiff under the name of The Export Brewing and Malting Company Limited gave security by payment into Court of \$1400. for certain costs of the Court of Appeal awarded to the Defendant, which costs have not yet been paid, and also gave security by bond for a proposed appeal from the Court of Appeal to His Majesty in His Privy Council but the Record for the Privy Council has not yet been certified, and it further appearing that certain costs of the action awarded to the Defendant by the Honourable Mr. Justice Kelly amounting to \$3,088.89 bearing interest at 5% per annum from 14th June, 1935, have not been paid and 10 proceedings in bankruptcy were taken against The Export Brewing and Malting Company Limited and were pending when it was discovered by the Defendant that the Plaintiff was not correctly described since which no further step has been taken in the bankruptcy proceedings, upon reading the proceedings on the pending petition in Bankruptcy and the evidence, exhibits and other proceedings in the action including the Order of the Honourable Mr. Justice Macdonnell herein dated 19th October, 1934, the notice of motion to the Court of Appeal for Ontario herein dated 20th January, 1936, the Order of the Court of Appeal herein dated 6th February, 1936, and the material therein referred to, the notice of application 20 to the Registrar of the Supreme Court of Ontario dated 2nd April, 1936, and the material therein referred to and the affidavit of John Wellington Pickup filed and upon hearing what was alleged by Counsel aforesaid.

2. THIS COURT DOTH ORDER that the Writ of Summons and all proceedings in this cause be amended by correcting the name The Export Brewing and Malting Company, Limited wherever the same appears so that the same will read "E.B.M. Company Ltd." instead of "The Export Brewing and Malting Company Limited".

3. AND THIS COURT DOTH FURTHER ORDER that the E.B.M. Company Ltd. as Plaintiff do on or before the 16th day of July, 1936, fur-30
nish security to the satisfaction of the Registrar of this Court in the sum of \$5,000. (to be in addition to the \$1400. so paid into Court) to secure payment to the Defendant of all costs of proceedings heretofore taken in this cause and which may ultimately be payable by the Plaintiff to the Defendant and pending the giving of said additional security all proceedings in connection with the proposed appeal to His Majesty in His Privy Council shall be stayed and should the security not be given within the time aforesaid the said proceedings shall be perpetually stayed and in that event the sum of \$1400. shall forthwith be paid out of Court to the Defendant.

40

4. AND THIS COURT DOTH FURTHER ORDER that upon the security aforesaid being furnished the Plaintiff shall, if the appeal to the Privy Council is to proceed, furnish proper security for costs of the pro-

posed appeal to His Majesty in His Privy Council in substitution for the security heretofore given.

5. AND THIS COURT DOTH FURTHER ORDER that this motion in so far as it asks for an Order directing the Solicitors who commenced and carried on the action and proceedings in the name of The Export Brewing and Malting Company Limited to pay to the Defendant the costs of such action or proceedings be and the same is hereby dismissed.

6. AND THIS COURT DOTH FURTHER ORDER that the costs of the Defendant of and incidental to this motion shall be costs in the said
10 appeal to the Privy Council if the Plaintiff proceeds with the said appeal and shall be payable by the Plaintiff to the Defendant in any event of the appeal, but should the proposed appeal be perpetually stayed under the provisions hereof such costs shall be payable by the Plaintiff to the Defendant forthwith after taxation thereof.

Record.
In the
Supreme
Court of
Ontario.

—
No. 22.
Order of
Middleton,
J.A.,
Amending
Style of
Cause and
Ordering
Further
Security
for Costs,
June 18th,
1936.

—concluded.

“H. B. PALEN”
Asst. Registrar S.C.O.

Entered O.B. 157

Pages 166-8

June 9th 1936

20

“R.M.”

Record.

No. 23.

*In the
Supreme
Court of
Ontario.*

IN THE SUPREME COURT OF ONTARIO

No. 23.
Order of
Court of
Appeal
Dismissing
Appeal from
Order of
Middleton,
J.A.,
October 23rd,
1936.

THE HONOURABLE THE CHIEF JUSTICE IN APPEAL
THE HONOURABLE MR. JUSTICE MACDONNELL
THE HONOURABLE MR. JUSTICE HENDERSON

} Friday,
the 23rd
day of
Octo-
ber,
1936.

BETWEEN:

E. B. M. COMPANY LTD.,

10

Plaintiff,

—and—

THE DOMINION BANK,

AND BETWEEN:

Defendant.

THE DOMINION BANK,

Plaintiff by Counterclaim,

—and—

E. B. M. COMPANY LTD.,
HARRY LOW, MARCO LEON
and CHARLES BURNS,

Defendants by Counterclaim. 20

1. UPON MOTION made this day unto this Court on behalf of the Plaintiff by way of appeal from the Order pronounced by The Honourable Mr. Justice Middleton on the 18th day of June, A.D. 1936, in the presence of Counsel for the Plaintiff, the Defendant, and the Solicitors who issued the Writ of Summons herein, upon hearing read the said Order and the material before The Honourable Mr. Justice Middleton on the occasion of his making the said Order and the Writ of Summons as amended pursuant to the said Order, and upon hearing what was alleged by Counsel aforesaid,

2. THIS COURT DOTH ORDER that this appeal be and the same 30 is hereby dismissed with costs to be paid by the Plaintiff to the Defendant forthwith after taxation thereof.

3. AND THIS COURT DOTH FURTHER ORDER that the date for furnishing the security of \$5,000.00 provided by paragraph three of the said Order of The Honourable Mr. Justice Middleton be extended until the 10th day of November, 1936, and that upon failure to furnish same by the said date all proceedings in the said paragraph three set forth shall be perpetually stayed.

“D’ARCY HINDS”

Entered O.B. 160 page 212
November 7, 1936.
“H.F.”

Registrar, S.C.O. 40

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE
THE CHIEF JUSTICE IN APPEAL } Thursday, the 5th day of
IN CHAMBERS } November, 1936.

No. 24.
Order of
Latchford,
C.J.A.,
Approving
Security and
Admitting
Appeal,
November 5th,
1936.

BETWEEN:

E. B. M. COMPANY LTD.,
Plaintiff,

10

—and—

THE DOMINION BANK,
Defendant.

AND BETWEEN:

THE DOMINION BANK,
Plaintiff by Counterclaim,

—and—

E. B. M. COMPANY LTD.,
HARRY LOW, MARCO LEON and
CHARLES BURNS,
Defendants by Counterclaim.

20

UPON THE APPLICATION of Counsel for the Plaintiff, E.B.M. Company Ltd., in the presence of Counsel for the Defendant. The Dominion Bank, upon hearing read the Judgment of the Court of Appeal for Ontario herein, dated 29th day of June, 1934, the Reasons for the said Judgment, the Order of The Honourable Mr. Justice Macdonnell herein, dated 19th day of October, 1934, the Order of The Honourable Mr. Justice Middleton herein, dated 18th day of June, 1936, the Bonds of United States Fidelity & Guaranty Corporation for \$5,000.00 and \$2,000.00 respectively, each dated 4th day of November, 1936, filed, and upon hearing what was alleged by Counsel aforesaid, and Counsel for the Plaintiff undertaking that the said Plaintiff will take all the necessary steps to expedite the hearing of its Appeal to His Majesty in His Privy Council, and if at all possible, will try to have same completed for hearing at the Sittings thereof commencing in the month of January, 1937, and it appearing that the Plaintiff has, under the Provisions of The Privy Coun-

Record.
*In the
Supreme
Court of
Ontario.*

cil Appeals Act, R.S.O. 1927, Chapter 86, a right to appeal to His Majesty in His Privy Council.

—
No. 24.
Order of
Latchford,
C.J.A.,
Approving
Security and
Admitting
Appeal,
November 5th,
1936.
—concluded.

1. IT IS ORDERED that the said Bond for \$2,000.00 be and the same is hereby approved as good and sufficient security that the Plaintiff herein will effectually prosecute its Appeal to His Majesty in His Privy Council from the said Judgment of the Court of Appeal, and will pay such costs and damages as may be awarded in case the said Judgment is affirmed, or in part affirmed.

2. AND IT IS FURTHER ORDERED that an Appeal by the said Plaintiff herein to His Majesty in His Privy Council from the said Judgment of the Court of Appeal be and the same is hereby admitted.

3. AND IT IS FURTHER ORDERED that the Bond filed in this Court on the 17th day of October, 1934 in this Cause as formerly constituted, be forthwith delivered up to the Solicitor for the Plaintiff.

4. AND IT IS FURTHER ORDERED that the costs of this application shall be costs in the said Appeal.

“D'ARCY HINDS”
Registrar
S.C.O.

Entered O.B. 159
Pages 265-6
November 7th, 1936
“R.M.”

PART II
EXHIBITS

(CORRESPONDENCE)

EXHIBIT NO. 26

APPLICATION FOR LINES OF CREDIT by
CARLING EXPORT BREWING & MALTING CO. LTD.
FROM THE DOMINION BANK

Record.
*In the
Supreme
Court of
Ontario.*
Exhibits.
No. 26.
Defendant's
Exhibit.
Application
for Lines of
Credit by
Carling Export
Brewing &
Malting
Co. Ltd.
February 26,
1925.

Name: Carling Export Brewing & Malting Co. Ltd. /
Branch: London, Ontario, Date: Feb. 26'25.

10 Occupation: Brewers.

	Incorporated 1922.	Dominion Charter.
	NEW CREDIT	LAST CREDIT
	Demand \$100,000.	Demand \$100,000.
	Rate 6%	Rate 6%

Term: Sept. 30th, 1925.

Purpose: To assist in the general
conduct of the business.Postponement of claim from Chas. Burns, H. Low and Marco Leon
\$165,000.20 Guarantee Bond \$100,000. Signed by Chas. Burns, H. Low, Marco Leon.
(Joint and Several—on new form, Yes.

Manager's Remarks and Recommendation (in brief)—Total cash invest-
ment of partners to date \$377,000. plus Bank loans and profits bring total
cash investment in excess of \$550,000. Turnover for six months operations
\$665,618.12 representing 224,133 cases besides bulk shipments 70% of
which was on a basis of \$2.25 per case whereas \$3.00 to \$3.50 is expected
in future. Guarantors have reputed means of \$340,000. independent of busi-
ness. Application recommended.

(Sgd.) B. B. Manning,
Mgr.30 Auditor:
Morris Goodman, Montreal.

H.O. Remarks:

In September 1923 the business of the Carling Brewing and Malting
Company Ltd., London, Ont., was purchased by Charles Burns, Harry
Low and Marco Leon. The price paid was \$350,000. of which \$230,000.
was cash and a mortgage of \$120,000. was given for the balance. The
latter has since been reduced to \$80,000. The actual cash placed in the
business up to the date of the statement, by the owners mentioned, totals
\$407,000., of this \$177,000. is carried on the Company's books as a loan.

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
No. 26.
Defendant's
Exhibit.
Application
for Lines of
Credit by
Carling Export
Brewing &
Malting
Co. Ltd.
February 26,
1925.

—continued.

Two statements of the Company's affairs as at 31st October, the end of its first fiscal year, are submitted. One shows the Company's position without allowing for depreciation, etc., and is said to represent the actual value of the assets. The other shows the net worth after reserves, etc., have been deducted and it is on the basis of this one that the application is being considered.

Gross profits were \$146,774. on a turnover of \$669,792. but after reserving \$11,465. for doubtful accounts, allowing \$62,666. for depreciation, providing \$38,635. for Government Sales Tax—it is expected that the actual amount required for this will be considerably less—and making 10 other sundry adjustments totalling \$9,000. a loss of \$24,110. is shown, creating a deficit in Profit & Loss Account to that extent. There is a liquid deficit of \$162,729., but included in the liabilities is an item of \$165,000. representing advances made by Burns, Low and Leon, as we have been given a postponement of claim covering these moneys, for our purpose the Company would show a liquid surplus of \$2,271. Total surplus is \$702,190.

Stock is said to have been taken in at cost and is valued at \$145,230., the principal item being manufactured stock \$88,888., containers, bottles, etc. \$32,605., and sundries \$19,404. 20

Receivables represent the value of stock at export ports and for which payment is to be received before the goods are delivered, which practically eliminates any risk. The major portion of those owing at the date of statement have since been paid. Nevertheless \$11,465. has been reserved for any of a doubtful nature.

The Company's properties and plant are said to be very conveniently situated and are carried at replacement values as submitted by the National Appraisal Company in April 1922 plus money since spent on improvements, etc. In fixed assets is an item of \$115,000. representing trade mark and formulas, etc. which are of no intrinsic value, also an amount of \$39,300. covering incorporation and organization expenses. 30

In January 1924 a credit of \$50,000. was authorized for the Company on its own notes. This was increased to \$100,000. in March on the understanding that any advances made would be fully paid off by the 30th June. This was not, however, accomplished, the low point being \$30,000. The present figures are \$71,469 and the maximum reached was \$100,000. Included in liabilities is an item of \$38,635. for Sales Tax and one of \$165,000. covering moneys owing to the three owners, both of which have been already referred to.

The result of the year's operations was disappointing, due to various unforeseen circumstances and the output was not as large as anticipated nor was the margin of profit as great, but it is reported that there is now a better understanding amongst the trade and prospects for the ensuing twelve months are very much brighter. This, together with the proposed Amendment to the O.T.A., permitting stronger beer, being passed, will, 40

it is expected, result in a larger turnover and necessitate greater assistance from Bank.

The Company's failure to retire its loans as promised was a most unfavourable feature in the account so far as we are concerned. This, however, could have been effected had such large reductions not been made upon the mortgage against the property, otherwise the account has operated very satisfactorily. It is a profitable one and eventually the connection should prove of considerable value to the Bank. The three guarantors are men of means who at times carry substantial balances in their individual 10 accounts. Mr. Leon owns fifty shares of The Dominion Bank stock and the total worth of the three is given at \$340,000. outside of their interests in the business. With this security and the postponement of claim covering moneys owing to them, we would appear to be justified in extending the credit asked for.

February 26, 1925.

PART OF EXHIBIT NO. 16

STATEMENT OF AFFAIRS OF CARLING EXPORT BREWING & MALTING CO. LTD.

For Private and Confidential Use of the Dominion Bank

20 Name—Export Brewing & Malting Co. Ltd. London, Ont.
 Occupation—Brewers Chas. Burns 1/3 interest
 President—Chas. Burns. H. Low 1/3 “
 Vice-President—H. Low. M. Leon 1/3 “
 Active head, stating title (Age 41)
 Capital authorized \$1,000,000. Capital subscribed \$726,300.

Customer at Branch for Two Years	STATEMENT OF AFFAIRS			
Years ending—	Oct. 1924	Oct. 1925	31 Mar. 1926	30 June 1926
ASSETS—Stock	145,230	132,542	145,658	180,090
30 Accounts Receivable, less reserve \$14,832	26,549	133,490	140,152	253,273
Bills Receivable, Advances to shareholders		2,601	6,645	2,521
Cash	555	1,750	603	29,564
TOTAL LIQUID ASSETS	172,334	270,383	293,058	465,448

Record.

In the Supreme Court of Ontario.

Exhibits. No. 26. Defendant's Exhibit. Application for Lines of Credit by Carling Export Brewing & Malting Co. Ltd. February 26, 1925.

—concluded.

Part of No. 16. Plaintiff's Exhibit. Statement of Affairs of Carling Export Brewing & Malting Co. Ltd. April 7, 1926.

Record. <i>In the Supreme Court of Ontario.</i> — Exhibits. Part of No. 16. Plaintiff's Exhibit. Statement of Affairs of Carling Export Brewing & Malting Co. Ltd. April 7, 1926. — <i>continued.</i>	LIABILITIES—Dominion Bk.	57,277	113,613	107,403	50,000		
	Other Banks—Outstanding cheques	15,268.		Export Ins.	43,534		
	Bills Payable	38,395	63,444	5,299	21,381		
	Accounts payable	8,487		56,584	121,768		
	Special loan account	—	—	—	20,000		
	Chas. Burns, H. Low and M. Leon	177,000	163,257	203,257	223,257		
	Taxes in dispute	38,636	80,249	98,984	194,050		
	Taxes on Stock Transfers		8,000	8,000	8,000		
	Taxes		3,374	5,689	6,084		
	Wages accrued and sundry charges		3,462	1,050		10	
	TOTAL LIABILITIES		335,063	435,399	486,266	688,074	
	LIQUID deficit		162,729	165,016	193,208	222,626	
	<hr/>						
		FIXED ASSETS—Real Estate					
	(Equity)	447,355	469,009				
	Plant, machinery, etc.	304,218	320,744				
	Patterns, Dies & Tools, Sidings and Docks	6,996	6,998				
	Office Furn. and Fixt's	4,090	751				
	Deferred charges	1,259	9,702				
	Motor trucks & equipment	9,366	14,306			20	
	Trade Marks & Formulae	115,000	115,000				
	Incorporation and Organization	39,300	39,300				
	TOTAL FIXED ASSETS—	927,585	975,810				
	Less depreciation—	62,666	125,527				
		864,919	850,283	885,322	925,322		
	TOTAL SURPLUS	702,189	685,267	692,114	702,696		
	Capital (Paid-up)	726,300	726,300	726,300	726,300		
	Profit & Loss At Debit	24,110	41,034	34,186	23,604		
	ANNUAL BUSINESS	669,800	748,000	314,000	298,145		
	(Net) Loss	24,110	16,922	5,088	62,565	30	
				(profit 5 mos)	(profit 1 month)		

PARTICULARS OF REAL ESTATE STANDING IN THE NAME OF CARLING EXPORT BREWING AND MALTING CO. LTD.

Record.
In the
Supreme
Court of
Ontario.

(Give Exact location)	Insce. Value	Assessed Value	Actual Value	Date searched	Titles	By Whom
Brewery and Brewery Property			529,009	Jan.24	Manager	
					Mortgage or other liability	\$20,000.
	Total book value		\$529,009			
	Less Mortgages		20,000			
	Equity		\$509,009			
					Certified correct	Apl. 7/26
					(Sgd) B.B.Manning,	Manager.

Exhibits.
Part of
No. 16.
Plaintiff's
Exhibit.
Statement of
Affairs of
Carling Export
Brewing &
Malting
Co. Ltd.
April 7, 1926.
—continued.

10

PART OF EXHIBIT NO. 23

APPLICATION BY CARLING EXPORT BREWING & MALTING CO. LTD. FOR CREDIT

Part of
No. 23.
Defendant's
Exhibit.
Application by
Carling Export
Brewing &
Malting
Co. Ltd.
for Credit.
November,
1926.

Application for Total Credit \$200,000. to assist in financing plant extension involving expenditure of \$300,000. to \$400,000.
Present Assets of the Carling Export Brewing & Malting Co., Ltd. and associated organizations owned by partners interested:—

20

Invested in Stock on Hand		
Leon, Burns & Low, Windsor.....		\$160,000.
“ “ “ “ Halifax		45,000.
Cuban Export Co., Windsor.....		125,000.
Wayne Products Co., Windsor.....		100,000.
		<u>\$430,000.</u>
Stock in cellars, London		100,000.
		<u>\$530,000.</u>
Dominion of Canada V. W. L.....		350,000.
Share in Brewers Trust (cash).....		100,000.
		<u><u>\$980,000.</u></u>

30

Record.
*In the
 Supreme
 Court of
 Ontario.*
 —
 Exhibits.
 Part of No. 23.
 Defendant's
 Exhibit.
 Application by
 Carling Export
 Brewing &
 Malting
 Co. Ltd.
 for Credit.
 November,
 1926.
 —concluded.

Value of Brewery and Brewery property, Auditors' Statement 31st Oct., 1925	\$505,959.	
Now Free of all encumbrance.		
Plant and Machinery at same date	251,259.	
Sidings and Docks, etc.	6,297.	
Motor Trucks and Equipment	12,875.	
Newly acquired land and docks (Equity)	38,000.	
“ “ Motor Trucks (paid)	36,000.	
Expenditures on Brewery 1926 to date	70,000.	
	<hr/>	
	\$920,390.	10
Total	\$1,900,390.	

Sufficient Receivables at this date to liquidate all payables including present Bank Loan \$50,000.
 Profit Brewery 1926—\$350,000.
 Sales between \$1,500,000. and \$2,000,000.
 Extensions will double present capacity.
 \$100,000. to be repaid within 1 year.
 \$100,000 V.W.L. Bonds not to be disturbed at our Windsor, Ont. Branch during currency of loan and with letter to be furnished us to that effect. 20
 Shortage of 150,000 to 200,000 cases in requirements during Summer months, 1926.
 Will require equipment and extensions indicated regardless of change or otherwise in Provincial Legislation.
 Guarantee of Chas. Burns
 Marco Leon Harry Low
 \$100,000. Bank Form.

Part of No. 23.
 Defendant's
 Exhibit.
 Memorandum
 of Information
 supplied
 Defendant
 by Low.
 November 24,
 1926.

PART OF EXHIBIT NO. 23

MEMORANDUM OF INFORMATION SUPPLIED TO
 DEFENDANT BY LOW 30

CARLING EXPORT BREWING & MALTING CO LTD.
 LONDON BRANCH

Information supplied by Mr. Low at an interview on the 24th November, 1926

STOCK ON HAND: Said to total approximately \$300,000. at this date, including \$150,000. of beer, balance represented by bottles, casks, malt, etc.

ACCOUNTS RECEIVABLE: Amounts owing for 4.4 are represented by sundry accounts in the Province of Ontario.

Amounts owing for 9% beer are due by the firm of Leon, Burns and Low—on the 30th June last the total of the former was approximately \$50,000. and the latter \$196,000.

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part of No. 23.
Defendant's
Exhibit.
Memorandum
of Information
supplied
by Low.
November 24,
1926.

— continued.

LIABILITY FOR UNPAID TAXES approximately \$200,000. it is stated will not likely have to be paid. This represents the reserve which was made in case a demand is made for Sales Tax on export shipments which would average approximately 25c per case based on Ontario sales. It is stated that the Solicitors for the different Brewers all agree that the Brewers are not liable for such a tax on export shipments. It appears that before it was decided not to pay this tax a considerable sum had already been turned over to the Government and in the case of the Carling Company they estimate that such payments made by them totalled about \$190,000. Should the Government sue for the amount now shown to be owing and lose, our customers would then be in a position to demand repayment from the Government for the taxes already paid. It is claimed other breweries and distilleries are in a similar position to a more or less extent, one concern it is stated show a liability of this nature of \$900,000.; they had previously paid the Government approximately \$2,000,000. so that if action is taken against them and it is not successful the Government would have to make reimbursement for a very large sum.

The case in which a decision was given recently respecting the O'Keefe Brewing Co. Ltd., whereby the Judge decided that liquor could not be warehoused pending reshipment is evidently not causing our customers any concern. They have apparently been informed that should the Government contemplate action they will be given ample time to move such stocks as they may have on hand at border points.

Under the Act, a Common Carrier, we are informed, has the right to warehouse merchandise and in case a decision respecting the O'Keefe Brewery Co. Ltd., is sustained, our customers have already obtained a Charter for a forwarding company or common carrier, through which organization it is claimed they would be able to warehouse merchandise when necessary.

The total export sales for the last twelve months of the Brewing Company are approximately \$2,000,000. Up until the end of June beer and ale was invoiced to Leon, Burns and Low at a price of \$2.50 a case which, I understand, is the price usually charged by Brewers for export merchandise to exporting organizations. Because of the largely increased turnover during the last two months it was found that on this basis the brewing company's profits were very substantial, those for the month of June alone being approximately \$60,000. Since that time, in order to modify the returns, Leon, Burns and Low have been billed for the product at \$1.75 per case only.

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
Part of No. 23.
Defendant's
Exhibit.
Memorandum
of Information
supplied
Defendant
by Low.
November 24,
1926.

—concluded.

The Company is proceeding now to double the capacity of their plant at London; they claim this was necessary because during the past year orders have had to be refused for over 200,000 cases of beer and ale. During the last six months their export output has run from 68,000 to 100,000 cases a month, and it is claimed that they now do approximately 60% of all of the exporting of beer and ale at the border points in the Windsor district. The cost of the additional buildings and equipment will run between \$350,000. and \$400,000. and we are being asked for total loans to assist in this work of \$200,000., the balance of the necessary funds will be provided by the Company or those interested in it and the properties will be free of any mortgage encumbrances, as the mortgage of \$120,000. which was given when the purchase of the property took place by Leon, Burns and Low has now been retired in full. They will undertake to retire \$100,000. of the advance applied for within one year's time and state that it is possible and quite probable that the full amount will be paid off much earlier than that. 10

As security we are given the personal guarantee of Messrs. Leon, Burns and Low, a postponement of claim from them and a registered assignment of the Company's book debts. In addition they will lodge in a safety deposit box at Windsor \$100,000. Dominion of Canada Bonds and give us a letter undertaking to leave these securities in the safety deposit box until such time as all of the loans to the brewing company have been retired. 20

Messrs. Leon, Burns and Low at present own \$350,000. Dominion of Canada Bonds, \$100,000. of which are now hypothecated to us at Windsor in connection with their operating accounts. Later on they may wish to obtain a loan from us up to possibly \$200,000. against such bonds in connection with a warehouse proposition at Halifax, N.S. and a possible change in their method of purchasing, by which they expect to largely reduce their costs of liquor with a corresponding increase in their profits.

The turnover in their export liquor business at Windsor and vicinity during the past twelve months has been close to \$3,000,000. 30

24th November, 1926.

PART OF EXHIBIT NO. 27

LETTER FROM LONDON MANAGER OF DEFENDANT TO
GENERAL MANAGERFROM THE MANAGER
LONDON, Ontario.TO: THE GENERAL MANAGER,
HEAD OFFICE,Name—Carling Export Brewing
& Malting Co. Ltd.Subject: Application for
Additional Line of Credit.

10 23rd May 1927.

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
Part of No. 27.
Plaintiff's
Exhibit.
Letter from
London
Manager of
Dominion
Bank to
General
Manager.
May 23, 1927.

Dear Sir:

- Owing to the Government Control Law becoming effective in Ontario in the immediate future, at the same time that the Dominion Government is conducting an inquiry into the affairs of all the Ontario Breweries, a situation has arisen with our customers whereby they will require an additional \$150,000. for a temporary period; the time is not expected to exceed three months. This additional Credit would bring the Company's total advances up to \$350,000.

20 The circumstances relative to the government control and the Brewery Inquiry, wherein they are related, are as follows:

It is the intention of all Ontario Breweries to co-operate in establishing warehouses at all centres where delivery is to be made under Government "permits". At the present time some twenty-five of these warehouses have already been secured, with the possibility of more being required as occasion demands. Our customers expect that to each warehouse they will have to despatch at least 2,000 cases of their product, at a cost of \$3. per case, necessitating an investment at the outset of \$150,000., in addition to which some 20/25,000 cases will be in reserve or in transit, bringing the investment in this branch of their business up to \$225,000.

30 This increased expense is incurred at a time when the Company has just completed extensions to its plant, costing \$280,000., all of which has been paid for with the exception of approximately \$25,000. The entire amount necessary for financing plant extensions was available through inter-financing in their own concerns, but it has been deemed inadvisable to complete these arrangements lest their intentions might be misunderstood by the Customs Commission.

40 As you are no doubt already aware, the Company enjoyed a most profitable year in 1926. The figures submitted are not taken from the books of the Company, but were given to the writer verbally by the General Manager, Charles Burns. They not only include the actual assets of the Carling Export Brewing & Malting Co. Ltd., but other assets as well, owned solely by the three partners who also are the owners of all Brewery Stock outright. It will be observed therefrom that total Liquid Assets

Record.

In the
Supreme
Court of
Ontario.Exhibits.
Part of No. 27
Plaintiff's
Exhibit.
Letter from
London
Manager of
Dominion
Bank to
General
Manager.
May 23, 1927.

—concluded.

amount to \$1,238,000., and the Liquid Surplus \$838,000; total Liabilities of \$400,000. consist chiefly of the Company's bank loan and outstanding cheques—given as \$300,000.—whilst the other \$100,000. is owing to the trade and balance of building operations. Total Fixed Assets shown at \$1,246,098. are taken at the same figures as the Auditors' Statement of 1925, plus \$280,000. expended during the past year.

The General Manager of the Company informs me that arrangements have been completed whereby an extensive business will be transacted with the Government of the Province of New Brunswick. It is generally expected that a large volume of business will be done by all Breweries in the Province of Ontario, and our customers are in a most favourable position to handle all requirements that may be demanded of them. At the present time their plant is most efficient, as well as having the largest storage capacity, of any Brewery in the Province. It is now operating as a four-unit Brewery, and a stock is being accumulated that should meet all demands of the coming season, whereas one year ago much business was lost through lack of merchandise on hand. The export business is expected to be equal in volume, if not greater, than last year, and with prices maintained the Company should be in a most enviable position when the Summer season of 1927 is over. The Banking account of the Company has been a profitable one to the Branch, and has been much sought after by other institutions; at this time it has been pointed out to me by the General Manager that if necessary they are in a position to retire all liabilities, including that to the Bank, from the proceeds of the War Loan Bonds now held, which they prefer not to do, but have asked the Bank to further finance them for the period mentioned. This has my recommendation, and I trust will have your favourable consideration.

Yours truly,

(Sgd) B. B. MANNING,

Manager.

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20

30

PART OF EXHIBIT NO. 16

STATEMENT OF AFFAIRS OF CARLING EXPORT BREWING
& MALTING CO. LTD.For Private and Confidential Use of The Dominion Bank
Branch—London, Ont.

Name—Carling Export Brewing & Malting Co. Ltd.
Occupation Brewers. Chas. Burns 1/3 interest.
President—Chas. Burns, H. Low 1/3 “
Vice-President—H. Low. M. Leon 1/3 “
Active Head, stating title (Age 41)
Capital Authorized \$1,000,000. Capital Subscribed \$726,000.

40

Part of No. 16.
Plaintiff's
Exhibit.
Statement of
Affairs of
Carling Export
Brewing &
Malting
Co. Ltd.
May 23, 1927.

STATEMENT OF AFFAIRS

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
Part of No. 16.
Plaintiff's
Exhibit.
Statement of
Affairs of
Carling Export
Brewing &
Malting
Co. Ltd.
May 23, 1927.

—continued.

	Years ending		Estimated	Fire
	Oct.1924.	Oct.1925.	23rd May 1927	Inscce
ASSETS—Stock	145,230	132,542	498,000.	
Accounts Receivable	26,549	133,490	97,000	
Bonds			400,000	
Cash	555	4,351	112,000	
Stiff Trustee			75,000	
10 Bermuda			56,000	
<hr/>				
TOTAL LIQUID ASSETS	— 172,334	270,383	1,238,000	
LIABILITIES: } including O/S	{ 57,277	113,613	300,000	
Dominion Bank, } Cheques, say	{ 15,268			
Bills payable	39,395	63,444	100,000	
Accounts payable, Special Loan Leon, Burns & Low	8,487			
Taxes in dispute —	177,000	163,257		
Taxes on Stock Transfers —	38,636	80,249		
Sundries —		8,000		
		6,836		
<hr/>				
20 TOTAL LIABILITIES	— 335,063	435,399	400,000	
LIQUID SURPLUS (Deficit)	— 162,729	165,016	838,000(Surplus)	
<hr/>				
FIXED ASSETS (Real Estate Equity)	447,355	469,009		
Plant, Machinery etc.	304,218	320,744		
Patterns, Dies & Tools				
Sidings and Docks —	6,996	6,998	1,091,798	
Office Furn. and fixt's	4,090	751		
Trade Marks and Formulae	115,000	115,000	115,000	
Incorporation and Organization	39,300	39,300	39,300	
30 Sundry	10,625	24,008		
<hr/>				
TOTAL FIXED ASSETS	927,585	975,810	1,246,098	
Less Depreciation —	62,666	125,527		
Goodwill	864,919	850,283		
TOTAL SURPLUS	702,189	685,267	2,084,098	
<hr/>				
Capital (Paid up)	726,350	726,350		
Profit & Loss at debit	24,110	41,034		
<hr/>				
ANNUAL BUSINESS	669,800	748,000		
PROFITS (NET)				

Record.
In the
Supreme
Court of
Ontario.

PARTICULARS OF REAL ESTATE STANDING IN THE NAME
OF.....

Exhibits.
Part of No. 16.
Plaintiff's
Exhibit.
Statement of
Affairs of
Carling Export
Brewing &
Malting
Co. Ltd.
May 23, 1927.
—concluded.

(Give exact location.	Insce.	Assessed Value.	Actual Value	Mtge or other search'd liab'ty	Date	By Whom
Brewery & Brewery Property			529,009	0	Jan./24	Mgr.
Total Book Value			\$529,009			
Equity			\$529,009			
Certified Correct May 23/27.						10
B. B. Manning, Manager.						

Part of No. 16.
Plaintiff's
Exhibit.
Application
for line of
credit by
Carling Export
Brewing &
Malting
Co. Ltd.
May 25, 1927.

PART OF EXHIBIT NO. 16

APPLICATION FOR LINE OF CREDIT BY CARLING EXPORT
BREWING & MALTING CO., LTD.

LONDON, ONT. Branch, 25th May 1927.

NAME: CARLING EXPORT BREWING & MALTING COM-
PANY LTD.

OCCUPATION: Brewers.

New Credit		Last Credit		
Trade — \$.....	} Rate 6%	Trade — \$.....	} Rate 6%	20
Direct — \$350,000		Direct — \$200,000		
Demand—\$.....		Demand—\$.....		
\$350,000.		\$200,000.		

Term:
Three months.

Purpose:
To assist in preparing stock to meet Government requirements under
new Government control measure.

Security Offered:
Joint and several guarantee bond, on the Bank's form, signed by Chas. 30
Burns, H. Low and Marco Leon for \$100,000.

Postponement of Claim signed by Chas. Burns, H. Low and Marco Leon covering all moneys owing to them by the Company.

Registered Assignment of Book Debts.

Manager's Remarks and recommendation:

"The Directors claim they are in a position to retire all liabilities including the Bank's from the proceeds of the War Loan Bonds held but prefer to ask the Bank to finance them for the period in question."

H. O. Remarks:

10 In September 1923 Messrs. Charles Burns, Marco Leon and H. Low purchased the assets of the Carling Brewing and Malting Co. Ltd., London, for \$350,000. for which they paid cash \$230,000. and gave a mortgage for the balance of \$120,000. This has since been retired from funds provided by the three men mentioned, and when the present improvements—now under way—have been completed and paid for they will have invested over \$1,000,000. in the business, and their present estimated position is as follows:

	Cash	\$243,000.
	Bonds	400,000.
	Receivables	97,000.
20	Stock	498,000.
		<hr/>
		\$1,238,000.
	Liabilities	400,000.
		<hr/>
	Liquid Surplus	\$838,000.
	Investment in brewery property	\$1,092,000.
	Total Surplus	\$1,930,000.
	Sales for 1926 approxi- mately	\$2,000,000.
	Profits " "	\$350,000.

30 Of \$400,000. in bonds entered on statement \$100,000. is held for safekeeping by the Bank in connection with the last line of credit.

When the Company commenced the recent alterations and improvements to the buildings, etc. they were unaware that under conditions of purchase by the Government in connection with the new legislation it would be necessary for the Ontario Breweries to carry a certain stock at all points where liquor permits were issued in order to fill orders promptly, direct from said warehouses. To cut down expenses the breweries have got together and are each taking so much space in a building to be rented for that purpose. In order to stock these warehouses it is esti-

Record.
In the
Supreme
Court of
Ontario.

Exhibits.
Part of No. 16.
Plaintiff's
Exhibit.
Application
for line of
credit by
Carling Export
Brewing &
Malting
Co. Ltd.
May 25, 1927.

—continued.

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part of No. 16.
Plaintiff's
Exhibit.
Application
for line of
credit by
Carling Export
Brewing &
Malting
Co. Ltd.
May 25, 1927.

—concluded.

mated it will cost our customers in the neighborhood of \$150,000, and we are asked to assist them to that extent for that special purpose which would bring their total credit up to \$350,000. The Directors claim they could arrange to finance amongst themselves, but under present conditions prefer not to do so.

There is no doubt, judging by the figures submitted, that there has been a remarkable improvement in the business and that it has been very profitable. Those concerned expect this condition to continue, and with the securities held it would appear as if we could safely extend the assistance asked for.

10

25th May, 1927.

PART OF EXHIBIT NO. 27

Part of No. 27.
Plaintiff's
Exhibit.
Letter to
London
Manager of
Dominion
Bank from
General
Manager
May 26, 1927.

LETTER TO LONDON MANAGER OF DEFENDANT FROM
GENERAL MANAGER

TO THE MANAGER } NAME—Carling Export Brewing &
LONDON, Ontario, } Malting Co. Ltd.
26th May 1927. } SUBJECT: Additional Line of Credit.

Dear Sir:

Referring to your letter of the 23rd instant, our Board of Directors has to-day considered the application submitted by the Carling Export 20 Brewing & Malting Co. Ltd. for an additional credit on the Company's own name of \$150,000, which has been sanctioned, making the total line now in force—

\$350,000.—on the Company's own notes.
Rate of Interest 6%.

To be secured by: Joint and several guarantee bond, on the Bank's form, signed by Chas. Burns, H. Low and Marco Leon for \$200,000,
Postponement of claim signed by Chas. Burns, H. Low and Marco Leon, covering all moneys owing 30 to them by the company.
Registered assignment of book debts.

In addition you are to continue to hold for safekeeping Dominion of Canada Bonds having a par value of \$100,000.

We note that the additional borrowings referred to are required in connection with the stocking of beer for sale to the Ontario Government and that you anticipate that the Company's debt to us should be brought down to \$200,000. again in about three months' time. This we shall expect to see accomplished and we shall look for a further reduction of \$100,-

000. by December next, as outlined in my communication of the 7th December 1926.

The Company's account at London Branch has become an important one and it is essential, in view of the nature of their business, that you keep in close touch with their operations and advise us from time to time of any special developments.

Yours truly,
 "C.A.B."
 W.
 General Manager.

10

Record.
*In the
 Supreme
 Court of
 Ontario.*
 Exhibits.
 Part of No. 27.
 Plaintiff's
 Exhibit.
 Letter to
 London
 Manager of
 Dominion
 Bank from
 General
 Manager.
 May 26, 1927.
 -concluded.

PART OF EXHIBIT NO. 2

LETTER FROM LONDON MANAGER OF DEFENDANT TO
 GENERAL MANAGER.

Part of No. 2.
 Plaintiff's
 Exhibit.
 Letter from
 London
 Manager of
 Dominion
 Bank to
 General
 Manager.
 June 1, 1927.

London, Ontario, Branch Name Carling Export Brewing & Malting Co. Ltd.
 FROM THE MANAGER Subject: Account-re Stock Issue
 To The General Manager Liability Account }
 Date 1st June, 1927, Present State of }
 Accommodation, \$302,001.55

20

Dear Sir:

The newspapers of yesterday contained certain information regarding re-financing of the affairs of the Carling Export Brewing & Malting Company Limited, valued customers at this Branch. The reports were denied by the President of the Company, as it was considered advisable to do so for the time being, but in an interview which I had with Mr. Chas. Burns last evening he frankly discussed the whole matter with me and requested me to acquaint you with the details as arranged.

30

A new Charter has been applied for under the name of Carlings! Breweries Limited, and the present Company will dispose of their entire assets to the new organization. Capital shares having no par value are to be issued for 200,000 shares. Of the 200,000 shares the firm of Doherty, Easson & Co. Ltd. Brokers of Toronto are to take delivery of 100,000 from our Toronto Branch upon payment on the basis of \$20. per share, and upon the first day of delivery which is expected to be June 11th next an initial delivery is to be made of 12,500 shares, and the balance from time to time until the 100,000 shares are entirely taken up. Of the remaining 100,000

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
Part of No. 2.
Plaintiff's
Exhibit.
Letter from
London
Manager of
Dominion
Bank to
General
Manager
June 1, 1927.

-- concluded.

shares 60,000 are to be shared by the present owners and the Brokers, and to be placed upon the market over a period of three years, but this condition is subject to change should both parties deem it advisable. The remaining 40,000 shares are to be retained in the treasury of the new Company.

The present partners are agreeing to remain with the Company for a period of not less than three years at a salary of \$25,000. each and are not to engage in the same business for a period of at least five years. All assets of the present Company with the exception of Bills Receivable, Accounts Receivables and Cash are to be turned over to the new Company, and the plant etc. is to be free of all encumbrance. The partners are to assume responsibility for all taxes etc., and to furnish \$100,000. working capital to be paid into the Bank in cash. The present indebtedness of the Company will be fully retired, but the relative arrangements regarding this matter will be discussed at a later date. 10

I was confidentially informed that the price at which the stock will be released to other Brokers by Doherty, Easson & Co. Ltd. will be \$24. per share of which they and the present owners will each received \$2. and the issue to the public will be at \$27. per share. Should there be other additional information which you would care to have, I will be pleased to obtain it from the management of the Company. In the meantime I am assured that the Banking Account of the Company will remain at this Branch and arrangements made regarding the indebtedness of the present Company that will be agreeable to the Bank. 20

Yours truly,

"B.B. Manning"
Manager.

PART OF EXHIBIT NO. 2

LETTER FROM GENERAL MANAGER OF DEFENDANT TO
LONDON MANAGER. 30

TO THE MANAGER

Name Carling Export Brewing &
Malting Co. Ltd.

London, Ontario.

Date 2nd June, 1927

Subject—Account—re Stock Issue.

Dear Sir:

I have received your letter of the 1st instant giving us some interesting information respecting the formation of the Carling Breweries Limited, which concern is to purchase the assets of the Carling Export Brewing & Malting Co. Ltd. You will no doubt be writing us again shortly regarding the arrangements which are to be made to retire the present lia- 40

Part of No. 2.
Plaintiff's
Exhibit.
Letter from
General
Manager of
Dominion
Bank to
London
Manager.
June 2, 1927.

bility of the latter concern, and as I take it the plans for the re-financing outlined by you have been definitely decided upon, we shall expect you to write us further when you have obtained the necessary data, so that we may instruct our Toronto Office in regard to delivery of shares to Doherty, Easson & Co. Ltd., Toronto.

It is satisfactory to note from the last paragraph of your communication that you have been assured that the banking account of the new Company will be carried at your Branch.

Yours truly,
"C.A.B"
"W"

10

General Manager.

PART OF EXHIBIT NO. 4

LETTER FROM LONDON MANAGER OF DEFENDANT TO
CHIEF INSPECTOR.
THE DOMINION BANK

London, Ont. 13th October, 1927.

W. C. MacAgy, Esq., Chief Inspector,
Head Office, The Dominion Bank,

20 Toronto, Ontario.

Dear Sir:— Routine

Referring to our telephone conversation of yesterday I was unable to see Mr. Charles Burns until today regarding the cheque for \$415,000. payable to Doherty-Easson Co. Ltd., and I now learn that this was given in payment for Dominion of Canada War Loan Bonds.

30 As you are aware the Carling Export Brewing & Malting Co. Ltd. assumed all outstanding liabilities when the assets of the Company were sold to Carling Breweries Ltd. Amongst the liabilities was a Government claim for approximately \$400,000. involving sales and gallonage tax in dispute. It appears that the Government was unwilling to transfer the license of the former Company to the new organization unless the latter would assume responsibility for the taxes referred to. This, I am informed, has been done under the protection of the bonds purchased. Mr. Burns informs me that it is his intention to deposit the bonds with the Bank.

40 In conversation with Mr. Burns I expressed regret that he had not made use of our Bond Department, but he informed me that through the brokers mentioned the purchase was made at an extremely close price. There has been no intimation of the Company's intention to make further withdrawals from their savings account for the time being at least.

Yours truly,
"B.B. Manning"
Manager

BBM/MMM

Record.
In the
Supreme
Court of
Ontario.

Exhibits.
Part of No. 2.
Plaintiff's
Exhibit.
Letter from
General
Manager of
Dominion
Bank to
London
Manager.
June 2, 1927.
- concluded.

Part of No. 4.
Plaintiff's
Exhibit.
Letter from
London
Manager of
Dominion
Bank to
Chief
Inspector.
October 13,
1927.

PART OF EXHIBIT NO. 4

COPY OF LETTER FROM CHIEF INSPECTOR OF
DEFENDANT TO LONDON MANAGER.

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
Part of No. 4.
Plaintiff's
Exhibit.
Copy of
Letter from
Chief
Inspector of
Dominion
Bank to
London
Manager.
October 14,
1927.

LH/90

14th October, 1927.

B. B. Manning, Esq.,
Manager, The Dominion Bank,
London, Ont.

Dear Sirs:

Routine

Your letter of the 13th instant has been received and I note what you state respecting the cheque of \$415,000 issued on your office to the Carl- 10
ing Export Brewing & Malting Co. Limited.

It is a pity that your customers did not arrange for the purchase of the bonds referred to through our Bond Department and I hope that in the event of their wishing to invest further funds they will not overlook our facilities. No doubt you will write me if and when the bonds referred to are deposited with you.

Yours truly,

Chief Inspector.

Part of No. 3.
Plaintiffs'
Exhibit.
Copy of
letter from
Carling Export
Brewing &
Malting
Co. Ltd.
to Dominion
Bank.
October 26,
1927.

PART OF EXHIBIT NO. 3

COPY OF LETTER FROM CARLING EXPORT BREWING & 20
MALTING COMPANY, LTD. TO DEFENDANT.

October 26, 1927.

Head Office,
Dominion Bank,
Toronto, Ontario.Attention Mr. Pierce

Dear Sir,—

Messrs. Roadhouse and McTague have handed you to-day \$400,000. of Dominion of Canada Victory Loan 5½% Bonds, due 1st November, 1934.

These are to be held by you to meet any final judgment that may be obtained by the Dominion Government against Carling Export Brewing and Malting Company, Limited in respect to action now pending with reference to sales and gallonage tax on export sales. 30

In view of the fact that this Company and Messrs. Low, Leon and Burns have agreed to indemnify Carling Breweries, Limited in respect to

such arrears of gallonage and sales tax, we would ask you to write a letter to Carling Breweries, Limited advising them that you hold the sum of \$400,000. to meet any judgment that may be obtained against this Company with respect to such taxes.

It is understood that you are to hold said Bonds until any action by the Government with respect to sales and gallonage tax on export is finally disposed of by judicial decision or settlement.

The coupons on the Bonds are to be clipped by you and cheque for interest payments is to be remitted to this Company from time to time
10 during the period the Bonds are held by you.

Yours truly,

CARLING EXPORT, BREWING & MALTING CO. LTD.

Per: Chas. Burns,
Pres.

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part of No. 3.
Plaintiff's
Exhibit.
Copy of
letter from
Carling Export
Brewing &
Malting
Co. Ltd.
to Dominion
Bank.
October 26,
1927.

—concluded.

PART OF EXHIBIT NO. 3

COPY OF LETTER FROM ASSISTANT GENERAL MANAGER
OF DEFENDANT TO THE CARLING BREWERIES, LTD.

27th October, 1927.

20 The Carling Breweries Limited,
London, Ontario.

Part of No. 3.
Plaintiff's
Exhibit.
Copy of
Letter from
Assistant
General
Manager of
Dominion
Bank to
Carling
Breweries
Ltd.
Oct. 27, 1927.

Dear Sirs:

We have been requested to advise you that in the event of your being called upon, under the agreement made or about to be made with the Minister of National Revenue whereby your Company undertake to pay any sum that might be judicially established to be owing by The Carling Export Brewing and Malting Company Limited on account of taxes under the Special War Revenue Act, 1915, and amendments, we are or will be in funds to the extent of \$400,000. for the purpose of applying the same or so much thereof as is necessary in payment of any claim made
30 by the Government under the agreement above referred to.

We are informing you of this and our instructions, and will be in a position to make payment and will make payment of any such demand then made so that you may rely upon funds being available to meet any such demand up to the amount above specified.

Yours very truly,

Assistant General Manager.

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
No. 24.
Defendant's
Exhibit.
Letter from
Carling Export
Brewing &
Malting
Co. Ltd.
January 11,
1928.

EXHIBIT NO. 24

LETTER FROM THE CARLING E. B. & M. COMPANY LIMITED

London, Ontario January 11th, 1928

In consideration of an advance of the sum of Two Hundred Thousand Dollars, \$200,000., having been made on behalf of Messrs Leon, Burns and Low, at the Dominion Bank, Windsor, it is hereby agreed that the sum of \$200,000. will be maintained at credit of the Carling Export Brewing & Malting Co. Limited Account, in the Dominion Bank, London, Ontario, during the currency of the advance aforementioned.

THE CARLING E. B. & M. CO. LTD. 10
Per "Chas. Burns" Pres.

No. 6.
Plaintiff's
Exhibit.
Copy of
Letter from
Carling Export
Brewing &
Malting
Co. Ltd.
to Dominion
Bank.
April 26, 1928.

EXHIBIT NO. 6

COPY OF LETTER FROM THE CARLING EXPORT BREWING & MALTING COMPANY LIMITED TO THE DEFENDANT

London, 26th April, 1928.

Dudley Dawson, Esq.,
Manager,
The Dominion Bank,
Toronto 2, Ont.

Dear Sir:

20

Referring to the \$400,000. odd Victory Loan Bonds now held at your Office for account of the Carling Export Brewing and Malting Company, Limited, we hereby instruct you to dispose of these Bonds forthwith at the market price whatever that may be and to deposit the proceeds to a Special Savings Account to be opened in our name and the balance therein to be held under the same conditions now pertaining to or covering the aforementioned Bonds.

Thanking you,

Yours very truly,

THE CARLING EXPORT BREWING & MALTING CO., LTD. 30

Per: Harry Low
Marco Leon

PART OF EXHIBIT NO. 5.

COPY OF LETTER FROM ASSISTANT MANAGER OF DEFENDANT TO CHAS. BURNS.

May 1st, 1928.

“Securities”
Chas. Burns, Esq.,
President,
Carling Breweries Ltd.,
London, Ont.

Record.
*In the
Supreme
Court of
Ontario.*
—
Exhibits,
Part of No. 5.
Plaintiff's
Exhibit.
Copy of
letter from
Assistant
Manager of
Dominion
Bank to
Chas. Burns
May 1, 1928.

10 Dear Sir:

We enclose herewith our draft on London, Ontario, in favor of the Carling Breweries Ltd., for \$11,000.00 being proceeds of coupons clipped from \$400,000.00 Dominion of Canada, 5½% bonds due 1st of November, 1934 which we hold here for your account,

Yours truly,

Assistant Manager.

PART OF EXHIBIT NO. 5.

LETTER FROM CHAS. BURNS TO THE DEFENDANT.

20 CARLING BREWERIES, LIMITED,
LONDON, ONT.

May 16th, 1928.

Dear Sir:—

I acknowledge receipt of your letter of May 1st, enclosing draft in our favour for Eleven Thousand Dollars (\$11,000.00).

I regret that I did not reply until now but I was absent from my office and just returned today.

I would like to call your attention that this draft should be made to the “Carling Export Brewing & Malting Co. Ltd.” instead of “Carling Breweries, Limited”.

30 Thanking you for same, I remain
Yours very truly,
“Chas. Burns”

CB/MP.

The Dominion Bank,
Securities Department,
Head Office,
Toronto 2, Ontario.

Attention Mr. J. D. L. Waugh

Part of No. 5.
Plaintiff's
Exhibit.
Letter from
Charles Burns
to Dominion
Bank.
May 16, 1928.

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
Part of No. 5.
Plaintiff's
Exhibit.
Copy of
letter from
Assistant
Manager
Dominion
Bank to
Chas. Burns.
May 18, 1928.

PART OF EXHIBIT NO. 5.

COPY OF LETTER FROM ASSISTANT MANAGER OF DEFENDANT TO CHARLES BURNS.

May 18th, 1928.

Charles Burns, Esq.,
The Carling Breweries Limited,
London, Ontario.

Dear Sir:

We have received your letter of the 16th instant, acknowledging ours of the 1st idem. enclosing draft for \$11,000. 10

This draft was in payment of coupons clipped from Dominion of Canada Bonds held at this office for account of the Carling Export Brewing & Malting Company, Limited, and was in error made payable to the Carling Breweries Limited.

Yours very truly,

JDNW/W.

Assistant Manager.

PART OF EXHIBIT NO. 5.

COPY OF LETTER FROM ASSISTANT MANAGER OF DEFENDANT AT TORONTO TO LONDON MANAGER.

Part of No. 5.
Plaintiff's
Exhibit.
Copy of
letter from
Assistant
Manager
Dominion
Bank to
London
Manager
May 18, 1928.B. B. Manning, Esq.,
Manager,
The Dominion Bank,
London, Ontario.

May 18th, 1928. 20

Dear Sir:—

Referring to Dominion of Canada Victory Loan 5½% Bonds, due November 1934, amounting to \$400,000. held by us for account of the Carling Export Brewing & Malting Company, Limited, we were instructed by Head Office to remit for the Coupons clipped to the Carling Export Brewing & Malting Company, Limited. However, through errors in this office, our drafts of both November 1st, 1927 and May 1st, 1928 were 20 payable to the Carling Breweries Limited, and the mistake was pointed out to us by Mr. Burns in his letter to us of the 16th instant.

We enclose herewith our paid draft No. 6474 for \$11,000. dated November 1st last, which you will note has been endorsed by the Carling Breweries Limited to the order of the Carling Export Brewing & Malt-

ing Company, Limited, and we would appreciate it if you could obtain for us the endorsement of the latter Company. The draft issued on the 1st of this month has not yet been negotiated, but we are anxious to obtain the endorsement of both companies on it also.

Thanking you for your attention to this matter on our behalf.

Yours truly,

JDNW/W.
Encl.

Assistant Manager.

Record.
In the
Supreme
Court of
Ontario.
—
Exhibits.
Part of No. 5.
Plaintiff's
Exhibit.
Copy of
letter from
Assistant
Manager
Dominion
Bank to
London
Manager.
May 18, 1928.
—concluded.

PART OF EXHIBIT NO. 31

10 LETTER FROM HARRY LEON TO MARCO LEON

Part of No. 31.
Defendant's
Exhibit.
Letter from
Harry Leon
to Marco Leon.
June 25, 1928.

WINDSOR, June 25th, 1928.

Dear Uncle:

After considering our conversation in my last visit to Montreal I am quite willing to loan you from time to time any sum of money you may require and you will assign to me your 7543 preferred shares of Carling E. B.&M. as collateral security which shares you'll deliver to me at your next trip to Windsor, and I also find that I shall be able to let you have amounts totalling the sum of \$70,000. at any time within the next 8 or 9 months. At present I enclose cheque for \$30,653.20 and it is of course understood that you are to pay me interest at the rate of 7% per annum. I realize that you are presently in need of money and assure you that I shall be only too glad to give you any assistance I can. Uncle do you remember me telling you about Anna's dancing, well she is going to be in a recital, she seems to be doing very well. How is Auntie and Ella love from us all.

"Harry"

(On back of above letter—)

30 From Harry
June 25—1928 \$30653.20 cheque
August 15—1928 5000.00 cash
September 5—1928 8000.00 cash
October 22—1928 6500.00 cash
December 10—1928 4700.00 do
January 14—1929 3000.00 cash
February 7—1929 4200.00 cash
March 25—1929 5400.00 do

\$67453.20

PART OF EXHIBIT NO. 12.

Record.

In the
Supreme
Court of
Ontario.

Exhibits.
Part of No. 12.
Plaintiff's
Exhibit.
Letter from
Montreal
Manager of
Dominion
Bank to
Windsor
Manager.
July 3, 1928.

LETTER FROM MANAGER MONTREAL BRANCH OF THE
DEFENDANT TO WINDSOR MANAGER.

Montreal Branch.

Dominion Square Corporation

From the Manager,
TO A. M. Cowie, Esq.,
Manager, Windsor, Ont.
Date 3rd July 1928.

Loan.

Dear Sir:

I beg to confirm our telegram of today's date reading as follows:

10

"Debit your Demand Loan Account \$750,000. and credit us through direct branch clearings similar amount re: Leon, Low and Burns loan \$1,500,000. made to-day."

We were advised by Head Office on the 18th instant, in respect to the above advance to Leon, Low and Burns, proceeds of which were paid to the Dominion Square Corporation at this office and then transferred to The Royal Trust Company to be applied by them in the discharge of certain mortgages, that one half of the amount was to be carried at your office and the balance here, which explains our telegram.

In connection with this advance, we beg to advise for your records that we hold the following securities in negotiable form as collateral, hypothecated or assigned, as per copies of forms enclosed.

20

60,000 shares of capital stock of Carling Breweries Ltd. represented by interim certificates for 500 shares in the name of Marco Leon and 59,500 shares in the name of Carling Export Brewing & Malting Co. Ltd.

General Hypothecation (form 107) signed by Marco Leon, Harry Low and Chas. Burns.

Special hypothecation signed and sealed by Carling E.B.&M.Co. Ltd.

30

Special resolution of C.E.B.&M. Co. Ltd. authorizing Charles Burns and Marco Leon to endorse and hypothecate this stock.

\$1,000,000. par value preferred stock of Dominion Square Corporation represented by interim certificates as mentioned hereunder:

Certificate No. 1	Marco Leon	3,334 shares
" "	No. 2 Charles Burns	3,333 "
" "	No. 3 Harry Low	3,333 "

*Resolutions
Cert. 11*

T

50,000 shares common stock Dominion Square Corporation represented by interim certificates as mentioned hereunder:

Certificate No. 1	Marco Leon	16,667	shares
" "	No. 2 Charles Burns	16,666	"
" "	No. 3 Harry Low	16,667	"

\$1,326,500 unsecured 6% debentures of Dominion Square Corporation payable to bearer).

General Hypothecation (form 107) signed by Marco Leon Harry Low and Charles Burns,

10 and also the following letters or agreements:

Agreement signed by Leon, Low and Burns regarding repayment of \$500,000 by Dec. 21, 1928, and payment of \$1,000,000 by June 21, 1929.

Agreement signed by Leon, Low and Burns stating that they will not invest further monies in real estate during currency of this loan.

Assignment signed by Dominion Square Corporation of any surplus monies which may be remaining with Royal Trust Co. after completion of the building. This assignment has been acknowledged by Royal Trust Co.

20 Letter from Dominion Square Corporation agreeing to offer us lease of suitable ground floor space for banking premises in the building which they propose to erect.

Interest is payable monthly on the loan, and Mr. Leon informs us that it will be paid at debit of the partnership account of Leon, Low and Burns carried at your office and presumably you will confirm this and take the necessary authority from the firm in the connection.

30 Having this in mind, we will debit your office at the end of each month with the interest on the amount of the advance carried here (presently \$750,000). I presume this will be the most satisfactory method and that you will collect the full amount of interest on the entire advance, crediting our share to your Suspense Account pending receipt of our entry.

Any payments received on the principal will be endorsed on the note held here and applied proportionately on the amounts carried at our respective offices.

Please acknowledge receipt.

Yours truly,
(Sgd) M. S. BOGERT,
Manager.

Record.

In the
Supreme
Court of
Ontario.

Exhibits.
Part of No. 12.
Plaintiff's
Exhibit.
Letter from
Montreal
Manager of
Dominion
Bank to
Windsor
Manager.
July 3, 1928.

—concluded.

PART OF EXHIBIT NO. 5.

COPY OF LETTER FROM ASSISTANT MANAGER OF
DEFENDANT AT TORONTO TO CHAS. BURNS.

"Securities"

Nov. 1, 1928.

Chas. Burns, Esq.,
President,
The Carling Breweries Ltd.,
London, Ont.

Dear Sir:

We enclose herewith draft drawn on our London, Ont. Office in 10
favour of the Carling Export Brewing & Malting Co. Ltd., for \$2750.00
being the proceeds of coupons detached from \$100,000.00 Dominion of
Canada, 5½% bonds due 1st of November, 1934.

R/B

Yours truly,

Encl.

Assistant Manager.

EXHIBIT NO. 36

LETTER MARCO LEON TO JACK ESAR

Mr. Jack Esar,

MONTREAL, Nov. 29th, 1928.

Dear Sir:

Referring to our understanding, it is agreed that I will deposit with 20
you 16,666 common shares of Carling E. B. & M. Co. Limited, endorsed
by me, as security for loans that you agree to make to me from time to
time, to a total sum of not more than \$65,000.00 interest on loan to be
paid to you at the rate of 6 per cent per annum, figured on the different
amounts loaned to me, and for the actual time of loans.

It is also agreed that should I not repay to you the full amount that
you may have loaned to me, plus interest, within two years from date,
then I agree to instruct the company to issue to you, in your own name,
common stock for the unpaid balance plus interest, valuing the common
stock at a price agreeable to both of us.

30

Yours truly,

(Sgd) MARCO LEON.

Accepted
(Sgd) JACK ESAR.

ENDORSED ON BACK OF EXHIBIT 36

From J. Esar—

November 29, 1928	\$15,000.00
December 10, 1928	\$20,000.00
January 23, 1929	\$12,000.00
March 17, 1929	\$15,000.00

 \$62,000.00

Record.

In the
Supreme
Court of
Ontario.

Exhibits.
Part of No 5.
Plaintiff's
Exhibit.
Copy of
letter from
Assistant
Manager.
Dominion
Bank to
Chas. Burns.
November 1,
1928.

No. 36.
Plaintiff's
Exhibit.
Letter,
Marco Leon
to Jack Esar.
November 29,
1928.

EXHIBIT NO. 38.

LETTER MARCO LEON TO JACK ESAR WITH ENDORSEMENT ON BACK.

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
No. 38.
Defendant's
Exhibit.
Letter,
Marco Leon
to Jack Esar,
November 29,
1928.

Mr. Jack Esar:

MONTREAL, Nov. 29th, 1928.

Dear Sir:

Referring to our understanding, it is agreed that I will deposit with you 16,666 common shares of Carling E. B. & M. Co. Limited, endorsed by me, as security for loans that you agree to make to me from time to time, to a total sum of not more than \$65,000. interest on loan to be paid
10 to you at the rate of 6 per cent per annum, figured on the different amounts loaned to me, and for the actual time of loans.

It is also agreed that should I not repay to you the full amount that you may have loaned to me, plus interest, within two years from date, then I agree to instruct the company to issue to you, in your own name, common stock for the unpaid balance plus interest, valuing the common stock at a price agreeable to both of us.

Yours truly,

(Sgd) MARCO LEON.

Accepted

(Sgd) JACK ESAR.

20 (ON BACK OF LETTER:)

RECEIVED FROM JACK ESAR:

November 29—1928 fifteen thousand (\$15000) Marco Leon,
December 10—1928 twenty thousand (\$20000) Marco Leon,
January 23—1929 twelve thousand (\$12000) Marco Leon,
March 17 — 1929 fifteen thousand (\$15000) Marco Leon.

\$62000

PART OF EXHIBIT NO. 31.

LETTER HARRY LEON TO MARCO LEON

WINDSOR, Ont. Dec. 20/1928.

Part of No. 31.
Defendant's
Exhibit.
Letter,
Harry Leon
to Marco Leon,
December 20,
1928.

30 Dear Uncle & Auntie:

Just a line to say hello and tell you how lovely our new home is coming along. We got some very fine new furniture. I also know you'd go for our dining room set in a big way, its so massive and you always did like that class of stuff.

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
Part of No. 31.
Defendant's
Exhibit.
Letter,
Harry Leon
to Marco Leon.
December 20,
1928.

—concluded.

Esther is very much pleased with it all and does Anna love her new mother goose bedroom set don't ask. I sure am glad I could make them so happy. Business is getting on pretty well thank God and everything is just great. I hope everything is getting along fine with you.

You certainly are pretty lucky getting a loan from the bank of \$1,000,000 dollars. Everybody is talking about it here. I hope you were just as successful in trying to get that second mortgage in New York as I understood that is what you went there for. In refernce to the money I have advanced you I am enclosing a statement in full to date which I hope you'll find correct.

10

June 25/28 by cheque	\$30,653.20
August 15/28 by cash	5,000.00
Sept. 5/28 " "	8,000.00
Oct. 22/28 " "	6,500.00
Dec. 10/28 " "	4,700.00
	\$54,853.20

Nothing else at present, love to you all from us all.
"Harry"

PART OF EXHIBIT NO. 19.

COPY OF LETTER CHIEF INSPECTOR OF DEFENDANT TO 20
LONDON MANAGER.

HEAD OFFICE

ASC/484.

TO THE MANAGER
LONDON, Ont. Branch, }
22nd January 1929.

Name—Carling Export Brewing
& Malting Co. Ltd.
Subject—Account.

Dear Sir:—

We notice by Bradstreet's Bulletin of the 17th instant that the Ohio Realty Ltd. has issued a Writ against the Carling Export Brewing & Malting Co. Ltd., amount unstated. We would be interested to have 30 particulars as to what the action covers.

Yours truly,
(Sgd) _____

Chief Inspector.

Part of No. 19.
Plaintiff's
Exhibit.
Copy of
letter from
Chief
Inspector of
Dominion
Bank to
London
Manager.
January 22,
1929.

PART OF EXHIBIT NO. 40.

LETTER CHAS. BURNS TO J. H. MAGID WITH LIST OF
SECURITIES ATTACHED.

Mr. J. H. Magid,
c/o Pure Food Stores Limited,
MONTREAL.

960 Outremont Ave,
OUTREMONT, Jan. 23rd, 1929.

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part of No. 40.
Plaintiff's
Exhibit.
Letter from
Chas. Burns
to J. H. Magid.
January 23,
1929.

Dear Joe:

This will confirm our understanding reached to-day in regard to my
10 joining you and your group, in your stock market and investment oper-
ations.

It is understood that I am taking over fifty percent (50%) of your
holdings, as per statement attached, and that I will participate in all
future profits of losses on your operations, to the extent of fifty (50%)
per cent.

I will leave it entirely to you to buy or sell such securities as you may
see fit from time to time.

It is understood that this arrangement holds good until mutually
cancelled, and that in the event of the desire on the part of either your-
20 self or myself to cancel such arrangement, one months notice must be
given to the other party.

As agreed I hand you herewith the following securities as collateral
against my share of the holdings;

Certificate No. 83 in name of Charles H. Burns, for 7543 Preferred
Shares in Carling Export Brewing and Malting Co. Limited.

Certificate No. 87 in the name of Charles Burns, for 16,666 shares
common stock, in Carling Export Brewing and Malting Co. Limited.

I agree that in the event of the operations showing a loss I will pay
you in cash or equivalent my share of such loss when called upon, and if
30 I fail to do so, you are to have the right to use the above shares, in such
manner as you may see fit, so as to protect the interests of the holdings,
as they may appear, but not without previously giving me notice to that
effect.

I have endorsed these certificates in Blank, as requested.

J. H. Magid. Yours truly,
(Sgd) CHAS BURNS

Record.

*In the
Supreme
Court of
Ontario.*

(LIST OF SECURITIES ATTACHED)

MONTREAL, Jan. 23, 1929.

Mr. C. Burns:

Exhibits.
Part of No. 40.
Plaintiff's
Exhibit.
Letter from
Chas. Burns
to J. H. Magid.
January 23,
1929.

List of securities held by J. H. Magid, with MacDougal and Cowans,
as at this date:

2000 shares International Nickel value per share \$71.50 \$143,000.00
200 shares National Steel Car value \$134.00 per share 26,800.00

--concluded.

\$169,800.00

"J. H. Magid"

"Chas Burns"

Part of No. 19.
Plaintiff's
Exhibit.
Letter,
London
Manager of
Dominion
Bank to
Chief
Inspector.
January 28,
1929.

PART OF EXHIBIT NO. 19.

10

LETTER LONDON MANAGER OF DEFENDANT TO CHIEF
INSPECTOR.

TO—LONDON, Ontario, Branch } Name—Carling Export Brewing &
FROM—THE MANAGER } Malting Co. Ltd.
TO THE CHIEF INSPECTOR, }
January 28th, 1929. } Subject—Account.

Dear Sir:

Referring to your letter of the 22nd instant, I beg to advise you that
the writ issued against the Carling Export Brewing & Malting Co. Ltd.,
amount unstated, by the Ohio Realty Company, is relative to a Dock 20
property at Riverside, Ontario, which Carling Export Brewing & Malting
Co. Ltd. hold under lease. The writ is issued to try and compel the
Carling Export Brewing & Malting Co. Ltd., to give up their lease rights.

Yours truly,
(Sgd) B. B. Manning,
Manager.

PART OF EXHIBIT NO. 5.

COPY OF LETTER TORONTO ASSISTANT MANAGER OF
DEFENDANT TO CHAS. BURNS

"Securities"

May 1st, 1929.

Chas. Burns, Esq.,
President,
Carling Breweries Ltd.,
London, Ont.

Record.
*In the
Supreme
Court of
Ontario.*
Exhibits.
Part of No. 5.
Plaintiff's
Exhibit.
Copy of
Letter,
Assistant
Manager of
Dominion
Bank
to Chas. Burns.
May 1, 1929.

Dear Sir:

10 We enclose herewith a draft on our London, Ontario Branch in favour of the Carling Export Brewing & Malting Co. Ltd. for \$2750.00 being the proceeds of coupons detached from \$100,000.00 Dominion of Canada, 5½% bonds due 1st of November, 1934.

Yours truly,

R/B
Encl.

Assistant Manager.

PART OF EXHIBIT NO. 40.

LETTER J. H. MAGID TO CHAS. BURNS

Part of No. 40.
Plaintiff's
Exhibit.
Letter from
J. H. Magid
to Chas. Burns.
May 13, 1929.

OUTREMONT, May 13th, 1929.

20 Dear Shoyl:

Just a few lines to let you know that I am working actively on the Consolidated stock and expect by the end of the month to have picked up between seven and eight thousand shares.

I believe they will not cost me on the average more than about \$8.50 to \$9.00 a share, which I think is good value.

If we don't clean up on this boy, we never will.

DJA' watch the market yesterday? Talk about action, that's real action for you, what say?

30 Everything here is coming along fine. How is Bennie? I hope he is feeling better.

Mother and Sara send their best regards. Max was here for some time and gave me a report of your doings. Congrats, and best of luck.

Sincerely,
"JOE"

EXHIBIT NO. 17.

COPY OF LETTER FROM CHIEF INSPECTOR OF DEFENDANT TO LONDON MANAGER.

Record.
In the
Supreme
Court of
Ontario.
Exhibits.
No. 17.
Plaintiff's
Exhibit.
Copy of
letter from
Chief
Inspector
Dominion
Bank to
London
Manager.
May 28, 1929.

ASC/478.

HEAD OFFICE

TO THE MANAGER,
LONDON, Ont. }Name—Carling Export Brewing
& Malting Co.,

28th May 1929. }

Subject—Account.

Dear Sir:

We notice by your Weekly Return of the 20th instant that this account was overdrawn \$2,531. Has cover since been provided, if not, when is it anticipated? 10

Yours truly,

Chief Inspector.

EXHIBIT NO. 18.

LETTER LONDON MANAGER OF DEFENDANT TO CHIEF INSPECTOR.

No. 18.
Plaintiff's
Exhibit.
Letter, London
Manager of
Dominion
Bank to
Chief
Inspector.
June 25, 1929.

LONDON, Ontario, Branch
From THE MANAGER
To The Chief Inspector
June 25th, 1929. }Name—Carling Export Brewing &
Malting Co. Ltd.,
Subject: Account.

Direct Loans \$3,023.46 20

Dear Sir:

Referring to your letter of June 20th, I beg to advise you of the following balances relative to the above and allied Accounts at this Branch:

Carling E. B. & M. Co. Ltd.	Overdrawn —	\$3,023.46
Carling E. B. & M. Co. Ltd. Savings	Credit —	318.24
Charles Burns	Credit —	805.84
Mrs. T. Burns	Credit —	61.23
Marco Leon	Credit —	298.87

All available funds of the principals concerned are being used at the present time for their various interests, and for that reason the balances are reduced to a minimum. Mr. Charles Burns informs me that arrange- 30

ments are being made to provide cover for the existing Overdraft on our books, as it was distinctly understood that this would be of a strictly temporary nature.

Yours truly,
(Sgd) B. B. Manning,
Manager.

EXHIBIT NO. 13.

LETTER WINDSOR MANAGER OF DEFENDANT TO MONTREAL ASSISTANT MANAGER.

10

THE DOMINION BANK.

CONFIDENTIAL

WINDSOR, Ont. 26th June, 1929.

W. O. H. James, Esq.,
Assistant Manager, The Dominion Bank,
Montreal, Que.

Dear Sir:

Re—Low, Leon and Burns

On Sunday the 9th instant I in company with Mr. Harry Low visited Toronto where we interviewed the Chief Inspector concerning Low, Leon and Burns various liabilities to the Bank.

20 As you are probably aware, we are now taking as additional security to the L. L. & B. accounts an assignment of their equities in certain Windsor and Toronto properties—it was in this connection that I confirmed by wire a few days ago the amount of the liability at your end—and in addition to insisting upon being given the further security we made it very clear to Mr. Low that he and his associates must without any more unnecessary delay clean up with the Bank from one source or another irrespective of what doing so might cost them.

30 Mr. Low spoke of several ways his firm might have of raising money, but with one exception these were so vague and indefinite that we practically told him to “forget” them and get down to earth and accept any bona fide offer to refinance the Dominion Square Building proposition even though it meant a very substantial loss to the firm. The exception mentioned was a statement to the effect that Messrs. Wm. A. White & Sons of 350 Madison Avenue, New York, had undertaken to refinance the Dominion Square Building proposition by providing or underwriting a

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
No. 18.
Plaintiff's
Exhibit.
Letter,
London
Manager of
Dominion
Bank to
Chief
Inspector.
June 25, 1929.

—concluded.

No. 13.
Plaintiff's
Exhibit.
Letter,
Windsor
Manager of
Dominion
Bank to
Montreal
Assistant
Manager.
June 26, 1929.

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
No. 13.Plaintiff's
Exhibit.
Letter,
Windsor
Manager of
Dominion
Bank to
Montreal
Assistant
Manager,
June 26, 1929.

—continued.

bond or stock issue thereon totalling \$9,000,000, which would be used as follows:—

\$5,250,000. to take up the present bond issue.

\$ 500,000. to clean up the Geo. A. Fuller Co. of Canada. Ltd. Second Mortgage.

\$1,400,000. to pay The Dominion Bank Loan.

\$ 600,000. to go to Messrs. Low, Leon & Burns.

\$1,250,000. to go to Wm. A. White & Sons to cover cost of this financing.

\$9,000,000.

10

Our customers have \$1,200,000. of their own money in the Dominion Square Building venture, which means that if the White offer were accepted they would take a loss on the deal of \$600,000. However, by doing this they would get back or release for themselves \$600,000. after paying off the Bank and the Geo. A. Fuller Company of Canada Limited, and Mr. MacAgy and I in addition to informing Mr. Low that we were strongly of the opinion that this offer should be taken up intimated that the Bank would insist upon their doing this.

On our return trip from Toronto Mr. Low and I stopped at London for an hour or so on the 10th instant and outlined to Mr. Chas. Burns what had transpired at the interview we had with the Chief Inspector, and our London Manager and I tried to show Mr. Burns where following our suggestion in this matter was in the best interests of his firm. It was apparently quite a shock to both Low and Burns to see the Montreal picture change from what they had previously viewed as a \$1,000,000. to \$2,000,000. profit to a \$600,000. loss, and we expected them to discuss the subject with Mr. Marco Leon forthwith and take some action in the connection Although Mr. Low has been East several times during the past two weeks or so and on one occasion was expected to see his two partners in Montreal, I do not yet know whether they have talked over our request with him.

These men, as you are doubtless aware, have been having considerable trouble with the parties associated with them in the Chatham Distillery enterprise—this resulted in a \$60,000. Writ being issued against them. As their associates, who live in Vancouver, B.C. came East a week or so ago to confer with Low, Leon and Burns it is quite possible that our customers have been devoting most, if not all, of their time lately to trying to straighten out the Distillery dispute and have simply been letting the Bank's request stand in abeyance. If that is the case, it is not at all satisfactory to us, and I would very much appreciate it if you would see Marco Leon and find out just what, if anything, has taken place between the partners as a result of the discussion Low and I had with Mr. MacAgy on the 9th idem.

It might be mentioned that I have not seen Mr. Low since the 10th of the month as he has been spending most of his time of late in Chatham

with a visit or two to Toronto and Montreal, which accounts for my not having obtained the desired information through him. In any event I think it advisable for you to see Leon and urge him to accept the Wm. A. White & Sons offer.

10 Since writing the foregoing I have succeeded in reaching Mr. Low by 'Phone; and while he has promised to call upon me to-day, the indications are that a Chatham appointment may keep him from doing so. I have just asked him who obtained the Wm. A. White & Sons offer and what assurance he had that the New York concern were willing to go through
 20 with this. He replied that the information and figures given to me in the connection were obtained by him from Mr. Leon and the Montreal rental agents looking after the Dominion Square Building. Apparently Leon and the agents mentioned saw the White people and I would like you to confirm this if you can and find out definitely what the White concern really undertook to do for Low, Leon and Burns. I am sure Mr. Low would not intentionally misinform me on any subject, but Leon is difficult to understand at times and his recital to Low of what the White firm promised to do may have been to some degree misinterpreted by Low; that is not likely but just possible. I neglected to mention when giving you
 30 the figures of the White offer that in addition to the \$600,000. that would go to Low, Leon & Burns, they would receive 25% of the Common Stock. What this might be worth coming after a \$9,000,000. Preferred or Bond Issue is quite problematical, but if the building's anticipated rentals are realized the Common Stock should at least be worth something.

Head Office has asked me what I have done to confirm the White offer, hence the request I am making of you.

Thanking you.

Yours very truly,

(Sgd) A. M. Cowie,
 Manager.

30

EXHIBIT NO. 14

LETTER ASSISTANT MANAGER OF DEFENDANT AT MONTREAL TO CHIEF INSPECTOR ENCLOSING COPY OF LETTER SENT TO WINDSOR MANAGER.

Montreal Branch

Name—Dominion Square Corp'n

To W. C. MacAgy, Esq.,
 Chief Inspector.

Subject—Loans.
 Direct Loans \$690,500 Montreal
 \$690,500 Windsor

Date 5th July, 1929.

Dear Sir:

40 At the request of our Windsor Manager, I enclose herewith copy of

Record.

In the
 Supreme
 Court of
 Ontario.

Exhibits,
 No. 13.

Plaintiff's
 Exhibit.
 Letter,
 Windsor
 Manager of
 Dominion
 Bank to
 Montreal
 Assistant
 Manager.
 June 26, 1929.

—concluded.

No. 14.
 Plaintiff's
 Exhibit.
 Letter,
 Montreal
 Assistant
 Manager of
 Dominion
 Bank to
 Chief
 Inspector.
 July 5, 1929.

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
No. 14.Plaintiff's
Exhibit.
Letter,
Montreal
Assistant
Manager of
Dominion
Bank to
Chief
Inspector.
July 5, 1929.

—continued.

my semi-official reply of to-day's date to his recent letter regarding proposed re-financing of the Dominion Square Corporation, in which I have given him some general information relative to the present position of Mr. Leon's finances and other matters in which he is interested.

Yours truly,
(Sgd) W. C. Gates
Assistant Manager.

(Enclosure)

Montreal Branch,
Date July 5th, 1929.

Dominion Square Corporation.

A. M. Cowie, Esq.,
Manager, The Dominion Bank,
Windsor. Ont.

Montreal 5th July 1929. 10

Dear Mr. Cowie:

Referring to your letter of the 26th ultimo, received a week ago to-day, a reply to which has been held up owing to my inability to see Mr. Leon, I may say I spent last evening with him.

It is as you know very difficult to discuss matters with Leon, but from the conversation I had with him it would appear that he does not know very much about what his partners do, or may be doing at our other Branches. However, he does know our attitude regarding payment of the loan, and I think is doing everything possible to raise the necessary funds, or at least a substantial portion of them. 20

White & Sons have not undertaken to refinance the Dominion Square Building, nor have they made any offer to do so, but they have gone into the proposition pretty fully, and the option given them about a month ago has been renewed until 1st August next. Apparently it is an easy matter for them to obtain \$6,000,000 under a first mortgage, but the trouble is in finding the balance either by way of second mortgage or a preferred stock issue with bonus of common.

Leon is quite willing that he and his partners should lose \$600,000, 30 provided they can obtain the necessary funds and retire their loans to us.

Locally the Laurentian Realty Company are confidentially canvassing about eight or ten local men from whom they hope to raise about \$1,000,000 on the preferred and common stocks of the Corporation presently held by us. If this were to materialize we would then be handed \$600,000 on account of the loan, \$200,000 would be used to repay Geo. A. Fuller Company of Canada and Ross & MacDonald, from whom Leon, Low and Burns borrowed \$100,000 each a year ago—this I think is not generally known. The balance of \$200,000 it is expected will be required to cover taxes, sundry carrying charges and particularly alterations to suit 40 tenants requirements, which will no doubt be substantial before the property is all rented.

Leon is, in my opinion, pretty well up against it for ready cash, and

just at present I cannot see how he is going to be able to finance the extras required which, of course, are not provided for in the construction fund handled by the Royal Trust Company.

We recently allowed him to sell about \$70,000 worth of securities held by us against his Call Loan, \$12,000 of which was used to cover his overdraft, \$24,000 applied on his Call Loan, reducing it to \$75,000, and the balance of \$34,000 was given to him and used in paying commissions to the Laurentian Realty Company, gratuities for certain concessions obtained re the garage, and other sundry accounts covering equipment and miscellaneous expenses. At present he owes us \$75,000 against securities worth approximately \$120,000, and although he would like to sell out everything and pay us off, we, of course, will not give him the equity, regardless of the urgency of his needs.

Re the United Distilleries Writ for \$60,000, Mr. Leon tells me that this matter has been dropped, and that he shortly expects the funds of approximately \$40,000 held up in Chatham will be released to the Distillery. This sounds too good to be true, but no doubt you know the position better than I can learn it here.

Leon knows nothing—so he claims—about any assignment of equities in Windsor or Toronto real estate and so far has not been consulted by Low in this respect.

Reverting to the White offer, Leon as you know is very indefinite and I am not surprised that Low got the impression from him that White & Sons had made an offer, whereas they are not bidding for the proposition, but were solicited by Rother of the Laurentian Realty Co., and as mentioned Dominion Square Corporation have given them an absolute option good until 1st August next, which incurs no liability on the part of either, and even if White & Sons were to put out a new issue in any form, it would no doubt take another month or two before the deal could be consummated, and our loans retired.

Yours truly,

Assistant Manager.

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
No. 14.

Plaintiff's
Exhibit.
Letter,
Montreal
Assistant
Manager of
Dominion
Bank to
Chief
Inspector.
July 5, 1929.

—concluded.

EXHIBIT NO. 15.

LETTER WINDSOR MANAGER OF DEFENDANT TO CHIEF
INSPECTOR ENCLOSING LIST OF WINDSOR PROPERTIES

THE DOMINION BANK,

W. C. MacAgy., Esq.,
Chief Inspector,
Head Office,
Toronto—2, Ont..

WINDSOR, 8th July, 1929.

Dear Sir:

Routine:

Re Low, Leon and Burns

10

Since talking with you over the telephone this afternoon, I have discussed with Mr. Low certain points referred to by you and mentioned in the Montreal Assistant Manager's letter of the 5th instant addressed to me. Mr. Low informs me that it is quite true that his firm borrowed \$100,000. from the George A. Fuller Co. of Canada, Ltd. and also \$100,000. from Ross & McDonald at the time it was decided to put two extra stories on the Dominion Square Building. Forty thousand dollars of the \$200,000. borrowed has been paid back.

Regarding the \$200,000. which Mr. W. O. H. James gathered from his interview with Marco Leon would have to be set aside for taxes, sundry carrying charges and alterations to suit tenants's requirements out of any moneys raised by refinancing, Mr. Low states that there must be some mistake about this, and that the last time he went into the matter, which was three or four weeks ago, he was given to understand that there was then between \$150,000. and \$160,000. still left for "tenants alterations". He also stated that he believed our Mr. Ashforth had investigated these matters at first-hand and would know definitely how much money yet remained for extras, etc. in the construction fund handled by the Royal Trust Company. Mr. Low added that while changed plans of the building would use up most, if not all, of the \$400,000. to \$500,000. that they originally expected to get back from the construction fund, he had no knowledge of this not being sufficient to finance all extras including tenants alterations. The subject may have been overstated by Leon when he discussed it with Mr. James, and I take it that Mr. Ashforth can tell us with a greater degree of accuracy than Leon how this matter stands.

I beg to hand you herewith a list of the Border Cities properties covered by the Mortgage dated 20th June, 1929, to be given by Low, Leon & Burns to The Dominion Bank. There are twelve properties on this list, and attached to it are twelve memoranda giving particulars of each property. There is also enclosed a list of Toronto properties covered by the Mortgage dated 20th June, 1929, to be given from Low, Leon & Burns to The Dominion Bank, and this includes six properties. Attached to the list is a two-page memorandum giving particulars of these properties. You asked me for a list of the properties which had been sold by Messrs. Low,

Record.
In the
Supreme
Court of
Ontario.
Exhibits.
No. 15.
Plaintiff's
Exhibit.
Letter,
Windsor
Manager of
Dominion
Bank to
Chief
Inspector.
July 8, 1929.

Leon & Burns to provide for the \$115,000. cash they put into the Chatham Distillery. It is as follows:

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
No. 15.Plaintiff's
Exhibit.
Letter,
Windsor
Manager of
Dominion
Bank to
Chief
Inspector.
July 8, 1929.

—continued.

Property	WINDSOR			
	Price Paid.	Cash Payments.	Sold for	Net Amt. received
339-341 Victoria	\$28,000.	\$15,000.	\$31,000.	\$16,000.
Riverside Frontage	33,100.			15,000.
Giles & Ouellette	25,000.		25,000.	25,000.
Wyandotte & Sunset	25,000.		25,000.	22,800.
10 517 Ouellette	120,000.	25,000.	130,000.	25,500.
	TORONTO			
Cor. Grenville and Bay	62,500.	17,500.	68,000.	21,000.
S.W. Cor. Hayter & Bay	75,000.	25,000.	80,000.	26,500.
756 Bay St.	10,000.	4,000.	12,000.	5,200.

\$157,000

In the column "Net Amount Received" are the amounts actually received after interest, taxes, commissions, etc. have been paid? From the foregoing it will be observed that Low, Leon and Burns disposed of eight properties which brought them in \$157,000. and also released them of substantial obligations under the purchase contracts. Approximately \$115,000. went into the Chatham Distillery and \$40,000. was paid to the United Distillers Limited for whiskey to be delivered later on to the Chatham Distillery. This is the \$40,000. referred to in the last paragraph on Page Two of my Special Communication letter of the 4th instant addressed to the General Manager. In an effort to expedite completion of the L. L. & B. Mortgage to the Bank, I to-day discussed the matter with our solicitors, with their solicitors and as aforementioned with Mr. Low. We are trying to arrange a meeting of the three partners at Windsor for Wednesday of this week. Mr. Low communicated with Burns by telephone, and Burns said that if he could not be here Wednesday he would come the following day. He was requested to arrange to bring Leon with him.

Yours truly,

(Sgd) A. M. COWIE,

Manager.

(Enclosure)

List of Border Cities Properties included in the mortgage dated 20th June 1929 from Low Leon and Burns to Dominion Bank:

- 1—Baxter Building—Lots 113 and 116 w.s. Goyeau St., Plan 93, Windsor.
- 40 2—Dewar Terrace—Lots 29 and 30 w.s. Pelissier St. Plan 281, Windsor.

Record.

In the
Supreme
Court of
Ontario.

Exhibits.

No. 15.

Plaintiff's
Exhibit.
Letter,
Windsor
Manager of
Dominion
Bank to
Chief
Inspector.
July 8, 1929.

concluded.

- 3—Gauthier Property—n/w. Park and Victoria, Lots 14 & 15, Plan 81, Windsor.
- 4—Glassco Property—s.e.cor. London and Pelissier, Lots 17 & 18 e.s. Pelissier, Block P. Plan 85, Windsor.
- 5—A. K. Davis property—Lots 4 & 5 & s. ½ 3 w.s. Victoria Ave. Plan 81, Windsor.
- 6—Belleperche Property—Lots 11 & 12 w.s. Victoria, Plan 81 Windsor.
- 7—Doyle Bldg.—Part Lot 1, Block 2, w.s. Ouellette cor. Wyandotte, Plan 256, Windsor.
- 8—Park Apts.—Lots 1 & 2 w.s. Pelissier, Plan 254, Windsor. 10
- 9—s.w. cor. London & Victoria, lot 6 w.s. Victoria, Plan 81, Windsor.
- 10—Bannon Property—Lot 20 e.s. Sunset Ave. Plan 611, Sandwich.
- 11—Loveridge Property—Part Farm lot 138, Town of Riverside.
- 12—Rockett Property—Part Farm Lot 101, Ford City now East Windsor.

List of Toronto Properties included in the mortgage dated 20th June, 1929, from Low Leon and Burns to Dominion Bank.

- 1—740 and 742 Bay St. being the s. ½ lot 179 and all of lot 180 w.s. Terauley St. Plan 154, Toronto.
- 2—435, 437 and 439 Yonge Street.
- 3—460-470 Yonge St. being lots 3, 4 & 5 w.s. Yonge St. south of Grenville 20 St. Plan 159, 90' x 126'
- 4—490 Yonge St. being part of Park lots 9 & 10 now known as lot 13, Plan 159.
- 5—492, 494 Yonge St. being Lot 14, Plan 159.
- 6—Yonge St. Fire Hall, 7560 sq. ft. part of Park Lots 9 & 10. Plan 159. 30' x 126'

PART OF EXHIBIT NO. 5

COPY OF LETTER TORONTO ASSISTANT-MANAGER OF
DEFENDANT TO CHAS. BURNS

"Securities"

November 1st, 1929.

30

Charles Burns, Esq.,
President, Carling Breweries Ltd.,
London, Ont.

Dear Sir:

We enclose herewith our draft on London, Ontario Branch in favour of the Carling Export Brewing & Malting Co. Ltd., for \$2750.00, being the proceeds of coupons detached from \$100,000.00 Dominion of Canada 5½% Bonds due 1st of November, 1934.

Yours truly,

Assistant Manager.

JR/TB
Encl.

40

Part of No. 5.
Plaintiff's
Exhibit.
Copy of
Letter,
Toronto .
Assistant
Manager of
Dominion
Bank to
Chas. Burns.
November 1,
1929.

PART OF EXHIBIT NO. 40.
LETTER J. H. MAGID TO CHAS. BURNS

Dec. 27th, 1930.

Dear Shoyl:

I was extremely sorry that you were unable to give me some time when you were here this week.

I phoned you at Freda's several times, and left word for you to call me, but didn't hear from you at all.

10 I really want to impress upon that the fact that things with me here have reached a very critical stage, and unless I can do something within the next few days, (not later than Saturday next, in any case) I am going to be in an awful predicament.

Surely you have some way of raising enough funds to take care of me now. Even a part payment will, I feel sure, stave off for the time being any undesirable action and with a few months breathing spell something may turn either in your finances or in mine to help me get things definitely arranged.

20 In any event you know how I feel about the matter. I have been hoping against hope all this time that I will be able to arrange things myself but nothing has materialized and I have no one left but yourself to fall back on.

I hate to use those shares, as much as you hate me to do it, but unless you can see your way clear to do something in time I'll have no other course left.

Please wire me, or phone me immediately upon receipt of this letter, as I am at my wits end to know what to do. I am sending you this letter by special delivery so you can get it quicker.

Yours truly,
"JOE"

30 P.S. AND with all my troubles, had afternoon tea with your Arthur today The boy is doing well in school and looks fine. Regards from everybody home.

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part of No. 40.
Plaintiff's
Exhibit.
Letter,
J. H. Magid to
Chas. Burns,
December 27,
1930.

EXHIBIT NO. 7.

LETTER CHIEF INSPECTOR OF DEFENDANT TO CHAS. BURNS ENCLOSING LIST OF LIABILITIES OF LOW, LEON AND BURNS

THE DOMINION BANK
HEAD OFFICE

AP/7.

TORONTO 2, Canada
2nd January, 1931.

Chas. Burns, Esq.,
President,
Carling Export Brewing & Malting Co., Ltd.,
London, Ont.

10

Dear Sir:

We beg to acknowledge receipt of your letter of the 19th ultimo and to inform you that the Dominion of Canada War Loan Bond, due 1934, held by the Bank under an agreement of escrow, has been sold and from the proceeds of the sale the sum of \$100,000. has been deposited in the special savings account of our Toronto Branch and the balance, \$3,904.11, representing the premium and accrued interest from the 1st November, 1930, was credited to the account of Carling Export Brewing & Malting Company, Ltd. at London Branch. 20

As requested, we enclose a memorandum of the liabilities of Messrs. Low, Leon & Burns to The Dominion Bank.

Yours truly,

"W. C. MacAgy

Chief Inspector.

(Enclosure)

LOW, LEON and BURNS LOANS

Low, Leon & Burns—Windsor	\$226,319.		30
Unpaid interest to 31st Dec. 1930	18,364.	\$244,683.	
	<hr/>		
Low, Leon & Burns re Dom. Square Corporation	Windsor	390,500.	
	Montreal	390,500.	
	Unpaid Interest to 31st Dec. 1930	82,221.	863,221.
		<hr/>	

Record.

In the
Supreme
Court of
Ontario.

Exhibits.
No. 7.

Plaintiff's
Exhibit.
Letter, Chief
Inspector of
Dominion
Bank to
Chas. Burns.
January 2,
1931.

Mo me C

Low, Leon & Burns

Carling Export
Brewing & Malting
Company, Ltd. London

8,808.

\$1,116,712.

3rd January, 1931.

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.

No. 7.

Plaintiff's
Exhibit,
Letter, Chief
Inspector of
Dominion
Bank to
Chas. Burns.
January 2,
1931.

PART OF EXHIBIT NO. 40

LETTER J. H. MAGID TO CHAS. BURNS ENCLOSING COPY OF
LETTER FROM MAGID TO MARCO LEON

Part of No. 40.
Plaintiff's
Exhibit.
Letter,
J. H. Magid to
Chas. Burns.
January 3,
1931.

MONTREAL, Jan. 3. 1931.

10 Mr. Chas. Burns,
835 Richmond St.,
London, Ont.

Dear Shoyl:

I am sending you herewith copy of letter I sent to Mr. Leon this afternoon.

As already advised you, I was hoping against hope, all these months, that it may not be necessary to touch this collateral, but what with all these pressing matters reaching an acute stage, I had no alternative but to try and adjust matters as best as I can with these shares.

20 I have a promise from two friends of a substantial advance on these shares for a period of about two years. I am hopeful that it will be long before that things will take a turn, and come back to normal, and perhaps we will be able to liquidate and regain some of the losses.

With kindest regards and best wishes, I am,
"JOE"

(Enclosure)

MONTREAL, Jan. 3rd, 1931.

30 Mr. M. Leon, Sec. Treas.
Carling E. B. & M. Ltd.,
2174 Sherbrooke St. West,
Apt. 11. Montreal.

Dear Mr. Leon:

This will confirm our telephone conversation of this day in regard to transferring of shares held by me in your Company.

I am sending you herewith the following certificates:

Record.

*In the
Supreme
Court of
Ontario.*

Certificate No. 83, 7543 shares, preferred, in the name of Charles H. Burns.
Certificate No. 87, 16,666 shares, common, in name of Charles Burns.

Exhibits.
Part of No. 40.Plaintiff's
Exhibit.
Letter,
J. H. Magid to
Chas. Burns.
January 3,
1931.

Both of these certificates are endorsed by Mr. Burns in blank.

Will you kindly issue new certificates as follows:

In name of J. H. Magid, 7543 Preferred shares.

In name of J. H. Magid, 16,000 common shares.

In name of Charles Burns, 666 common shares.

Please complete these certificates in due legal form and forward them to me promptly care P.O. Box 30, Station B. Montreal.

Thanking you for your kind attention to this matter, I am,

10

Yours very truly,

PART OF EXHIBIT NO. 9

LETTER N. W. ROWELL TO DEFENDANT

TORONTO

13th May 1931.

Part of No. 9.
Plaintiff's
Exhibit.
Letter,
N. W. Rowell
to General
Manager of
Dominion
Bank.
May 13, 1931.

C. A. Bogert, Esq.,
General Manager The Dominion Bank,
T o r o n t o.

Dear Sir:—

The King vs. Carling Export
Brewing & Malting Co.

20

Referring to letter of the 29th March 1930, signed by your Chief Inspector, in which it is stated that you held in your hands Dominion of Canada bonds bearing 5½% per annum, payable in 1934, to the amount of \$100,000. and cash on deposit to the amount of \$313,250.69, to meet any final judgment that might be obtained by the King against the Carling Export Brewing and Malting Company in respect of the action then pending with reference to sales and gallonage tax on export sales, I beg to advise you that under the terms of the judgment of the Privy Council there is payable in respect of the Crown's Claim, up to the 1st May 1931, the sum of \$87,222.52, and to that amount must be added interest at 8% 30 on the sum of \$63,800.00 from the 1st May to the date of payment.

I should be glad to receive cheque for the amount due payable to the Receiver-General of Canada.

Yours truly,

“N. W. Rowell”

PART OF EXHIBIT NO. 9

COPY OF LETTER GENERAL MANAGER OF DEFENDANT TO
N. W. ROWELL

16th May, 1931.

N. W. Rowell, Esq., K.C.,
38 King St. West,
Toronto, 2.

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part of No. 9.
Plaintiff's
Exhibit.
Copy of letter,
General
Manager of
Dominion
Bank to
N. W. Rowell.
May 16, 1931.

Dear Sir: Re: The King vs. Carling Export Brewing
& Malting Co. Ltd.

10 I beg to acknowledge receipt of your letters of the 13th and 14th instant, the latter with enclosure.

We have seen the Reasons for Judgment of the Judicial Committee of the Privy Council and the formal Judgment issued pursuant thereto. We observe that the formal Judgment does not state specifically the amount to be paid by the Carling Export Brewing & Malting Co. Ltd. to the King. The funds held by The Dominion Bank to meet the final judgment are held upon instructions from the Carling Export Brewing & Malting Co. Ltd. which read as follows:

20 "These are to be held by you to meet any final judgment that may be obtained by the Dominion Government against Carling Export Brewing & Malting Co. Ltd. in respect to action now pending with reference to sales and gallonage tax on export sales. It is understood that you are to hold said bonds until any action by the Government with respect to sales and gallonage tax on export is finally disposed of by judicial decision or settlement."

You will note the words "finally disposed of by judicial decision or settlement", and you will also observe that in our letter to you of the 29th March, 1930, it was pointed out that the funds were to be held pending judicial decision or settlement.

30 The Bank has not yet received from the Carling Export Brewing & Malting Co. Ltd. any confirmation of the figures mentioned in your letter of the 13th instant to myself, nor has the Bank received any amended form of judgment of the Exchequer Court containing definite figures. Under these circumstances, we are advised by our Solicitors that the Bank should have either the consent of the Carling Export Brewing & Malting Co. Ltd. to payment of the amount mentioned in your letter, or production of a formal judgment of the Exchequer Court fixing that amount as the amount to be paid by the Company to the King.

40 Will you be good enough to give these matters your consideration, and let me hear from you again.

Yours faithfully,

General Manager.

be \$87,222.52 with interest at 8% on \$63,800. from the 1st of May to date of payment. Mr. Milliken understood that you would write us a letter confirming this amount as the amount to be paid to the Government. Will you please do this so that further interest may be saved.

With reference to the last part of your letter to us in which you ask that the balance of the funds in our hands be returned to the Company, we beg to say that this balance has been hypothecated to the Bank.

Yours truly,
 "W.C. MacAgy"
 Chief Inspector.

10

Record.
*In the
 Supreme
 Court of
 Ontario.*
 Exhibits.
 Part of No. 10.
 Plaintiff's
 Exhibit.
 Letter, Chief
 Inspector of
 Dominion
 Bank to
 Plaintiff's
 Solicitors.
 June 6, 1931.
 —concluded.

PART OF EXHIBIT NO. 10

LETTER PLAINTIFFS' SOLICITORS TO THE DEFENDANT.

27th
 June
 1931.

Part of No. 10.
 Plaintiff's
 Exhibit.
 Letter,
 Plaintiff's
 Solicitors to
 Dominion
 Bank.
 June 27, 1931.

The Dominion Bank,
 Head Office,
 King and Yonge Streets,
 TORONTO 2.

20 Dear Sirs:

Re- CARLING EXPORT, BREWING & MALTING
 COMPANY, LIMITED.

Referring to previous correspondence herein, the amount to be paid to the Government under its judgment has now been definitely fixed at \$88,073.17. Payment of this amount by the end of the month will be accepted in full.

30 In making payment we are directed to ask that it should be expressly stated that it is made without prejudice to the claim of the Company to be repaid certain sums paid by the Company for gallonage tax and other taxes and which, according to the judgment of the Privy Council, the Government was not entitled to demand.

With respect to the balance of the security deposited with you by the Company, our instructions are to take proceedings on behalf of the Company to recover it.

Yours truly,
 Fasken, Robertson, Aitchison, Pickup & Calvin
 Per: "R. S. Robertson"

RSR/AF.

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
Part of No. 10.
Plaintiff's
Exhibit.
Letter, Chief
Inspector
Dominion
Bank to
Plaintiff's
Solicitors.
June 30, 1931.

PART OF EXHIBIT NO. 10.

LETTER CHIEF INSPECTOR OF DEFENDANT TO PLAINTIFF'S SOLICITORS

THE DOMINION BANK
HEAD OFFICE

TORONTO 2, 30th June, 1931

Messrs. Fasken, Robertson, Aitchison, Pickup & Calvin,
Barristers,
Excelsior Life Building,
Toronto.Dear Sirs: Re: Carling Export Brewing & Malting
Co. Ltd.

We beg to acknowledge receipt of yours of the 27th instant.

We are to-day sending to Mr. Rowell a cheque in favour of the Receiver General of Canada for \$88,073.17. In the letter to Mr. Rowell we have stated that the payment is made without prejudice to the claim of the Company to be repaid certain sums paid by the Company for gallonage tax and other taxes and which, according to judgment of the Privy Council, the Government was not entitled to demand.

With respect to the balance of the security deposited with us by the Company, referred to in your letter, we beg to say that this balance has been applied in reduction of the indebtedness to the Bank for which it was given as security. 20

As our solicitors state that you wish a copy of the hypothecation under which we claim the balance of this security, we enclose a copy thereof herewith.

Yours truly,
"W. C. MacAgy"
Chief Inspector

PART OF EXHIBIT NO. 9.

COPY OF LETTER CHIEF INSPECTOR OF DEFENDANT TO
N. W. ROWELL.

30th June, 1931

N. W. Rowell, Esq., K.C.,
38 King Street West,
Toronto.Dear Sir: The King vs Carling Export Brewing
& Malting Company, Limited.

Referring to your letter of the 13th May and other correspondence,

10

30

Part of No. 9.
Plaintiff's
Exhibit.
Copy of
Letter, Chief
Inspector of
Dominion
Bank to
N. W. Rowell.
June 30, 1931.

we have been requested by the Carling Export Brewing & Malting Co. Ltd. to pay the Government, under its judgment against that concern, the sum of \$88,073.17 and we enclose herewith our cheque for that amount payable to the Receiver General of Canada.

This payment is made without prejudice to the claim of the Carling Export Brewing & Malting Co. Ltd. to be repaid certain sums paid by the Company for gallonage tax and other taxes and which, according to the judgment of the Privy Council, the Government was not entitled to demand.

10 Will you kindly acknowledge receipt.
Yours truly,

Enclosure

Chief Inspector.

PART OF EXHIBIT NO. 10

LETTER PLAINTIFF'S SOLICITORS TO DEFENDANT.

Toronto 2, 19th,
October,
1931.

The Dominion Bank,
Cnr. King and Yonge Streets,
TORONTO 2.

Record.

In the
Supreme
Court of
Ontario.

Exhibits.
Part of No. 9.
Plaintiff's
Exhibit.
Copy of
Letter, Chief
Inspector of
Dominion
Bank to
N. W. Rowell.
June 30, 1931.

—concluded.

Part of No. 10.
Plaintiff's
Exhibit.
Letter,
Plaintiff's
Solicitors to
Dominion
Bank.
October 19,
1931.

20 Dear Sirs:

We had recently some correspondence with you regarding the security provided by the Carling Export, Brewing & Malting Company, Limited, to protect the Bank against its guarantee given to the Dominion Government. You claim to hold the balance of the security, after deducting the amount that you have paid the Government, against a personal liability of Messrs. Low, Leon & Burns to the Bank.

We are now definitely instructed by the Company to bring action to recover the amount of the security after crediting what has been paid the Dominion Government, and we intend to issue a writ accordingly within the next few days.

30 Yours truly,
Fasken, Robertson, Aitchison, Pickup & Calvin
Per: "R. S. Robertson"

RSR/AF.

PART OF EXHIBIT NO. 10.

LETTER DEFENDANT TO PLAINTIFF'S SOLICITORS

THE DOMINION BANK

OFFICE OF VICE PRESIDENT and GENERAL MANAGER

LH/600

TORONTO 2, 26th October, 1931.

Messrs. Fasken, Robertson, Aitchison, Pickup & Calvin
 Excelsior Life Building,
 Adelaide & Toronto Sts.,
 Toronto 2.

Dear Sirs:

Your letter of the 19th instant was duly received relating to instructions which have been given to you by the Carling Export, Brewing & Malting Company, Limited, and the contents have been noted.

Yours truly,
 "C. A. Bogert"
 General Manager.

10

LETTERS PATENT, BY-LAWS, MINUTES OF CARLING
 EXPORT BREWING & MALTING COMPANY
 LIMITED

EXHIBIT NO. 1

20

COPY OF LETTERS PATENT INCORPORATING CARLING EXPORT BREWING AND MALTING COMPANY LIMITED CANADA

BY THE HONOURABLE ARTHUR BLISS COPP,
 SECRETARY OF STATE OF CANADA.

TO ALL TO WHOM THESE PRESENTS SHALL COME, OR
 WHOM THE SAME MAY IN ANYWISE CONCERN:

GREETING:

WHEREAS, in and by the first part of Chapter 79 of the Revised Statutes of Canada, 1906, and known as "The Companies Act" and Amending Acts, it is amongst other things, in effect enacted, that the Secretary of State of Canada may, by Letters Patent, under his Seal of Office, grant a Charter to any number of persons, not less than five, who

Record.

In the
 Supreme
 Court of
 Ontario.

Exhibits.
 Part of No. 10.
 Plaintiff's
 Exhibit.
 Letter,
 General
 Manager
 Dominion
 Bank to
 Plaintiff's
 Solicitors,
 October 26,
 1931.

No. 1.
 Plaintiff's
 Exhibit.
 Copy of
 Letters Patent
 Incorporating
 Carling Export
 Brewing &
 Malting
 Co. Ltd.
 May 8, 1922.

having complied with the requirements of the said Act and Amending Acts, apply therefor, constituting such persons, and others who thereafter become shareholders in the Company thereby created, a Body Corporate and Politic for any of the purposes or objects to which the Legislative Authority of the Parliament of Canada extends, except the construction and working of Railways or of Telegraph or Telephone lines, the business of Banking, the issue of paper money, the business of Insurance, the business of a Loan Company, or the business of a Trust Company, upon the applicants therefor establishing to the satisfaction of the Secretary of State, due compliance with the several conditions and terms in and by the said Act and Amending Acts set forth and thereby made conditions precedent to the granting of such Charter.

10 AND WHEREAS, CHARLES HENRY BOWYER and WILLIAM BERNARD McHENRY, Students-at-law; HAZEL IRENE COWARD and EDNA FLORENCE SADLEIR, Stenographers, and JOHN FRANCIS BOLAND, Solicitor; all of the City of Toronto in the Province of Ontario, have made application for a Charter under the said Act and Amending Acts, constituting them and such others as may become shareholders in the Company thereby created, a Body Corporate and Politic, under the name of

20 "CARLING EXPORT BREWING & MALTING
COMPANY LIMITED"

for the purposes hereinafter mentioned, and have satisfactorily established the sufficiency of all proceedings required by the said Act and Amending Acts, to be taken, and the truth and sufficiency of all facts required to be established previous to the granting of such Letters Patent, and have filed in the Department of the Secretary of State a duplicate of the Memorandum of Agreement executed by the said applicants in conformity with the provisions of the said Act and Amending Acts.

30 NOW KNOW YE, that I, the said Arthur Bliss Copp, Secretary of State of Canada, under the authority of the hereinbefore in part recited Act and Amending Acts, do by these Letters Patent constitute the said CHARLES HENRY BOWYER, WILLIAM BERNARD McHENRY, HAZEL IRENE COWARD, EDNA FLORENCE SADLEIR, and JOHN FRANCIS BOLAND and all others who may become shareholders in the said Company, a Body Corporate and Politic, by the name of

"CARLING EXPORT BREWING & MALTING
COMPANY LIMITED"

40 with all the rights and powers given by the said Act and Amending Acts, and for the following purposes and objects, namely:—

(a) To carry on the business of brewers and maltsters in all its various branches and of hop merchants and growers, malt factors, corn merchants, coopers, bottle makers, bottle stopper makers, potters, manufacturers of and dealers in aerated and mineral waters and other beverages, wine and spirit merchants and manufacturers, licensed victuallers, hotel keepers, ice

Record.

In the
Supreme
Court of
Ontario.

Exhibits.

No. 1.
Plaintiff's
Exhibit.
Copy of
Letters Patent
Incorporating
Carling Export
Brewing &
Malting
Co. Ltd.
May 8, 1922.

—continued.

Record.
*In the
 Supreme
 Court of
 Ontario.*
 Exhibits.
 No. 1.
 Plaintiff's
 Exhibit.
 Copy of
 Letters Patent
 Incorporating
 Carling Export
 Brewing &
 Malting
 Co. Ltd.
 May 8, 1922.
 —continued.

manufacturers and merchants, yeast dealers, grain sellers and driers, customs house brokers, warehouse men, common carriers, carters, forwarders, box manufacturers, millwrights, wheelwrights, and any other business auxiliary or incidental thereto, or which can be carried on in connection therewith, and further, to manufacture, buy, sell and generally deal in any wares, merchandise, articles or effects directly or indirectly relating to any of the said businesses, including barrels, casks, bottles, boxes, cases, corks and other like articles used in connection therewith;

(b) To buy, sell, handle and deal, both in wholesale and retail, in commodities, articles and appliances of all kinds which can be conveniently dealt with by the Company in connection with any of its objects; 10

(c) To be a common carrier in accordance with Section 154 of the Canada Temperance Act, being Chapter 152 of the Revised Statutes of Canada, 1906, as amended by Chapter 8, of the Statutes of Canada, 1919 (second session);

(d) To acquire by purchase, lease, exchange or otherwise and to hold, use, improve, manage, lease, sell, exchange dispose of or otherwise deal in lands, mineral and surface rights, tenements, hereditaments, immovables or interests therein and to erect, alter, repair and maintain buildings upon any lands in which the company may have any interest, either as principal or agent, or upon any other lands and to deal in building materials of all kinds; 20

(e) To acquire and take over as going concern or otherwise the undertakings, assets and liabilities of any person or company carrying on any business in whole or in part similar to that which the company is authorized to carry on or possessed of property suitable for the purposes of this company, and with a view thereto to acquire, all or any of the shares or liabilities of such companies;

(f) To carry on any other business (whether manufacturing or otherwise) which may seem to the company capable of being conveniently carried on in connection with its business or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights; 30

(g) To apply for, purchase or otherwise acquire any patents, brevets d'invention, licenses, concessions and the like, conferring any exclusive or non-exclusive or limited right to use, or any secret or other information as to any invention which may seem calculated directly or indirectly to benefit the Company, and to use, exercise, develop or grant licenses in respect of or otherwise turn to account the property, rights or information so acquired; 40

(h) To enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which the company is authorized to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to

benefit the company; and to lend money to, guarantee the contracts of, or otherwise assist any such person or company, and to take or otherwise acquire shares and securities of any such company and to sell, hold, re-issue, with or without guarantee or otherwise deal with the same;

10 (i) To enter into any arrangements with any government, authorities, municipal, local or otherwise that may seem conducive to the company's objects or any of them, and to obtain from any such government or authority any rights, privileges, and concessions which the company may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;

(j) To promote any company or companies for the purpose of acquiring all or any of the properties, rights and liabilities of the company, or for any other purpose, which may seem directly or indirectly calculated to benefit the company;

(k) To purchase, take on lease or in exchange, hire or otherwise acquire any personal property, and any rights or privileges which the company may think necessary or convenient for the purposes of its business and in particular any machinery, plant, stock-in-trade;

20 (l) To construct, improve, maintain, work, manage, carry out or control, any roads, ways, branches, or sidings, bridges, reservoirs, water-courses, wharves, manufactories, warehouses, electric works, shops, stores and other works and conveniences which may seem calculated directly or indirectly to advance the company's interests, and to contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;

(m) To invest and deal with the moneys of the Company not immediately required in such manner as may from time to time be determined;

30 (n) To lend money to customers and others having dealings with the company and to guarantee the performance of contracts by any such persons;

(o) To draw, make, accept, endorse, execute and issue promissory notes, bills of exchange, bills of lading, warrants, and other negotiable or transferable instruments;

(p) To sell, lease or otherwise dispose of the property or undertaking of the company or any part thereof for such consideration as the company may think fit, and in particular and notwithstanding the provisions of Section 44 of The Companies Act, for shares, debentures or securities of any other partnership, association or company having objects altogether or in part similar to those of the company;

40 (q) To apply for, secure, acquire by assignment, transfer, purchase, or otherwise and to exercise, carry out and enjoy any charter, license, power, authority, franchise, concession, rights or privileges, which any government or authority or any corporation or other public body may be empowered to grant and to pay for, aid in and contribute towards carrying the same into effect, and to appropriate any of the company's shares,

Record.

In the
Supreme
Court of
Ontario.

Exhibits.

No. 1.
Plaintiff's
Exhibit.
Copy of
Letters Patent
Incorporating
Carling Export
Brewing &
Malting
Co. Ltd.
May 8, 1922.

—continued.

Record.

In the
Supreme
Court of
Ontario.Exhibits.
No. 1.Plaintiff's
Exhibit.
Copy of
Letters Patent
Incorporating
Carling Export
Brewing &
Malting
Co. Ltd.
May 8, 1922.

—continued.

bonds and assets to defray the necessary costs, charges and expenses thereof;

(r) To procure the company to be registered, licensed or otherwise recognized in foreign countries, and to designate and appoint persons therein as attorneys or representatives of the company with full power to represent the company in all matters according to the law of such foreign country, and to accept service for and on behalf of the company of any process or suit;

(s) To raise and assist in raising money for, and to aid by way of bonus, loan, promise, endorsement, guarantee of bonds, debentures or other securities or otherwise, any other company or corporation, with whom the company may have business relations, and to guarantee the performance of contracts by any such company, corporation, or by any such person or persons 10

(t) To adopt such means of making known the products of the company as may seem expedient, and in particular by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes, rewards and donations;

(u) To sell, improve, manage, develop, exchange, lease, dispose of, 20
turn to account or otherwise deal with all or any part of the property and rights of the company;

(v) Notwithstanding the provisions of Section 44 of The Companies Act, to subscribe for, purchase, assume liability under, acquire, hold, sell, exchange, dispose of or otherwise deal in or contract with reference to bonds, debentures, stocks or other securities or obligations or any estate or interest therein; and to apply or to accept in whole or in part as consideration or satisfaction, or security for any contract, indebtedness, or obligation to or of the company, property obligations, shares and securities of any kind at such valuation, and upon such terms as may be agreed 30
upon; and to apply or to accept as security for any indebtedness to the company mortgages of land or chattels upon such terms as may be agreed upon;

(w) To issue paid-up shares, bonds, debenture, debenture stock or other securities for the payment either in whole or in part of any property, real or personal, movable or immovable or other rights, leases, business transactions, undertakings, powers and privileges, licenses or concessions which the company may lawfully acquire or in exchange for shares, bonds, debentures or debenture stock or other securities of any other company doing business similar or incidental to the business of the 40
company.

(x) To do all such other things as are incidental or conducive to the attainment of the above object or any of them.;

(y) To do any and all things set forth as its objects as principal, agent, contractor or otherwise, and to carry out any or all of the foregoing objects as principals, agents, sub-contractors or otherwise, and by

And do any thing

or through trustees, agents, sub-contractors, or otherwise and alone or jointly with any other corporation, association, firm or person, and to do all and everything necessary or incidental for the accomplishment of any of the purposes or the attainment of any one or more of the objects herein enumerated or incidental to the powers herein named, or which shall at any time be necessary or incidental for the protection or benefit of the company;

The operations of the company to be carried on throughout the Dominion of Canada and elsewhere.

10 The place within the Dominion of Canada which is to be the chief place of business of the said Company is the City of Montreal in the Province of Quebec.

The Capital Stock of the said Company shall be ONE MILLION (1,000,000) DOLLARS divided into ONE HUNDRED THOUSAND (100,000) shares of TEN (\$10.00) DOLLARS each, of which FIFTY THOUSAND (50,000) shares shall be cumulative preference shares, subject to the increase of such capital stock under the provisions of the said Act and Amending Acts.

20 The said cumulative preference shares shall carry and be subject to the preferences, priorities, rights, privileges, limitations and conditions hereinafter set forth, that is to say:—

(1) The holders of the preference shares shall be entitled to receive out of profits of the company in each year as a first charge, a fixed cumulative preferential dividend at the rate of eight per cent (8%) per annum on the capital for the time being paid up on such shares respectively.

(2) The capital paid up on the preference shares shall not be liable to cancellation or reduction in respect of loss or depreciation.

30 3— In the event of the winding up of the company the holders of the preference shares shall be entitled to have the surplus assets applied—

firstly: in paying off the capital paid up on the preference shares held by them respectively, and

secondly: in paying up the arrears (if any) on the preferential dividends, as aforesaid, to the commencement of the winding up.

4— The preference shares shall carry no voting power. Every holder of common shares shall be entitled to one vote for every common share held by him.

40 And it is hereby ordained and declared that if authorized by by-law, sanctioned by a vote of not less than two-thirds in value of the subscribed

Record.

In the
Supreme
Court of
Ontario.

Exhibits.

No. 1.
Plaintiff's
Exhibit.
Copy of
Letters Patent
Incorporating
Carling Export
Brewing &
Maltine
Co. Ltd.
May 8, 1922.

—continued.

Record.

In the
Supreme
Court of
Ontario.

Exhibits.

No. 1.

Plaintiff's
Exhibit.
Copy of
Letters Patent
Incorporating
Carling Export
Brewing &
Malting
Co. Ltd.
May 8, 1922.

—concluded.

stock of the company, represented at a general meeting duly called for considering the by-law, the directors may from time to time:

- (a) Borrow money upon the credit of the company;
- (b) Limit or increase the amount to be borrowed;
- (c) Issue bonds, debentures, debenture stock or other securities of the company and pledge or sell the same for such sums and at such prices as may be deemed expedient;
- (d) Hypothecate, mortgage or pledge, the real or personal property of the company, or both, to secure any such bonds, debentures, debenture stock or other securities and any money borrowed for the purposes of the company;

Nothing in this clause contained shall limit or restrict the borrowing of money by the company on bills of exchange or promissory notes made, drawn, accepted or endorsed, by or on behalf of the company.

The said Charles Henry Bowyer, William Bernard McHenry, Hazel Irene Coward, Edna Florence Sadleir and John Francis Boland are to be the first or Provisional Directors of the said Company.

PROVIDED ALWAYS that nothing in these Presents expressed or contained shall be taken to authorize the construction and working of Railways or of Telegraph or Telephone lines, the business of Banking, the issue of paper money, the business of insurance, the business of a loan company or the business of a Trust Company by the said Company.

Given under my hand and Seal of Office at Ottawa this Eighth day of May 1922.

“SEAL”

“A. B. COPP”

Secretary of State of Canada.

PART OF EXHIBIT NO. 22.

BY-LAW OF THE CARLING EXPORT BREWING AND MALT-
ING COMPANY LIMITED AUTHORIZING DIRECTORS TO
BORROW AND PLEDGE

THE Carling Export Brewing & Malting COMPANY, LIMITED, incorporated under the Dominion Companies Act.

AT a meeting of the directors of The Carling E. B. & M. Company, Limited duly convened and held on the first day of November 1923, a By-law of which the following is a true copy was duly enacted:

BY-LAW No. 18

“(a) THAT the Directors of the Company may from time to time borrow any sum or sums of money from THE DOMINION BANK upon the credit of the Company, either by way of overdraft, discount, loan or

Part of No. 22.
Defendant's
Exhibit.
Certified Copy
of By-law of
Carling Export
Brewing &
Malting
Co. Ltd. re
Borrowing and
Banking.
November 1
1923.

30

otherwise, and on such terms as they may think proper, and may hypothecate, mortgage, pledge and give to the said Bank all or any stocks, bonds, debentures, negotiable instruments, agreements to give securities, and all other agreements, securities and documents necessary or required by or on behalf of the said Bank as security, and also without limitation of the foregoing may hypothecate, give and grant to the said Bank warehouse receipts, bills of lading, assignments, securities and promises and agreements to give security under the Bank Act, and for any of the purposes aforesaid may mortgage, hypothecate and pledge the movable and immovable property of the Company."

10

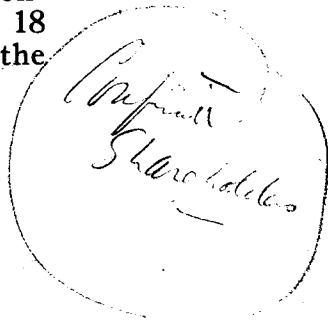
"(b) THAT the Directors of the Company may from time to time authorize such Director or Directors, officer or officers, clerk, cashier or other employee of the Company as the Directors may appoint to transact the Company's banking business with the said Bank, and to sign and execute on behalf of the Company all such documents, agreements, securities, promises and pledges as aforesaid."

"(c) THAT this By-law shall continue in full force, virtue and effect as between the Company and the said Bank until notice of the revocation or cancellation thereof shall have been given to the said Bank in writing."

20

Subsequently, namely on the first day of November 1923 at a Special general meeting of the said The Carling E. B. & M Co. Ltd., duly convened and held for the purpose of considering said By-law Number 18 the said By-law was confirmed by more than two-thirds in value of the shareholders of the said Company.

The authorized capital of the said Company is	\$1,000,000
" Subscribed	" " " " " " \$ 726,300
" paid-up	" " " " " " \$ 726,300
Surplus	\$



Record.

In the Supreme Court of Ontario.

Exhibits. Part of No. 22. Defendant's Exhibit. Certified Copy of By-law of Carling Export Brewing & Malting Co. Ltd. re Borrowing and Banking. November 1, 1923.

for [unclear]

—concluded.

(Seal of the Company)

30 THE CARLING E. B. & M CO. LTD.

"Marco Leon"

Secretary.

President "Chas. Burns"
 Vice-President "Harry Low"
 Secretary-Treasurer "Marco Leon"
 Director "T. Burns"
 " "S. Leon"

PART OF EXHIBIT NO. 22

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
Part of No. 22.
Defendant's
Exhibit.
Certified Copy
of Resolution
of Directors of
Carling Export
Brewing &
Malting
Co. Ltd.
November 1,
1923.RESOLUTION OF THE BOARD OF DIRECTORS OF CARLING
EXPORT BREWING & MALTING COMPANY LIMITED RE
BANKING ACCOUNT AND SECURITIES

THE Carling Export Brewing & Malting Co. LIMITED

At a meeting of the Board of Directors, held on the first day of
November 1923 at London, Ont.Present: President: Chas. Burns. — Vice-President: Harry Low —
Secretary: Marco Leon.Pursuant to By-law No. 18 of the Company, it was unanimously 10
resolved:—(a) That THE DOMINION BANK be and are hereby appointed
bankers to the Company, and authorized to pay and honour or make ad-
vances upon all cheques, drafts, acceptances and other negotiable instru-
ments purporting to be signed by President or Vice-President and coun-
tersigned by any one of other officers and further to accept for deposit
all cheques, drafts and bills purporting to be endorsed on behalf of the
Company by any one Director or the Secretary or Treasurer.(b) That all agreements, securities, promises to give security, hypo- 20
thecations and pledges, shall be valid and binding on the Company when
signed by any one of the officers and countersigned by any one of other
officers.(c) That the said Bank be furnished with a list of the names of the
Directors, officers, clerk, cashier or other employee of the Company
authorized to sign for it, together with specimens of their signatures, and
that the said Bank be from time to time informed in writing of any
change of such officers.(d) That this Resolution be communicated to the said Bank and re-
main in force until notice in writing to the contrary be given to the said
Bank. 30

Certified a true copy

THE CARLING E. B. & M. CO. LTD.

"Marco Leon"

Secretary

(Seal of the Company)

PART OF EXHIBIT NO. 30

EXTRACTS FROM THE MINUTE BOOK OF CARLING EXPORT
BREWING & MALTING COMPANY LIMITED

EXTRACT FROM GENERAL BY-LAWS

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
Part of No. 30.
Defendant's
Exhibit.
Extract from
General
By-laws of
Carling Export
Brewing &
Malting
Co. Ltd.
June 20, 1922.

- 10 THE PRESIDENT 10—The President shall preside at all meetings of the shareholders and directors. He may call meetings of the shareholders or of the Board of Directors when necessary or expedient. He may execute bonds, mortgages and other contracts on behalf of the Company and affix the corporate seal to any instrument requiring the same and the seal, when so affixed and attested by his signature and the signature of the Secretary, shall be valid and binding on the Company. He shall, with the Secretary, sign certificates of stock.
- THE VICE-PRESIDENT. 11—The Vice-President shall be vested with and shall perform all the duties of the President in the absence of the latter from his office.
- 20 GENERAL MANAGER. 12—The General Manager shall be the chief executive officer of the Company. He shall have and exercise general supervision of the affairs of the Company. He shall have complete charge, direction, management and control of the office staff, employees, servants, business affairs, correspondence, salaries, wages, buying, selling, brewing and advertising and over all matters for the care of the capital, property, plant, business and affairs of the Company. He shall determine all duties and fix all salaries and wages of the office staff, servants and employees. He may engage and dismiss the office staff, servants and employees and confer his authority and withdraw it from the Superintendents or Foremen. He shall submit a report of the operations of the Company for the preceding fiscal year to the Directors at a Meeting to be held prior to the Annual Meeting and to the shareholders at the Annual Meeting and from time to time shall report to the Board all matters within his knowledge which the interests of the Company may require to be brought to their notice.
- 30 THE SECRETARY. 13—The Secretary shall attend all Sessions of the Board and all Meetings of the Shareholders and act as clerk thereof and record all votes, minutes and proceedings of such meetings in a book to be kept for such purpose. He

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
Part of No. 30.
Defendant's
Exhibit.
Extract from
General
By-laws of
Carling Export
Brewing &
Malting
Co. Ltd.
June 20, 1922

—concluded

shall give or cause to be given notice of all meetings of the shareholders and of the Board of Directors. He shall, with the President, sign certificates of stock and execute bonds, mortgages and other contracts on behalf of the Company. He shall perform such other duties as may be prescribed by the Board of Directors under whose supervision he shall be.

TREASURER 14—The Treasurer shall keep or cause to be kept full and accurate accounts of the receipts and disbursements of the Company in books provided by the Company for such purpose, and shall deposit or cause to be deposited 10 all monies, cheques, notes, drafts, orders for the payment of money and other negotiable paper in the name and to the credit of the Company, in such depositories as may be designated by the Board of Directors and shall deliver all such books to his successor in office or such person as may be named in a resolution of the Board of Directors. He shall disburse the funds of the Company as may be ordered by the Board, taking proper vouchers for such disbursements and shall render to the General Manager 20 and Directors at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Company. He shall perform such other duties as may be prescribed by the Board of Directors from time to time under whose supervision he shall be.

MINUTES of the meeting of the Board of Directors of the Carling Export Brewing & Malting Co. Limited held at the office of the Company at London, Ontario, on the 11th day of October 1923 at the hour of 8 p.m. 30

Part of No. 30.
Defendant's
Exhibit.
Minutes of
Meeting of
Directors of
Carling Export
Brewing &
Malting
Co. Ltd.
October 11,
1923.

THERE WERE PRESENT:
Lt-Col. J. Innes Carling,
Hector P. Bellingham,
Charles H. Burns,
Harry Low and
A. B. Drake,

being all the directors of the Company.

Mr. Burns was in the chair and Mr. Drake acted as Secretary and took the minutes of the meeting.

The minutes of the Board of Directors held on the 11th day of October 1923 were read and on motion confirmed. 40

The Secretary then stated that Messrs Patterson and Werner each applicants of One hundred (100) shares of preferred stock of the Company had not fulfilled their agreement and paid the calls thereon.

On motion by Mr. Carling and seconded by Mr. Low and carried unanimously it was resolved that their application for stock be cancelled.

On motion by Mr. Burns and seconded by Mr. Low and carried unanimously it was resolved that the Dominion Bank be the bank of the Company for the purpose of enabling the Company to carry on its affairs in accordance with by-law No. 17 and that copy of the by-law be submitted to the Dominion Bank in accordance with the Bank Act, duly signed.

10 Lt. Col. J. Innes Carling submitted his resignation as director of the Company and the transfer of one share held by him in the capital stock of the Company to Marco Leon both subject to the approval of the Board.

On motion duly seconded the resignation was accepted and the transfer approved of.

CARRIED:

On further motion Mr. Marco Leon was elected as a director in the place and stead of Lt. Col. J. Innes Carling.

CARRIED:

Mr. Leon being present then took his seat with the Board of Directors.

20 Mr. H. P. Bellingham next submitted his resignation as a director of the Company and the transfer of one share held by him in the capital stock of the Company to Mr. Vital Benoit, both subject to the approval of the board.

On motion duly seconded the resignation was accepted and the transfer approved of.

CARRIED:

On further motion Mr. Vital Benoit was elected as a Director in the place and stead of H. P. Bellingham.

CARRIED.

30 Mr. Benoit being present then took his seat with the Board of Directors.

It was moved by Harry Low and seconded by A. B. Drake and carried unanimously that the following be appointed officers of the company until the next annual meeting.

Mr. Chas. Burns -----President

Mr. Harry Low -----Vice-President

Managing Director

Mr. Marco Leon -----Secretary Treasurer.

40 It was moved by Harry Low and seconded by Mr. Leon that any two of the Officers of the Company are empowered to sign, under seal or otherwise, any documents necessary for the carrying on the affairs of the Company.

CARRIED.

It was moved by Mr. Burns and seconded by Mr. Drake and carried

Record.

In the
Supreme
Court of
Ontario.

Exhibits.
Part of No. 30.
Defendant's
Exhibit.
Minutes of
Meeting of
Directors of
Carling Export
Brewing &
Malting
Co. Ltd.
October 11,
1923.

- continued.

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
Part of No. 30.
Defendant's
Exhibit.
Minutes of
Meeting of
Directors of
Carling Export
Brewing &
Malting
Co. Ltd.
October 11,
1923.

—concluded

unanimously that the salaries of the Officers of the Company be as follows:

Mr. Chas. Burns \$4000.00 per annum
Mr. Harry Low \$4000.00 per annum
Mr. Marco Leon \$4000.00 per annum

and that this resolution be submitted to the shareholders at a Special general meeting, which will be called for the purpose.

Upon motion by Mr. Burns, seconded by Mr. Low, and carried unanimously, it was resolved that in view of the fact that the Company required funds to carry on Business and since an offer had been made by Mr. & Mrs. Low, Mr. & Mrs. Burns, and Mr. & Mrs. Leon, to advance to the Company \$103,000.00 that this money be accepted and notes for the repayment of the same be issued to them, payable one year from date, with interest at seven per cent (7%), with an option of renewing same annually, if necessary, and that a Special General meeting of shareholders be held to approve of this resolution. 10

There being no further business, the meeting then adjourned.

Read and confirmed at London, Ontario.

October 12/23.

"Chas. Burns"

President.

"Marco Leon"

Secretary Treasurer.

20

Part of No. 30.
Defendant's
Exhibit.
Minutes of
Meeting of
Directors of
Carling Export
Brewing &
Malting
Co. Ltd.
October 12,
1923.

MINUTES of the meeting of the Board of Directors of the Carling Export Brewing & Malting Co. Limited held at the office of the Company at London, Ontario, on the 12th day of October 1923 at two'clock in the afternoon.

THERE WERE PRESENT:

Mr. Chas. Burns

Mr. Harry Low

Mr. Marco Leon

Mr. A. B. Drake (All being directors of
the company)

30

Mr. Burns was in the chair and Mr. Leon acted as Secretary and took the minutes of the meeting. The minutes of the meeting of the 11th of October were read and confirmed.

The Secretary then read a letter submitting the resignation of Mr. Vital Benoit, as a director of the company and the transfer of one share held by him in capital stock of the company to Mrs. Harry Low, both subject to the approval of the board. 40

On motion duly seconded the resignation was accepted and the transfer approved.

CARRIED.

Mrs. Low being present, then took her seat with the Board of Directors.

Mr. A. B. Drake next submitted his resignation as a director of the company and the transfer of one share held by him in the capital stock of the company to Mrs. Marco Leon both subject to the approval of the Board.

10 On motion duly seconded the resignation was accepted and the transfer approved of.

CARRIED.

Mrs. Leon being present then took her seat with the Board of Directors.

There being no further business the meeting then adjourned.

Read and confirmed at London, Ontario,

March 31/24.

“Chas. Burns”

President,

20

“Marco Leon”

Secretary-Treasurer.

MINUTES of a meeting of the Board of Directors of The Carling Export Brewing and Malting Company Limited held at The King Edward Hotel, Toronto, Ontario, on the 14th day of June 1927 at the hour of eleven o'clock in the evening.

P R E S E N T:

Chas Burns

Harry Low

Marco Leon

30 Norah Low and Freda Leon not being present though having sent waivers and consents to the meeting, which appear in the Minute Book, following minutes of this meeting.

Being all the directors of the Company.

The President of the Company took the chair.

Agreement dated the 27th day of May 1927, and made between Charles Burns, Harry Low and Marco Leon of the First Part, this Company of the Second Part, and Doherty-Easson Company Limited of the Third Part, was submitted to the meeting by the President and discussed clause by clause.

40 On motion by Mr. Harry Low, seconded by Mr. Marco Leon, the following resolution was unanimously passed.

That the said Agreement dated the 27th day of May, 1927, be and the same is hereby approved and adopted and that the execution thereof by the officers of the Company and the affixing of the Company's Seal is here-

Record.

In the
Supreme
Court of
Ontario.

Exhibits.
Part of No. 30.
Defendant's
Exhibit.
Minutes of
Meeting of
Directors of
Carling Export
Brewing &
Malting
Co. Ltd.
October 12,
1923.

—continued.

Part of No. 30.
Defendant's
Exhibit.
Minutes of
Meeting of
Directors of
Carling Export
Brewing &
Malting
Co. Ltd.
June 14, 1927.

Record.
In the
Supreme
Court of
Ontario.

Exhibits.
Part of No. 30.
Defendant's
Exhibit.
Minutes of
Meeting of
Directors of
Carling Export
Brewing &
Malting
Co. Ltd.
June 14, 1927.

—continued.

by authorized and approved adopted ratified and confirmed.

A draft of By Law No. 51 was then submitted to the meeting together with the Agreement dated the 14th day of June 1927.

On motion by Mr. Leon, seconded by Mr. Low the said By-law was unanimously enacted as a By-law of this Company. The said By-law appears as Schedule "A" to the Minutes of this meeting.

There being no further business the meeting then adjourned.

"CHAS. BURNS" President.

"MARCO LEON" Secretary.

WAIVER OF NOTICE

10

We, the undersigned Directors being all the Directors of the Company, do hereby waive notice of the above meeting and consent to the meeting being held at the above time and place.

"Mrs. L"	"HARRY LOW"
"Mrs. L"	"CHAS BURNS"
"Mrs. L"	"MARCO LEON"

SCHEDULE "A" to Minutes of Directors Meeting held the 10th day of June 1927.

THE CARLING EXPORT BREWING AND MALTING COMPANY LIMITED,

20

BY-LAW NO. 51.

WHEREAS the Company has agreed to sell its assets and undertaking to Carling Breweries Limited.

NOW THEREFORE BE IT ENACTED AND IT IS HEREBY ENACTED a By-law of the Company,

That this Company do sell and dispose of its undertaking and assets (save and except Accounts Receivable and Cash on hand and in Bank) to Carling Breweries Limited, free and clear from all incumbrances, outgoings, liens, taxes and liabilities for the consideration and upon the terms and conditions set out in the Agreement dated the 14th day of June, 1927, between the Company and Carling Breweries Limited now submitted to the Meeting, and that such Agreement be executed by the President and Secretary of the Company and the Corporate Seal be thereto affixed and that such further and other formal deeds documents and agreements as may be necessary or convenient for carrying into effect the intention of this By-law and the carrying out of the said Agreement be executed by the President and Secretary of the Company, or other proper officer under the seal of the Company after approval of the same by Counsel for the

30

Company and that delivery of the same be and the same is hereby authorized:

AND BE IT FURTHER ENACTED:

That the execution and delivery of any such deeds, documents and agreements shall be conclusive evidence of the same having been duly settled and approved as herein provided.

"CHAS BURNS"

President.

(Seal of Company)

"MARCO LEON"

Secretary.

10

Unanimous approved by all shareholders the 10th day of June 1927.

"HARRY LOW"

"CHAS BURNS"

"MARCO LEON"

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part of No. 30.
Defendant's
Exhibit.
Minutes of
Meeting of
Directors of
Carling Export
Brewing &
Malting
Co. Ltd.
June 14, 1927

—concluded.

MINUTES OF A MEETING OF DIRECTORS OF THE COMPANY held at the office of Carling Breweries Limited, on the 31st day of January, 1928, at two o'clock in the afternoon.

Part of No. 30
Defendant's
Exhibit.
Minutes of
Meeting of
Directors of
Carling
Export
Brewing &
Malting
Co. Ltd.
January 31,
1928.

PRESENT:

Mr. Charles Burns

Mr. Harry Low

Mr. Marco Leon

20 being all the directors of the Company.

On motion duly made and unanimously carried it was

RESOLVED:

That each Director be paid a salary of Ten Thousand Dollars a year as and from the tenth day of June 1927 for services in connection with the administration of the affairs of the Company.

The Meeting then adjourned.

(Sgd) Chas Burns,
Chairman.

(SEAL)

30

(Sgd) Marco Leon,
Secretary

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
Part of No. 30.
Defendant's
Exhibit.
Minutes of
Meeting of
Directors of
Export
Brewing &
Malting
Co. Ltd.
2nd May,
1931.

E. B. & M. COMPANY LIMITED

MINUTES of the meeting of the Board of Directors of the E. B. & M. COMPANY LIMITED, held at the Hotel London, London, Ontario, on the 20th day of May 1931 at the hour of 10:15 o'clock a.m. Standard Time.

There were present:

Mrs. M. Leon
Mr. Charles Burns
Mr. Harry Low
Mr. Marco Leon,

10

being a majority of the Directors of the Company.

Mr. Charles Burns was in the chair and Mr. Leon took the minutes of the meeting.

Upon motion of Mr. Harry Low and seconded by Mrs. M. Leon, and unanimously carried, it was resolved that the President shall write letter to Dominion Bank to confirm the verbal instructions given by 'phone on or about 28th or 29th April by Mr. Harry Low, Vice-President, that no monies to be paid to the Dominion Government, or other parties, without written instructions given by E. B. & M. COMPANY LIMITED.

It was moved by Mr. Harry Low and seconded by Mr. M. Leon, that ²⁰ the Annual Shareholders' meeting be held May 30th 1931, and that notice be sent accordingly.

It was moved by Mr. Harry Low, seconded by Mrs. M. Leon and resolved, in view of the judgment rendered by the Privy Council in the case of His Majesty The King vs. Carling Export Brewing and Malting Company Limited, as regards liability of the latter company for sales and gallonage tax to the Government of the Dominion of Canada.

That the President and Secretary of the Company, or either of them, be and he is hereby authorized to consult with Mr. R. S. Robertson, K.C., of Toronto, Ontario, with a view to obtaining the latter's opinion re-³⁰ garding this Company's right to recover the moneys amounting to approximately \$400,000. deposited by the Carling Export Brewing and Malting Company Limited with the Dominion Bank, as collateral security for any moneys that might be found to be due by said Company to the Government of the Dominion of Canada in connection with sales and gallonage tax, and in connection with said case of His Majesty The King vs. Carling Export Brewing and Malting Company Limited; and that the President and Secretary of this Company, or either of them, be and he is hereby authorized to take (on behalf of E. B. & M. COMPANY LIMITED) such steps as Mr. Robertson, K.C., may advise in the matter, ⁴⁰ but no legal action shall be taken in this matter, unless same be submitted to the shareholders for approval. CARRIED.

CERTIFIED TO BE TRUE COPY

"MARCO LEON"

Secretary.

Seal of Company.

IT WAS MOVED BY MR. HARRY LOW,
SECONDED BY MRS. M. LEON,
AND RESOLVED:

IN VIEW of the judgment rendered by the Privy Council in the case of His Majesty The King vs. Carling Export Brewing and Malting Company Limited as regards liability of the latter company for sales and gallonage tax to the Government of the Dominion of Canada.

10 THAT the President and Secretary of the Company, or either of them, be and he is hereby authorized to consult with Mr. R. S. Robertson, K.C. of Toronto, Ontario, with a view to obtaining the latter's opinion regarding this Company's right to recover the moneys amounting to approximately \$400,000. deposited by the Carling Export Brewing and Malting Company Limited with the Dominion Bank, as collateral security for any moneys that might be found to be due by said company to the Government of the Dominion of Canada in connection with sales and gallonage tax, and in connection with said case of His Majesty The King vs. Carling Export Brewing and Malting Company Limited; and that the President and Secretary of this company, or either of them be, and he is hereby authorized to take (on behalf of E. B. & M. Company Limited)
20 such steps as Mr. Robertson, K.C. may advise in the matter. But no legal action shall be taken in this matter unless same be submitted to the shareholders for approval.

CARRIED:

"E. B. & M. CO. LTD.,"

"Chas Burns"

President.

"Marco Leon"

Secretary.

"Freda Leon"

"Harry Low"

(Seal of Company)

DOCUMENTS.

30

PART OF EXHIBIT NO. 21.

GUARANTEE OF LOW, LEON AND BURNS TO THE
DEFENDANT.

TO

THE DOMINION BANK

1— For valuable consideration, the undersigned (herein called the guarantors), and each of them (if more than one) guarantees the due payment and discharge of all liabilities to The Dominion Bank (herein called the Bank) of Carling Export Brewing and Malting Co. Ltd.,
40 hereof, and whether incurred by the Customer alone or jointly with others, and whether as principal or surety, and whether such liabilities are

Record.

In the
Supreme
Court of
Ontario.

Exhibits.
Part of No. 30.
Defendant's
Exhibit.
Minutes of
Meeting of
Directors of
Export
Brewing &
Malting
Co. Ltd.

—concluded.

Part of No. 21.
Defendant's
Exhibit.
Guarantee
of Low, Leon
and Burns to
Dominion
Bank.
December 28,
1923.

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part of No. 21.
Defendant's
Exhibit.
Guarantee
of Low, Leon
and Burns to
Dominion
Bank.
December 28,
1923.

--continued.

matured or not, and whether absolute or contingent, including liabilities in respect of advances and cheques, bills or other negotiable or non-negotiable instruments, drawn, accepted, endorsed or guaranteed by the customer and in respect of interest, commissions and banking charges, together with any costs and expenses incurred with respect to any such liabilities or any securities therefor.

2— This shall be a continuing guarantee and shall secure the general balance due, or that may be due, from time to time, and at any time, from the Customer to the Bank, notwithstanding any payments from time to time made to the Bank, or any settlement of account or any other thing whatsoever. 10

3— All benefits of discussion and division are hereby waived, and the Bank shall not be bound to exhaust its recourse against the Customer or other parties or the securities it may hold, nor to value such securities before requiring payment from the guarantors, or any of them, or their personal representatives.

4— Notwithstanding the discontinuance of this guarantee as to one or more of the guarantors, it shall remain a continuing security as to the other or others, and this guarantee shall, as to each guarantor, remain in force and cover all liabilities of the Customer, inclusive of those incurred down to the expiration of three months after notice of discontinuance thereof shall be given in writing to the Bank by such guarantor or his legal personal representatives. 20

5— The Bank may, without exonerating the guarantors, grant time or other indulgences to the Customer or any other person or persons liable to the Bank on or in respect of any bills, notes, guarantees or undertakings, and give up, or modify, or abstain from perfecting or taking advantage of any securities or contracts, and discharge any party or parties, and accept or make any compositions or arrangements, and realize any securities when and in such manner as the Bank may think expedient. 30

6— All dividends, compositions, and payments received are to be treated as payments in gross, and the guarantors are not to have any right to participate except to the extent of the surplus remaining after satisfaction of the ultimate balance due to the Bank.

7— All debts and liabilities, present and future, of the Customer to the guarantors or any of them are hereby postponed to the liabilities of the Customer to the Bank, and all moneys received by any of the guarantors or their representatives or assigns thereon shall be received as Trustees for the Bank and shall be paid over to the Bank.

8— Where the Customer is a Corporation, the Bank is not to be concerned to see or enquire into the powers of the Customer or its directors or other agents acting, or purporting to act, on its behalf, and moneys in fact borrowed from the Bank in professed exercise of such powers, shall be deemed to form part of the moneys guaranteed, even though the borrowing or obtaining of such moneys be in excess of the powers of the Customer or of the Directors or other agents thereof, or shall be in any way irregular, or defective or informal.

10 9— Where the Customer is a partnership, this guarantee is to extend to the person or persons for the time being and from time to time carrying on the business now carried on by the Customer, notwithstanding any change or changes in the name or membership of the Customer's firm.

10— Any account settled or stated by or between the Bank and the Customer, or admitted by or on behalf of the Customer, may be adduced by the Bank, and shall in that case be accepted by the guarantors and each of them and their respective representatives as conclusive evidence that the balance or amount thereby appearing is due by the Customer to the Bank.

20 11— A certificate in writing, under the hand of any Manager of the Bank where the Customer's account relating to the same is kept, stating the amount at any particular time due and payable to the Bank under this Guarantee, shall be conclusive evidence as against the guarantors and each of them and their respective representatives.

30 12— The liability of each guarantor to pay shall first arise when notice in writing is given to him requiring him to pay, and any notice may be served on him or his legal personal representatives either personally or by sending the same through the post in an envelope addressed to the last known place of address of the person to be served, and the notice so sent shall be deemed to be served on the day following that on which it is posted.

13— Any sum which shall become payable hereunder shall be payable at the office of the Bank where the Customer's account relating to the same is kept.

14— This Guarantee shall be construed in accordance with the laws of the Province of Ontario and any judgment recovered in the Courts of such Province against any guarantor or his personal representatives shall be binding on him and them.

15— Each guarantor is to be severally liable only for the sum of Fifty

Record.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part of No. 21.
Defendant's
Exhibit.
Guarantee
of Low, Leon
and Burns to
Dominion
Bank.
December 28,
1923.

—continued.

Record.

*In the
Supreme
Court of
Ontario.*

Thousand Dollars and interest on that amount at six per cent per annum from the time notice in writing is served requiring him to pay.

Exhibits.
Part of No. 21.
Defendant's
Exhibit.
Guarantee of
Low, Leon
and Burns to
Dominion
Bank.
December 28,
1923.

16— In the foregoing the plural shall include the singular and vice versa. This Guarantee shall be binding upon every person signing the same notwithstanding the non-execution thereof by any other proposed guarantor.

DATED the 28th day of December 1923.

—concluded.

WITNESS: "B. B. MANNING"

"CHAS BURNS"

"B. B. MANNING"

"HARRY LOW"

"B. B. MANNING"

"MARCO LEON"

Part of No. 21.
Defendant's
Exhibit.
Guarantee of
Low, Leon &
Burns to
Dominion
Bank.
April 9, 1924.

PART OF EXHIBIT NO. 21.

10

GUARANTEE OF LOW, LEON AND BURNS TO THE
DEFENDANT.

TO

THE DOMINION BANK

1— For valuable consideration, the undersigned (herein called the guarantors), and each of them (if more than one) guarantees the due payment and discharge of all liabilities to The Dominion Bank (herein called the Bank) of Carling Export Brewing and Malting Co. Ltd., (herein called the customer) whether incurred before or after the date hereof, and whether incurred by the Customer alone or jointly with others, and whether as principal or surety, and whether such liabilities are matured or not, and whether absolute or contingent, including liabilities in respect of advances and cheques, bills or other negotiable or non-negotiable instruments, drawn, accepted, endorsed or guaranteed by the Customer and in respect of interest, commissions and banking charges, together with any costs and expenses incurred with respect to any such liabilities or any securities therefor. 20

2— This shall be a continuing guarantee and shall secure the general balance due, or that may be due, from time to time, and at any time, from the Customer to the Bank, notwithstanding any payments from time to time made to the Bank, or any settlement of account or any other thing whatsoever. 30

3— All benefits of discussion and division are hereby waived, and the Bank shall not be bound to exhaust its recourse against the Customer or other parties or the securities it may hold, nor to value such securities

before requiring payment from the guarantors, or any of them, or their personal representatives.

4— Notwithstanding the discontinuance of this guarantee as to one or more of the guarantors, it shall remain a continuing security as to the other or others, and this guarantee shall, as to each guarantor, remain in force and cover all liabilities of the Customer, inclusive of those incurred down to the expiration of three months after notice of discontinuance thereof, shall be given in writing to the Bank by such guarantor or his legal personal representatives.

10 5— The Bank may, without exonerating the guarantors, grant time or other indulgences to the Customer or any other person or persons liable to the Bank on or in respect of any bills, notes, guarantees or undertakings, and give up, or modify, or abstain from perfecting or taking advantage of any securities or contracts, and discharge any party or parties, and accept or make any compositions or arrangements, and realize any securities when and in such manner as the Bank may think expedient.

6— All dividends, compositions, and payments received are to be treated as payments in gross, and the guarantors are not to have any right to participate except to the extent of the surplus remaining after satisfaction of
20 the ultimate balance due to the Bank.

7— All debts and liabilities, present and future, of the Customer to the guarantors or any of them are hereby postponed to the liabilities of the Customer to the Bank, and all moneys received by any of the guarantors or their representatives or assigns thereon shall be received as Trustees for the Bank and shall be paid over to the Bank.

8— Where the Customer is a Corporation, the Bank is not to be concerned to see or enquire into the powers of the Customer or its Directors or other agents acting or purporting to act on its behalf, and moneys in fact borrowed from the Bank in professed exercise of such powers shall
30 be deemed to form part of the moneys guaranteed, even though the borrowing or obtaining of such moneys be in excess of the powers of the Customer or of the Directors or other agents thereof, or shall be in any way irregular, or defective or informal.

9— Where the Customer is a partnership, this guarantee is to extend to the person or persons for the time being and from time to time carrying on the business now carried on by the Customer, notwithstanding any change or changes in the name or membership of the Customer's firm.

10— Any account settled or stated by or between the Bank and the Customer, or admitted by or on behalf of the Customer, may be adduced by

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part of No. 21.
Defendant's
Exhibit.
Guarantee of
Low, Leon &
Burns to
Dominion
Bank.
April 9, 1924.

—continued.

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part of No. 21.
Defendant's
Exhibit.
Guarantee of
Low, Leon &
Burns to
Dominion
Bank.
April 9, 1924.
—concluded.

the Bank, and shall in that case be accepted by the guarantors and each of them and their respective representatives as conclusive evidence that the balance or amount thereby appearing is due by the Customer to the Bank.

11— A certificate in writing, under the hand of any Manager of the Bank where the Customer's account relating to the same is kept, stating the amount at any particular time due and payable to the Bank under this Guarantee, shall be conclusive evidence as against the guarantors and each of them and their respective representatives.

12— The liability of each guarantor to pay shall first arise when notice 10
in writing is given to him requiring him to pay, and any notice may be served on him or his legal personal representatives either personally or by sending the same through the post in an envelope addressed to the last known place of address of the person to be served, and the notice so sent shall be deemed to be served on the day following that on which it is posted.

13— Any sum which shall become payable hereunder shall be payable at the office of the Bank where the Customer's account relating to the same is kept.

14— This Guarantee shall be construed in accordance with the laws of 20
the Province of Ontario and any judgment recovered in the Courts of such Province against any guarantor or his personal representatives shall be binding on him and them.

15— Each guarantor is to be severally liable only for the sum of One hundred Thousand Dollars and interest on that amount at six per cent per annum from the time notice in writing is served requiring him to pay.

16— In the foregoing the plural shall include the singular and vice versa. This Guarantee shall be binding upon every person signing the same notwithstanding the non-execution thereof by any other proposed guar- 30
antor.

DATED the ninth day of April 1924.

WITNESS: "B. B. MANNING" "CHAS BURNS"
"B. B. MANNING" "MARCO LEON"
"B. B. MANNING" "HARRY LOW"

PART OF EXHIBIT NO. 20.

AGREEMENT TO POSTPONE MADE BY LOW IN FAVOUR OF THE DEFENDANT.

TO THE DOMINION BANK:

IN CONSIDERATION of The Dominion Bank making advances to The Carling Export Brewing & Malting Company Ltd. (hereinafter called the customer) the undersigned hereby agrees with the Bank that any present or future claim of the Bank against the customer for or in respect of any advances heretofore made or hereafter to be made by the Bank to the customer, or for or in respect of any liability whatever of the customer to the Bank, shall take precedence of and be fully paid in priority to and be treated as a preference claim over any claim which the undersigned now has or may hereafter have against the said customer, which claim of the undersigned is hereby postponed to the claim of the Bank.

And as security for the due observance hereof the undersigned hereby assigns to the Bank any and every such claim as aforesaid, which the undersigned has now, or may at any time hereafter have against the said customer and agrees with the Bank to do all such further acts and execute all such further documents as may be necessary to give effect to this agreement.

DATED at Windsor this 21st day of Feb. 1925.

Signature "Harry Low" (Seal)

Witness: "A. M. Cowie"

Record.
In the Supreme Court of Ontario.
Exhibits.
Part of No. 20.
Defendant's Exhibit.
Agreement to Postpone made by Low to Dominion Bank.
February 21, 1925.

PART OF EXHIBIT NO. 20

AGREEMENT TO POSTPONE MADE BY BURNS IN FAVOUR OF THE DEFENDANT.

TO THE DOMINION BANK:

IN CONSIDERATION of The Dominion Bank making advances to The Carling Export Brewing & Malting Co. Ltd., (hereinafter called the customer) the undersigned hereby agrees with the Bank that any present or future claim of the Bank against the customer for or in respect of any advances heretofore made or hereafter to be made by the Bank to

Part of No. 20.
Defendant's Exhibit.
Agreement to Postpone made by Burns to Dominion Bank.
February 24, 1925.

Record.
in the
Supreme
Court of
Ontario.
—
Exhibits.
Part of No. 20.
Defendant's
Exhibit.
Agreement to
Postpone made
by Burns to
Dominion
Bank.
February 24,
1925.
—concluded.

the customer, or for or in respect of any liability whatever of the customer to the Bank, shall take precedence of and be fully paid in priority to and be treated as a preference claim over any claim which the undersigned now has or may hereafter have against the said customer, which claim of the undersigned is hereby postponed to the claim of the Bank.

And as security for the due observance hereof the undersigned hereby assigns to the Bank any and every such claim as aforesaid, which the undersigned has now, or may at any time hereafter have against the said customer and agrees with the Bank to do all such further acts and execute all such further documents as may be necessary to give effect to this 10 agreement.

DATED at London, Ont. this 24th day of February, A.D. 1925.

Signature "Chas Burns" (Seal)

WITNESS:

"B. B. MANNING"

PART OF EXHIBIT NO. 20

Part of No. 20.
Defendant's
Exhibit.
Agreement to
Postpone made
by Leon to
Dominion
Bank.
February 24,
1925.

AGREEMENT TO POSTPONE MADE BY LEON IN FAVOUR
OF THE DEFENDANT.

TO THE DOMINION BANK:

IN CONSIDERATION of The Dominion Bank making advances to The Carling Export Brewing & Malting Co. Ltd., (hereinafter called 20 the customer) the undersigned hereby agrees with the Bank that any present or future claim of the Bank against the customer for or in respect of any advances heretofore made or hereafter to be made by the Bank to the customer, or for or in respect of any liability whatever of the customer to the Bank, shall take precedence of and be fully paid in priority to and be treated as a preference claim over any claim which the undersigned now has or may hereafter have against the said customer, which claim of the undersigned is hereby postponed to the claim of the Bank.

And as security for the due observance hereof the undersigned hereby assigns to the Bank any and every such claim as aforesaid, which the 30 undersigned has now or may at any time hereafter have against the said customer and agrees with the Bank to do all such further acts and execute all such further documents as may be necessary to give effect to this agreement.

DATED at London, Ontario, this 24th day of February, 1925.

Signature "Marco Leon" (Seal)

WITNESS:

"B. B. MANNING"

EXHIBIT No. 8

COPY OF SAVINGS ACCOUNT No. C3108 IN THE NAME OF THE CARLING EXPORT BREWING & MALTING COMPANY LIMITED AT DEFENDANT'S TORONTO BRANCH

SHEET NO. 1

NAME THE CARLING EXPORT BREWING & MALTING CO. LTD.
ADDRESS — LONDON, ONT.

SPECIAL a/c

DATE 1928	PARTICULARS	DEBIT	CREDIT	BALANCE	INTEREST		
					DAYS	DEBIT	CREDIT
May 4	Sale of \$50,000.00 of Can. Bds.		52247.60	52247.60	May/28		120.25
16	do		104376.03	156623.63	June		772.35
17	50,000. do		52195.55	208819.18		892.60	
18	50,000. do		52203.09	261022.27	Dec/28		4750.85
28	50,000. do		52228.42	313250.69		4750.85	
June 30			892.60	314143.29	June/29		4744.20
Dec. 31			4750.85	318894.14		4744.20	
June 30/29			4744.20	323638.34	Dec/29		4894.50
Dec. 31			4894.50	328532.84		4894.50	
Apr 30/30			2750.	331282.84	Apr/30		3240.15
June 30			4901.05	336183.89	June		1660.90
Oct 6	Cheque Carling E.B.&M.Co.Ltd.	20000.	2750.	316183.89		4901.05	
June 31	Transfer to London Ont. applied on loan		4946.75	318933.89	Sept/30		2542.10
Dec 31			100000.	323880.64	Oct.		805.65
				423880.64	Dec.		1599.
1931							
Jan'y 3	Cheque C.E.B.&M.Co. Ltd. applied on Co's loan at London	10000.		413880.64	Apr/31	4946.75	
June 30	Interest		6157.20	420037.84	May		4082.10
30	Payment to Rec. General	88073.17		331964.67			1054.55
30	Applied on debt Carling E.B.&M.Co.Ltd. London	8807.98		323156.69	June		1020.55
30	Applied debt. L.L.&B. re Dom. Square Windsor	48516.78		274639.91		6157.20	
30	Applied debt Low. Leon & Burns — Windsor	226123.12		48516.79			
30	Applied debt L.L.B. re Dom. Square Montreal	48516.79				31287.15	31287.15
			450037.84	450037.84			

EXHIBIT NO. 35.

CHEQUE DRAWN BY BORDER CITIES EXPORTERS CO. IN FAVOUR OF T. J. HALEY AND ENDORSED BY LEON.

No. 115.

WINDSOR, Ont. June 25th, 1928.

THE DOMINION BANK

PAY T. J. Haleyor Order

the sum of 30,653 and 20 cts. Dollars.

\$30,653.20

BORDER CITIES EXPORTERS CO.,
"S. J. Denomy"
"Eugene Dufom"

10

Countersigned
"E. N. Dugat"

(Stamp)
Dominion Bank
Montreal
No Protest.

(Stamp)
Dominion Bank
Windsor
PAID
Jul 3 28

(Stamp)
Dominion Bank
Windsor
Entered Jul 3 1928.

ENDORSEMENT

20

T. J. HALEY
Pr. H. Leon,
In Trust.
MARCO LEON

ENDORSEMENT
GUARANTEED
BORDER CITIES EXPORTERS
"E. N. Dugat"

Record.

In the
Supreme
Court of
Ontario.

Exhibits.
No. 35.

Plaintiff's
Exhibit,
Cheque drawn
by Border
Cities Ex-
porters Co.
in favour of
T. J. Haley,
Endorsed
by Leon.
June 25, 1928.

EXHIBIT NO. 39

FOUR CHEQUES DRAWN BY J. ESAR.

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
No. 39.Defendant's
Exhibit.
Four cheques
drawn on
The Provincial
Bank of
Canada to
cash, signed
J. Esar,
November,
1928—March,
1929.

(1)

\$15,000.00

103 Rue Roy, Montreal, Nov. 29 19.....

Excise Stamp

2c

THE PROVINCIAL BANK OF CANADA

PAY TO CASH or bearer the sum
of FIFTEEN THOUSAND Dollars

(Sgd) J. ESAR. 10

(2)

\$20,000.00

103 Rue Roy, Montreal, Dec. 10, 1928.

THE PROVINCIAL BANK OF CANADA

PAY TO CASH or bearer the sum
of TWENTY THOUSAND Dollars

No..... (Sgd) J. ESAR.

(3)

Excise Stamp

2c

MONTREAL, QUE. Jan. 23, 1929. No.....

THE PROVINCIAL BANK OF CANADA

20

PAY TO THE ORDER OF — CASH — \$12,000.00

The sum of Twelve Thousand Dollars.

(Sgd) J. ESAR.

Endorsement
"J. ESAR"

(4)

Excise Stamp
2c

MONTREAL, QUE. March 13, 1929. No.....

THE PROVINCIAL BANK OF CANADA
Savings Department

PAY TO THE ORDER OF — CASH — \$20,000.00

.....Twenty Thousand..... Dollars

Account No.....

(Sgd) J. ESAR.

Endorsement
"J. ESAR"

10

Record.
*In the
Supreme
Court of
Ontario.*
Exhibits.
No. 39.
Defendant's
Exhibit.
Four cheques
drawn on
The Provincial
Bank of
Canada to
cash, signed
J. Esar,
November,
1928—March,
1929.
--concluded.

EXHIBIT NO. 33

MORTGAGE HARRY LOW ET AL TO THE DEFENDANT.
(WINDSOR PROPERTIES)

No. 33.
Defendant's
Exhibit.
Mortgage by
Low et al to
Dominion
Bank of
Windsor
properties.
June 20, 1929.

THIS INDENTURE made (in duplicate) this 20th day of June One
Thousand nine hundred and twenty-nine IN PURSUANCE OF THE
SHORT FORMS OF MORTGAGES ACT.

BETWEEN:

HARRY LOW, of the City of Windsor in the County of Essex,
Manufacturer, MARCO LEON, of the City of Montreal in the Province
20 of Quebec, Manufacturer, and CHARLES BURNS, of the City of Lon-
don in the County of Middlesex, Manufacturer, and a Widower, herein-
after called the Mortgagors

OF THE FIRST PART

THE DOMINION BANK, a corporation organized under the
Bank Act of Canada, with head office at the City of Toronto in the County
of York, hereinafter called the Mortgagee

OF THE SECOND PART

and
30 and NORAH LOW, wife of the said Harry Low, and of the same place,
and FREDA LEON, wife of the said Marco Leon, and of the same place.

OF THE THIRD PART

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
No. 33.
Defendant's
Exhibit.
Mortgage by
Low et al to
Dominion
Bank of
Windsor
properties.
June 20, 1929.

—continued.

WHEREAS the parties hereto of the First Part either severally or jointly are indebted to the said Bank for cash advances amounting at this date to the sum of ONE MILLION FIVE HUNDRED AND EIGHTY-ONE THOUSAND DOLLARS (\$1,581,000.00). and the said Bank has requested payment or other security for the said indebtedness, and in consideration of the said Bank refraining until the 1st day of August, 1929, from taking proceedings to recover payment, the parties hereto of the First Part have offered and agreed to give this mortgage of their interest in all their lands in the County of Essex and another mortgage of even date herewith on all their lands in the City of Toronto in the County of York, as collateral security for the payment of the said indebtedness without prejudice to the right of the said Bank to hold or realize on any other securities it may hold for said indebtedness. 10

WITNESSETH, that in consideration of the premises and the sum of One Dollar of lawful money of Canada now paid by the said Mortgagee to the said Mortgagors, the receipt whereof is hereby acknowledged, the said Mortgagors DO GRANT AND MORTGAGE unto the said Mortgagee, its successors and assigns forever. ALL AND SINGULAR those certain parcels or tracts of lands and premises situate, lying and being in the City of Windsor in the County of Essex and Province of Ontario, and being composed of: 20

FIRSTLY: Part of lots numbers ONE HUNDRED AND THIRTEEN (113) and ONE HUNDRED AND SIXTEEN (116) on the west side of Goyeau Street according to registered plan number 93, more particularly described as follows: COMMENCING in the west limit of Goyeau Street where it is intersected by the north limit of Wyandotte Street; Thence westerly along the north limit of Wyandotte Street seventy-six and one half ($76\frac{1}{2}$) feet; Thence north in a line parallel with the west limit of Goyeau Street seventy-two (72) feet more or less to the north limit of said lot number 113; Thence easterly along said north limit seventy-six and one half ($76\frac{1}{2}$) feet to the west limit of Goyeau Street; and Thence south along the said last mentioned limit seventy-two (72) feet more or less to the place of beginning; 30

SECONDLY: Four Terrace buildings known as the Dewar Terrace and being composed of lots numbers TWENTY-NINE (29) and THIRTY (30) on the west side of Pelissier Street, according to registered plan number 281, more particularly described as follows: COMMENCING at the intersection of the north limit of Wyandotte Street with the west limit of Pelissier Street, which point is also the south east angle of the aforesaid lot 30; Thence northerly along the easterly limits of lots 30 and 29 seventy-four (74) feet two (2) inches more or less to the northeast angle of lot 29; Thence westerly along the north limit of lot 29 ninety (90) feet more or less to a point on the east limit of an alley in the rear of said lots 29 and 30, which point is also the northeast angle of said lot 40

29; Thence southerly along the said west limits of said lots 29 and 30 seventy-four (74) feet two (2) inches to the south limit of said lot 30; Thence easterly along said south limit of said lot 30 ninety (90) feet more or less to the place of beginning;

THIRDLY: Lots numbers FOURTEEN (14) and FIFTEEN (15) at the northwest corner of Park Street and Victoria Avenue in the said City of Windsor, according to registered plan number 81;

FOURTHLY: Lots numbers SEVENTEEN (17) and EIGHTEEN (18) on the east side of Pelissier Street, in Block "P", according to registered plan number 85;

FIFTHLY: Lots numbers FOUR (4) and FIVE (5) and the south half of lot number THREE (3) on the west side of Victoria Avenue, according to registered plan number 81;

SIXTHLY: Lots numbers ELEVEN (11) and TWELVE (12) on the west side of Victoria Avenue, according to registered plan number 81; having a frontage of Eighty (80) feet;

SEVENTHLY: Lot number ONE (1) in Block number Two (2) on the west side of Ouellette Avenue according to registered plan number 256; SAVE AND EXCEPT the westerly forty-five (45) feet thereof, the parcel herein having a frontage of Fifty (50) feet on Ouellette Avenue by a depth of One hundred and thirty-five (135) feet on Wyandotte Street.

EIGHTHLY: Lots numbers ONE (1) and TWO (2) on the west side of Pelissier Street, according to registered plan number 254;

NINTHLY: Lot number SIX (6) on the west side of Victoria Avenue, according to registered plan number 81;

TENTHLY: That certain parcel or tract of land and premises situate, lying and being in the Town of Sandwich in the County of Essex and Province of Ontario, and being composed of Lot number TWENTY (20) on the east side of Sunset Avenue according to registered plan number 611;

ELEVENTHLY: That certain parcel or tract of land and premises situate, lying and being formerly in the First Concession of the Township of Sandwich East in the County of Essex, now in the Town of Riverside in the County of Essex, being part farm lot 138, and described as follows: COMMENCING at the water's edge of Lake St. Clair and at a distance of Three hundred (300) feet as measured westerly from the dividing line between said lot 138 and 139 in said First Concession; Thence Westerly

Record.

In the
Supreme
Court of
Ontario.

Exhibits.
No. 33,
Defendant's
Exhibit.
Mortgage by
Low et al to
Dominion
Bank of
Windsor
properties,
June 20, 1929.

—continued.

Record.
*In the
 Supreme
 Court of
 Ontario.*
 Exhibits.
 No. 33.
 Defendant's
 Exhibit.
 Mortgage by
 Low et al to
 Dominion
 Bank of
 Windsor
 properties.
 June 20, 1929.
 —continued.

at right angles one hundred (100) feet; thence southerly on a line parallel with the said dividing line to north side of River Front Road; Thence easterly at right angles One hundred (100) feet to a point which is three hundred (300) feet from said dividing line between lot 138 and 139; Thence northerly on a line parallel with the said westerly limit of the lands herein described and one hundred (100) feet easterly therefrom to the water's edge of Lake St. Clair and the place of beginning, which said lands may be otherwise known and described as follows: COMMENCING at the water's edge of Lake St. Clair and at a distance of three hundred (300) feet more or less measured westerly from the dividing line between said lot 138 and lot 139 in said First Concession; Thence westerly at right angles to said dividing line a distance of One hundred (100) feet more or less; Thence south ten (10) degrees fifty (50) minutes east magnetically One hundred (100) feet more or less to the north limit of the River Front Road; Thence easterly at right angles to said last described course One hundred (100) feet more or less to a point which is distant three hundred (300) feet more or less measured westerly at right angles from said dividing line between said lots numbers One hundred and thirty-eight (138) and One hundred and thirty-nine (139); Thence northerly along a line parallel to the said westerly limit of the lands herein described and One hundred (100) feet more or less easterly therefrom to the water's edge of Lake St. Clair and the place of beginning. 10

SECONDLY—Part of said lot number One hundred and thirty-eight (138) more particularly described as follows: COMMENCING at a point in the north limit of the River or Lake Front Road a distance of forty-six (46) feet more or less measured easterly from the west limit of the said lot number 138 and at right angles thereto; Thence easterly twenty-seven (27) feet two (2) inches along the said northerly limit of said Front Road to a point which is the point of commencement; Thence easterly along the northerly limit of the said Front Road ninety-eight (98) feet more or less to the dividing line between the lands heretofore agreed to be sold by Luderer to said Loveridge and the lands hereby agreed to be sold; Thence northerly Ten (10) degrees and fifty (50) minutes west magnetically a distance of One hundred and thirty (130) feet to the shore of Lake St. Clair; Thence westerly along the said shore a distance of One hundred (100) feet more or less to the easterly limit of the lands conveyed by one William C. Doyle to E. Martin; Thence southerly following the said easterly limit of the lands conveyed to E. Martin to the northerly limit of the said Front Road and place of beginning; together with all the right, title and interest, if any, of the parties of the first part in and to the water lot or any other lands in front of the lands hereinbefore firstly and secondly described. 30 40

TWELFTHLY: All that certain parcel or tract of land and premises situate, lying and being composed of part of lot number One hundred and

One (101) in the First Concession formerly in the Township of Sandwich East, now in the City of East Windsor, more particularly described as follows: COMMENCING at the northerly limit of Sandwich Street or the River Front Road at the south-easterly angle of lands now owned by the Walkerville Boat Club, Limited, said point of commencement being distant Three hundred and thirty-seven (337) feet four (4) inches more or less from the westerly limit of lot 101 measuring easterly along the northerly limit of said Sandwich Street; Thence north eighty-four (84) degrees east magnetically along said north limit of Sandwich Street
 10 sixty-five (65) feet to a point where a post has been planted; Thence north nineteen (19) degrees west Two Hundred and twenty-four (224) feet more or less to the northerly limit of the Break Water along the shore of the Detroit River; thence south eighty (80) degrees west fifty-nine (59) feet to a point; Thence south twenty-eight (28) degrees east Twenty-eight (28) feet six (6) inches to a point where an iron bar has been planted; Thence south sixteen (16) degrees east One hundred and ninety-one (191) feet more or less to the place of beginning; Together with all the right, title and interest of the said mortgagors in and to the water lot immediately in front of the said property from the water's edge to the
 20 Channel Bank of the River Detroit.

AND the said Parties of the Third Part hereby bar their dower in the said lands.

PROVIDED this Mortgage to be void on payment of ONE MILLION FIVE HUNDRED AND EIGHTY-ONE THOUSAND (\$1,581,000.-00) DOLLARS of lawful money of Canada, with interest monthly at six and one half per cent. ($6\frac{1}{2}\%$) per annum as follows:

The said principal sum to be payable on demand together with interest at the rate aforesaid payable monthly on the balances unpaid from time to time. All arrears of principal and interest to bear interest at the rate
 30 aforesaid as well after maturity as before and until fully paid.

Upon a bona fide sale at a price and on terms satisfactory to the Mortgagee by the mortgagors or any of them of each and every parcel of land contained in this mortgage, or any part thereof during the currency of this mortgage, there shall be payable to the Mortgagee in reduction of the principal sum all of the cash down payments and succeeding instalments paid on account of sale price in excess of such amount or fraction thereof as is necessary to meet and pay the then accruing principal payment owing by the mortgagors or any of them to their Vendor or Vendors on such parcel.

40 And with the privilege to the mortgagors or any of them of obtaining a discharge from this mortgage of each and every parcel of land contained

Record.

In the
Supreme
Court of
Ontario.

Exhibits.
No. 33.
Defendant's
Exhibit.
Mortgage by
Low et al to
Dominion
Bank of
Windsor
properties.
June 20, 1929.

—continued.

Record.
*In the
 Supreme
 Court of
 Ontario.*
 Exhibits.
 No. 33.
 Defendant's
 Exhibit.
 Mortgage by
 Low et al to
 Dominion
 Bank of
 Windsor
 properties.
 June 20, 1929.
 —continued.

herein upon paying to the Mortgagee the actual amount for which the mortgagors have by a bona fide sale at a price and on terms satisfactory to the mortgagee, sold said parcel and in arriving at the amount so to be paid for a release the amount of any instalment already paid in reduction of the mortgage principal from the proceeds of a resale of such property shall be taken into consideration and Taxes and performance of Statute labor.

The said Mortgagors COVENANT with the said Mortgagee THAT the Mortgagors will pay the mortgage money and interest, and observe the above proviso;

10

THAT the Mortgagors' title to each of the said parcels of land is by way of a good, valid and subsisting Agreement of Purchase or by deed from the Owner in fee thereof upon which there is owing the amounts hereinafter respectively set out and they, the said Mortgagors, for themselves, their heirs, executors, administrators and assigns COVENANT, promise and agree with the Mortgagee that they will pay and observe all the terms and conditions on their part contained in said Articles of Agreement and will promptly pay when and as they become due all instalments of principal and interest provided to be paid under said Agreements of Purchase or under any outstanding mortgages and all taxes, water rates and other municipal assessments charged on said lands and on the default, neglect or failure of the Mortgagors to so observe said terms and conditions or pay said instalments or charges for a period of one month after same have become due then this mortgage shall be deemed to be in default and the Mortgagee shall be entitled to all the remedies hereinafter provided either as to any parcel or all.

20

AND that they have the right to convey their interest in the said lands to the Mortgagee, which said interests are at the date hereof subject only to the following mentioned sums owing to the respective Vendors of the said mortgagors or the Vendors' mortgagees, as follows:

30

<u>Parcel No.</u>	<u>Balance owing</u>	<u>Instalment payable</u>	<u>Balance payable</u>
No. 1	\$ 88,300.00	\$ 3350 on 20th Feb. and Aug.	Feb. 20th, 1936
No. 2	61,500.00	\$ 2000 on 28th May and Nov.	May 28th, 1933
No. 3	48,000.00	\$12000 on Dec. 10th	Dec. 10th, 1932
No. 4	155,000.00	\$20000 Dec. 15th, 1929	
		\$12000 Dec. 15th, 1930	Dec. 15th, 1931
No. 5.	75,000.00	\$ 5000 June 25th	June 25th, 1931

No. 6	24,000.00	\$ 3870 Dec. 28th, 1928	Dec. 28th, 1928	Record. <i>In the Supreme Court of Ontario.</i> Exhibits. No. 33. Defendant's Exhibit. Mortgage by Low et al to Dominion Bank of Windsor properties. June 20, 1929. —continued.
No. 7	141,000.00	\$ 9500 on 20th June and Dec.	Dec. 20th, 1932	
No. 8	87,500.00	\$12500 on Jan. 1st	Jan. 1st, 1936	
No. 9	50,000.00	\$ 5000 on Jan. 1st	Jan. 1st, 1932	
No. 10	6,000.00			
No. 11	9,262.50	\$ 3087.50 27th Aug. and Feb.	Aug. 27th, 1930	
No. 12	25,000.00	\$ 5400 on 15th Apr. and Oct.	Oct. 15th, 1931	
10				
	<hr/>			
	770,562.50			

AND that on default the Mortgagee shall have quiet possession of the said lands, free from all incumbrances save as aforesaid;

AND that the said Mortgagors will execute such further assurances of the said lands as may be requisite;

AND that the said Mortgagors have done no act to incumber the said lands save as aforesaid;

20 AND that the said Mortgagors will insure the buildings on the said lands to the amount of not less than their full insurable value of lawful money of Canada. If the Mortgagee considers that the insurance carried on any parcel is not sufficient the Mortgagors will on written request take out further insurance with loss, if any, payable to the Mortgagee;

AND the said Mortgagors do RELEASE to the said Mortgagee all their claims upon the said lands subject to the said provisos;

PROVIDED that the said Mortgagee on default of payment for one month may on one month's notice enter on and lease or sell the said lands, and said notice shall be sufficiently served if served on the law firm of McTague, Clark, Springsteen, Racine and Spencer, of Windsor, solicitors for the said Mortgagors.

30 PROVIDED that the Mortgagee may distrain for arrears of interest.

PROVIDED that in default of the payment of the interest hereby secured, the principal hereby secured shall become payable.

PROVIDED that until default of payment the Mortgagors shall have quiet possession of the said lands.

Record.
In the
Supreme
Court of
Ontario.

IN WITNESS WHEREOF the said parties have hereunto set their hands and seals.

SIGNED, SEALED and DELIVERED
In the presence of

Exhibits.
No. 33.
Defendant's
Exhibit.
Mortgage by
Low et al to
Dominion
Bank of
Windsor
properties.
June 20, 1929.
—continued.

"S. L. Springsteen"	}	"Harry Low"	(Seal)	
As to signature of H. Low				
"S. L. Springsteen"				
As to signature of M. Leon				
"S. L. Springsteen"			"Marco Leon"	(Seal)
As to signature of C. Burns			"Chas Burns"	(Seal) 10
"S. L. Springsteen"				
As to signature of N. Low		"Norah Low"	(Seal)	
"W. O. H. James"				
As to signature of F. Leon		"Freda Leon"	(Seal)	

CANADA
Province of Ontario
County of York

TO WIT:

I, Stanley Lount Springsteen of
the City of Windsor in the County
of Essex, Solicitor make oath and say:

1. THAT I was personally present and did see the within Instrument and a Duplicate duly signed, sealed and executed by Charles Burns, Harry 20 Low, Marco Leon and Norah Leon four of the parties thereto.
2. THAT the said Instrument and Duplicate were executed by the said party at the said City of Toronto.
3. That I know the said parties
4. THAT I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at the City
of Toronto in the County of
York, this 12th day of
July, A.D. 1929.

"S. L. Springsteen"

30

"W. B. Milliken"
A Commissioner, etc.

CANADA
Province of Quebec
County of Hochelaga

TO WIT:

I, William Orael Hamilton James
of the City of Montreal in the County
of Hochelaga make oath and
say:

Record.
*In the
Supreme
Court of
Ontario.*
Exhibits.
No. 33.
Defendant's
Exhibit.
Mortgage by
Low et al to
Dominion
Bank of
Windsor
properties.
June 20, 1929.
—continued.

1. THAT I was personally present and did see the within Instrument and a Duplicate duly signed, sealed and executed by Freda Leon one of the parties thereto.
2. THAT the said Instrument and Duplicate were executed by the
10 said parties at the said City of Montreal.
3. THAT I know the said parties.
4. THAT I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at the City of
Montreal in the County of
Hochelaga this 20th day of
July, A.D. 1929. } "W. O. H. James"

"J. H. Hutchison N.P."
(Notary Seal)

20 A Notary Public in and for the Province of Quebec.

CANADA
Province of Ontario
County of
Essex

TO WIT:

I,
of the City of Windsor in the County
of Essex make oath and say:

1. THAT I was personally present and did see the within Instrument and a Duplicate duly signed, sealed and executed by Harry Low and Norah Low two of the parties thereto.
2. THAT the said Instrument and Duplicate were executed by the said
30 parties at the said City of Windsor.
3. THAT I know the said parties.

Record.
in the
Supreme
Court of
Ontario.

Exhibits.
No. 33.
Defendant's
Exhibit.
Mortgage by
Low et al to
Dominion
Bank of
Windsor
properties.
June 20, 1929.

—concluded.

4. THAT I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at the City
of Windsor in the County of
Essex this day of
June A.D. 1929. }

A Commissioner, etc.

Dated 20 June A.D. 1929

HARRY LOW, et al

to

THE DOMINION BANK

Cor Sandwiche & Ouellette
Windsor.

MORTGAGE

\$1,581,000

I certify that the within instrument
is duly entered and registered in the
Registry Office of the Registry Divi-
sion of the County of Essex in Book
30 for the City of Windsor, East at
3.50 o'clock P.M. on the 31 day of
July A.D. 1929. Number 37023.

Thos. E. Green,
Dep. Registrar.

KENNING & CLEARY
Barristers and Solicitors

Security Building
WINDSOR — ONTARIO

County of
Middlesex

I, Charles Burns, of the City of London in the County
of Middlesex, Manufacturer

10

TO WIT: } DO SOLEMNLY DECLARE:

THAT I was at the time of the execution and delivery by me of the with-
in Instrument a widower, and of the full age of 21 years

AND I make this solemn declaration conscientiously believing it to be true
and knowing that it is of the same force and effect as if made under oath
and by virtue of "The Canada Evidence Act."

DECLARED before me at the City
of London in the County of
Middlesex, this 29 day of
July, A. D. 1929.

"Chas Burns"

20

"A. R. Douglas"
A Commissioner, etc.

EXHIBIT NO. 34.

MORTGAGE HARRY LOW ET AL TO THE DEFENDANT.
(TORONTO PROPERTIES).

THIS INDENTURE made (in duplicate) this 20th day of June One thousand nine hundred and twenty-nine.

IN PURSUANCE OF THE SHORT FORMS OF MORTGAGES ACT.

BETWEEN:

HARRY LOW, of the City of Windsor in the County of Essex, Manufacturer, MARCO LEON, of the City of Montreal in the Province of Quebec, Manufacturer, and CHARLES BURNS, of the City of London in the County of Middlesex, Manufacturer, and a Widower, hereinafter called the Mortgagors

OF THE FIRST PART

THE DOMINION BANK, a corporation organized under The Bank Act of Canada, with head office at the City of Toronto in the County of York, hereinafter called the Mortgagee

OF THE SECOND PART

and

NORAH LOW, wife of the said Harry Low, and of the same place, and FREDA LEON, wife of the said Marco Leon, and of the same place,

OF THE THIRD PART

WHEREAS the parties hereto of the First Part either severally or jointly are indebted to the said Bank for cash advances amounting at this date to the sum of ONE MILLION FIVE HUNDRED AND EIGHTY-ONE THOUSAND DOLLARS (\$1,581,000.00). and the said Bank has requested payment or other security for the said indebtedness, and in consideration of the said Bank refraining until the 1st day of August, 1929, from taking proceedings to recover payment, the parties hereto of the First Part have offered and agreed to give this mortgage of their interest in all their lands in the City of Toronto in the County of York and another mortgage of even date herewith of all their lands in the County of Essex, as collateral security for the payment of the said indebtedness without prejudice to the right of the said Bank to hold or realize on any other securities it may hold for said indebtedness.

WITNESSETH, that in consideration of the premises and the sum of One Dollar of lawful money of Canada now paid by the said Mortgagee to the said Mortgagors, the receipt whereof is hereby acknowledged, the said Mortgagors DO GRANT AND MORTGAGE unto the

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
No. 34.
Defendant's
Exhibit.
Mortgage.
Low et al
to Dominion
Bank (Toronto
properties)
June 20, 1929.

Record.

*In the
Supreme
Court of
Ontario.*Exhibits.
No. 34.Defendant's
Exhibit.
Mortgage,
Low et al
to Dominion
Bank (Toronto
properties).
June 20, 1929.

—continued.

said Mortgagee, its successors and assigns forever ALL AND SINGULAR those certain parcels or tracts of lands and premises situate, lying and being in the City of Toronto in the County of York and Province of Ontario, and being composed of

FIRSTLY: The southerly half of lot number One hundred and Seventy-nine (179) and the whole of lot number One hundred and eighty (180) on the west side of Terauley Street, according to plan registered in the Registry Office for the Registry Division of East Toronto as number 154, the said lands and premises being known as street numbers 740 and 742 BAY STREET, formerly 206 and 208 Terauley Street;

10

SECONDLY: Commencing at a point in the easterly limit of Yonge Street where the same would be intersected by the production westerly of the southerly face of the southerly wall of the old brick store building standing in April, 1922, upon the south-westerly part of the lands hereby mortgaged, the said point being Forty-six (46) feet six and one quarter ($6\frac{1}{4}$) inches measured northerly along the said limit of Yonge Street from the existing northerly limit of Anne Street; Thence easterly to and along the said southerly face of wall, and along the southerly face of the southerly wall of the one storey brick building immediately in rear of the building last mentioned, and continuing thence easterly parallel to the said limit of Anne Street, in all a distance of One hundred and nine (109) feet two and one half ($2\frac{1}{2}$) inches to a point in the line of a fence running northerly, which point is distant forty-six (46) feet five and three-quarters ($5\frac{3}{4}$) inches measured northerly on a course parallel to the said limit of Yonge Street from the aforesaid northerly limit of Anne Street; Thence northerly along the line of the said fence Sixty-five (65) feet six and one-quarter ($6\frac{1}{4}$) inches to the line of a fence running easterly; Thence westerly and parallel to the said limit of Anne Street, One (1) feet two (2) inches to the southerly production of the easterly face of the easterly wall of an old brick stable building; Thence northerly along the last mentioned production One (1) foot to the southerly face of the southerly wall of the said old brick stable building; Thence westerly along the said southerly face of wall and along the westerly production of the same, in all, a distance of Nineteen (19) feet ten (10) inches to the easterly face of the easterly wall of a brick building standing at the date hereinbefore last mentioned upon the lands hereby mortgaged; Thence northerly and parallel to the said limit of Yonge Street Four (4) feet to the northerly face of the northerly wall of the last mentioned brick building; Thence westerly along the said northerly face of wall, to and along the southerly face of the southerly wall of the old brick store building standing at the date hereinbefore last mentioned upon the lands to the north of the said lands hereby mortgaged in all a distance of Ninety-two (92) feet three and one half ($3\frac{1}{2}$) inches to the easterly limit of Yonge Street aforesaid; Thence southerly along the last mentioned limit Sixty-five

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30

40

(65) feet eight and three quarters ($8\frac{3}{4}$) inches more or less to the point of commencement, and also known as street numbers 435, 437 and 439 YONGE STREET.

Record.
In the
Supreme
Court of
Ontario.

Exhibits.
No. 34.
Defendant's
Exhibit.
Mortgage,
Low et al
to Dominion
Bank (Toronto
properties).
June 20, 1929.

—continued.

THIRDLY: Lots numbers THREE (3), FOUR (4) and FIVE (5) on the west side of Yonge Street, south of Grenville Street, in the said City of Toronto, as shown on the plan of the subdivision of a certain block of land comprised of parts of park lots numbers NINE (9) and TEN (10) in the First Concession from the Bay in the Township of York, which said plan has been numbered 159 and was filed on the 12th day of June, A.D. 10 1856, in the Registry Office for the United Counties of York and Peel and is now registered in the Registry Office for the Registry Division of Toronto, having a frontage of Ninety (90) feet more or less on the west side of Yonge Street by a depth of One hundred and twenty-six (126) feet more or less on the south side of Grenville Street to a lane, and also known as street numbers 460 to 470 YONGE STREET.

FOURTHLY: That part of park lots numbers NINE (9) and TEN (10) in the First Concession from the bay in the Township of York now in the City of Toronto which is known as lot number Thirteen (13) on the west side of Yonge Street according to a plan of the Elmsley Villa 20 property made by J. C. Browne, P.L.S. dated the 12th day of June, 1856 and registered in the Registry Office for the Registry Division of East Toronto as number 159, upon which said lands is situate store number 490 YONGE STREET.

FIFTHLY: Lot Number FOURTEEN (14) on the westerly side of Yonge Street, according to registered plan number 159, and also described by metes and bounds as follows. COMMENCING at the north-easterly angle of the said lot, being the southwest corner of Yonge Street and Grosvenor Street; Thence southerly along the westerly limit of Yonge Street Thirty-five (35) feet Nine and three-quarters ($9\frac{3}{4}$) inches 30 more or less to the north face of the north wall of the new brick building known as 490 Yonge Street; Thence westerly along the north face of the north wall of the said new brick building and the production thereof west in a straight line in all One hundred and twenty-six (126) feet four and one half ($4\frac{1}{2}$) inches more or less to a point in the easterly limit of a lane; Thence northerly along the easterly limit of the said lane Thirty-five (35) feet ten and one half ($10\frac{1}{2}$) inches more or less to the northwest angle of the said lot; Thence easterly along the southerly limit of Grosvenor Street One hundred and twenty-six (126) feet four and one half ($4\frac{1}{2}$) inches more or less to the place of beginning, the properties now 40 known as numbers 492 to 494 YONGE STREET.

SIXTHLY: Containing by admeasurement seven thousand five hundred and sixty (7560) square feet, more or less, which upon a plan of part of

Record.
*In the
 Supreme
 Court of
 Ontario.*
 Exhibits.
 No. 34.
 Defendant's
 Exhibit.
 Mortgage.
 Low et al
 to Dominion
 Bank (Toronto
 properties).
 June 20, 1929.
 —continued.

park lots numbers NINE (9) and TEN (10) in the First Concession from the Bay formerly in the Township of York but now in the said City of Toronto the said plan having been filed on the 12th day of June, A.D. 1856, in the Registry Office for the United Counties of York and Peel as number 159 upon the certificate of Alexander McKenzie Clark, Esquire, and John O. Browne, P.L.S., are set down and described as lots numbers ELEVEN (11) and TWELVE (12) on Yonge Street, the said lots having a frontage of thirty (30) feet each on Yonge Street and a depth of One hundred and twenty-six (126) feet to a lane, being known as YONGE STREET FIRE HALL.

10

AND the said parties of the Third Part hereby bar their dower in the said lands.

PROVIDED this Mortgage to be void on payment of TWO HUNDRED THOUSAND (\$200,000.00) DOLLARS of lawful money of Canada, with interest monthly at six and one half per cent ($6\frac{1}{2}\%$) per annum as follows:

The said principal sum to be payable on demand together with interest at the rate aforesaid payable monthly on the balances unpaid from time to time. All arrears of principal and interest to bear interest at the rate aforesaid as well after maturity as before and until fully paid.
 and Taxes and performance of Statute labor.

20

Upon a bona fide sale at a price and on terms satisfactory to the Mortgagee by the Mortgagors or any of them of each and every parcel of land contained in this mortgage, or any part thereof during the currency of this mortgage, there shall be payable to the Mortgagee in reduction of the principal sum all of the cash down payments and succeeding instalments paid on account of sale price in excess of such amount or fraction thereof as is necessary to meet and pay the then accruing principal payment owing by the Mortgagors or any of them to their Vendor or Vendors on such parcel, or on a prior mortgage thereon.

30

And with the privilege to the Mortgagors or any of them of obtaining a discharge from this mortgage of each and every parcel of land contained herein upon paying to the Mortgagee the actual amount in excess of prior incumbrances for which the Mortgagors have by a bona fide sale at a price and on terms satisfactory to the Mortgagee, sold said parcel and in arriving at the amount so to be paid for a release the amount of any instalment already paid in reduction of the mortgage principal from the proceeds of a resale of such property shall be taken into consideration.

40

The said Mortgagors COVENANT with the said Mortgagee THAT the

Mortgagors will pay the mortgage money and interest, and observe the above proviso;

Record.

In the
Supreme
Court of
Ontario.

Exhibits.
No. 34.
Defendant's
Exhibit.
Mortgage,
Low et al
to Dominion
Bank (Toronto
properties).
June 20, 1929.

—continued.

10 THAT the Mortgagors' title to each of the said parcels of land is by way of a good, valid and subsisting Agreement of Purchase or by deed from the Owner in fee thereof upon which there is owing the amounts respectively hereinafter set out, and they, the said Mortgagors, for themselves, their heirs, executors, administrators and assigns COVENANT, promise and agree with the Mortgagee that they will pay and observe all the terms and conditions on their part contained in said Articles of Agree-
ment or mortgage, and will promptly pay when and as they become due
all instalments of principal and interest provided to be paid under said
Agreements of Purchase or mortgages and all taxes, water rates and
other municipal assessments charged on said lands and on the default,
neglect or failure of the Mortgagors to so observe said terms and con-
ditions or pay said instalments or charges for a period of one month after
same have become due then this mortgage shall be deemed to be in de-
fault and the Mortgagee shall be entitled to all the remedies hereinafter
provided either as to any parcel or all.

20 AND that they have the right to convey their interest in the said lands to the Mortgagee, which said interests are at the date hereof subject only to the following mentioned sums owing to the respective Vendors of the said Mortgagors or the Vendors' mortgagees, as follows:

Parcel No.	Balance owing,	Instalment Owing	Balance owing
1	\$ 15,650.00	6½% int. payable 30th Apr. & Oct.	Apr. 30th, 1933
2	\$181,000.00	\$45000 due May 1st 1929, \$7500 ½ yearly 1st May & Nov.	May 1st, 1933
30 3	1st mortgage on 460-462 Yonge \$ 30,000.00	6½% int. 1st May and Nov.	May 1st, 1931
	1st mortgage on 464-466 Yonge \$ 35,000.00	7% int.	Past due
	1st mortgage on 468-470 Yonge \$ 50,000.00	6% Mar. & Sept. 1st	Sept. 1, 1932
	2nd mortgage on 460-470 Yonge \$179,000.00	6% int. and \$5000 May & Nov. 1st	May 1st 1933
40 4	1st mortgage \$ 38,000.00	\$5000 and 6½% int. 1st June & December	Dec. 1st, 1930

Record. <i>In the Supreme Court of Ontario.</i> Exhibits. No. 34. Defendant's Exhibit. Mortgage, Low et al to Dominion Bank (Toronto properties). June 20, 1929. --continued.	2nd mortgage 5 6	\$ 34,000.00 \$ 89,500.00 <u>\$100,000.00</u>	\$1000 ½ yearly 6% 1st May and November \$2500 ½ yearly 25th June and Dec. and 6% \$3750 ½ yearly 1st June and Dec. and 6%	May 1st, 1933 June 25th, 1933 Dec. 1st, 1933
--	--------------------------------	---	--	--

AND that on default the Mortgagee shall have quiet possession of the 10 said lands, free from all incumbrances save as aforesaid;

AND that the said Mortgagors will execute such further assurances of the said lands as may be requisite.

AND that the said Mortgagors have done no act to incumber the said lands save as aforesaid.

AND that the said Mortgagors will insure the buildings on the said lands to the amount of not less than their full insurable value of lawful money of Canada. If the Mortgagee considers that the insurance carried on any parcel is not sufficient the Mortgagors will, on written request, take out further insurance with loss, if any, payable to the Mortgagee; 20

AND the said Mortgagors do RELEASE to the said Mortgagee all their claims upon the said lands subject to the said provisos;

PROVIDED that the said Mortgagee on default of payment for one month may on one month's notice enter on and lease or sell the said lands, and said notice shall be sufficiently served if served on the law firm of McTague, Clark, Springsteen, Racine and Spencer, of Windsor, solicitors for the said Mortgagors.

PROVIDED that the Mortgagee may distrain for arrears of interest.

PROVIDED that in default of the payment of the interest hereby secured, the principal hereby secured shall become payable. 30

PROVIDED that until default of payment the Mortgagors shall have quiet possession of the said lands.

IN WITNESS WHEREOF the said parties have hereunto set their hands and seals.

SIGNED, SEALED and DELIVERED
in the presence of

"S. L. Springsteen" As to signature of Harry Low "S. L. Springsteen" As to signature of Marco Leon "S. L. Springsteen" As to signature of C. Burns "S. L. Springsteen" 10 As to signature of Norah Low "W. O. H. James" As to signature of F. Leon	}	"Harry Low" (SEAL) "Marco Leon" (SEAL) "Chas. Burns" (SEAL) "Norah Low" (SEAL) "Freda Leon" (SEAL)
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Record.
*In the
 Supreme
 Court of
 Ontario.*
 Exhibits.
 No. 34.
 Defendant's
 Exhibit.
 Mortgage,
 Low et al
 to Dominion
 Bank (Toronto
 properties).
 June 20, 1929.
 —continued.

CANADA
 Province of
 Ontario
 County of York
 TO WIT:

} I, Stanley Lionel Springsteen
 of the City of Windsor in the County of
 Essex, Solicitor, make oath and say:

1. THAT I was personally present and did see the within Instrument and a Duplicate duly signed, sealed and executed by Marco Leon and
- 20 Charles Burns, Harry Low and Norah Low, four of the parties thereto.
2. THAT the said Instrument and Duplicate were executed by the said parties at the said City of Toronto.
3. THAT I know the said parties.
4. THAT I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at the City
 of Toronto in the County of
 York this 12th day of
 July, A.D. 1929. } "S. L. Springsteen"

30 "W. B. Milliken"
 A Notary Public in and the the Province of Ontario.

CANADA
 Province of Quebec
 County of Hochelaga
 TO WIT:

} I, William Orael Hamilton James
 of the City of Montreal in the County of
 Hechelaga, make oath and say:

1. THAT I was personally present and did see the within Instrument

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
No. 34.
Defendant's
Exhibit.
Mortgage,
Low et al
to Dominion
Bank (Toronto
properties).
June 20, 1929.

—continued.

and a Duplicate duly signed, sealed and executed by Freda Leon, one of the parties thereto.

2. THAT the said Instrument and Duplicate were executed by the said parties at the said City of Montreal.

3. THAT I know the said party.

4. THAT I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at the City
of Montreal in the County
of Hochelaga this 20th day
of July, A.D. 1929. }

“W.O.H. James”

10

“J. H. Hutcheson” N.P.
A Notary Public for Quebec.
(Notarial Seal)

CANADA
Province of
Ontario
County of Essex
TO WIT: }

I,
of the City of Windsor
in the County of Essex
make oath and say:

1. THAT I was personally present and did see the within Instrument 20
and a Duplicate duly signed, sealed and executed by Harry Low and
Norah Low

two of the parties thereto.

2. That the said Instrument and Duplicate were executed by the said parties at the said City of Windsor.

3. That I know the said parties.

4. That I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at the City
of Windsor in the County of
Essex this day of
June A.D. 1929. }

30

A commissioner, etc.

Dated 20 June A.D. 1929.

HARRY LOW, et al
to
THE DOMINION BANK
King & Yonge Sts.
Toronto.

MORTGAGE

\$200,000.00

No. 19549 E. P.
I certify that the within instrument is duly Entered and Registered in the Registry Office for the Registry Division of Toronto in Book E.P. at 12:25 o'clock pm on the 15th day of August A.D. 1929.

Wm. Bennett,
Dep. Registrar.

Mulock, Milliken, Clark & Redman

Record.
In the
Supreme
Court of
Ontario.
Exhibits.
No. 34.
Defendant's
Exhibit.
Mortgage,
Low et al
to Dominion
Bank (Toronto
properties).
June 20, 1929.
—concluded.

County of
Essex

I, Charles Burns, of the City of London in the
County of Middlesex,

TO WIT:

DO SOLEMNLY DECLARE

THAT I was at the time of the execution and delivery by me of the within Instrument a widower, and of the full age of 21 years.
AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of "The Canada Evidence Act."

10 DECLARED before me at the City
of London in the County of
Middlesex, this 29th day of
July, A.D. 1929.

"Chas. Burns"

"A. R. Douglas"
A Commissioner, etc.

EXHIBIT No. 11.

ASSIGNMENT THE CARLING EXPORT BREWING & MALTING
COMPANY LIMITED AND LOW, LEON, AND BURNS TO THE
DEFFENDANT.

No. 11.
Plaintiff's
Exhibit.
Assignment
from Carling
Export Brew-
ing & Malting
Co. Ltd. to
Dominion
Bank.
July 12, 1929.

20 WHEREAS the undersigned individuals HARRY LOW, MARCO
LEON and CHARLES BURNS are jointly and severally indebted to the

Record.

In the
Supreme
Court of
Ontario.Exhibits.
No. 11.Plaintiff's
Exhibit.
Assignment
from Carling
Export Brew-
ing & Malting
Co. Ltd. to
Dominion
Bank.
July 12, 1929.

—concluded.

Dominion Bank and own the total issued capital stock of The Carling Export Brewing and Malting Company Limited.

AND WHEREAS the undersigned THE CARLING EXPORT BREWING AND MALTING COMPANY LIMITED on or about the 26th day of October 1927 deposited with the Dominion Bank \$400,000. of Dominion of Canada Victory Loan 5½ per cent Bonds due 1st of November, 1934, to be held by the said Bank to meet any final judgment that might be obtained by the Dominion Government against the said Company in respect of the action then pending with reference to sales and gallonage tax on export sales. 10

AND WHEREAS with the consent of the undersigned Company certain of the said Bonds have been converted into cash, and the proceeds thereof deposited in the said Bank in a special savings account in the name of the said Company.

AND WHEREAS the said Bank has required from the undersigned individuals further security for the payment of the said indebtedness of the said individuals to the Bank, as the consideration for which the Bank will refrain from immediately taking proceedings against the said undersigned individuals to recover the said indebtedness.

NOW THEREFORE in consideration of the premises, the under- 20
signed company and individuals do and each of them doth hereby assign transfer and set over unto the said The Dominion Bank all the right title and interest of them and each of them of in and to the said hereinbefore mentioned Bonds and proceeds thereof, subject however to the payment thereout of the amount of any final judgment that may be obtained by the Dominion Government against the undersigned Company in respect to the action above mentioned.

IT IS UNDERSTOOD AND AGREED that the said Bank shall hold the said Bonds and proceeds thereof to the extent to which the same are hereby assigned to the said Bank as further continuing addi- 30
tional security for the payment of the joint and several indebtedness from time to time of the undersigned individuals to the said Bank and interest thereon, and that in connection with the said bonds and proceeds thereof hereby assigned to the said Bank it shall have all the powers, rights and privileges contained in a certain agreement of even date here-
with executed by the undersigned company and individuals.

DATED at Toronto this twelfth day of July, A.D.1929.

W I T N E S S :

THE CARLING E.B.&M.CO.LTD.

Per "Chas. Burns"

Pres.

(Corporate
Seal)

40

"Marco Leon"

Sec.

"Harry Low"

(Seal)

"Marco Leon"

(Seal)

"Chas. Burns"

(Seal)

EXHIBIT No. 37.

SHARE CERTIFICATE No. 101 OF THE CARLING EXPORT BREWING & MALTING COMPANY LIMITED.

Record.

In the Supreme Court of Ontario.

Exhibits. No. 37. Plaintiff's Exhibit. Share Certificate No. 101 for 16000 Common Shares of Carling Export Brewing & Malting Co. Ltd., in name of J. Esar. February 4, 1931.

Incorporated under the Companies Act.

No. 101

16,000 Shares

CARLING EXPORT BREWING & MALTING COMPANY LIMITED

Capital Stock \$1,000,000.

Preference Stock \$500,000.

Common Stock \$500,000.

Shares \$10.00 each.

10 THIS IS TO CERTIFY that J. ESAR - - - - - is the owner of Sixteen thousand fully paid up Common Shares of Ten Dollars (\$10.00) each in the Capital Stock of CARLING EXPORT BREWING & MALTING COMPANY, LIMITED transferable only on the books of the Company in person or by attorney upon surrender of this certificate properly endorsed.

The holders of the preference shares shall be entitled to receive out of the profits of the Company in each year as a first charge a fixed cumulative preferential dividend at the rate of eight per cent. (8%) per annum on the capital for the time being paid up on such shares respectively. 20 The capital paid up on the preference shares shall not be liable to cancellation or reduction in respect of loss or depreciation; and in the event of the winding up of the Company, the holders of the preference shares shall be entitled to have the surplus assets applied; firstly in paying off the capital paid up on the preference shares held by them respectively and secondly in paying up the arrears if any on the preferential dividends as aforesaid to the commencement of the winding up. The preference shares have no voting power.

Every holder of common shares shall have one vote for every common share held.

30 C O M M O N

IN WITNESS WHEREOF the said Company has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be

Record.

In the
Supreme
Court of
Ontario.

Exhibits.
No. 37.

Plaintiff's
Exhibit.
Share Certifi-
cate No. 101
for 16000
Common
Shares of
Carling Export
Brewing &
Malting Co.
Ltd., in name
of J. Esar,
February 4,
1931.

—continued.

hereunto affixed this Fourth day of February, A.D. 1931.

(Company's
Corporate Seal)

“CHAS BURNS”

“MARCO LEON”

President.

Secretary.

(BACK OF CERTIFICATE)

CERTIFICATE FOR

COMMON SHARES

of the

CAPITAL STOCK

10

of

CARLING EXPORT BREWING & MALTING
COMPANY LIMITED.

Issued to

Dated 192

FOR VALUE RECEIVED hereby sell, assign and
transfer unto _____

the shares of the Capital Stock represented by the within
Certificate and do hereby irrevocably constitute and
appoint _____ Attorney

20

to transfer the said stock on the books of the within named

Company, with full power of substitution in the premises.

DATED _____ 19

(Sgd) J. ESAR.

In presence of:

Note: The signature to this assignment must correspond with the name as written upon the face of the Certificate, in every particular, without alteration or enlargement, or any change whatever.

Record.

*In the
Supreme
Court of
Ontario.*

Exhibits.
No. 37.
Plaintiff's
Exhibit.
Share Certifi-
cate No. 101
for 16000
Common
Shares of
Carling Export
Brewing &
Malting Co.
Ltd., in name
of J. Esar.
February 4,
1931.

-concluded.