

82, 1937

In the Privy Council

No. of 1937.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

BETWEEN:

A. VIVIAN MANSELL

(Plaintiff) Appellant

—AND—

THE STAR PRINTING AND PUBLISHING COMPANY
OF TORONTO, LIMITED

(Defendant) Respondent.

Record of Proceedings

SOLE, SAWBRIDGE & CO.
68, ALDERMANBURY
LONDON, E.C.2.

For the Appellant.

CHARLES RUSSELL & CO.
37, NORFOLK STREET, STRAND
LONDON, W.C.2.

For the Respondent.

TORONTO:
MURRAY PRINTING COMPANY LIMITED
1937



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No. _____ of 1937.

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BETWEEN:

A. VIVIAN MANSELL

(Plaintiff) Appellant,

—AND—

THE STAR PRINTING AND PUBLISHING COMPANY
OF TORONTO, LIMITED

(Defendant) Respondent.

RECORD OF PROCEEDINGS

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Amended this 1st day of May, 1935, pursuant to an order of the Master S.C.O. dated April 30th, 1935.

*"D'Arcy Hinds",
Registrar, S.C.O.*

No. 1.

AMENDED STATEMENT OF CLAIM

Writ issued the 27th of June, 1932.

*In the
Supreme
Court of
Ontario.*

No. 1.
Amended
Statement of
claim.

1. The Plaintiff is a publisher of fine art colour prints carrying on business throughout the world with head offices in London, England, and operating under the name of A. Vivian Mansell & Company.

2. The Defendant is a corporation incorporated under the laws of the Dominion of Canada, and is the printer and publisher of a weekly publication known as the Toronto Star Weekly, published at Toronto, and distributed
10 throughout the Dominion of Canada with a circulation of over two hundred thousand copies.

3. In or about the years 1928, or 1929, the Defendant in its publication known as the Toronto Star Weekly began to publish a colour gravure section, consisting of reproductions of pictures in colour, which section since its inception has been published each week in the said publication.

4. The Plaintiff alleges as the fact is that numerous pictures, the copy-
right in which is owned by the Plaintiff have been reproduced by the Defend-
ant in the said colour gravure section of the Toronto Star Weekly without
the Plaintiff's consent and without any colour of right whatsoever, and have
20 been copied by photography or otherwise and multiplied and printed in
the said Star Weekly and sold and distributed by the Plaintiff.

5. The Plaintiff is aware of thirty-eight pictures, the copyright in which
belongs to him, which copyright has been infringed by the Defendant's
publication, sale and distribution as aforesaid, a list of which, with the names
under which they were published and the dates of publication is attached
hereto and marked as Schedule "A" to this Statement of Claim; but the Plain-
tiff is unaware how many other pictures in which he has the copyright have
been similarly published, sold and distributed by the Defendant and the
Plaintiff craves leave to refer to any other of such pictures as may come to
30 his knowledge, on the examination for discovery in this action.

6. The Defendant has wrongfully infringed the Plaintiff's said copy-
right by selling, publishing, exhibiting, distributing and offering for sale
copies or imitations of the said paintings without the consent of the Plaintiff,
well knowing that such copies or imitations had been unlawfully made and
were an infringement of the Plaintiff's copyright.

7. By reason of the Defendant's wrongful publication of the copy-
righted pictures of the Plaintiff, the Plaintiff has suffered extensive damages
in that the originality of the said pictures has been lost to him, that the wide
publication in a newspaper has lessened their value for artistic purposes, and
40 the Plaintiff's customers throughout Canada will not purchase pictures that
have been given widespread publicity of the cheapest form, namely through
a newspaper.

In the
Supreme
Court of
Ontario.
No. 1.
Amended
Statement of
Claim.
—continued.

7(a). *The Plaintiff alleges that the Defendant sold or caused to be sold 250,000 copies of each of the issues of their newspaper "The Toronto Star Weekly", containing the pictures set forth in Schedule "A" hereto, and thus converted to their own use 250,000 copies of each of the said pictures set forth in Schedule "A" hereto which copies were the property of the Plaintiff whereby the Plaintiff has been damnified.*

8. The Plaintiff therefore claims:

(a) An injunction restraining the Defendant, its servants, workmen and agents from selling, publishing, exhibiting or distributing or offering for sale, exhibition or distribution, any copies or imitations of the paintings in 10 which the Plaintiff is owner of a copyright.

(b) An account and delivery up of all copies or imitations of the said paintings in the possession, custody and control of the Defendant, and delivery up to the Plaintiff by the Defendant of all plates for printing or reproducing the said pictures.

(c) Damages for infringement of the Plaintiff's copyright in the sum of Twenty-five Thousand Dollars (\$25,000.00).

(cc) *Damages in the sum of \$25,000.00 for the conversion by the Defendant of 250,000 infringing copies of each of the pictures set out in Schedule "A" hereto.* 20

(d) His costs of this action.

(e) Such further and other relief as this Honourable Court may deem meet.

The Plaintiff proposes that this action be tried at Toronto, in the County of York.

DELIVERED at Toronto, this 30th day of June, 1933, by MESSRS. McMASTER, MONTGOMERY, FLEURY & COMPANY, 902 Temple Building, Toronto, Solicitors for the Plaintiff.

SCHEDULE "A"

List of paintings in which the Plaintiff alleges that he owns the copyright, 30 published in the Toronto Star Weekly with the names under which they were so published and the dates of publication.

<i>Title Used by Defendant</i>	<i>Date of Publication</i>
1. The Captain and His Crew	March 12, 1932
2. Poppies	April 2, 1932
3. Shamrock	April 2, 1932
4. Stalkers	April 2, 1932
5. The Intruder	April 2, 1932
6. Off to the Hunt	April 2, 1932
7. Highland Cattle	April 2, 1932
8. An Eastern Belle	April 9, 1932
9. A Spanish Beauty	April 9, 1932
10. A Nibble	May 7, 1932

	<i>Title Used by Defendant</i>	<i>Date of Publication</i>
	11. The Kill	May 7, 1932
	12. Fishing	May 7, 1932
	13. Out of the Spring	May 14, 1932
	14. Let's be Friends	May 14, 1932
	15. Highland Cattle	May 21, 1932
	16. Duck and Green Peas	May 21, 1932
	17. Fast Asleep	May 21, 1932
	18. A Brunette	May 21, 1932
10	19. Daughter of Erin	May 21, 1932
	20. Otter's Halt	May 21, 1932
	21. A Cavalier	May 21, 1932
	22. A Scanty Meal	May 21, 1932
	23. Reflections	May 28, 1932
	24. Noonday Rest	May 28, 1932
	25. Tally Ho	May 28, 1932
	26. Violet	May 28, 1932
	27. Roses by Klein	May 28, 1932
	28. Aristocrats	May 28, 1932
20	29. At the Seaside	May 28, 1932
	30. Meadowsweet	June 4, 1932
	31. Kittens	June 4, 1932
	32. Table d'Hote with Music	June 4, 1932
	33. Cherries	June 4, 1932
	34. Girl of Florence	June 4, 1932
	35. Pierrette	June 4, 1932
	36. Old Old Story	June 18, 1932
	37. Daisies	June 18, 1932
	38. Summertime	July 9, 1932

*In the
Supreme
Court of
Ontario.*
No. 1.
Amended
Statement of
claim.
—continued.

30

No. 2.

DEMAND FOR PARTICULARS OF STATEMENT OF CLAIM

TAKE NOTICE that the Defendant requires you to furnish it on or before the 9th day of September, 1933, with particulars of the registration, if any, of the alleged copyright of the Plaintiff referred to in Paragraphs 4, 5, 6, 7 and 8 of the Statement of Claim herein.

DATED this 5th day of September, 1933.

To.

McMaster, Montgomery, Fleury & Co.
902 Temple Bldg. Toronto,
Solicitors for the Plaintiff.

ALEXANDER STARK,
903 Star Building, Toronto,
Solicitor for the Defendant.

40

No. 2.
Demand for
Particulars
of Statement
of Claim,
5th Sept.,
1933.

In the
Supreme
Court of
Ontario.

No. 3.

ANSWER TO DEMAND FOR PARTICULARS

No. 3.
Answer to
Demand for
Particulars,
18th Oct.,
1933.

In answer to the Defendant's demand for particulars dated the 5th day of September, 1933, the Plaintiff states that there is no registration in Canada of the copyright pictures referred to in the Statement of Claim herein.

DATED this 18th day of October, A.D., 1933.

McMASTER MONTGOMERY, FLEURY & Co.
902 Temple Building, Toronto,
Solicitors for the Plaintiff.

To.
Alexander Stark,
903 Star Building, Toronto,
Solicitor for the Defendant.

10

No. 4.
Re-amended
Statement of
Defence,
18th Oct.,
1933.

*Amended pursuant
to the Order of the
Master dated 28th
day of February,
1935, this 1st day of
March, 1935.
"D'Arcy Hinds,"
Registrar, S.C.O.*

*Re-amended this
10th day of May,
1935, pursuant to the
Order of the Master
dated the 30th day of
April, 1935.
"D'Arcy Hinds,"
Registrar, S.C.O.*

No. 4.

RE-AMENDED STATEMENT OF
DEFENCE

1. The Defendant has no knowledge of the business carried on by the Plaintiff as alleged in paragraph 1 of the Statement of Claim.

2. The Defendant admits the allegations contained in paragraph 2 of the Statement of Claim, but says that it is a corporation incorporated under the laws of the Province of Ontario; and except as expressly admitted herein after, denies the allegations contained in the remaining paragraphs of the Statement of Claim.

3. The Defendant denies that any copyright existed in pictures or paintings referred to in the Statement of Claim, or that the Plaintiff had any title to copyright therein.

4. The Defendant alleges that if it reproduced pictures and paintings in which the Plaintiff had the copyright, the Defendant did so with the permission and consent or ratification of the Plaintiff.

5. The Defendant further alleges that if it reproduced pictures and paintings in which the Plaintiff had the copyright, at the time of such reproduction, the Defendant was not aware and had no reasonable ground for suspecting that copyright existed in such pictures and paintings, and the

Defendant relies upon Section 22 of the Copyright Act, being Chapter 32 of the Revised Statutes of Canada, 1927.

5(a). In reply to paragraph 7(a) of the Statement of Claim, the Defendant repeats the foregoing allegations, and alleges that it did not convert to its own use any pictures which are the property of the Plaintiff.

5(b). The Defendant relies upon Section 24 of the Copyright Act, being Chapter 32 of the Revised Statutes of Canada, 1927.

6. The Defendant further alleges that the Plaintiff has suffered no damage by reason of the alleged infringement of the Plaintiff's alleged copy-10 right or of the alleged conversion.

6(a). The Defendant has paid into Court the sum of \$2,500.00 and says that that sum is sufficient to satisfy the Plaintiff's claims made in this action, including the claim for damages for conversion.

7. The Defendant submits that this action be dismissed with costs.

DELIVERED this 18th day of October, 1933, by ALEXANDER STARK, 707 Star Building, Toronto, Ontario. Solicitor for the Defendant.

In the Supreme Court of Ontario.

No. 4. Re-amended Statement of Defence, 18th Oct., 1933. —continued.

No. 5.

REPLY AND JOINDER OF ISSUE

No. 5. Reply and Joinder of Issue, 15th Nov., 1933.

1. The Plaintiff denies that no copyright exists in the pictures or 20 paintings referred to in the Plaintiff's statement of claim, as alleged in paragraph 3 of the Defendant's statement of defence, but states that copy- right does subsist in the said pictures or paintings, and such copyright is owned by the Plaintiff.

2. The Plaintiff denies that it at any time permitted or consented to the Defendant using any of the pictures or paintings referred to in the Plain- tiff's statement of claim herein, or ratified the use by the Defendant of such pictures or paintings.

3. The Plaintiff denies each and every other allegation contained in the Defendant's statement of defence herein, and puts the Defendant to the strict 30 proof thereof.

4. The Plaintiff joins issue with the Defendant upon its statement of defence herein.

DELIVERED at Toronto, this 15th day of November, A.D., 1933, by McMASTER, MONTGOMERY, FLEURY & Co., 902 Temple Building, Solicitors for the Plaintiff.

*In the
Supreme
Court of
Ontario.*

FORMAL JUDGMENT AT TRIAL

IN THE SUPREME COURT OF ONTARIO

No. 6.
Formal
Judgment at
Trial, 11th
July, 1936.

THE HONOURABLE THE CHIEF } Saturday, the 11th day of
JUSTICE OF THE HIGH COURT } July, A.D., 1936.

This action having come on for trial on the 14th, 15th, 16th, 17th and 18th days of October, 1935, at the Sittings holden at Toronto for trial of actions without a jury, in the presence of counsel for the Plaintiff and counsel for the Defendant, this Court was pleased to direct that this action stand over for judgment, and the same coming on this day for judgment. 10

1. **THIS COURT DOTH ORDER AND ADJUDGE** that the Plaintiff do recover from the Defendant the sum of Six Hundred Dollars (\$600.00) as damages by reason of the Defendant's publication of the pictures entitled "At the Seaside", "Cherries", and "Pierrette".

2. **AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE** that the Plaintiff do recover from the Defendant his costs of this action up to and including the 30th day of April, 1935.

3. **AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE** that the Defendant do recover from the Plaintiff its costs of this action from and after the 1st day of May, 1935, forthwith after taxation thereof, which costs shall 20 be set off against the costs as taxed pursuant to the next preceding paragraph, and if there is any balance in favour of the Defendant, such balance shall be set off against the sum awarded to the Plaintiff by paragraph 1 hereof.

4. **AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE** that any balance owing to the Plaintiff after the set off of costs as directed in the next preceding paragraph shall be paid out of court to the Plaintiff out of the sum standing in court to the credit of this action, and any balance of such sum shall be paid out to the Defendant.

5. **AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE** that if there is any balance owing to the Defendant by reason of the Defendant's 30 taxed costs exceeding the amount of the judgment plus the Plaintiff's taxed costs, the said balance shall be paid out to the Defendant from the moneys paid into court by the Plaintiff as security for costs.

Judgment signed this 18th day of September, 1936.

D'ARCY HINDS,
Registrar, S.C.O.

Entered J.B. 68,
Pages 61-2,
September 19th, 1936.
R.M.

No. 7.

REASONS FOR JUDGMENT OF ROSE, C.J.H.C.
DELIVERED JULY 11th, 1936

*In the
Supreme
Court of
Ontario.*

S.C.O.

A. VIVIAN MANSELL
AND
THE STAR PRINTING
& PUBLISHING CO. OF
TORONTO, LTD.

J. M. BULLEN, K.C., and R. M. FOWLER,
for the Plaintiff.

D. L. McCARTHY, K.C., and A. STARK,
for the Defendants.

No. 7.
Reasons for
Judgment of
Rose, C.J.
H.C., 11th
July, 1936.

10 The plaintiff carries on business in London, under the name of A. Vivian Mansell and Company, as a printer and publisher of fine-art colour prints. He acquires paintings, sometimes by purchase and sometimes by having them executed to his order, and reproduces them in various forms and sizes; and he sells the reproductions, sometimes for framing but more frequently for use by the manufacturers of boxes, calendars, Christmas cards, and so forth. The defendants publish a weekly paper called The Toronto Star Weekly, which includes what is called a colour-gravure section, consisting of reproductions of pictures in colour, reproductions of photographs with some descriptive reading matter, and a number of advertisements. The plaintiff
20 alleges that in each of ten issues of the paper the defendants, without his authority, published reproductions in colour of paintings of which he owned the copyright. He complains of thirty-nine of these infringements—one or more of them in each of the ten issues, and he claims damages for the infringement, and, under s. 20 (4) of the Copyright Act as amended in 1931 by 21-22 Geo. V., c. 8, s. 7, a part of the profits made by the defendants from the infringement, and also, under s. 21 of the Act, damages for conversion. There is no question as to the publication, and there is no real doubt that the plaintiff was the owner of the original paintings; and while the evidence on this point is somewhat indefinite, I think that it is sufficiently proved that at the time
30 of the acquisition of each painting he acquired also the artist's rights in respect of copyright. The defences are a denial of the existence of copyright, a denial that the plaintiff has suffered damages, an assertion that the reproductions were published with the authority of the plaintiff's authorized agent, and an allegation that the defendants were not aware, and had no reasonable ground for suspecting that copyright subsisted, and, therefore, that by s. 22 of the Act the plaintiff's only remedy is an injunction. The defendants have paid into Court \$2,500. as a sum sufficient to satisfy all of the Plaintiff's claims.

40 The publications complained of took place in March, April, May, June, and July, 1932; and the writ was issued soon after the last publication, but for some reason, the action was not brought to trial for more than three years.

Many years ago the plaintiff had an arrangement with a Mr. Ridout, now deceased, by which Ridout, in Toronto, sold the plaintiff's goods on commission, and books containing samples of many of the plaintiff's pictures

*In the
Supreme
Court of
Ontario.*

No. 7.
Reasons for
Judgment of
Rose, C.J.
H.C., 11th
July, 1936.
—continued.

had been left with Ridout. When Mr. Ridout died part of his business was taken over by the Artists' Supply Company of which Mr. A. W. Arnott was manager, and Arnott continued to represent the plaintiff. He obtained possession of such of the plaintiff's sample-books as were in Ridout's place of business, and from time to time thereafter other sample-books were supplied to him and he was given specimens of new reproductions of pictures to be inserted in books that he had on hand. His agency was terminated in 1923. In 1926 there were some discussions looking towards the re-establishment of the agency (see exhibit 19) and it seems that a loose understanding that Arnott should be paid a commission on such business as he might send to the plaintiff was reached; but Arnott did not again become the plaintiff's Canadian representative, and, although thereafter he bought prints from the plaintiff from time to time, either to fill orders which he had taken or for re-sale, it is, I think, established by the evidence that, whatever his authority may have been before 1923, he had not in 1932 any authority from the plaintiff to consent to the publication of works the copyright in which was owned by the plaintiff.

Early in 1932, Arnott was visited by a member of the defendants' staff, Mr. Pascoe, who was looking for pictures suitable for reproduction in the "Star Weekly". Pascoe was allowed to take away a number of the plaintiff's prints for submission to the defendants' art-editor. There was some discussion about copyright. The evidence as to what was said is somewhat conflicting (as might have been expected, the trial taking place some three and a half years later). Mr. Pascoe seems to think that Mr. Arnott said that the prints were old (as most of them were) and that there was no copyright; but Arnott denies this, and I do not think that in fact he made the statement. Pascoe had spoken to a solicitor about copyright in general, and had been informed, as he understood, that there was no copyright in pictures of which prints had been in Canada before the Canadian Act of 1921 had come into force; and I think that, assuming that all of these prints had been in Canada for a long time, he assumed also that there was no copyright in any of them; but I think that what Arnott really said was to the effect that if there was any copyright the plaintiff was the owner of it, and that if permission to use such prints as the art-editor might select was requisite, he (Arnott) could not give it, but that it would have to be obtained from the plaintiff. Arnott thought (and other persons of wide experience who gave evidence at the trial are of the same opinion) that the publication would be of benefit to the plaintiff as an advertisement. The practice of the defendants is to publish with each picture what they called a "credit-line", that is to say, a statement that the publication is by the courtesy of someone named; and some publishers of and dealers in prints believe that this kind of publication of their pictures in illustrated periodicals increases their trade, either by creating a demand for the pictures published or by directing prospective purchasers of prints to the establishments named. In the present case the "credit-line" was "Courtesy Artists' Supply Co., Toronto". Pascoe says that Arnott stipulated for this form. Arnott says that he did not, and that when he saw the pictures in the "Star Weekly" he supposed that the

defendants had communicated with the plaintiff and had acted upon his instructions; but, whether he had or had not said anything about the form of "credit-line" that he would like the defendants to publish, he was pleased rather than annoyed by the publication. The plaintiff holds very different views. He says that his market for a print is destroyed by publication of a reproduction of it in a newspaper—that he would not think of offering to a customer, *e.g.*, a manufacturer of paper boxes, any print that had been so published. He disagrees with a New York publisher, called as a witness, who says that he endeavours to get the magazines to publish his pictures because he believes that "the public buys greatly what it sees most."

The plaintiff came to Toronto in June, 1932. On the day of his arrival he saw a copy of the "Star Weekly" of June 18, in which copies of two of his pictures appeared. He called promptly at the defendants' offices and had an interview with the defendants' managing editor and lodged a complaint. There was a long interview, Pascoe, who was not in the offices when the plaintiff arrived, being sent for and finally appearing and taking part in the discussion. In the process used by the defendants the pictures that are to make up a page of an issue of the paper are fastened (sometimes after some cutting down) to a sheet of cardboard, a good many to the sheet. The "boards" used in the preparation of those issues of the paper in which copies of pictures owned by the plaintiff had appeared were produced, as were also the boards that had been prepared for some future issues, and the plaintiff pointed on the several boards to the pictures that he owned. Again there is contradictory evidence, but I think that it is probable that finally the plaintiff said that Arnott, rather than the defendants, was to blame for what had been done; that he would take no action in respect of past publication; and that he consented to the publication of the prints that had been got ready for inclusion in forthcoming issues. But a definite finding of fact as to what was said would be difficult to make, and need not be made if the opinion as to the law which I am about to express is correct; because there was no consideration for the promise (if there was in effect a promise) not to sue in respect of past publications, and the only picture belonging to the plaintiff and published after the interview "Summertime," (in the issue of July 9) was one in which, as I think, the plaintiff had no copyright in Canada.

Some of the pictures in question were painted before and some after the Imperial Act of 1911 (1 & 2 Geo. V., c. 46) came into operation in the United Kingdom, but all of them except three were painted before the day (January 1, 1924) on which the Canadian Act of 1921 (now R.S.C. 1927, c. 46) was brought into force. There is no doubt about the copyright in the three pictures. The author was a British subject resident in England and under contract of service with the plaintiff, and they were painted for the plaintiff in the course of the artist's employment. Therefore, by s. 4 of the Canadian Act, copyright subsisted in Canada, and by s. 12 (1) (b) the plaintiff was the owner of it. But, in my opinion, the plaintiff had no copyright in Canada in the other pictures at the time of the publication complained of.

In Canada since the passing of the Act of 1921 no person is entitled to

*In the
Supreme
Court of
Ontario.*

No. 7.
Reasons for
Judgment of
Rose, C.J.
H.C., 11th
July, 1936.
—continued.

In the
Supreme
Court of
Ontario.

No. 7.
Reasons for
Judgment of
Rose, C.J.
H.C., 11th
July, 1936.
—continued.

copyright or any similar right in any artistic work otherwise than under and in accordance with the provisions of the Act or of another statutory enactment for the time being in force (R.S.C. c. 32, sec. 45); and, subject to the provisions of the Act, copyright shall not subsist in any work made before January 1, 1924, otherwise than under and in accordance with the provisions of s. 42(s. 42 (5)). The relevant provisions of s. 42 are that where any person is immediately before January 1, 1924, entitled to any such right in any work as is specified in the first column of the first schedule to the Act (*i.e.*, in the case of artistic works, to “copyright”) he shall as from that date be entitled to the substituted right set forth in the second column of that schedule (*i.e.*,¹⁰ to “copyright as defined by this Act”). Therefore, unless the plaintiff immediately before January 1, 1924, was in Canada entitled to copyright in these paintings, he was not at the time of the alleged infringement entitled to copyright as defined by the Act or to any similar right.

In the United Kingdom before the Act of 1911, copyright in pictures depended upon the Fine Arts Copyright Act of 1862 (25-26 Vict. c. 68). But that Act did not extend to any part of the British dominions outside the United Kingdom; *Graves v. Gorrie*, [1903] A.C. 496; and certainly until 1911 copyright in Canada in artistic works depended solely upon the Canadian statute. By the Imperial Act of 1911 copyright as defined in that Act was²⁰ conferred upon those persons who immediately before the commencement of that Act were entitled to copyright under the Act of 1862, and, of course, upon the authors of artistic works produced after the commencement of the Act of 1911 and their assigns; so that it may be assumed for the purposes of the present case that immediately before January 1, 1924, the plaintiff, in the United Kingdom, had copyright under the Act of 1921 in the artistic works here in question. But the Imperial Act of 1911 does not extend to a self-governing dominion unless declared by the Legislature of that dominion to be in force therein (s. 25), and it has not by the Parliament of Canada been declared to be in force in Canada. Under sec. 26, where His Majesty³⁰ in Council is satisfied that the law of a self-governing dominion to which the Act does not extend provides adequate protection within the Dominion for the works of authors who at the time of the making of the work were British subjects resident elsewhere than in that dominion, His Majesty in Council may, for the purpose of giving reciprocal protection, direct that the Act (or parts of it) shall, within the parts of His Majesty’s dominions to which the Act extends, apply to works the authors whereof were, at the time of the making of the work, resident in the first-mentioned dominion, and to works first published in that dominion; but such an order does not confer any rights within the self-governing dominion. And by s. 25 (2), if the⁴⁰ Secretary of State certifies by notice published in the *London Gazette* that any self-governing dominion has passed legislation under which works, the authors whereof were at the date of the making of the works British subjects resident elsewhere than in the dominion, enjoy within the dominion rights substantially identical with those conferred by the Imperial Act, then whilst such legislation continues in force, the dominion shall, for the purposes of the rights conferred by the Imperial Act, be treated as if it were a dominion

to which that Act extends. After the Canadian Act of 1921 had been passed, such a certificate was issued (Statutory Rules and Orders, 1923, p. 168). Canada, therefore, for the purposes of the rights conferred by the Act of 1911, is to be treated as from January 1, 1924, as if it were a dominion to which that Act extends; but that is not to say that the Act does, or immediately before January 1, 1924, did, extend to Canada in the sense of conferring copyright within Canada upon those persons who in the United Kingdom, immediately before January 1, 1924, possessed copyright. The plaintiff, therefore, is not helped by the Act of 1911, and he has no rights in Canada in respect of the works produced before 1924 unless immediately before January 1, 1924, he was by a Canadian statute entitled to copyright in them.

The Canadian statute that was in force immediately before January 1, 1924, was Part I of the Copyright Act, R.S.C. 1906, c. 70, with some amendments which are not of importance in this case.

The sections important here are s.s. 4 and 6. The relevant part of s. 4 is as follows: "Any person domiciled in Canada or in any part of the British possessions . . . who is the author of . . . any original painting . . . and the legal representatives of such person"—this expression included assigns—"shall, for the term of twenty-eight years *from the time of recording the* 20 *copyright thereof*, in the manner hereinafter directed have the sole and exclusive right and liberty of . . . publishing, reproducing and vending such . . . artistic work . . . in whole or in part . . ." And the relevant part of s. 6 is as follows: "The condition for obtaining such copyright shall be that the said . . . works shall be printed and published or reprinted and republished in Canada, or in the case of works of art that they shall be produced or reproduced in Canada, whether they are so published or produced for the first time, or contemporaneously with or subsequently to publication or production elsewhere." The copyright of these artistic works had not been recorded. Therefore, the exclusive right of reproduction, which 30 under s. 4 ran from the time of the recording, had not come into existence. Moreover, the condition stated in sec. 6, for "obtaining" copyright had not been complied with. Therefore, the case of *E. W. Savory, Limited v. The World of Golf, Limited*, [1914] 2 Ch. 566, upon which counsel for the plaintiff placed great reliance, is not in point.

In *Savory v. The World of Golf*, the plaintiffs, while the Fine Arts Copyright Act of 1862 was in force, had purchased a sketch and obtained an assignment of the artist's rights in respect of copyright, but had not effected registration. Therefore, by s. 4, although they were the "proprietors" of the copyright, they were not "entitled to the benefit" of the Act, or to main- 40 tain an action in respect of an infringement. The Act of 1911 repealed the Act of 1862, except sections 7 and 8, which have no bearing upon the present discussion, and swept away the whole machinery of registration, and it gave, in words which have been copied in the Canadian Act of 1921, copyright as defined by the Act of 1911 to every person who immediately before the commencement of the Act was "entitled to" copyright. The plaintiffs, the "proprietors", had been, immediately before the commence-

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ment of the Act of 1911, entitled to copyright, although not entitled to sue under the Act of 1862. Therefore, they were, under the Act of 1911, entitled to the substituted right of copyright as defined by that Act, and to maintain their action for infringement. But the Canadian Act of 1906 did not say, as did the Fine Arts Copyright Act of 1862, that no "proprietor" of a copyright should be entitled to the benefit of the Act "until" registration; and it did not say, as did the Act of 1862 (s. 1) that the author and his assigns should have the sole and exclusive right of reproducing the work. What it did say was (s. 4) that the author and his assigns should from the time of recording have the sole and exclusive right of reproducing the work; that (s. 6) 10 the condition for obtaining the copyright should be printing and publishing, or reprinting or republishing in Canada; and (s. 12) no "person" should be entitled to the benefit of the Act "unless" he had registered; and (s. 14) that no person should be entitled to the benefit of the Act unless, in a manner prescribed, he had given information "of the copyright being secured." Thus the whole scheme of the Canadian Act of 1906 was different from that of the Fine Arts Copyright Act of 1862. Under the Act of 1862, copyright existed from the moment of the production of the work, and (s. 3) was the personal estate and assignable at law; whereas under the Act of 1906 copyright did not exist until it had been "secured" by registration; and what 20 before registration was assignable was (s. 17) "the right of an author . . . to obtain a copyright." And so, to repeat, *E. W. Savory, Limited v. The World of Golf, Limited* has no application.

The defence based upon s. 22 of the Act has been mentioned and the evidence bearing upon it has been stated, but the defence itself has not been discussed. Pascoe's experience had led him to believe that the general opinion in the trade was that publication such as was contemplated was beneficial to the owners of copyright, and I think that he acted largely upon the belief that it was improbable that the plaintiff, if he had copyright, would raise any objection. I think that he did not trouble to enquire very closely into 30 the existence of copyright, and that if he had enquired particularly he would have learned that the pictures in respect of which I think the plaintiff is entitled to sue were comparatively recent works and probably were the subject of copyright, and so, while the defendants did not actually know that copyright in those works subsisted, it is my opinion, upon the whole of the evidence as to the events that preceded the publication, that the defendants have failed to prove that they had "no reasonable ground for suspecting" that copyright subsisted. Ever since the Act of 1921 came into force there has been ground for *suspecting* that almost any artistic work which is not known to be old is the subject of copyright; and I do not think that a person 40 who publishes a work, in the circumstances in which these defendants published the plaintiff's three pictures, can be said to have proved that he had no reasonable ground for suspecting that copyright subsisted merely because he has proved that he did not in fact know that the work had not been produced before 1924. Therefore I think that the plaintiff is not by s. 22 limited to the remedy of an injunction, and I proceed to consider the remedies to which he is entitled.

The three artistic works reproduced by the defendants in breach of the plaintiff's exclusive right were by the defendants given the titles "At the Seaside," "Cherries," and "Pierrette." The first mentioned appeared in the issue of the "Star Weekly" of May 28; the others in the issue of June 4, 1932. (In the form in which they are published by the plaintiff, they are on pages BB, FF and HH of exhibit 1). They are far from being the best of the plaintiff's pictures reproduced by the defendants. In the issue of the "Star Weekly" of May 14, 1932, there was a reproduction of a painting for which the plaintiff had paid 125 guineas, but these three were the work
 10 of an artist who was employed by the plaintiff at a moderate weekly salary and who did not spend a very long time on any one picture. The first, "At the Seaside," is a picture of a girl in a bathing suit which the plaintiff says is in the style of 1927 or 1929. Probably the costume was no longer fashionable in 1932. The other two may be said to be pleasing bits of decorative work, suitable no doubt for the ornamentation of covers of papers boxes, but not of outstanding merit. There is no proof that as a result of the reproduction by the defendants the plaintiff lost any sales, and the probability is that he did not lose any; for even if, as the plaintiff believes, publication in newspapers detracts from the marketability of the pictures, the plaintiff's
 20 business in Canada at the time of the publication was quite small, and the circulation of the "Star Weekly" in England was negligible. I doubt, therefore, whether the plaintiff suffered any damages "due to infringement", and I think that his recovery under s. 21 (1) and the first four lines of s. 20 (4) of the Copyright Act as amended in 1931 (1931, c. 8, s. 7) must be of nominal damages only.

By s. 20 (4) the plaintiff is entitled, in addition to the damages, to "such part of the profits which the infringer shall have made from such infringement as the court may decide to be just and proper." The defendants in 1932 made a weekly net profit from the publication and sale of the "Star
 30 Weekly" and an estimate of the average amount of that weekly profit was prepared by the proper officer and submitted to and accepted by counsel and put in writing in a sealed envelope so as to be available in case it was deemed to be material. I was informed that the amount was substantial, but I have not opened the envelope; because I think that it is quite impossible by any calculation to reach the conclusion that any definite fraction of the profit realized from the publication and sale of the issues of May 28 and June 4 was so realized as a result of the printing of the plaintiff's pictures. The paper is a bulky production containing many pages of reading matter, partly news and partly articles of the magazine-type, and the "colour-gravure
 40 section", and the plaintiff's pictures covered only a comparatively small part of the front page of the colour-gravure section. The publication of the supplement adds to the defendants' profits in two ways; it increases the circulation of the paper, and the rates charged for advertising in the supplement are high. No doubt, therefore, the plaintiff ought, under the Act, to have some part of the defendants' profits derived from the publication and sale of the offending issues, not on the theory that persons bought copies because of the inclusion of the plaintiff's pictures, which were printed in

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“vignette” form and were not suitable for cutting out and framing or any similar use, but on the theory that by using these pictures the defendants made a profit. The fact that there were many other pictures available which would have answered the defendants’ purposes equally well, or even better, is on that theory of no importance. But it is impossible by any mathematical calculation to decide what sum it is “just and proper” to award; and so the fact that the plaintiff is entitled to an award on this score is simply something that must be kept in mind in fixing a lump sum.

The plaintiff claims damages under s. 21 of the Act also. The relevant portion of the section reads; “All infringing copies of any work in which¹⁰ copyright exists . . . shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.” The retail price of a copy of the “Star Weekly” is 10 cents, and about 250,000 copies of each of the offending issues were sold, and the plaintiff asks damages calculated in the manner usual in conversion, for each copy sold. Counsel for the defendants contend that the remedies under s. 20 and s. 21 are alternative. But the Court of Appeal in England has decided in *Sutherland Publishing Company Limited v. Caxton Publishing Company Limited*, [1936] 1 Ch. 323, that the remedies given by s. 7 of the Act of 1911, of which s. 21 of the Cana-²⁰ dian Act is a copy, and s. 6 (1), from which s. 20 (1) of the Canadian Act is taken, are cumulative; and although leave to appeal to the House of Lords was given, and an appeal, presumably, is pending, I think that I ought not to delay longer but ought to follow the judgment of the Court of Appeal, especially as the amount to be awarded on this head is not nearly as large as the figures just stated might seem to indicate.

Sec. 21 is not easy to apply when the “pirated” matter forms a very small part of the offending publication; but the procedure to be followed has been established by two cases, *John Lane, The Bodley Head Ltd. v. Associated Newspapers Ltd.* [1936] 1 All E.R. 379, and *Ash v. Dickie* [1936]³⁰ 2 All E.R. 71. What has to be ascertained is the value of the chattel which has been converted. If, as Lord Wright, M.R. said in *Ash v. Dickie*, the infringing article fills the whole of an issue of the paper there is little doubt that the price of the issue would be the correct amount of damages. But in a case like this the first thing to be ascertained is, as Romer L.J. points out, what is the chattel which by s. 21 has to be deemed to be the plaintiff’s property? The chattel does not include the whole paper in which the picture appeared. It is merely that part of the paper on which the picture was printed. “In other words,” to quote Romer L.J., “the chattel is part,⁴⁰ although a physically separable part, of a composite chattel. The other part is the property of the defendants. The chattel which is the property of the plaintiff was wrongly converted by the defendants and the plaintiff is accordingly entitled to damages for conversion” and he is “entitled to recover by damages the value of the chattel to him at the time of conversion.” His only available means of turning his chattel to profitable account was to combine with the other owners and sell as a whole. And as the chattel as

a whole has been sold, he ought to have his proper share of the purchase price. That proper share is not necessarily the fraction of the whole price which is proportionate to the space occupied by the picture; see the judgment of Du Parcq J., in *John Lane, The Bodley Head Ltd. v. Associated Newspapers Ltd.*, and the judgment of the Master of the Rolls in *Ash v. Dickie*; for the proper value of a particular part of an issue as compared with the totality must vary enormously. Therefore all that can be done is to make the best estimate that is possible upon the evidence, (if "estimate" is not, as Du Parcq J. suggests, too flattering a word). In this case I have made such an
 10 estimate and have included the amount in the lump sum that I am awarding.

Giving to all the elements—the damages, the share of profits, and the conversion—my best consideration, I fix \$600 as the sum to be awarded. I am not sure that it is not excessive; but, while the defendants, as I think, did not intend to do a wrong to the plaintiff, they appear to have acted somewhat carelessly, and when the sum to be awarded is under consideration the plaintiff, rather than the defendants, ought to have the benefit of such doubt as there may be.

The record appears to show that the defendants paid \$2,500 into Court before April 30, 1935, and that on that day the Plaintiff was given leave to
 20 amend his statement of claim by adding the claim under s. 21 of the Act for damages for conversion, and that on the same day the defendants were given leave to amend their statement of defence so as to allege that the money paid in was sufficient to satisfy the claims made in the action, including the claim last mentioned. Upon the assumption that these dates are stated correctly, I award to the plaintiff his costs of the action down to and including April 30, 1935, and to the defendants their costs from May 1, 1935, onwards. There will be a set-off of costs, and if the balance is in favour of the defendants it will be set off against the amount of the judgment; and there will be an order for payment out of Court accordingly.

30

No. 8.

NOTICE OF APPEAL TO COURT OF APPEAL

TAKE NOTICE that the Plaintiff intends to appeal, and hereby appeals from the judgment of the Honourable, the Chief Justice of the High Court dated the 11th day of July, 1936, upon the following, among other grounds:—

1. That the learned trial judge erred in finding that the Plaintiff had no copyright in Canada in thirty-one of the pictures set forth in Schedule "A" to the statement of claim filed herein.
2. That the learned trial judge erred in finding that the Plaintiff was not entitled to copyright in the said thirty-one pictures by reason of the provisions
 40 of the Imperial Copyright Act, 1911, and the certificate of the Secretary of State published in Statutory Rules and Orders 1923, page 168.

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 Court of
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No. 7.
 Reasons for
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 Rose, C.J.
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 —continued.

*In the
 Court of
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No. 8.
 Notice of
 Appeal to
 Court of
 Appeal, 11th
 Sept., 1936.

*In the
Court of
Appeal for
Ontario.*

No. 8.
Notice of
Appeal to
Court of
Appeal, 11th
Sept., 1936.
—continued.

3. That the learned trial judge erred in that he confused the application of part 1 and part 2 of the Canadian Copyright Act, 1906, R.S.C. Chapter 70.

4. That the learned trial judge erred in refusing to allow the Plaintiff to recover a share of the profits of the Defendant Company pursuant to Section 20, Sub-section 4 of the Canadian Copyright Act, 1931, chapter 8, section 7.

5. And upon such further and other grounds as counsel may advise.

DATED at Toronto this 11th day of September, A.D., 1936.

MCMMASTER, MONTGOMERY; FLEURY & CO. 10
902 Temple Building,
Solicitors for the Plaintiff.

To.

Alexander Stark, Esq.,
Star Building, Toronto,
Solicitor for the Defendant.

No. 9.

No. 9.
Formal
Judgment of
Court of
Appeal, 27th
Jan., 1937.

FORMAL JUDGMENT OF COURT OF APPEAL

THE HONOURABLE THE CHIEF JUSTICE IN APPEAL	} Wednesday, the 27th	} day of January,	} 1937. 20
THE HONOURABLE MR. JUSTICE MIDDLETON			
THE HONOURABLE MR. JUSTICE MACDONNELL			

1. Upon motion made on Tuesday, the 26th day of January, 1937, unto this Court by counsel on behalf of the Plaintiff by way of appeal from the judgment pronounced by the Honourable Chief Justice Rose on the 11th day of July, 1936, herein; in presence of counsel for all parties, and upon hearing read the pleadings, the evidence adduced at the trial, and the judgment aforesaid, and upon hearing what was alleged by counsel aforesaid,

2. THIS COURT DOTH ORDER that this appeal be and the same is hereby dismissed, with costs to be paid by the Plaintiff to the Defendant forthwith after taxation thereof.

“D’ARCY HINDS”, 30
Registrar, S.C.O.

Entered O.B. 161, page 122,
February 9th, 1937.
E.B.

No. 10.

ORDER ADMITTING APPEAL TO HIS MAJESTY IN COUNCIL

THE HONOURABLE MR. JUSTICE MIDDLETON
In Chambers

} Saturday, the 10th day
of April, A.D., 1937.

*In the
Court of
Appeal for
Ontario.*

No. 10.
Order ad-
mitting Ap-
peal to His
Majesty in
Council,
10th April,
1937.

Upon the application made by counsel on behalf of the Appellant, in the presence of counsel for the Respondent for an order admitting the appeal herein of A. Vivian Mansell from the judgment of the Court of Appeal for Ontario dated the 27th day of January, 1937, to His Majesty in His Privy Council, and approving the security for costs of the said appeal, and upon
10 hearing read the affidavit of Robert MacLaren Fowler filed and upon hearing counsel as aforesaid, and it appearing that A. Vivian Mansell has, under the provisions of the Privy Council Appeals Act, being Chapter 86 of the Revised Statutes of Ontario 1927, a right to appeal to His Majesty in His Privy Council,

1. IT IS ORDERED that the sum of Two Thousand Dollars (\$2,000.00) paid into the Canadian Bank of Commerce by A. Vivian Mansell to the credit of the Accountant of this honourable Court as appears by the receipt of the said Bank dated the 9th day of April, 1937, be and the same is hereby approved as good and sufficient security that A. Vivian Mansell will effectually prosecute his appeal to His Majesty in His Privy Council from the said judgment of
20 the Court of Appeal for Ontario, and will pay such costs as may be awarded in the event of the said judgment being affirmed.

2. AND IT IS FURTHER ORDERED that the appeal by A. Vivian Mansell herein to His Majesty in His Privy Council from the said judgment of the Court of Appeal for Ontario be and the same is hereby admitted.

3. AND IT IS FURTHER ORDERED that the costs of this application shall be costs in the said appeal.

“W.E.M.” J.A.
Entered O.B. 161, Page 395,
April 10, 1937.

“D’ARCY HINDS”
Registrar.
S.C.O.

30 “E.B.”

PART II—EXTRACTS FROM EVIDENCE

*In the
Supreme
Court of
Ontario.*

NO. 1. EXTRACTS FROM THE EVIDENCE OF
A. VIVIAN MANSELL, THE PLAINTIFF.

Plaintiff's
Evidence
No. 1
A. Vivian
Mansell
Examination

Examination-in-Chief by Mr. Bullen

Q. Will you tell his Lordship what is the nature of your business? A. Art publishing and printing.

Q. And how long have you been carrying on business along those lines, art publishing and printing?

A. About forty, forty-two years.

Q. And do you do business any place else other than England? A. Oh, yes. 10

Q. Where? A. Pretty well all over the world.

Q. Do you do business in Canada? A. Yes.

Q. And when you say art publishing and printing, will you give his Lordship some intimation of what the nature of that is, keeping in mind its materiality to this action? That is, do you sell originals? A. Oh, no; we buy and we commission originals.

Q. You which? A. We commission and we buy originals.

Q. What do you mean by commissioning originals?

A. Tell the artist to paint what we want him to paint.

Q. And he paints the picture? A. He paints the picture. 20

Q. You pay him for it? A. Certainly.

Q. Then what do you do when you get the original picture? How do you make your money out of that?

A. We reproduce it in blocks, in various sizes; you see reproductions there.

Q. When you say you reproduce it in blocks in various sizes, that is to say, you make a print of the picture?

A. That is right. That is taken from the original picture.

* * * * *

MR. BULLEN: Q. Will you explain to the Court some of the different uses you said they were sold for; all sorts of things, I think, was your expression, Mr. Mansell. Will you explain to the Court the uses to which you put them? 30
A. Sold for framing, for box tops, for calendars, for—oh, so many uses that I can't think of them all—lamp shades, everything.

Q. What goes to make up the saleability of each individual print? A. The originality, and the quality of the subject, and the subject itself.

Q. What has originality to do with it?

A. Well, it has got to be something out of the ordinary, otherwise people would not be interested in it.

Q. Would the publication in a newspaper of say 250,000 circulation affect the saleability, in your opinion, at all? A. Oh, yes, unless I controlled it.

Q. How do you say it does affect the saleability? 40

A. My customers, if they see a picture of mine in a paper such as the Toronto Star, they can come back on me, "I have seen that in the Star." They will ask me when I show them my collection of prints, "Who has had this?" If I say the Star has had it, there is no remark made, but it is turned over.

Q. It is turned over? A. Finished.

Q. When you say there is no remark made, what do you mean by that?
A. The customer doesn't go into it. It is public, it is publicity, and he is finished with it.

Q. Would that affect your sales in England at all?

A. Well, it would.

Q. In what manner? A. You see, I do a very considerable business with the supplement people in England.

HIS LORDSHIP: Q. With whom? A. With the supplement people, my
10 Lord, people who issue supplements with their newspapers.

MR. BULLEN: Q. Yes? A. Such as the Amalgamated Press, the Harmsworth people, and all those people.

Q. Yes? A. They are bound to ask me who has had this; if I tell them it has been used as a supplement, that would finish it.

Q. Outside of asking you what occasion would arise of which they would ask, say the picture had been published in the Toronto Star? A. I would not show it to them.

* * * * *

MR. BULLEN: Q. Then, Mr. Mansell, having Exhibit 3 before you, will you turn to the issue of the "Star" of the defendant company of March 12,
20 1932, and tell me if there is contained therein any of what you claim as being your pictures? A. Yes; here is one.

Q. What is the name of it? A. They call it "Young Mariners". My title is "The Captain and His Crew."

Q. When you say your title, from whom did you get the original of that picture? A. Fred Morgan.

Q. He being who? A. The artist.

Q. When you say you got it, did you commission him to paint it? A. Yes.

Q. Did you pay him for it? A. Yes.

Q. Did you get a receipt for your payment? A. Yes.

30 Q. Did you get anything else besides a receipt for the money from him?
A. Our usual receipt for a picture.

* * * * *

MR. BULLEN: Q. Then will you tell us what was on the receipts? A. "Received from A. Vivian Mansell & Company the sum of so-and-so for a picture entitled 'The Captain and His Crew' with full copyright."

Q. "With full copyright"? A. Yes; then the signature of the artist.

* * * * *

Q. What was on the receipt? A. Just what I have told you.

Q. Then when you mention receipt, did you get copyright when you got your receipts? A. Yes; the receipt is no good without copyright to us.

Q. Why are you so emphatic that you got copyright?

40 A. Because you don't buy anything from an artist unless you have got the full copyright. What is the good of my business unless I have got full copyright

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence
No. 1
A. Vivian
Mansell
Examination
—continued

with everything? Supposing half a dozen of us had the same picture, look at the confusion, all over the world; no one would be secure.

* * * * *

- Q. "Stalkers", D in Exhibit 1, was a Royal Academy picture? A. Yes.
- Q. You say you purchased that from Arthur Wardle?
- A. Yes.
- Q. Who hung it in the Academy, do you know?
- A. No.
- Q. Well, who exhibited it? A. Well, Arthur Wardle.
- Q. Arthur Wardle exhibited it in the Academy, and I understand you purchased from him? A. That is right. 10
- Q. After the Academy showing? A. After the Academy.
- Q. When you purchased it did you get a receipt from him. A. Yes.
- Q. Containing full copyright to the picture?
- A. Absolutely.

* * * * *

- Q. Well, can you tell me approximately—I don't want the exact date—as to when, if you can go back, you got "The Captain and His Crew", or the "Young Mariners", as they call it? That is on the issue of—
- A. I won't be able to give you the date.
- Q. Well, when I say the date, approximately?
- A. Approximately I can, yes. 20
- Q. Well, when did you get that? A. "The Captain and His Crew", I think it was about 1908 or 1910.
- Q. 1908 or 1910? A. Yes.
- Q. In that neighbourhood. That is a Morgan?
- A. Yes, Fred Morgan.
- Q. Then take the others you have just given me out of the issue of April 2, 1932; do you know the dates of those pictures? A. Fairly well.
- Q. Take "Eileen", or the "Shamrock", as they call it?
- A. 1912.
- Q. The "Stalkers"? A. The "Stalkers", 1913, '14. 30
- Q. 1913 or 1914. Then "It Never Rains But It Pours"—
- HIS LORDSHIP: Q. Is that the year you say it was in the Academy, the "Stalkers"? A. The "Stalkers"? Oh, Lord, no! The "Stalkers" was in the Academy in nineteen—there is a picture—it is illustrated in the Academy books. I will give you the year: I think it was about 1907.
- MR. BULLEN: Q. You think it was in the Academy about 1907?
- A. At any rate, there is an illustration in the Academy book here. It was an important picture.
- Q. Then "It Never Rains But It Pours"—their title, "The Intruder"? A. 1911. 40
- Q. Then "Going to the Meet"? A. That is rather early, I would say about 1908.
- Q. 1908 you think that was. And "Highland Cattle"?

- A. "Highland Cattle", about 1910.
- Q. Now will you turn in that file, Exhibit 3, that you have, to the issue of April 9 and see if you recognize in that any of your pictures? A. Yes, there are two here.
- Q. They are called what? A. "An Eastern Belle" and "A Spanish Beauty". They have changed my titles, I believe.
- Q. From whom did you purchase "An Eastern Belle"? A. "An Eastern Belle" was a Lynde.
- Q. How do you spell that? A. Raymond L-y-n-d-e.
- 10 Q. Did you commission him to paint that picture? A. Yes.
- Q. You commissioned Lynde to paint that picture? A. But that is not our title, I am sure.
- Q. I don't think you had a title on it? A. Yes, I did. I think we call it "A Belle of Cashmere".
- Q. Well, anyway, I haven't got it. You think you call that picture "The Belle of Cashmere"? A. May I see that sir?
- Q. There is nothing on mine. A. Yes, all right—"A Belle of Cashmere".
- Q. You call that "The Belle of Cashmere"? A. Yes.
- 20 Q. But there is nothing on the picture you furnish me? A. No, there would not be a title there, but I know that picture was "The Belle of Cashmere".
- Q. And you got it, you say, from Lynde? A. Lynde.
- Q. He being who? A. The artist.
- Q. And did you get a receipt for your money, and did you get an assignment of the copyright in that? A. Yes.
- Q. In the same form as you have told us about the other pictures. 30 A. Yes.
- Q. What about I in Exhibit 1, that you say is entitled there "A Spanish Beauty"? A. Isn't that "Dolores"?
- Q. Yes, that is your "Dolores"? A. That is right.
- Q. From whom did you get that picture? A. Lynde.
- Q. That is another Lynde? A. Yes.
- Q. And does the same thing apply as applies to "A Spanish Beauty"? A. Yes.
- Q. The same thing applies to the "Dolores" as applies to "The Spanish Beauty"? A. Yes.
- 40 Q. That is the picture you have just been telling me about—"Eastern Belle"; change that, Mr. Reporter, will you please. It is not "Spanish Beauty", it is "Eastern Belle", he calls the one of the girl with the jug on her shoulder. That is what you call it in the "Star". The "Spanish Beauty" is the one we call "Dolores". Can you give us the date that you got these pictures from Lynde? A. Around about 1910 or 1911.
- Q. 1910 or 1911? A. Yes.

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Q. Then may we have the copy of the paper of May 7, 1932, and while you are turning to that, did you give anybody in Canada the right to publish these pictures that I have just been speaking to you about in the paper of April 9, 1932?

HIS LORDSHIP: Isn't he making that statement about all these pictures complained of? A. Yes, I am.

MR. BULLEN: Q. That applies to all the pictures that are complained of? A. Absolutely.

* * * * *

MR. BULLEN: Q. Mr. McCarthy would like the dates if you can give them, Mr. Mansell. Cast your mind back to the pictures I have just been asking you about, "The Nibble", "The Kill" and "Fishing"?

A. "Fishing" was quite an early picture, about 1908.

Q. Yes? A. "The Kill"—is that our title, sir?

Q. No. A. I thought it wasn't.

Q. No, your title to that picture is "The Pack at His Heels"? A. That is it, "The Pack at His Heels".

Q. You got that from Mr. Wells? A. Sanderson Wells.

Q. I am asking you when you got that?

A. About 1909, 1910.

Q. Around 1909 or 1910? A. Yes.

Q. What about "Fishing"? A. "Fishing", that is our picture "On Duty". They call it "A Nibble".

Q. No. I asked you about that, the date, the one with the kitten and the bowl, "Fishing"? A. The kitten and the goldfish bowl.

Q. Well, what about "On Duty"? A. "On Duty", I would say, is around about 1912 or 1913.

Q. 1912 or 1913? A. Yes.

* * * * *

Q. You are all right so far, but go ahead. Whom did you get that picture from, "Let's be Friends"?

A. That is an Arthur J. Elsley.

Q. Did you commission him? A. Yes.

Q. For that particular picture? A. Yes, sir.

Q. And did you get an assignment of the copyright?

A. For all the pictures Elsley ever painted me, commissioned.

Q. About when, do you know, did you commission Elsley to paint this picture? A. I would say about 1912.

Q. I have not asked you—not that I think it is material, but it might be interesting for the purpose of the record—what did you pay the artists for these pictures? A. Well, he is a very expensive man, this particular man.

Q. What did you pay him? A. 125 guineas.

Q. You would pay him 125 guineas? A. 125 guineas.

Q. 125 guineas for the original of that picture?

A. Yes, and copyright.

Q. I suppose, yes, that would be included in the price? A. In every case.

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Q. Go back on some of the others; may I ask you about Mr. Margetson? Is he as expensive as Mr. Elsley?

A. No, not nearly.

HIS LORDSHIP: Mr. Who?

WITNESS: Elsley.

MR. BULLEN: Margetson, I asked him.

Q. If I remember rightly, he is the chap that does the— A. That is right, "Eileen".

Q. For instance, "Eileen", do you remember what you paid for that?
10 A. About 25 pounds, perhaps thirty.

Q. About twenty-five pounds? A. Yes, or perhaps thirty.

Q. Well, take Morgan? A. Oh, he is very dear.

Q. Do you remember what you paid him? A. 125.

Q. For "The Captain and His Crew"? A. That is right.

Q. 125 guineas you paid for that? A. Guineas.

Q. What about "Stalkers"? One of Wardle's, was it?

A. That is a very dear picture, but I bought it very cheap.

Q. What did you get it for? A. I think I gave 65 guineas for it. At
one time I thought I had given 150; he wanted 150 for it.

20 Q. What about Sanderson Wells? How do his prices run?

A. His prices run always between 21 and 25.

Q. Guineas or pounds? A. Guineas.

Q. Now, you were telling me about "Let's be Friends", and I think you told me the year and the price and the fact that that was a commission?

A. That is an Elsley, 125 guineas.

* * * * *

MR. BULLEN: That is a misprint; it should be "Out of the Spinney".

Q. Whom did you get that picture from?

A. Arthur Wardle.

Q. That is another Wardle. How much did you pay for that, do you
30 know? A. Yes; twenty-five, thirty.

Q. Twenty-five to thirty guineas? A. Yes.

Q. Was he commissioned to paint that picture?

A. Yes. That is one of a set of six that I have got the whole six here.

Q. Well, you commissioned him to paint the picture; and did you get
an assignment of the copyright?

A. Yes.

Q. As well as a receipt for your money from Mr. Wardle for that picture?
A. Yes.

Q. Now will you turn to the issue of May 21?

40 MR. MCCARTHY: What is the date of that?

MR. BULLEN: Q. My friend wants the date of Mr. Wardle's "Out of
the Spinney"? A. 1910.

Q. 1910, you say? A. I am not too sure, you know, to a year or two.
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Q. Of the dates? A. About the date, yes. It is too much to expect me to go back twenty-five years, you know, and give you the exact year. I can give you fairly good and reliable particulars in the way of dates, but I won't undertake to be exact.

* * * * *

Q. Who puts this on in the lower right-hand corner, "Copyrighted and published by A. Vivian Mansell & Co., London"? A. We do. "Duck and Green Peas".

Q. Do you know when you got that picture, "Clan on the Ramparts"? A. About 1909.

Q. About 1909? A. Yes. 10

Q. Did you commission the painting of that, do you know? A. No, no. That is a Spencelayh.

Q. Which picture are you talking about?

A. Oh, are you speaking about "Highland Cattle"?

Q. Yes, stay with it until I have finished it. Did you commission "Highland Cattle"? A. Yes.

Q. Now I am finished with that one for the time being at any rate, and I am turning now to the next one on the list, "Duck and Green Peas"; is that your title?

A. Yes. 20

Q. You use the same title. Whom did you get that picture from? A. Charles Spencelayh.

Q. Who is Mr. Spencelayh? A. An artist.

Q. And did you commission him for that picture, do you know? A. No; not any of Spencelayh's, that I know of.

Q. Not any of Spencelayh's? A. No.

Q. Do you know the date? A. About 1910.

Q. And did you get an assignment of the copyright of that picture? A. Oh, yes.

Q. Did you get an assignment of the copyright in writing signed by the 30 artist for all these pictures?

A. Oh, yes; the usual form of a receipt with full copyright.

Q. Now let us take "Fast Asleep"; that is the next one I have. Do you see that in the issue of May 21?

A. Yes.

Q. Under what title? A. Our title.

Q. What is the title in the newspaper?

A. "Fast Asleep".

Q. That is the same as your title? A. Yes, I think that is the—

Q. Whom did you get that from? A. That is J. Sheridan Knowles. 40

Q. That is a Sheridan Knowles, you say; did you commission him to paint that? A. Yes.

Q. Did you pay him for it? A. Yes.

Q. When? When did you commission him to paint it, and when did you get it? A. About 1911.

Q. Now, what about "A Brunette"? Do you see a picture there entitled "A Brunette"? A. Yes.

Q. Is that your title? A. I don't think so.

Q. The one I have got in my book is "Janet"?

A. That is right, that is it, that is "Janet".

Q. Who painted that picture? A. Vernon.

Q. Vernon who? A. Vernon, Emil Vernon.

Q. That is a Vernon? A. Emil Vernon.

Q. Did you commission him to paint it?

10 A. Yes—no, I don't think I did.

Q. You are not able to swear as to that?

A. I am not able to swear to that.

Q. You are not able to swear as to whether you commissioned the painting of that? A. No.

Q. Our "Janet", their "Brunette". What time did you get that picture?

A. I would say about 1912 or 1913.

MR. BULLEN: I have not asked him as to whether he got an assignment of the copyright and got a receipt for his money and that sort of thing, my Lord. He said he got them for all, and I suppose that is sufficient.

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20 Q. Yes. The one you hand me is S in Exhibit 1, "A Daughter of Erin". Whose is it? Who painted it?

A. Sydney Kendrick.

Q. This is a new man, Kendrick? A. Yes.

Q. Did you commission him? A. Yes.

Q. Has he painted more than one picture for you?

A. Oh, yes, lots.

HIS LORDSHIP: Q. What was his name? A. Sydney Kendrick.

MR. BULLEN: Q. You commissioned him to paint that picture: my friend would like to know when?

30 A. 1912.

Q. Around 1912? A. Yes.

Q. Any other in that issue? A. Yes; here is one, "The Otter's Halt".

Q. That is your title? A. Yes.

A. That is the same title? A. Yes.

Q. No title change there. Who painted that picture?

A. Arthur Wardle.

Q. Was he commissioned to do it, do you know?

A. Yes.

Q. You are able to swear that he was?

40 A. Yes; it is one of a series.

Q. Commissioned to do it by whom? A. By me.

Q. When? A. About 1911 or 1912.

Q. Now, there are two others there you do not complain of. Now will you turn to the issue of May 28, 1932, in Exhibit 3, and tell me if you see any pictures there that you complain of being yours and published without your

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consent? A. There are five on this sheet—six. One, two, three, four, five, six.

Q. Well, taking them in the order that they are set out in the schedule, which Mr. Fowler will show you, will you tell me what is the name of the first one?

A. That is a Margetson, "Reflections".

Q. Is that the title in the "Star"? A. Yes, "Reflections".

Q. That is your title also, is it? A. Yes.

Q. The same title there? A. Yes.

Q. You say that is a Margetson? A. Yes, W. H. Margetson. 10

Q. Was he commissioned to paint that? A. Yes.

Q. By whom? A. Me.

Q. And you paid him and got a receipt?

A. (No answer).

HIS LORDSHIP: Q. Who was the artist?

A. W. H. Margetson.

MR. BULLEN: Q. That is a Margetson? A. Yes.

Q. Do you know the date that you commissioned him to paint that? What do you say? A. 1913, 1914.

Q. 1913 or 1914; he is a little later than the other chaps? A. Yes. 20

Q. What about "Noonday Rest"? Do you find that picture there? A. Yes.

Q. Is that your title to it? A. I think so, yes.

Q. Well, the one I have hasn't any title.

A. No title, is there no title on our print?

MR. MCCARTHY: Yes, we have it.

MR. BULLEN: Q. "Noonday Rest", who painted that picture? A. Adams.

Q. Charles Adams? A. Charles Adams, that is right.

Q. His name is right on this one, but it would not be there, I suppose? 30

MR. FOWLER: It is here.

MR. BULLEN: Q. Mr. Adams painted that; did you commission him to paint it? A. No.

Q. That was not a commission? A. I don't know. That is one of a series of four.

Q. Well, do you know whether you did or not?

A. No, I am not quite sure. There was only one transaction I had with Adams, and I am not sure.

Q. You are not sure as to whether you commissioned him to paint that picture? A. I am not sure, but I would be inclined to—I don't know. I 40 only had one dealing with him.

Q. Do you know what you paid for it?

A. Yes; I paid 42 pounds—42 or 45 pounds for all four of them.

Q. 45 pounds for four of them? A. Yes.

Q. Somewhat similar subjects, I suppose?

A. Yes. Well, he only painted that sort of stuff, landscape and cattle, you know.

- Q. Do you know the time? A. About 1912.
- Q. Now, the next hunting picture—do you see another picture there, a hunting picture? A. Yes.
- Q. What is the title in the “Star”? A. “Tally Ho”.
- Q. Is that your picture? A. Yes, my picture.
- Q. Now we are into my learned friend’s particular field, the hunting. Is that your title to the picture, “Tally Ho”? A. I don’t think so.
- Q. What do you think your picture is entitled?
- A. It is “Woo Whoop”.
- 10 Q. Whose picture is that? A. J. Sanderson Wells.
- Q. I notice that he paints all the hunting scenes?
- A. Yes.
- Q. Is that his hobby? A. Yes—coaching, and sentimental.
- Q. Did you commission him to paint that? A. Yes.
- Q. And paid him for it and got the copyright?
- A. Yes.
- Q. Do you know when? A. About 1910.
- Q. Do you see another in the issue of May 28?
- A. It is the head.
- 20 Q. It is the head? A. Taken from a bigger picture; they have taken the head only.
- Q. Is there a title on it? A. They call it “Violet”. That is all right. On the larger print it has got—I have a bunch—
- Q. That is taken from the picture Z of Exhibit 1?
- A. That is right.
- Q. Entitled “Violet”. Whose is that? Who is the artist? A. That is J. Sheridan Knowles.
- Q. Was he commissioned in that case, do you know?
- A. Yes.
- 30 Q. By whom? A. By me. It is one of a set. I have got the whole set in my books there.
- Q. This is one of a set? A. Yes.
- Q. Have you got the others? A. Yes.
- Q. You have them with you in Canada to-day?
- A. They are here.
- MR. McCARTHY: I didn’t get the date.
- MR. BULLEN: Q. Will you tell my friend the date that you commissioned— A. Around 1910.
- Q. Do you see any others in the issue of May 28 that you complain of 40 as being your picture and used without your permission? A. There are two little dogs, a Maltese terrier and a King Charles. That is my subject, but we haven’t got a title to it.
- Q. What title does the “Star” use? A. They call it “Aristocrats”.
- Q. You say that is your subject? A. Yes.
- Q. But you haven’t got a title to it? A. There is no title to it, never has been.
- Q. Who painted it? A. Arthur Wardle. That is a set of six.

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- Q. For whom did he paint it? A. Me.
 Q. Do you know when? A. About 1915, 1916.
 Q. 1915 or '16? A. Yes.
 Q. Is this one of a series? A. Of six.
 Q. Of six? A. He always painted six dogs of a series for me.
 Q. Have you got the balance of the series in your possession? A. Oh,
 yes.
 Q. Are there any other pictures— A. Yes, here is one.
 Q. In the issue of May 28, 1932, that you complain of?
 A. Here is one, "At the Seaside".

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- Q. That is a Thomas? A. Yes.
 Q. Who was Thomas? A. Well, he was my artist, an indoor artist.
 Q. When you say "my artist", that is a little different from what you
 have told me about the other ones; you say "the artist". Now, Mr. Thomas,
 you say, is "my artist"?
 A. Yes.
 Q. Why do you make a distinction between Thomas and the rest of them?
 A. Well, he is in my studio; he is paid a weekly salary.
 Q. Oh, I see. Mr. Thomas painted, you say, the picture "At the Sea-
 side", of the 28th of May, 1932. Was he in your employ at the time he painted 20
 it? A. Oh, yes.
 Q. And you paid him a salary? A. A weekly salary.
 Q. Did you tell him what to paint, what you wanted?
 A. Yes. This is one of a set of three.
 Q. This is one of a set of three by Thomas. So you don't get any receipt
 from him; you pay him a salary?
 A. Got no receipt from Thomas.
 Q. I see. You pay him a salary. And you say that BB in Exhibit 1,
 called "At the Seaside" in the "Star" of May 28 is one of Thomas's painted
 while he was in your employ? 30
 A. Yes.
 Q. My friend will want to know what time?
 A. About what time?
 Q. Yes? A. Oh, I would say about 1928, 1929.
 Q. 1928 or 1929? A. Yes; about five or six years ago, six or seven
 years ago. You see, it is modern. Look at it.
 Q. It is what? A. It is modern. Look at it. I mean, any woman
 here—
 Q. Oh, it is modern? A. Yes, it is a modern dress, it is a modern bathing
 dress. Any woman would recognize that. 40
 Q. Is Thomas still in your employ? A. No; he is working part time
 with us now—that is, since about eight or nine or ten months.
 Q. Now take the issue of June 4, 1932; do you see any pictures there
 that you claim to be reproductions of your pictures? A. One, two, three,
 four, five, six.

Q. Six, are there? A. Six.

Q. Taking them in the order that we have them in the schedule and that are lettered in Exhibit No. 1, what is the first one? A. "Meadowsweet"

Q. Whose is that? A. J. Sheridan Knowles.

Q. That is J. Sheridan Knowles. Did you commission him to paint that, do you know? A. Yes.

Q. You did? A. Yes.

Q. When? A. About—there was a set of four—about 1910, I would say, or 1911.

10 Q. 1910, you think? A. Yes.

Q. Somewhere in around 1910. Your title to that is "Meadowsweet"; does the "Star" use the same title?

A. Yes.

Q. They use the same title. What is the next one? That is a vignette? A. "Kittens". That is a vignette. We have no title.

Q. You haven't any title to that? A. No title. We never use a title on a vignette, because there is no space to put it.

Q. Who painted that? A. Wardle.

Q. Was he commissioned to paint it? A. Yes, six of them.

20 Q. By whom? A. By me.

Q. Is that one of the six? A. One of the six.

Q. Is this one of the six that the dogs also formed part of, entitled "Aristocrats"? A. No, no. The cats are different from the dogs, another series.

Q. Oh, it is another series? A. Another series. Dogs one series, and cats the other.

Q. But the same man, Wardle? A. The same man.

Q. And commissioned by you? A. Commissioned by me.

Q. You say somewhere around 1910? A. Later than that.

30 Q. Eh? A. No, I didn't say that.

Q. Well, all right? A. No, I didn't say that, surely. I am sure that is later than that. I put that down at least to 1915 or '16.

Q. 1915 or '16? A. Yes.

Q. Is DD, or the one entitled "Kittens". Well, what is the next one? A. It is a Spencelayh, "Table d'Hote with Music."

Q. "Table d'Hote with Music"—is that the title in the "Star"? A. Yes.

Q. I see that is your title? A. The same title, yes.

Q. That is EE in Exhibit 1. Who painted that?

A. That is a Spencelayh.

40 Q. That is a Spencelayh; that is the expensive artist, isn't it, you told me before? A. Spencelayh, Charles Spencelayh.

Q. Do you know whether he was commissioned to paint that picture? A. No, I don't think so. I don't think I ever commissioned Spencelayh to paint a picture. He was a man who wouldn't work under a commission.

Q. Did you purchase it from him? A. Yes.

Q. From the artist, Spencelayh? A. Yes.

Q. When? A. About 1912.

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Q. Then what is the next one you see there that you complain of as being published without your consent and being your picture? A. There is a girl with cherries. That is a vignette. There is no title for us.

Q. You have no title? A. We have no title.

Q. They use the title "Girl with Cherries"?

A. Yes.

Q. Who painted that picture? A. Thomas.

Q. Does that come in the same category as Mr. Thomas's picture entitled— A. The bathing girl, yes; the bathing girl, "At the Seaside".

Q. "At the Seaside"? A. Yes.

Q. Mr. Thomas being an artist in your employ, as you told us before? A. Yes. 10

Q. Did he paint that picture whilst in your employ?

A. Yes, sir.

Q. At whose request? A. Mine.

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Q. What is the next one you see there that you complain of in the same issue, June 4, 1932? A. A girl—what do they call it?

Q. It is "Girl of Florence"? A. Oh, I think that is a Lynde.

Q. "Girl of Florence"; you claim to have a copyright on that picture? A. Yes. 20

Q. Whom did you get it from? A. Lynde.

Q. Who is Lynde? A. An artist.

Q. When did you get it? A. 1912.

Q. Did you commission him to paint it? A. Yes.

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Q. Is it called "Pierrette" in the "Star"?

A. Yes. We haven't a title for that.

Q. You have no title for that picture? A. No.

Q. Whose is it? A. Thomas.

Q. Is that the same artist that is in your employ?

A. Yes, that painted "Cherries" and the— 30

Q. Who painted "Cherries" and "At the Seaside"?

A. "Cherries" and "At the Seaside", the bathing girl.

Q. And this was painted whilst he was in your employ?

A. Yes.

Q. Then the next one I see is—that finishes, according to my list, June 4. Now take the issue of June 18, 1932; do you see any of your pictures there?

A. "The Old, Old, Story"—I think that is our title.

Q. "The Old, Old Story"? A. Yes.

Q. Whose is that? A. Raymond Lynde.

Q. Did you commission him to paint that? A. Yes. 40

Q. Do you know when? A. Yes; about 1909.

Q. Did you pay him for it and get a copyright and that sort of thing? A. Yes.

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Q. Now, what about "The Old, Old Story"? Have you told me who painted that, and whom you got it from?

A. Yes—Lynde.

Q. That is a Lynde? A. Yes.

Q. Did you commission him to paint that, do you know?

A. Yes.

Q. You did? A. Yes.

Q. When? A. 1909, '10.

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Q. Now, do you see any other in the issue of June 18?

10 A. Yes; "Daisies".

Q. That you want to complain of? "Daisies"?

A. Yes.

Q. Is that your title? A. No; we haven't one.

Q. You haven't got a title, but the "Star" used the title "Daisies"?

A. Yes.

Q. Who painted that? A. Thomas.

Q. Is that the man that was in your employ?

A. That is right.

Q. The same artist? A. Yes.

20 Q. The same artist that painted "At the Seaside"?

A. "Cherries".

Q. "Cherries", and "Pierrette"? A. And "Pierrette".

Q. And did he paint that whilst he was in your employ?

A. Yes.

Q. At whose request? A. Me.

Q. Did you pay him a salary, as you did—

A. Yes.

30 Q. You paid him a salary. Will you take the issue of July 9, 1932, and see if there is anything in that that you say you have the copyright in, and that was published without your consent? A. There is a picture here, that is a Margetson, W. H. Margetson.

Q. What is the name of the picture? A. Well, surely our title for that is—

Q. What is the title in the "Star"? A. "Summertime".

Q. "Summertime"; is that your title? A. No. It is "Cornflowers", surely. I have got a set of four, the same girl—a different girl with poppies, and something else, and something else.

Q. You say that that is a picture painted by Margetson? A. Yes, and I believe our title is "Cornflowers".

40 Q. Well, your title is "Cornflowers" in the set that I have here. Did you commission Mr. Margetson to paint that? A. Yes—a set of four.

Q. Is this one of a set of four? A. Yes.

Q. That he painted for you? Do you know when?

A. Yes, I remember roughly about.

Q. When? A. I should say about 1912.

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Q. Did you have a conversation with Mr. Hindmarsh?

A. Yes.

Q. Where did the conversation take place?

A. In his office.

Q. Was the subject of your two pictures being run in the issue of June 18 brought up? A. Yes; I showed him the copy of the paper I had bought.

Q. And what did you say to him? A. I asked him how it came about that he had copied, reproduced, two of my pictures.

Q. What did he say? A. Oh, he said they collected pictures from various sources and reproduced them, as it was a great—found to be a great help 10 to business.

HIS LORDSHIP: Q. What? A. Found to be a great help to business.

MR. BULLEN: Q. Will you go on and recount the conversation, slowly?

A. It was found to be a great help to business.

Q. It was found to be a great help to business?

A. I asked him how much he paid for them. He said nothing, he had never paid anything to anybody, to any firm, for their use in the "Toronto Star".

Q. Yes? A. I said, "You have never paid anything to an artist who paints an original for you?" He said, "No, never." 20

Q. Yes? A. "Well," I said, "you can't expect artists to live on air. They have got to be paid." No, they are never paid, and if they wanted them to reproduce their pictures they would give them the acknowledgment in their "Star", what they call their courtesy title.

Q. Having said that, did you make any reply to him?

A. Yes. There was a great deal said. I wanted to know the fullest possible details.

Q. Will you try to tell us the conversation that you had with him? We know there were a lot of details, but I want to know what the details were?

A. I asked him where he got all his pictures from. He said he had a man 30 that went around continually collecting pictures, and they selected what pictures they wanted.

Q. Yes? A. And I said, "You never pay for them?" "No, never have paid for them." They give the acknowledgment. So I asked him if he would let me see the file of their papers, so he sent for it, and I went through the file. It is that file that was here just now.

Q. Exhibit 3? A. Yes.

Q. You saw Exhibit 3? A. I know it because those crosses are mine. Every one of those pictures is marked with a cross; I did it.

Q. I didn't notice that. 40

MR. FOWLER: A red pencil cross.

WITNESS: Mr. Hindmarsh gave me the red pencil—

MR. BULLEN: Q. Wait a minute. I see you are right, that on the pictures that you complain about in Exhibit 3 there is a red pencil cross. Who put the cross there? A. I did, with Mr. Hindmarsh's pencil.

Q. On June 20, 1932? A. Yes, in his office.

Q. Then, having gone over his file and crossed the pictures that you say were yours, what happened then?

A. Well, I said something about if I had not been here this Monday morning they would still be getting away with it, so he said, "We are protected."

HIS LORDSHIP: Q. He said what? A. "We are protected." I said, "In what way do you mean?"

MR. BULLEN: Q. Protected from what? Had there been any discussion about protection or what protection they needed? A. No; it was only when
10 I—what shall I say? It was only when I pressed my point and my position that he said that they were protected.

Q. When you pressed your point—what do you mean by pressing your point? What did you say? A. What was he doing with my property?

Q. Well, you haven't told us a thing about that yet, Mr. Mansell. What did you say to Mr. Hindmarsh about your property, if anything? A. That he had been reproducing my property.

Q. Yes? A. And all he said was that it was found to be a great help to business.

Q. Was "property" the word you would use?

20 A. Yes—my subjects, my property.

Q. "My subjects, my property." What did you mean by them being your property? A. They were my subjects, my pictures, my own property, my copyrights, my everything. It is my business.

Q. Well, did you mention copyright to Mr. Hindmarsh?
A. Oh, yes, of course.

Q. Did you tell him that you had the copyright in the pictures? A. Yes. That didn't affect him.

Q. When you say it didn't affect him, was that when he used the words that he was protected? A. Yes, protected.

30 Q. Well, how did he say he was protected?

A. I asked him, "In what way can you protect yourself?" I said, "I am the owner of the copyright. You can't get permission from any of these people to whom you give an acknowledgment. It is me that has got to give you permission." He said, "We have letters of authorization."

Q. You said that you had the copyright in the pictures and you can't get permission from any of these people. What did you mean, or did you tell him who "these people" were? What did you mean by "these people"?

A. The people whose pictures I had shown him, my pictures.

40 Q. And he said he was protected. Did he tell you how he was protected?
A. Yes, he had letters of authorization in every case, indemnifying them against trouble, action.

Q. He said he had letters of authorization in every case? A. In every case.

Q. Indemnifying them against trouble? A. Yes.

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MR. BULLEN: Q. Then did Mr. Arnott have any authority from you to give your prints to anybody for reproduction? A. Never.

* * * * *

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Q. Anything material that you want to tell the Court happened in the conversation with Mr. Hindmarsh before Mr. Pascoe came? A. I think the next thing was, I wanted to know how they reproduced from my prints.

Q. Well, if that is only a matter of method, I don't want to hear it. He told you the method in which they did the reproduction? A. But I think you do want it.

Q. All right, if we do want it, go ahead?

A. I wanted to know whether they painted original pictures from my 10 prints. He said, "No, we gather the prints together and reproduce from the print." I said, "You reproduce from the actual print without any touching up or anything?" He said, "Yes, just the print." "Well," I said, "how do you choose your prints? How do you choose suitable prints?" He said, "We choose them for pluck and for colour"—pluck means drawing—"and for colour, brightness and brilliance of colour." So he said, "I'll show you," so he went out and came in with four or five or so, perhaps, half a dozen, boards, and put them on a chair, and I went around to look at them. I said, "You don't touch the prints up at all." He said, "No, just we choose the prints from the point of view of colours, and we reproduce from the boards 20 just as you see them." He asked me, "Is this yours?" I said, "No."

* * * * *

Q. Are these artists, the various artists of the pictures you have named, are they British subjects? A. Every case except Emil Vernon.

Q. Every case except Vernon? A. Emil Vernon.

Q. Where did he reside at the time he painted your pictures? A. In London.

* * * * *

Q. Then, having disposed of those boards, what happened then? A. I wanted to go, and he said that Mr.—no, he asked what prices were paid for fees, what prices were paid, what would they have to pay for the right of reproduction.

30

Q. Of what? A. Pictures in their supplement.

Q. Was he referring to your pictures, or what was he referring to? A. He was asking generally, not my pictures.

Q. Yes? A. And I told him I could not tell him, as I was not in that class of business.

Q. Yes? A. But I said I do know from hearsay what Harmsworths paid, because I always did a very big business with Harmsworth, and I know what was going on there; and he asked me what prices were paid in London; I told him I could only tell him about Harmsworths, and from my recollection they paid two pounds for matter in black and white, and ten and twelve 40 pounds for a colour, and a hundred pounds for a supplement. Other than that I could not give him any information at all. It is not my business to grant rights.

HIS LORDSHIP: Q. I thought you said you were in that business. I thought you said that you used these pictures of yours, sometimes by giving the right to reproduce for box covers, sometimes— A. Oh, no, my Lord.

Q. What, then? A. Oh, no. I sell my prints. I won't give the rights to anybody. It is my property, it is my machinery. My pictures are my machine.

Q. Oh, I see. A. I sell thousands of prints, but I won't give anybody a right.

MR. BULLEN: Q. In other words, you do not sell for reproduction?
10 A. No, sir. The picture is the same as my machine to me; one is the same as the other; the machine is no good without my picture. I must have pictures to keep my machines going, not for other people to use.

* * * * *

Q. When you were talking to Mr. Hindmarsh was there any discussion about circulation, how many of these they had published?

A. Yes, I asked him the circulation.

Q. What did he say the circulation of this Toronto Star Weekly was?

A. 250,000.

Q. Have you made up for me the cost to you of 250,000 of each of these individual pictures? A. Yes.

20 Q. I produce to you what I am handed as being made up by you, setting out the cost of 250,000 of these prints to you? A. That is right.

Q. Does that deal with each of the individual prints that we have gone over this morning? A. Yes, size by size.

Q. That is to say, you have taken in, in making your compilation, as to the size of the picture taken by the "Star"? A. Absolutely.

* * * * *

Q. Now, will you tell me—if his Lordship pleases, I intend to put in as Exhibit 6 the statements you have in your hand now—how do you arrive at those figures?

A. (No answer).

30 Q. I think there are two sets of figures on each sheet, are there not?
A. Yes.

Q. And each sheet deals with a particular print?

A. That is right.

Q. Then will you tell his Lordship how you have made up each set of figures, how you arrived at each set of figures, not with too much detail?

A. The first item is an estimate—

HIS LORDSHIP: Show me the sheet of which he is speaking.

MR. BULLEN: Q. The first item is what?

A. The first item on the left is the estimate for the printing from our
40 works.

MR. McCARTHY: What's that?

MR. BULLEN: The estimate for the printing from his works.

Q. That is the printing? A. The printing.

Q. The second is what? A. The second item is the paper.

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Q. That is the cost of the paper? A. Yes.

Q. To you? A. Yes.

Q. What is the third item? A. No third item.

Q. Is there no third item? I thought I saw electros or something?
A. Well, that is another system of working, but I am not claiming on that, printing and paper.

Q. When you say you are claiming— A. I have not spent the money on the electros, and I claim on the printing and paper.

Q. Yes, but I want to know if you had sold 250,000 of these to the "Star" what would you be entitled to get from the "Star" or from any other paper 10 for them?

A. I would be entitled to that; no, I would be entitled to that.

MR. MCCARTHY: What's that? I don't understand that.

HIS LORDSHIP: Neither do I.

MR. BULLEN: Nor can anybody else, my Lord.

Q. Mr. Mansell, this is all being taken down, and when you refer to "that" it means nothing on the notes. When I am asking you about figures, please mention them. Now will you answer my question: what would you be entitled to if you had sold to the "Star" 250,000 of each of these prints? Will you point out to his Lordship— 20

HIS LORDSHIP: I suppose he would be entitled to whatever he had bargained to receive.

MR. BULLEN: Q. Well, what would that be, Mr. Mansell, having in mind the cost and the profit that you should make ordinarily? A. I would want in this case £186 3s.

Q. When you say in this case £186 3s.—

MR. MCCARTHY: I can't see what you are looking at, and I should like to get a note of your evidence.

HIS LORDSHIP: I can't see what he is looking at either. I don't know what picture he is talking about— 30

WITNESS: I am speaking about "Daisies" now.

HIS LORDSHIP: Wait a minute. I don't know what picture the witness is talking about. I don't know why he says the cost would be whatever it was—£183, I think.

MR. BULLEN: What I have had him do, my Lord, for the convenience of the Court, is make up an estimate of the cost to him and what it would net him, his gross, if he sold 250,000 of these prints to Harmsworth or anybody else.

HIS LORDSHIP: Wait till I look at these papers you are trying to put in. The things are not self-explanatory; I do not understand them. 40

MR. BULLEN: So that your Lordship will understand why they were made up for the Court, if your Lordship will be good enough to look at section 21 of the Act, it says all infringing copies of any work in which copyright subsists or of any substantial part thereof and all plates used or intended to be used for the production of such infringing copy shall be deemed to be the property of the owner of the copyright, who accordingly may take pro-

ceedings for the recovery of possession thereof or in respect of the conversion thereof.

Now, I am advancing as my argument on behalf of the plaintiff that the "Star" took all prints being infringing copies, that they took 250,000 of them, of each of these pictures, and that our damages are the value of 250,000 of these in Mr. Mansell's hands as though he had sold them to the "Star" or Harmsworth or somebody else, or even if he didn't sell them, what he holds them at, the value to him of them; and I have asked him to make up, and what he is submitting to the Court there is, the statement of the cost to him, 10 in one instance of just the bare paper and the ink.

Q. Is that right? A. That is right—printing and paper.

Q. Printing and paper? A. Yes.

Q. On the other side you have the printing and the paper and what else? A. And the electros.

Q. Well, would you need electros or would you have to pay for electros, or would that enter into your element of making up the value? A. Oh, yes, if I had to.

MR. MCCARTHY: I don't know just what the evidence is now. I have not seen the document he has in his hand.

20 MR. BULLEN: I will try to help my friend.

MR. MCCARTHY: I should like the witness to tell, if he will.

MR. BULLEN: I will ask my questions, and then you will follow me.

MR. MCCARTHY: I don't understand what he means.

MR. BULLEN: Q. In Exhibit 6, Mr. Mansell, I see you have the first, JJ, the picture "Daisies"? A. Yes.

Q. You say that 250,000 size $2\frac{3}{4}$ by $5\frac{3}{8}$; first of all, why do you put the size on? A. Because it is their size.

Q. That is the size of the print that the "Star" used?

A. Yes.

30 Q. You have in the first column printing and paper, and you have got a figure, £72 7s. 6d.; what does that represent? A. The printing.

Q. The cost of the printing? A. Yes.

Q. The cost of the printing? A. From the works, Finsbury Square.

Q. You say the works; you mean your factory?

A. That is right.

Q. Then you have also a figure of £20 14s. 0d.; what is that for? A. Paper.

Q. Do you mean by that that there would be that many pounds, shillings and pence worth of actual paper?

40 A. Paper, yes.

Q. In the making up of the 250,000 copies?

A. That is right.

Q. That totals £93 1s. 6d? A. Yes.

Q. Then you have got that doubled? A. M'hm.

Q. Why? And what is the explanation of the doubling figure? A. Everything has to come out of that, the original, the overheads, everything.

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Q. You mean to say that in the second £93 1s. 6d. you say is your overhead? A. Which item are you looking at there, sir? That is right, yes, it is all there. If it is doubled, it is all there.

Q. You say you have taken the cost of the printing and the paper and then you have doubled that, and the reason you have doubled it is what? A. All the expenses of the business have to come out of that doubling—rent—

Q. You mean you cover your overhead with the doubling?

A. Rent, everything.

Q. Is your profit in that? A. Yes.

Q. That covers your profit as well? A. Oh, yes.

Q. Now, for the same picture, covering "Daisies", JJ, in the right-hand column you have a higher price, which amounts to £223 7s. 6d. You have in that the same figures for printing and paper, but you have added electros; why did you add electros in one instance and not the other? A. Because you can't print without the electros.

Q. Then— A. And my people have given me the estimate both ways, just printing and paper, and printing and paper and electros.

Q. Then which are you claiming against the "Star" here?

A. On the lesser item.

Q. On the lesser item? A. On the lesser item.

HIS LORDSHIP: Q. You mean the item excluding the electros? A. Yes.

MR. BULLEN: Excluding the electros.

Q. Then are you adopting that system all the way through your claim for damages? A. Yes.

Q. Then we are not interested with the right-hand figure at all? A. That is right.

Q. All right; we understand that.

HIS LORDSHIP: You have got me pretty well confused now. You told me, or the witness said, that in the statement his first figure was the cost of printing and his second figure was the cost of paper, and that in his second column he had doubled the figures—that was the expression—so as to take care of overhead, profits and all that sort of thing.

MR. BULLEN: We are at cross purposes, my Lord. I may have misled you.

HIS LORDSHIP: In the second column he has not done anything of the sort; he has repeated what he has in the first column, and has added electros.

MR. BULLEN: If your Lordship looks at it carefully—probably I misled your Lordship, or we may have been at cross purposes. In his first column he has made up his damages on the basis of just the cost of printing and the paper; then he doubles that, you will see, my Lord, for his overhead and his profit.

HIS LORDSHIP: He does not double it; he repeats it in another column.

MR. BULLEN: Yes.

HIS LORDSHIP: There is no doubling at all.

MR. BULLEN: It is double the cost, is his selling price, and he says, "I do double it by reason—"

HIS LORDSHIP: Oh, I see—in his last figure?

MR. BULLEN: Yes; his last figure is double his cost. And he says, "By doubling it, if I sold, I have to take care of my overhead, the cost of the original picture to me, which I spread over all the prints, and my profit."

HIS LORDSHIP: This doubling does not take place, as I understand you to say, in the second column; it takes place in the final line of each column.

MR. BULLEN: That is right, my Lord.

* * * * *

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Cross-Examination by Mr. McCarthy

Q. Then I just want to divide the time covering this litigation in some way. During the war I take it you were not doing business in this country at all? A. No.

Q. Or England? A. Oh, yes.

Q. You were doing business in England? A. Yes.

Q. You were still doing business in England. And after the war when did you first resume business in Toronto or in Ontario? A. When my son came out here. I sent him around the world about 1926, '27, and he came out here and asked Mr.—called on Mr.—

Q. Well, I don't think you can tell me what your son asked. You did not come yourself? A. No.

Q. But you say you sent your son out here?

20 A. Yes.

Q. In 1926 or 1927? A. Yes.

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Q. Now take this Exhibit 4. Up to what time, if you can fix a period of time, up to what time is covered by the pictures or prints or coloured prints which are in Exhibit 4? A. Is that 4?

Q. Yes. A. I can't say. I don't know what is in that book unless I look through it.

Q. Can you glance through it roughly and give me some idea as to what period this would cover—because I see some very old ones there, going back to 1908 or 1909?

30 A. That is right. Yes, he has got a fairly old book there, a book going back I would say to perhaps 1912.

Q. It goes back beyond that, I see, too, doesn't it?

A. Does it?

Q. Well, I see pictures of the late King?

A. King Edward?

Q. Yes? A. Leading in Minaros.

Q. Which was long before 1910? A. Was it?

Q. Wasn't it? A. I couldn't say. I can only go by our mixing up eight by tens, ten fourteen, with six by eights. We never do it now.

40 Q. When did you cease doing that? Perhaps that will help us? A. I think we ceased doing that about seven or eight years ago.

Q. Well, this book came out long before the war, didn't it? A. Yes.

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Q. Well, we don't want to get seven or eight years ago? A. But you asked me when did I cease—

Q. I thought it might help us in this book, but apparently your answer is utterly useless as far as we are concerned. I want to know, can you date this book in any way? A. No, sir, I cannot.

Q. Will you say this—it was all before the war?

A. Yes, sir.

* * * * *

Q. So that before the war am I quite safe in saying, taking your evidence, that none of your pictures or coloured prints were ever printed in Canada?

A. No, never. I have never had anything printed in Canada. 10

Q. You have never had anything printed in Canada?

A. Never.

Q. And nothing has been reproduced in Canada by you?

A. No.

Q. Never; is that right? A. Yes.

Q. Then during the war you sent nothing out here at all? A. No.

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Q. Will you tell me when the first shipment was made to Toronto or Canada after the war? A. No, I can't.

* * * * *

Q. Anybody like Mr. Arnott would be furnished with a price-list? A. That is right. 20

Q. And with a letter of instructions? A. No.

Q. No? A. No.

Q. And what was the course of your dealing with Mr. Arnott? A. He would take orders wherever he could obtain them and send them to us to fill.

Q. He would take the orders and send them to you to fill? A. Yes.

Q. But he would have to quote a price to the person from whom he got the orders? A. Naturally.

Q. Now, can you tell me how long Mr. Arnott had this picture "The Captain and His Crew" or "Young Mariners" in his possession for sale?

A. I couldn't tell you. 30

Q. Could you tell me whether he sold any of them while he had them? A. Couldn't tell you.

Q. Do you suggest he did? A. Couldn't say, sir.

Q. Well, have you searched to find out? A. No.

Q. Now, in giving the dates—I don't know that it makes very much difference, but in giving the dates when these different coloured prints were first done, I notice a great variation in your evidence to-day and your evidence on discovery? A. There would be.

Q. Why? A. Memory, sir.

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Q. Then you have no record, or perhaps I will put it this way to you: 40 have you any record of the sale of any of the prints which are mentioned in

schedule A to your statement of claim, in Toronto or in Canada? A. No, I wouldn't have.

Q. You haven't? A. No.

Q. How was the record kept? If sold through Mr. Arnott, he would send you the order, would he? A. Yes.

Q. And you would fill the order and ship the goods to the person who ordered them? A. Yes. Q. And can you produce any order received having reference to any of the pictures mentioned in this schedule?

A. From Mr. Arnott, do you mean?

10 Q. Yes? A. Those pictures, you mean?

Q. Yes? A. I can't say that, but I have got Mr. Arnott's list of business.

Q. Well, that is what I want; give me Mr. Arnott's list of business?

A. Yes.

Q. Let me see that, will you? A. Total amount, you mean?

Q. No. I want to see what business he sent you, what reference they have to these particular pictures?

A. But you won't get it. It is the total amount.

Q. Well, let me see what you have got, and we will ask you about it; if it is no use we won't bother about it. Let me see Mr. Arnott's business.

20 (Witness produces statement). Well, I want something more detailed than that, please? A. Well, you can't have it.

Q. Why? A. I haven't got it.

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MR. MCCARTHY: Q. Any catalogues of that nature are your property?

A. Yes.

Q. Then Exhibit 4 is your property, is it?

A. That is, if that is Exhibit 4.

Q. Yes, it is. A. Then that is my property.

Q. Then that is your property; and has been with Arnott for how long?

A. Well, if it was there in 1914—twenty-one years.

30 Q. Yes, it has been there for twenty-one years. Has anything been sold out of that in that time?

A. I couldn't say.

Q. You couldn't say? A. Mr. Arnott could answer that.

Q. Then what arrangement did you make with Arnott in regard to selling these prints? What means was he to adopt to sell them? A. He would have our selling price.

Q. Well, that wouldn't sell it, the price wouldn't sell it. Was he allowed to adopt any means he saw fit?

A. Sell them to users of prints; that is the only thing he can do.

40 Q. Was he allowed to advertise them? A. No. How do you mean, advertise them?

Q. How do I mean? The ordinary course of advertising. He could take them around and show them to people, I take it? A. Just to get orders for quantities.

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Q. Yes, to get orders for quantities. He could not advertise them in the papers for sale? A. If he wanted to.

Q. If he wanted to he could? A. At his own expense.

Q. At his own expense, quite so? A. But you don't mean in the way of giving the "Toronto Star" the right to use it?

Q. You don't think he had that? A. No fear.

Q. You say that is not done? A. Never.

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Q. Or no written document. Then have you the orders which Arnott subsequently sent you after the war, from 1918 on? A. Yes.

Q. Have you got those there? A. Yes, but—

Q. Let me have them; I want to see how that was done.

A. I don't know how you are going to pick them out.

Q. Well, let me see what orders he sent in to you?

A. A frightful job.

Q. Well, perhaps your large staff might have done it before you came out here? A. It is all there in years.

Q. It is all here in years? A. Yes.

Q. Have you gone over this to see, Mr. Mansell, whether these orders which I have in my hand cover any of the pictures that you complain of in this action?

A. No, I have not.

Q. Eh? A. I have not. You only asked me for orders from my Canadian business.

Q. I didn't say what I asked you; I am asking you this question now?

A. No; I have only done what you told me.

Q. I didn't say you hadn't. Now will you answer my question? Have you checked over these orders to see whether any of the orders relate to any of the pictures complained of in this action? A. No, I have not.

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Q. Well, we will come to that in a moment. Now, Mr. Mansell, you have handed me a great many orders; did these orders come through Arnott? A. Oh, no.

Q. What? A. That is me.

Q. That is not what I asked you for; I asked you for the orders you got from Arnott? A. Well, they will be there, sir, amongst them.

Q. Oh, you have not separated them? A. No; they ought to be there, if my people are carrying out what I told them.

Q. Yes, but you have not taken the trouble to separate them? A. No.

Q. And your staff did not before you came? A. No.

Q. These are all Canadian orders, are they?

A. That is right.

Q. Covering what period? A. May I get out of the witness box? There are my orders, and there is the total of my business—

Q. When I want a thing I will ask for it, please. Don't be too active. These orders which you have handed me cover what dates, what years?
A. The years you asked me, sir.

Q. Will you answer the question? A. Three years, you asked me to give you—

HIS LORDSHIP: Oh, never mind harping on what has been asked. Answer the question that is put to you, and we shall get along much faster.

MR. MCCARTHY: Q. You heard the question I have asked you?
A. Four years.

10 Q. What years do these cover, please?

A. Four years.

Q. Well, tell me what years they are?

A. 1930, '31, '32 and '33.

Q. What do these orders purport to cover now?

A. (No answer).

Q. All your business done in Canada during those four years? A. Yes, sir.

Q. And I ask you again, have you checked up to see whether any of the orders were for copies of the pictures which are involved in this action?

20 A. No, I have not.

Q. You have not. So they may be? A. They may be.

Q. Do the orders describe the pictures, or how are they described?

A. Oh, I don't know, sir. They would be described sometimes by number and sometimes by a description.

Q. What will the key to these orders be? They mean nothing to me.

A. The total amount of business.

Q. I want your price-list so that I can verify it. That is made up by someone in your office. I don't want that; I want your price-list so that I can check these over? A. I haven't got a price-list.

30 Q. You haven't got a price-list? A. No.

Q. Well, how were the prices arrived at here?

A. Quotation.

Q. A quotation? Then there must be some correspondence? A. No; I do it myself.

Q. Oh, these are all orders taken by you?

A. Yes, sir.

Q. Oh, I see; these are all orders taken by you when you were here?

A. Yes.

Q. And you had no price-list; you just fixed the price yourself as you go
40 along? A. Yes.

* * * * *

Q. Now take this man Thomas; when did he first begin to work for you?
A. About 1922.

Q. 1922? A. Yes.

Q. And continued to work for how long?

A. He continued until about this time last year solely for me.

Q. Eh? A. Solely for me.

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Q. Solely for you, until about this time last year. Now take these pictures that you say Thomas did for you, take 29, which is BB in Exhibit 1, you put that down as done in 1926; how do you fix the date of that?

A. May I look at the picture, sir?

MR. BULLEN: I will let him see mine.

MR. MCCARTHY: Q. BB, "At the Seaside" it is marked in Exhibit 1; have you got it there? A. No, sir.

Q. It is this one; how do you fix when that was done? A. I go by the fashion of the bathing dress.

Q. You go by the fashion of the bathing dress? 10

A. Yes.

Q. Is that the only way you have of fixing it?

A. Yes; I remember the picture too. There was a series of three, and I would say—I would give them about 1929, 1928 or '29.

Q. Yes, but you have given other dates besides that?

A. Yes.

Q. Why do you give 1928 or '29? A. (No answer).

Q. How do you fix it at that time? Have you looked up your records? A. No; by memory.

Q. By memory? A. Yes. 20

Q. But you have no records to show it? A. No.

* * * * *

Q. And what is it that fixes it in your memory?

A. Well, I go by the fashion and—

Q. Tell me what there was in the fashion that helps you there? A. Well, if there is a lady present perhaps she could tell you.

Q. Well, I am asking you to tell me? A. Well, that fashion is about five or six years ago.

Q. What fashion? A. The striped bathing costume. You don't see it to-day. A lady of to-day would say it is old-fashioned.

Q. And you say that was in the last how many years, that fashion? 30
A. I would say about five or six years ago.

Q. You would say about five or six years ago?

A. Six or seven years ago.

Q. If you put twenty on it would be more like it, wouldn't it? A. (No answer).

Q. However, that is the way to fix the time, is it?

A. That is it—except I remember the originals.

* * * * *

Q. Well, that is not what I am asking you. What I want to get is this: you are complaining of our copying certain of these pictures, and what I want to know is whether any of those pictures, which apparently had been 40 with Mr. Arnott and his predecessor for sale for some time, whether any of those had ever been sold in Toronto or Canada? A. I can't tell you.

Q. Or any other part of the world? A. Oh, of course.

Q. Where is the record of it? A. I haven't got the record.

Q. You haven't got the record? A. But we are not in business to reproduce pictures and look at them.

Q. Quite so; you are not in business to reproduce them and look at them, but they are not all saleable, are they? A. Well, if we don't, we go to the wall.

Q. Exactly; I thought so; they go to the wall?

A. We go.

Q. Oh, you go to the wall? A. Yes.

Q. Oh, I thought you were going to put the pictures on the wall? A. If
10 my judgment is wrong in the picture, if my judgment is wrong in what I buy, we soon go to the wall.

Q. I don't mean your judgment is wrong on all pictures, but do you mean to suggest you have never made a mistake? A. Yes, but I don't think there is a mistake here.

Q. That is what I am asking you. I want to know which of these have been sellers and which have not?

A. I would say all of them.

Q. Well, you would say so? A. Yes.

Q. Have you any record to show? A. No. I haven't, but I do say
20 they are.

Q. Can you show me one single one that you have sold and how much you ever got for it? A. No, I can't.

• Q. In Canada? A. In Canada?

Q. Yes? A. No, I can't.

Q. Well, I challenge you to mention any one that you have sold in Canada? A. I can't, but you know they were good enough for the "Toronto Star" to help themselves to, weren't they?

Q. I am not asking you about that now; I am challenging you—perhaps they were so bad, that is why the "Star" put them in? A. Well, they helped
30 themselves pretty freely, didn't they? You only want three or four "Toronto Stars" to ruin my business.

Q. You want a few "Stars" to ruin your business?

A. Yes.

Q. Perhaps you just need a few "Stars" to make your business?
A. Three or four taking forty pictures out of my collection, where am I?

Q. Well, you needn't argue your case; just answer the question. I am asking you, please, Mr. Mansell, in all seriousness, because you have had this case in hand now for three years, I am asking you to give his Lordship one instance in which one of these pictures has been sold in Toronto or
40 Canada? A. I can't do it.

Q. I am suggesting to you that not one of them has ever been sold in Toronto? A. Are you? I don't know.

Q. What? A. I don't know.

Q. Wouldn't it come to your knowledge if they had been sold? A. No, sir.

Q. Why? A. I look after the picture side of my business, and that is as much as I can do. My staff have got to do the rest.

* * * * *

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Q. Just a moment. Just search that marvellous memory of yours again and tell me whether you have sold one single one of these during the time you were trying to sell them?

A. I am not going to say I have sold a picture, sir, but—

Q. Now I am going to ask you one more question: have you tried to sell any of them? A. No.

Q. Now, is it not so that the style has changed very considerably in the last few years in regard to these prints? A. The style?

Q. And the methods of making them? A. Are you referring to the picture you have got in your hand? 10

Q. I am referring to all these thirty-odd?

A. Style changed?

Q. Yes? A. I am hard at it now, the same thing.

Q. What do you mean by the same thing? A. Same business.

Q. I am not speaking of the business; I am speaking of the manner of turning them out; the manner of making the prints has changed? A. I am on the same game now.

Q. Answer my question? A. Well, I am, sir.

Q. Well, I don't think you are; you may think so. I am asking you whether the method of reproducing these prints has not altered very con-20 siderably? A. You mean reproducing the picture?

Q. Yes? A. Has it altered?

Q. Yes? A. Yes, there are other processes; mine goes on.

Q. I didn't say yours didn't go on; who ever suggested yours was not going on? I am asking you, are there not new methods of reproduction?

A. Yes, sir.

Q. Very much better than they were twenty years ago?

A. No.

Q. No? A. No.

Q. No better? A. No. 30

Q. You don't tell people that? A. Me?

Q. Yes? A. No.

Q. And you think them no better? A. There are better—they know better, do you say?

Q. No, I didn't say that. I said, are not the present means or methods of reproducing these prints much superior to what they were twenty years ago? A. I don't consider so.

Q. You don't consider so? A. I still keep my end up with the very same process that you have got there.

Q. You have not altered your process? A. No. 40

Q. Not in the slightest? A. Not in the slightest.

Q. In the last twenty years? A. Never.

Q. You are going on with the same process that reproduced these? A. The same exactly.

* * * * *

Q. Now, as you told me, you are not able to tell me or suggest that any of these pictures were sold by you yourself? A. No.

Q. And you are not suggesting that Mr. Arnott sold any? A. No.

Q. You are not suggesting Mr. Arnott did. Is there any other means except yourself and Arnott that these pictures could be disposed of? A. Mr. Arnott ought to answer that, sir.

Q. I am asking you? A. No. there are no other means that I know of.

Q. There are no other means except you and Arnott; so that if you didn't sell them and Arnott didn't sell them, then I may take it that there were none of these sold in Canada? A. That I can't say.

Q. That you can't say; and you have taken no trouble to find out.

10 A. No, sir.

Q. Have you found out from your records in any way—because they are all numbered—whether any of these pictures have been sellers? A. Yes, I would know that.

Q. What? A. I know that; I don't want to go to records.

Q. You know that? A. Yes.

* * * * *

Q. Then you could not, with all your records or all your small but efficient staff at hand, turn up any record to show me that any one of these particular thirty-odd prints had been sold in any particular place at any particular time in the last twenty years? A. No, I could not.

20 Q. As a matter of fact, is it not so, Mr. Mansell, that you have got an entirely new book out to-day? You are not using this old Exhibit 4 any more, are you?

A. Aren't I?

Q. That is what I am asking you? A. I am. There they are there.

Q. There are what there? A. There they are, two books there.

Q. The same as Exhibit 4? A. Certainly.

Q. The same pictures? A. Absolutely.

Q. You are still sending the same prints, are you?

A. Have you got eight by ten there? Look at the sizes. That is right.

30 They are in our collection, sir.

Q. Well, we will come to your collection. That is what I want to get.

In your present collection—is this the book you are selling from to-day?

A. I am not; my agents.

Q. You are not selling to-day? A. My agents sell—

Q. Are you not selling to-day yourself?

A. Yes, sir.

Q. And you have been out to this country selling, haven't you? A. Yes, but not with these books.

40 Q. Wait a minute, now. You have been out to this country selling in 1931, 1932, 1933 and 1934? A. Yes.

Q. And what book were you using then? A. What book?

Q. What book? A. You mean this sort of book?

Q. I don't know; whatever book you did use?

A. I carry my portfolio.

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Q. Well, I don't know what you do carry, except in your head. Tell me what you were carrying when you were making your sales in 1931, '32, '33 and '34?

A. If I am in the box to-morrow morning I will bring my portfolio and you shall see a collection in there, and I will show you what I am carrying.

Q. I don't want to see the collection. A. It is not a collection; it is my prints.

Q. I am asking you in that collection have you any of the pictures which are here complained of? A. No, I have not.

Q. You have not? A. No. 10

Q. So that they are not for sale to-day as far as you are concerned?
A. Which?

Q. Those pictures? A. These?

Q. Yes? A. Of course they are; they are in the collection.

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Q. Listen: you are being asked whether you in the last four years have ever offered anybody any one of the pictures the reproduction of which by the "Star" is complained of? A. I wouldn't know, my Lord.

MR. McCARTHY: Q. You wouldn't know? A. No, I wouldn't know.

Q. Why wouldn't you know? A. Collection is too big.

HIS LORDSHIP: Q. Did you in these travels of yours in Canada have 20 with you a copy of any one of those pictures? A. I would think I did. I wouldn't—

MR. McCARTHY: Q. You think you did; you would not know? A. I would say I would have.

Q. You would say you would have? A. Yes.

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Q. What I want to know is, in the collection which you display have you ever included these ones which are in question in this action? A. I can't tell you.

Q. Well, where is your portfolio?

A. Present collection? 30

Q. Yes? A. At the hotel.

Q. And is that the same one you have had for how many years, or does it vary from year to year? A. New things I have brought out this time.

Q. New things you have brought out this time?

A. Yes.

Q. Are these pictures in the new ones you brought out this time? A. Are they new pictures?

Q. Are these pictures which are in question in this action in the new ones which you brought out for sale this time? A. No.

Q. Were they in the collection last year? A. No. 40

Q. Or the year before? A. No, I should not say so.

Q. Or the year before that? A. I couldn't say.

Q. I suggest to you, Mr. Mansell, that you would not be trying to sell pictures that had been in Mr. Arnott's possession for sale for the last twenty or twenty-five years? A. Yes, sir.

Q. What? A. They are in our books now. Our collection is not old.

Q. Your collection is not old; that is what I am suggesting, that it is not old? A. Supposing we appointed a new agent in Toronto, he would have those books.

Q. Don't let us get to supposing. I am asking you, the simple question: you are getting out new prints all the time, aren't you? A. Yes.

10 Q. And some of them become old after a time, don't they? A. Yes.

Q. And they are no longer saleable; isn't that so?

A. No, I wouldn't say that.

Q. You won't say that? A. No, I won't say that with these things of mine. I think they are jolly good.

Q. What? A. I think they are jolly good.

Q. Which things of yours? A. All these things of mine.

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Q. Mr. Mansell, to go back for a moment to this man Thomas—who was employed by you, I think, from 1919 on?

A. Yes, sir.

20 Q. That is right? A. Yes, sir.

Q. At what salary was he employed? A. Commenced at twelve, fourteen, sixteen pounds a week.

HIS LORDSHIP: I beg your pardon: which was this? Thomas?

MR. MCCARTHY: Thomas, my Lord.

Q. At what? A. Commenced at twelve, increased to fourteen.

Q. How long was it twelve? A. I can't tell you.

Q. And what salary was he paid at the time he left?

A. Sixteen.

30 Q. But you cannot tell the different periods?

A. No.

Q. Twelve, fourteen and sixteen? A. No.

Q. Now, the Thomas pictures that are complained of are not included in Exhibit No. 4, are they? A. I don't know—

Q. Exhibit 4 being the big book. The Thomas pictures are not included in this Exhibit No. 4, are they?

A. I should say not.

Q. All the pictures which are included in No. 4, are they all pre-war pictures? A. I would say so.

40 Q. Then what pictures— A. May I qualify that? Because we send pictures each year to our agents and they paste them in.

Q. Well, I want to get to that? A. So the majority would be pre-war, but each year more pictures are sent to the agents and they put the pictures in themselves.

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Q. Now, what I want to find out from you is, what pictures were sent to Arnott after the war? A. I can't tell you.

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HIS LORDSHIP: What exhibit is that to which you are referring?

MR. MCCARTHY: I am referring to Exhibit 7, my Lord.

Q. You have given me a statement here which shows money coming to you, does it? A. Yes, sir.

Q. From Arnott? A. Yes.

Q. I see that in 1918, '19 and '20 no money came from Arnott to you at all? A. Yes.

Q. But in 1921 £2. 8s. 5d. apparently came from Arnott. Now, I want to know, what was that for? A. Oh, I couldn't tell you, sir. I have just said I couldn't tell you. The actual prints you are referring to, you mean?

Q. If you have got anything that I can search here to find out what is represented by £2 8s. 5d?

A. I have nothing to show you, sir.

Q. Nothing to show me at all? A. No.

Q. And you don't know yourself? A. No. Had you asked me to bring that information I might have been able to bring it.

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MR. MCCARTHY: Q. What I am asking you now is, have you got any orders with you— A. No, sir.

20

Q. You haven't heard what I am saying yet, so don't be so anxious to say no. Have you got any orders which would in any way enable me to check up the sales which you say you made to the Artists' Supply Company?

A. No, sir.

Q. You have none at all? A. No.

* * * * *

Q. Well, I want something a little better than that, because your memory is not very reliable?

A. I think it is, sir.

Q. Well, I am going to show you how unreliable it is in a moment. You have told me one thing on the examination for discovery and another thing here, so I only want to show you that I want something a little better than your memory. I want to know whether you have any record of these very prints that you complained of, of the time they were sent to Arnott, because they must have been sent after the war? A. No, I have no record.

* * * * *

Q. Therefore except your memory you have no idea as to when Arnott got them? A. The Thomas pictures?

Q. Yes? A. Yes, my memory.

Q. Except your memory? A. Except my memory, I have no idea.

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Q. Now, you came out in 1929, and you are quite sure that since you came out here you yourself have given no prints to Arnott? A. Certainly.

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Now, take these Thomas pictures which we are discussing; take this one, JJ, No. 37, "Daisies"; what would a picture of that kind be sold for? A. Box tops, calendars.

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Q. For box tops and calendars? A. Yes—all sorts of uses.

Q. Can you tell me what you were selling these for per thousand? A. About—

Q. I don't want about. A. Sixty-five shillings—turn to the first page, 10 the catalogue.

Q. I thought you didn't keep catalogues; you rather resented my suggestion that you kept a catalogue; you said it was a price-list that you kept?

A. That is a catalogue.

Q. Oh, this is a catalogue? I thought it was, too. Here they are. Does that help you? A. Yes, but you want the other book. This is the eight and a half twelve and a half.

Q. All right, I will give you whichever you like.

A. There it is.

Q. This is your price-list? A. Yes.

20 Q. How do you identify the price-list with the—

A. Was this the picture out of this book?

Q. Yes? A. Seventy-five shillings a thousand.

Q. Seventy-five shillings a thousand? A. I said sixty-five.

Q. When was this price list got out? A. I couldn't tell you.

Q. You couldn't tell me that? A. No.

Q. And that is what you were selling them for, at seventy-five? A. Yes.

Q. When you sold them at that much a thousand they were turned out in the same condition as we find them in the sample? A. Yes, sir.

Q. The same paper? A. Yes.

30 Q. And the same type of reproduction?

A. Absolutely.

Q. And you sold those for seventy-five shillings per thousand in England? A. Yes, sir; all over the world.

Q. I notice in your price-list you say:

"Apart from these Box Wrappers we have a large range of pictures of all descriptions—Landscape, Seascape, Hunting, Figure, Floral, etc., suitable for mounting on boxes."

These are all box mountings, are they? A. Yes.

Q. In this Exhibit No. 9? A. Yes.

40 Q. And they vary in price, I see; the large ones, ten and a quarter by thirteen and an eighth, 120 shillings per thousand—those are certain numbers. I take it these are the more ornate ones, are they? What are the 120-shilling a thousand ones? A. You can identify them all by number. Here is number—

Q. How can I identify these lower down? I can identify those, that is quite easy, but how can I identify the others? A. What have you got?

Q. I have ten and a quarter by thirteen and an eighth.

A. There is your thirteen and an eighth, there is your ten and a quarter.

Q. Well, what about the next one, sixty-five shillings?

A. Well, that is ten and a quarter thirteen and an eighth too.

Q. Well, which are seventy-five and which are sixty-five? A. It says ladies' heads, etc., coloured background; that's that.

Q. That is the coloured background? A. That is the coloured background.

Q. Then if you don't have a coloured background?

A. You get it for fifty-five. 10

Q. You get it for fifty-five shillings; I see. Did the price differ when you ordered larger quantities than one thousand? A. No.

Q. No change? A. No.

Q. If you ordered two hundred thousand it would be the same, would it? A. There would be a difference. There would be a printing edition, you see.

Q. What? A. There would be a difference in price, but not much.

Q. Then the other ones which we have here, the price-list is in the front as well? A. Just the same thing.

Q. And these are all numbered too. These, I take it, are box wrappers as well, are they? A. The same thing. 20

Q. These are both box wrappers, but a smaller size?

A. That is right.

Q. And certain of those are seventy-five shillings a thousand and the others are less. Now, take these other pictures which are contained in Exhibit 1; take the one which is marked A; can you tell me whether these pictures occur in this Exhibit 4 or not? A. I cannot.

* * * * *

Q. The first one, "The Captain and his Crew", for what purpose is a picture of that kind used?

A. Well, all sorts of purposes, framing and mounting.

Q. Framing and mounting; yes? A. Christmas cards. 30

Q. Christmas cards? A. Calendars—everything.

Q. Everything? A. Yes.

Q. That is a universal type, eh? A. Yes.

Q. Use that for everything. At about what price—

A. I have got my supplement trade too for pictures like that.

Q. I am coming to your supplement trade in a minute. I didn't know you had one. In fact, I thought you told us you hadn't, but we will see about that. What would that sell for per thousand? A. We vary, our price varies, in different trades.

Q. What do you mean by that? A. Well, in a trade that would pay 40 more we would get 120 shillings, and then other trades we would get perhaps 100 or 85.

Q. Or less? A. No.

Q. Then take No. 2, which is your picture "Eileen"; it is No. 3 on the schedule; for what is that picture used?

- A. Oh, used for all similar purposes to this.
- Q. Similar purposes to 1, is it? A. Yes.
- Q. And take No. 3, "Stalkers"? A. Yes.
- Q. What would you use that for? What do you sell that for? A. Not such a big use as the two previous.
- Q. What would you sell it for? A. Oh, framing and calendars.
- Q. Framing and calendars? A. Yes.
- Q. And the next one, "The Intruder", No. 5?
- A. Our title is "It Never Rains but it Pours".
- 10 Q. Yes? A. The same purpose.
- Q. The same purpose? A. Yes.
- Q. And the next one is a hunting scene; what is that? Apparently very old, isn't it? A. No, sir.
- Q. Judging by the costumes of the ladies?
- A. Well, it is—it is a jolly good picture.
- Q. What do you use that for? A. Framing and mounting, for all purposes.
- Q. What is the age of that picture? A. I would put that down at about 1909 or '10.
- 20 Q. Then when you get to these Highland cattle pictures? A. The same thing.
- Q. The same thing? A. The same thing.
- Q. Framing? A. Yes.
- Q. And "The Belle of Cashmere", as you call it? A. Yes.
- Q. Number H in Exhibit 1; that is for tops of boxes or— A. Yes; people who want an eastern subject, there it is.
- Q. And the same with "On Duty", marked J? A. Yes, the same thing.
- Q. What price would they be sold for? A. That would be about 100, 120 shillings.
- 30 Q. 120 shillings a thousand.
- HIS LORDSHIP: "On Duty"—which is that?
- MR. McCARTHY: I think it is called J.
- WITNESS: "On Duty" is our title. The artist called it "Bobbing".
- MR. McCARTHY: Q. I think it is "A Nibble", isn't it? A. "The Toronto Star" called it "A Nibble".
- Q. I think the "Star" called it "A Nibble". And that used for the same purpose? A. Yes, sir.
- Q. Tops of boxes? A. Yes, sir.
- Q. Anything of that kind? A. Yes. The collection, take it all the way 40 through, it is the same thing—supplements, box tops, calendars, Christmas cards—anybody that wants a plucky coloured print.

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Q. That is what you do. What I am asking you now is, if you will perhaps answer my question, after having told us what you did, is it not common practice in the illustrated papers in England, not only at Christmas but at other times, to reproduce coloured prints or uncoloured prints, as the

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—continued.

case may be, and with the courtesy titles as to where they came from and who lent them for that purpose? A. No, I have never seen it.

Q. You have never seen it? A. No.

Q. Then take a look at these? A. I have seen a picture by so and so.

Q. And it doesn't tell where it came from? A. No, not that I know of.

Q. Not that you know of? A. No.

Q. Have you read them? This is by—do you know Mr. Frank T. Sabin of New Bond Street? A. Oh, he is an old antique dealer.

Q. Yes, an old antique dealer? A. Duke Street.

Q. Well, it is New Bond Street here? A. Yes.

Q. It says this painting is in the possession of Mr. Frank T. Sabin of New Bond Street, by whose kind permission it is here reproduced? A. Oh, yes.

Q. You have seen that done frequently in England, have you? A. No, I have not.

Q. Then I find another one on the next page, page 23 of the Sphere of November, 1934, "Through the Night", from a painting by Cooper Henderson: "This unusual aspect of coaching is in the possession of Messrs. Vicars, Old Bond Street, by whose permission it is here reproduced." Have you ever noticed that before? A. No.

Q. Never noticed that before. Then we have another one on the following page, a large one called "Bowling Along on the Brighton Road". "This picture is one of a pair on view at the Ackermann Galleries,"—very well-known galleries on New Bond Street? A. Yes.

Q. "Owners of the pictures, by whose courtesy the above example is here reproduced for the first time in colour." Have you never noticed that in the English illustrated papers before? A. No.

Q. You have never noticed that before? A. No, sir. May I have the date of that?

Q. Yes. A. Here it is here.

Q. It is the Christmas Sphere of 1934. And I have a number of others. You can go through this; I will put it in as an exhibit if it is— A. It looks now that these people made a collection of old masters, hunting and coaching.

Q. I am not saying what they made a collection of. What I am calling your attention to is that these are reproduced in an English weekly illustrated, and in each case the picture is in the possession of so-and-so, and produced by his courtesy? A. M'hm.

Q. And I am asking you again, isn't that a very common way to reproduce them? A. No, sir; I have not seen it before.

Q. You have never seen it before? Well, it is a good thing you came to Canada to read the Sphere. And there are a number of others which I won't go through, all to the same effect. You have told us you know Vicars, and you know Messrs.—is it Knoedler.

Q. How do you pronounce that? A. Nödler.

Q. You know Messrs. Knoedler of Old Bond Street? A. Yes, sir.

Q. And you have told us you knew Ackermanns, of course.

MR. McCARTHY: I had better put that in, having referred to it.

—EXHIBIT 10: "The Sphere", Christmas number, 1934.

MR. McCARTHY: Q. Then I also show you a copy of "The Field" of November, 1934, where, on pages 1146 to 1150 and following, you will find again reproductions of sporting scenes, and in each case, owned by Mr. Ambrose—oh, that is the horse that was owned by Ambrose Clark. The picture is reproduced by the courtesy of Frost and Reed, of 10, Clare Street, Bristol, from the signed Remarque Artist proof of which 250 copies are being published at 8 guineas each. Now, that is quite a frequent advertisement in English papers, is it not? A. No, sir.

Q. It is not? A. No.

10 Q. That is from page 1146 to page 1150, mentioning in each case being the courtesy of different people, and saying what they can be bought for. That will be the next exhibit.

—EXHIBIT 11: "The Field", Christmas number, 1934.

Q. Now, I suggest to you, Mr. Mansell, that reproductions of that kind in English papers are rather sought after for the purpose of making sales? A. Oh, no, sir.

Q. Oh, no, sir? A. I should think not.

Q. You think not. Then when they suggest that 250 copies are on sale at 8 shillings each— A. 8 guineas, you said.

20 Q. Eight guineas each; that would not be for the purpose of making a sale? A. Yes, for them.

Q. For whom? A. Why, for Frost and Reed, you have just said.

Q. Yes, quite so. And you do not think that the reproduction of pictures of that kind is an assistance in making a sale? A. I don't know their business, sir; I know mine.

Q. But you are not selling them, are you? A. I am not selling the rights of my pictures to anybody.

Q. No, but you are selling your pictures? A. No, I am not selling my pictures.

30 Q. You are selling the prints, though? A. I am selling my edition.

Q. And you don't think that would be helpful in selling the edition? A. No, sir; that is publication.

Q. That is what? A. That is publication.

Q. What do you mean by "That is publication"? A. The pictures that you have shown me from these Vicars and Sabin and all these sort of people, they have got very likely a picture there that is worth five hundred pounds, and they like to get an advertisement to sell that picture, not for reproduction.

Q. You don't think it would apply to reproduction? A. No, certainly not.

40 Q. Well, perhaps you may change your mind before long? Now, these pictures in question in this action you told me were never printed in Canada? A. No, sir.

Q. Or reprinted in Canada? A. Never.

Q. Or reproduced in Canada? A. Never.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence
No. 1
A. Vivian
Mansell
Cross-
examination
—continued.

*In the
Supreme
Court of
Ontario.*
Plaintiff's
Evidence
No. 1
A. Vivian
Mansell
Cross-
examination
—continued.

Q. And I want to know what took place between you and Mr. Hindmarsh when this paper was produced and you said these two pictures were yours. What did Mr. Hindmarsh say to that? A. He said that they were—he collected pictures, they collected pictures from various sources, and gave an acknowledgment to the people that they got the picture from, and they found it a great help to business.

Q. And they found it a great help to business? A. Yes.

Q. A help to his business or to your business? A. He never said my business.

Q. He never said your business; will you swear to that? A. Certainly. 10

Q. Well, we will come to that. Did he not tell you that these people were glad to get their pictures in the "Star"? A. He told me that.

Q. And that they found it a great help? A. A great help, yes, in business, it was found to be a great help in business, a great assistance in business.

Q. To them, to the people? A. To the "Star".

Q. Oh, no, don't try and twist that around. Did he not tell you that people were very glad to get their pictures in the "Star", that it was a great help to the people who put their pictures in? A. Yes, in effect he did tell me that.

* * * * *

Q. And did you quote a price? A. Never. 20

Q. Never? A. Never.

Q. Sure? A. Certain.

Q. Certain, are you? A. Certain.

Q. Never mentioned what you would take for your prints? A. Never, never.

Q. You said never twice; if you want to say it three times, all right? A. Well, sir, three hundred times.

Q. You will say it three hundred times. I suggest to you that he asked you how much you were asking, and you quoted twelve pounds? A. No, sir, wrong. 30

Q. You say? A. No, sir.

Q. And he then asked you, was that the maximum or minimum? A. You are getting to the wrong part of the interview, sir, quite the wrong part of the interview.

Q. I am not saying what part of the interview; I am asking at any time did he ask you? A. No. He asked me early—about halfway through the interview, what people charged for the right to reproduce. I told—

Q. I am coming to that too now? A. Well, that is where the price came, there.

Q. Just a moment. Did he ask you what price you were asking for the 40 prints you had in the hotel? A. Never.

Q. Never during the interview at all? A. Never; and he wouldn't have got a price.

Q. Just a moment. Answer my questions. A. He wouldn't have got a right to use from me.

Q. I didn't say whether he had a right to use from you or not. I am asking you whether he asked you to give him a price on what you were asking to reproduce or— A. Never, sir, never.

Q. And you say you did not quote him twelve pounds? A. Never.

Q. And he didn't ask you—twelve dollars, I mean? A. Twelve what?

Q. Twelve dollars? A. What's that? That is two pounds.

Q. Twelve dollars, yes. A. That is two pounds.

Q. Yes? A. To reproduce my pictures?

Q. Yes? A. That is adding insult to injury.

10 Q. Well, you may think so? A. I never heard such a thing.

Q. You never heard such a thing? A. Two pounds to take a man across to my hotel to get my pictures and print in their supplement, 250,000 copies? Why, I never heard of such a thing in all my life—lies, lies, lies!

* * * * *

Q. The actual cost you estimate at £93. 1s. 6d? A. That is right.

Q. Then you double that? A. Yes.

Q. And the double takes care of your overhead and profit? A. Everything.

Q. Takes care of the overhead and profit. Is that your claim for damages? A. Yes.

20 Q. And your only claim? A. Under conversion.

Q. Now, have you any other claim? A. I am not answering that. My solicitors are looking after my interests.

Q. Well, I want to know, now that you are in the witness box, what your claim for damages is?

MR. BULLEN: I submit, my Lord, it is hardly fair to ask this witness what his claim for damages is in a copyright action, where the Copyright Act sets out what his claim for damages is.

HIS LORDSHIP: You can get from him if you like, Mr. McCarthy, any damages that he knows he has sustained, but what his claim is is more a 30 matter of law than—

MR. MCCARTHY: I think it is a mixed question of law and fact, isn't it, my Lord?

HIS LORDSHIP: The fact is, any damage that he has suffered, if he can tell you.

MR. MCCARTHY: Q. If you have suffered any damage we would like to know what it is now? A. I can't put my finger on any damage, but—

Q. You can't put your finger on any damage; is that right? A. Yes.

* * * * *

Re-examination by Mr. Bullen:

40 Q. One or two questions in reply. You said to my friend a moment ago, "I can't put my finger on any damage"; what did you mean by that? A. Well, you can't prove damage in a case like this, except when I come to sell my goods to people like Harmsworths, you know, and if they ask me who has had this, and it is passed over because it has been used, it is a serious matter for me.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence
No. 1
A. Vivian
Mansell
Cross-
examination
—continued.

Plaintiff's
Evidence
No. 1
A. Vivian
Mansell
Re-exami-
nation

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence
No. 1
A. Vivian
Mansell
Re-exami-
nation
—continued.

Q. Have you had any actual figures or anybody turning down the picture because it has been published? Is that what you mean to Mr. McCarthy?
A. Yes.

Q. That is what you mean? A. Yes.

Q. You haven't any particular figures of damage?

A. No.

MR. MCCARTHY: What is that again?

MR. BULLEN: Hasn't any particular figures of damage, of anybody asking and not getting an order.

HIS LORDSHIP: I don't think he has said he had any instance of a 10 person refusing one of these pictures because it had been published.

MR. BULLEN: I think that is what he means.

WITNESS: I do mean that.

HIS LORDSHIP: Q. You do not know of an instance in which anyone refused to take— A. No, my Lord.

Q. —one of these pictures because of prior publication? A. No, my Lord.

MR. BULLEN: Q. That is what you meant—

A. Yes.

Q. —when you said, "I can't put my finger"?

A. Yes.

Q. You do not know of any particular person turning down your prints because they had been published?

A. Yes.

Q. Are these pictures that you complain about being published by the "Star" still in your collection? A. Yes.

Q. Are they still available for a customer to buy?

A. Yes.

Q. Incidentally, my friend chided you because you had made a mistake in the artist of one of the pictures; how many pictures are in your collection, approximately? We don't want it accurately. A. You mean pictures, you 30 don't mean sketches now, do you?

Q. Take the pictures, from which these are reproduced, the same type?
A. 4,500, 5,000.

Q. Between 4,500 and 5,000? A. Yes.

* * * * *

MR. BULLEN: Q. When you say just look at this reproduction, you are referring to a reproduction of what picture? A. Well, the wicked reproduction of my picture.

Q. What is the name of the picture, so that I can identify it on the notes?
A. Take "A Brunette".

Q. "A Brunette" in the issue of the "Star" of May 21, 1932; what do 40 you say about that? A. Well, it is a dreadful reproduction of my picture.

Q. You complain there of the manner in which it has been done? A. Of course I do—every one of them.

Q. You have the same complaint, you say, about every one of them?
A. Every one of them—but for what it is, this "Star" supplement is jolly

good; it is a credit. It is not a credit to me to reproduce my pictures, though, in this way.

Q. You said something to my friend about selling to— was it Harmsworths or the Amalgamated Press, a supplement? A. Yes, sir.

Q. In that case you do the printing? A. Yes.

Q. And you do not sell to them to reproduce?

A. No.

Q. You do not sell a picture to them to reproduce?

A. Never, never.

10 Q. Have you ever done that? A. Never, except in one case.

Q. What case was that? A. I had a picture painted by Elsley entitled, "There's Room for You", and it was arranged that it should be sent to the R.A. It was accepted by the Academicians, hung on the walls, and within a week or two the "Illustrated London News" approached me, and they gave me a hundred guineas for the use in photogravure, not colour.

Q. That is the only instance in which you—

A. Yes.

Q. Had you the copyright in the picture? A. Yes.

Q. You had the copyright in the picture?

20 A. Oh, yes. So that picture only stood me a cost of twenty-five guineas. We are printers, we do not sell these things. We keep our pictures to keep our machines going.

* * * * *

No. 2. Evidence Taken on Commission in England.

"Mr. Ernest Henry Thomas, sworn.

"Examined by Mr. P. Stuart Bevan.

"Q. You are Mr. Ernest Henry Thomas. Where do you live?—

"A. Benhilton Mount, All Saints Road, Sutton.

"Q. I think you are a British subject?— A. Yes.

30 in 1919?— A. Sheen Gate Mansions.

"Q. You were living in England?— A. Yes.

"Q. What was your employment in 1919?— A. I was an artist.

"Q. Were you employed by anybody?— A. Well, I had just come out of the Army, and shortly after I started working for Mr. Mansell.

"Q. You started working for Mr. Alfred Vivian Mansell, the Plaintiff?—

A. Yes.

"Q. What was it your duty to do for Mr. Mansell?—

"A. Anything that he asked me to do.

40 artist?— A. Yes.

"Q. Was it your duty to paint anything he directed you to paint?—

A. Yes.

"Q. I want you to say if you can remember any paintings that you did at that time. I want you to look at those four pictures. Do you recognize those four pictures?

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence
No. 1
A. Vivian
Mansell
Re-exami-
nation
—continued.

Plaintiff's
Evidence on
Commission
No. 2 (a)
Ernest
Henry
Thomas
Examination

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence on
Commission
No. 2 (a)
Ernest
Henry
Thomas
Examination
—continued.

“A. Yes, definitely.

“Q. Did you paint those?— A. Yes.

“Q. Were those pictures painted, as you have said, by the order of Mr. Mansell— A. Yes.

“Q. I think they are called: ‘Pierrette breaking through paper background’, ‘Daisies’, ‘Cherries’ and ‘At the Seaside’?— A. Yes.

“(Picture ‘At the Seaside’ put in and marked ‘E.H.T.1’.

“Picture ‘Cherries’ put in and marked ‘E.H.T.2’.

“Picture ‘Daisies’ put in and marked ‘E.H.T.3’.

“Picture ‘Pierrette breaking through paper back ground’ put in and 10 marked ‘E.H.T.4’).

“Q. Where were these painted; were they painted in England?— A. Yes.

“Q. And published in England?— A. Yes.”

Plaintiff's
Evidence on
Commission
No. 2 (a)
Ernest
Henry
Thomas
Cross-
examination

“Cross-examined by Mr. Stark.

“Q. You stated that in 1919 you entered the employment of Mr. Mansell. Is that right?— A. Yes.

“Q. At what dates were these pictures painted?—

“A. After 1919.

“Q. Be more explicit if you can.— A. Early in 1919 I was under no contract with Mr. Mansell, but at the end of 1919 I had a contract with him 20 and worked wholly for him; but, of course, I know that all those pictures have been painted since, I should say, 1921, when I was working solely for Mr. Mansell.

“Q. Give me your best recollection as to the actual date upon which each of those pictures was painted. Take this one, ‘At the Seaside’.— A. That would be about 1926.

“Q. About 1926?— A. Yes.

“Q. Can you give me the month of that year?— A. No, I am afraid not.

“Q. Did you receive any remuneration for painting these pictures, apart from salary?— A. No. I had a weekly salary. 30

“Q. Then the picture entitled ‘Cherries’; in what year was that painted?— A. It is very difficult to say. I should say, roughly, 1924.

“Q. And the picture entitled, ‘Daisies’?— A. That would be probably 1921 or 1922.

“Q. And the fourth picture entitled, ‘Pierrette breaking through paper background’?— A. 1926. It is difficult to remember. It was my sole job to turn out stuff like that, day after day.

“Q. Have you any written record that would assist you in this regard?— A. No, I never kept any record, because I was simply a salaried employee, and I kept no record of the work I did. 40

“Q. Are you aware that Mr. Mansell in his examination swore that all these pictures are painted during the years 1927 to 1930? What would you say as to that?— A. I do not know, I am sure. Mr. Mansell is a far busier man than I am and deals with a lot of stuff, and hires the artist who has to live with these things day after day until they are completed and associates them with things, which makes me remember, perhaps.

“Q. You believe your dates are more inclined to be accurate than Mr. Mansell’s in that regard?— A. For that reason; yes.

“Q. Will you give me some idea of what output in pictures you would paint in a given period for Mr. Mansell?— A. I should think a fair average would be one a week. That is only an average.

“Q. Are you still in Mr. Mansell’s employ?— A. No; I am not under contract with him, but I still work for him.

“Q. Going back to these particular four pictures, did you ever assign in writing to Mr. Mansell the copyright in these pictures?— A. That was understood. Mr. Mansell is a publisher of pictures and I could not possibly have had any further interest in them.

“Q. Was this understanding verbal, or in writing?—

“A. I had a written contract.

“Q. Have you a copy of that contract with you?—

“A. No, I have not.

“Q. Where is that?— A. Well, it was made a long time ago, and I have moved about twice since then, and it has just disappeared. I am afraid I am not very business-like.

“Q. Describe as well as you can for me the terms of this contract.—
20 A. That I was to work solely for Mr. Mansell for £16 a week, and that I was to work for no other firm, and that is all. It was a very simple business. Before making this contract I had been working for Mr. Mansell.

“Q. Please stick to the contract for the moment. Were there any terms in that contract having to do with copyright?— A. No; that was understood, you see. Having handed over the sketch to Mr. Mansell, I had no further interest in it. He did what he liked with it.

“**Re-examined by Mr. P. Stuart Bevan.**

“Q. I want to know just about your output of work. Does this average of one sketch a week include sketches that you made which were of no value, or does it mean one completed picture a week?— A. I can only make a very rough average. When I say one week, that includes time occupied in making roughs.

“Q. This contract, of which you now have not a copy, was, as I understood from what you said, a contract of employment whereby you acted as Mr. Mansell’s servant, in fact?— A. Yes.

“(The witness withdrew).

* * * * *

“**Mr. John Sanderson-Wells, sworn.**

“**Examined by Mr. P. Stuart Bevan.**

“Q. Where do you live?— A. 8 Bedford Park Mansions, W. 4.

40 “Q. I think you are an artist and a British subject?— A. Yes.

“Q. I want you to take your mind back to the year 1904.— A. You are asking rather a lot.

“Q. Can you tell me one or two things. Do you know, were you resident in England at that time?— A. Yes.

Plaintiff’s
Evidence on
Commission
No. 2 (a)
Ernest
Henry
Thomas
Cross-
examination
—continued.

Plaintiff’s
Evidence on
Commission
No. 2 (a)
Ernest
Henry
Thomas
Re-exami-
nation

Plaintiff’s
Evidence on
Commission
No. 2 (b)
John Sander-
son-Wells
Examination

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence on
Commission
No. 2 (b)
John Sander-
son-Wells
Examination
—continued.

“Q. Did you know the Plaintiff, Mr. Alfred Vivian Mansell?— A. Yes.
“Q. Did he give you certain instructions, do you remember, at that time?
— A. He gave me commissions.

“Q. To do what?— A. Any amount of things I did for him.

“Q. I presume to paint pictures for him?— A. Yes.

“Q. Would you look at these two pictures?— A. Yes, I can see them;
I have seen them for years.

“Q. Did you paint those pictures upon the instructions of Mr. Mansell?—
A. Yes.

“Q. They are called ‘Woo Whoop’ and ‘Going to the Meet’. They were 10
painted in England?— A. Yes.

“(Picture ‘Woo Whoop’ put in and marked Exhibit ‘J.S.W.1’.)

“(Picture ‘Going to the Meet’ put in and marked Exhibit ‘J.S.W.2’.)

“Q. When you finished the pictures, what did you do with them? To
whom did you give them?— A. Mr. Mansell.

“Q. I suppose he paid you the price which had been agreed?— A. Yes.

“Q. Did you give a receipt?— A. I expect so.

“Q. Do you remember the terms of the receipt?— A. I have not the
slightest idea. I do not want my answer to sound rather too indefinite; if you
would prefer to have something a little nearer, I will give it. 20

“Q. I was going to ask you, was it anything more than a mere receipt of
money? Do you remember that?— A. I do not quite follow.

“Q. Did it identify the pictures on the receipt? Did it say: Received,
so much money in respect of certain pictures, naming them?— A. It was
simply payment for the pictures and the copyright.

“Q. For the pictures and the copyright?— A. Yes.

“Q. Do you remember whether the pictures were referred to in the
receipt? Was it merely a sum of money? You said that it referred to the
copyright?— A. Yes.

“Q. I presume the receipt merely did not say ‘and copyright’; it must 30
have identified the copyright?— A. I usually submitted titles with the
pictures, and those titles were put on the account when it was paid, and the
titles I gave were used as identifying the pictures.

“Q. That is what I was meaning.— A. Yes.

“Cross-examined by Mr. Stark.

“Q. Are you swearing that both these pictures were painted in 1904?—

A. I am not swearing anything of that kind.

“Q. When were they painted?— A. I have not the smallest idea.

“Q. You have not the smallest idea?— A. No; it is too far back for me
to give any definite date, having taken an oath upon it. 40

“Q. Can you give me any idea as to what remuneration you received for
these pictures?— A. Anything you like between 20 and 30 guineas, because
I always made it a policy with everybody.

“Q. You always charged between 20 and 30 guineas?— A. Yes, unless
it goes larger; then I get more.

Plaintiff's
Evidence on
Commission
No. 2 (b)
John Sander-
son-Wells
Cross-
examination

"Q. Is it possible you did this for less money for Mr. Mansell?— A. No, it is not possible. I had a man standing in my studio who offered me £80 for a set of four pictures, and I said: 'Good evening' to him. He went, and came back, and I made him pay another five guineas on top of that for having done it.

"Q. Are you swearing that you gave Mr. Mansell a receipt for these pictures?— A. I expect so.

"Q. Do you know?— A. He is a business man, and would want a receipt.

10 "Q. I want your recollection?— A. I have not any recollection of 1904, or something like that. These things are right away back; I am trying to forget them as much as I can.

"Q. The truth is that you may or may not have given a receipt?— A. I do not think there is much chance of my not doing it.

"Q. You cannot remember?— A. No, of course I cannot; I mean who could, if you want an honest statement?

"Q. Have you any letters or written documents which would indicate the nature of this receipt, or if in fact you gave one?— A. If I kept letters like that from that time up to now you could not stack them on this table.

20 "Q. Will you answer my question?— A. I am a busy man and I have done a lot of work for a lot of people. They all write me tons of letters, and, if I kept them all, I should be snowed out of my home.

"Q. Have you any written note or memorandum referring to these pictures?— A. No, I could not tell you, it is quite impossible, thirty years ago, twenty years ago, whatever it may be.

"Q. Have you a copy of any receipt you might have given for these pictures?— A. I told you, no.

"Q. Will you swear that you gave a receipt in connection with this picture?— A. No, I would not swear to anything of the sort. It is only
30 the natural thing that I would have done.

"Re-examined by Mr. Shelley.

"Q. Apart from any swearing about it, have you any reasonable doubt that, following the ordinary course of business, you did give a receipt for these pictures?— A. None whatever; no.

"(The witness withdrew.)

* * * * *

"Mr. Charles Spencelayh, sworn.

"Re-examined by Mr. Shelley.

"Q. I think you are an artist, and do you live now at Beaufort House, Hollingbourne, in Kent?— A. Yes.

40 "Q. Are you a British subject?— A. Yes.

"Q. Do you remember painting some pictures for Mr. Alfred Vivian Mansell a good many years ago?— A. Yes, certainly.

"Q. Can you give us any sort of idea about the date; within five or six

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence on
Commission
No. 2 (b)
John Sander-
son-Wells
Cross-
examination
—continued.

Plaintiff's
Evidence on
Commission
No. 2 (b)
John Sander-
son-Wells
Re-exami-
nation

Plaintiff's
Evidence on
Commission
No. 2 (c)
Charles
Spencelayh
Examination

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence on
Commission
No. 2 (c)
Charles
Spencelayh
Examination
—continued.

years? If you say early in this century that is good enough—whatever date you can fix?— A. I should think it is about 25 years ago.

“Q. That will take us to about 1910?— A. 25 or 27 years, perhaps.

“Q. Would you mind telling us how you came to paint those pictures, that is to say did you paint them what I might call speculatively, to use rather an analogy from another trade, or were you asked to paint them?— A. They were speculative, really.

“Q. Would you look at the two pictures that I am handing to you? Do you identify those pictures?— A. Yes, I know them quite well.

“Q. Are they your pictures?— A. Yes, from my pictures, I should say. 10

“Q. One of them is called ‘Duck and Green Peas’ and the other is called ‘Table d’Hote with Music’?— A. Yes.

“(Picture ‘Duck and Green Peas’ put in and marked Exhibit ‘C.S.1’.)

“(Picture ‘Table d’Hote with Music’ put in and marked Exhibit ‘C.S.2’.)

“Q. They were painted in this country?— A. Yes.

“Q. After the pictures were done did you sell them to Mr. Mansell?— A. Yes, I did.

“Q. What about the copyright?— A. The copyright was included.

“Q. Did you give a receipt for the money that you received?— A. I 20 could not say now, but I should think I did.

“Q. Was it your practice, when dealing with Mr. Mansell, to give a receipt?— A. I should think it was. I could not say now. Sometimes I give receipts, sometimes I do not; people do not require receipts with pictures, but I should think, under Mr. Mansell’s circumstances, he would require a receipt.

“Q. It was a business transaction?— A. Yes.

“Q. You knew that Mr. Mansell was a publisher?— A. Yes.

“Q. Not a private buyer?— A. Quite.

“Q. You have no doubt, have you, that you did in fact intend to assign 30 the copyright to Mr. Mansell?— A. Yes, most decidedly.

“Q. And the actual pictures themselves, I think, you handed to Mr. Mansell also?— A. Yes.

“Cross-examined by Mr. Stark.

“Q. Why do you say that you intended to assign the copyright to Mr. Mansell?— A. I did not say I intended; I said I think I did.

“Q. Why do you say that?— A. Because it is usual, when you sell pictures to a publisher, to have the copyright assigned with it. I cannot say I know I did do it, but I believe, with all the pictures I sold to Mr. Mansell, there was a copyright form signed at the time. 40

“Q. Have you any recollection of assigning the copyright of these two particular pictures to Mr. Mansell?— A. No, but I think in the usual course I should.

“Q. You do not recall doing so in this case?— A. No, I do not.

“Q. Did you have any written agreement with Mr. Mansell before

Plaintiff's
Evidence on
Commission
No. 2 (c)
Charles
Spencelayh
Cross-
examination

painting these pictures?— A. No, I do not think so. They were painted on spec. and shown to Mr. Mansell, and he purchased them.

“Q. Did he tell you what to paint?— A. No.

“Q. Or how to paint them?— A. No; they are my ideas; all original.

“Q. Since you executed these two pictures, have you done any other pictures for Mr. Mansell?— A. I could not say; I expect I have. I do not think they were the last I painted for him, or, rather, sold to him; I could not say, but I do not think they were the last.

“Q. How many pictures have you ever painted for Mr. Mansell?— A. I could not say; it is a very difficult question to answer.

“Q. Well, roughly?— A. It may be twenty, perhaps.

“Q. Perhaps twenty pictures?— A. It may have been; I could not say; I would not say at all. I just painted them. I did not paint them for Mr. Mansell; I painted them and sold them to him as originals, with the copyright.

“Q. Have you painted any pictures recently for Mr. Mansell?— A. No, not at all.

“Q. When was the last picture painted for Mr. Mansell?— A. I should think it is twenty years ago—no, perhaps not; nearly twenty, I should think.

“Q. Give me, as best you can, the particular years in which these two pictures were painted. Take the one ‘Duck and Green Peas’. When was it painted?— A. I could not say; I have no records of them, but I should think it is about 26 years ago, where I was living at the time where I painted it; 27, perhaps; 26 or 27 years.

“Q. What remuneration did you receive for the picture ‘Duck and Green Peas’?— A. That I could not say definitely; I should think about 25 guineas or 30 guineas.

“Q. Are you prepared to swear that Mr. Mansell is wrong when he says that he only paid you six guineas for this picture?— A. I could not say; I should think I had more in those days. I do not remember ever receiving six guineas for a picture from Mr. Mansell.

“Q. That is what he said he paid you.— A. Is that so? He knows; perhaps he has records of them; I have not.

“Q. That may be the price you received for this picture?— A. It may be. I should think it was very low indeed, because it was an original picture and not a commission picture, you see.

“Q. You are not prepared to swear that Mr. Mansell is wrong in his memory?— A. No, I do not say that what I said is correct, but I should think about that price.

“Q. With regard to the picture ‘Table d’Hote with Music’, what remuneration did you receive for that?— A. I should say about the same, 25 or 30 guineas with the copyright, in those days.

“Q. What do you mean by ‘in those days’?— A. Well, my prices have advanced considerably since then.

“Q. In what year would you say that picture was painted— ‘Table d’Hote with Music’?— A. It is about 25 years ago, I should think. That boy was killed in 1916, so it is considerably before that.

*In the
Supreme
Court of
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Plaintiff's
Evidence on
Commission
No. 2 (c)
Charles
Spencelayh
Cross-
examination
—continued.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence on
Commission
No. 2 (c)
Charles
Spencelayh
Re-exami-
nation

“Re-examined by Mr. Shelley.

“Q. When you sold these pictures, I think you knew that you were selling them for reproduction?— A. Certainly, yes; no other purpose with Mr. Mansell.

“Q. In those circumstances did it ever occur to you that you were retaining for yourself any sort of right or title in the pictures at all?— A. I was selling the right and title.

“Q. That is what I meant. You did not intend to reserve to yourself any right or title of any sort?— A. None whatever.

“Q. You knew that Mr. Mansell might have to take proceedings in 10 respect of infringement, but that was his affair entirely after the sale?— A. Yes, of course; if they were infringed upon he would most probably take proceedings.

“Q. It was always your intention that all the necessary rights should be in Mr. Mansell?— A. Most decidedly.

“Further cross-examined by Mr. Stark.

Plaintiff's
Evidence on
Commission
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Charles
Spencelayh
Further
Cross-
examination

“Q. I want to ask you a question arising out of the re-examination. When you say that you intended to pass the copyright in these pictures for reproduction purposes, you will bear in mind that in fact you did not carry out that intention, did you?— A. I did. 20

“Q. How did you carry out that intention?— A. I supposed I signed a form. I could not say, I only suppose; I do not remember. On receipt of the cash there is generally a form for the copyright of the picture and the title.

“Q. There is generally a form. You are not swearing that there was any form in this case?— A. No. You asked me that before, and I said: No.

“Q. You are quite clear about that?— A. I cannot swear, but it is the usual case. I am speaking of 25 years ago. I do not run about with these things in my head, whether I signed a copyright form or not.

“Q. You will not swear you did?— A. No, certainly not. 30

“Further re-examined by Mr. Shelley.

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Evidence on
Commission
No. 2 (c)
Charles
Spencelayh
Further Re-
examination

“Q. When you say that you will not swear you did, do you mean by that that you will not swear that you have no recollection of actually signing a form?— A. No; that is what I mean. It is understood, when you sell a picture for publication, that the copyright goes with it.

“Q. Have you any doubt in your mind that in fact you did what you have told us was the general thing in this case; you did sign a form of receipt?— A. I expect I did. I would rather say I did than I did not, but still, I would not swear either way.

“(The witness withdrew.) 40

* * * * *

"Mr. Arthur John Elsley, sworn.

"Examined by Mr. Shelley.

"Q. You are Arthur John Elsley. Are you an artist?— A. Yes.

"Q. Do you live at 28, Madeira Park, Tunbridge Wells, Kent?— A. Yes.

"Q. Are you a British subject?— A. Yes.

"Q. Do you remember making a business deal with Mr. Mansell some years before the war?— A. Yes.

"Q. Will you look at this picture? Did you paint the original of that?—

A. Yes.

10 "Q. Is that called: 'Let's be Friends'?— A. Yes.

"Q. Where did you paint it; in what country, I mean?— A. In London.

"(Picture put in and marked 'A.J.E.1'.)

"Q. After you had painted it did you sell it to Mr. Mansell?— A. Yes.

"Q. Was that the only picture you ever sold to Mr. Mansell?— A. No,

I have painted others.

"Q. Did you know Mr. Mansell was a dealer and was buying for reproduction?— A. I knew he was a publisher.

"Q. I mean a publisher. When you dealt with Mr. Mansell, when the money was paid was it customary to sign a receipt for it?— A. Well, as far as I recollect I used to sign a receipt including all rights of reproduction, which was the copyright.

"Q. And, I presume, identifying the picture?— A. Yes.

"Q. So far as your recollection can go back all these years, is that what happened in this particular case?— A. Yes.

"Q. I suppose you were paid the purchase price, whatever it was?— A. Yes.

"Q. And after that you did not care what Mr. Mansell did with the picture?— A. No; quite so.

"Q. It was not your business at all? A. No.

30 "Cross-examined by Mr. Stark.

"Q. In what year did you paint the picture 'Let's be Friends'?— A. I should think about 1909 or 1910; it might have been 1911, but I do not think so.

"Q. Did you receive any instructions from Mr. Mansell for the painting of the picture?— A. A general idea of what was wanted.

"Q. Then you sold it to him for what remuneration?— A. £125.

"Q. Are you speaking from memory?— A. No.

"Q. Only?— A. The usual price at that time for my pictures.

"Q. Have you any record that you received that amount of money for this picture?— A. No, but it was the usual price; rather low.

40 "Q. Have you any recollection of signing a receipt transferring the copyright in connection with this particular picture?— A. I have not any definite recollection, but as my pictures were always painted for and bought by publishers, I should say I never missed filling up a copyright form of some sort.

"Q. If you did sign any such form have you a copy in your possession?— A. No.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence on
Commission
No. 2 (d)
Arthur John
Elsley
Examination

Plaintiff's
Evidence on
Commission
No. 2 (d)
Arthur John
Elsley
Cross-
examination

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence on
Commission
No. 2 (d)
Arthur John
Elsley
Cross-
examination
—continued.

“Q. Why do you say ‘No’?— A. You do not keep copies like that; at least I do not.

“Q. You do not keep copies like that?— A. No.

“Q. How many pictures have you painted for Mr. Mansell?— A. I could not tell you.

“Q. Approximately.— A. Half-a-dozen or more; more than that.

“Q. Were they painted before, or since that painting of this particular picture?— A. Mostly before; some since. Up to about 1919 I suppose that was the last time.

“Q. Do you know where the original of this picture is?— A. No; no idea.

“(The witness withdrew.)”

* * * * *

Plaintiff's
Evidence on
Commission
No. 2 (e)
Daniel
Sherrin
Examination

“Mr. Daniel Sherrin, sworn.

“Examined by Mr. Shelley.

“Q. Are you an artist?— A. Yes.

“Q. Do you live at West Bank, Whitstable, Kent?— A. Yes.

“Q. Are you a British subject?— A. Yes.

“Q. Do you remember doing business with Mr. Mansell in connection with a picture that you painted some time before the war?— A. Many years before the war. 20

“Q. Would you just look at two reproductions of pictures. Did you paint the originals of those?— A. Yes.

“Q. One of them is called ‘Down to the Stream’ and the other is called ‘Highland Cattle’?— A. Yes.

“(Picture ‘Down to the Stream’ put in and marked ‘D.S.1’.)

“(Picture ‘Highland Cattle’ put in and marked ‘D.S.2’.)

“Q. Did you paint more than those two pictures for Mr. Mansell?— A. In that year?

“Q. Altogether.— A. Dozens and dozens.

“Q. You knew he was a publisher?— A. Only a publisher. 30

“Q. You knew he intended to reproduce them?— A. He only bought them for that purpose.

“Q. Can you tell us what was your usual course of business between yourself and Mr. Mansell as regards a receipt, and so forth when he bought your pictures?— A. Yes.

“Q. What did he do?— A. I called round to him to see what he was wanting; any business doing. He might be away, and I would call round again and see somebody else. Then he would eventually tell me what sort of subject he would like. I would bring a small sketch round and show it to him, and then I would bring the finished picture in, which he would publish. 40

“Q. Then presumably he paid you for it?— A. Of course.

“Q. Did you sign a receipt when you got your money?— A. Every time.

“Q. And, that being so, have you any doubt that you signed a receipt in the case of these two pictures?— A. No. There was no doubt about those.

I assigned the copyright. There may not be a receipt, but the assignment of the copyright was brought out.

“Q. There was an actual formal assignment of the copyright?— A. There was a formal assignment of the copyright, and I just signed that. The receipt comes on another one; sometimes all in one; mostly it is a separate form, a copyright form.

“Q. In that particular case you remember signing a form assigning the copyright?— A. Yes, I think 38 years ago, when that was done, it was different. I think they put it all on one invoice. I used to bring in an invoice myself. Now Mr. Mansell has a form. I think it is 38 years since I did that picture.

“Q. After you had handed it over to Mr. Mansell and signed that form, you yourself claimed no right of any sort or kind?— A. No. I had finished; I had my money and I had finished.

“Cross-examined by Mr. Stark.

“Q. Were both these pictures painted 38 years ago?— A. One was painted the year after. There are two of these pictures; in pairs I generally painted them. That other one I think I painted the year after. Mr. Mansell was then in Silk Street, before he lived in Chapel Street. Then he went to 20 Finsbury Square. I think it is a good many years ago I painted that one.

“Q. When Mr. Mansell swears that these pictures were painted in 1912, he is wrong?— A. Most likely he would be right, because I have done so many highland cattle pictures for him. I dare say I have done 25 or 30 altogether, of highland cattle alone, called ‘Highland Cattle’, so I could not swear to that individual picture; but if you brought me the others I could tell you the dates.

“Q. Your recollection shows a spread of about 15 years. Will you tell me which is correct?— A. Fifteen years, quite, I can go back again.

“Q. You swore a few moments ago the pictures were painted about 38 years ago.— A. I thought they were.

“Q. Now you say Mr. Mansell is correct when he says they were painted in 1912, 23 years ago. I say that shows a spread of 15 years. Which is correct?— A. I should think about half way. I have done such a lot of them. If I had more of them I could go by them.

“Q. So that to the best of your recollection you would say these pictures were painted about 1907?— A. Well, I should think it was near about then. In 1907 I moved to Whitstable. I do not think I was at Whitstable then; I was living in London then. I think I painted this before I went to Whitstable, but I am not positive of that. I would not swear to a year or two. 40 1907; yes, I think it would be about that time.

“Q. What remuneration did you receive for each of these pictures?— A. About £20.

“Q. You mean £20 for each, or £10 for each?— A. For each one.

“Q. £20 for each?— A. Yes, with the copyright. I get much more money for a picture with the copyright, because they use it, you see.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence on
Commission
No. 2 (e)
Daniel
Sherrin
Examination
—continued.

Plaintiff's
Evidence on
Commission
No. 2 (e)
Daniel
Sherrin
Cross-
examination

“Q. Are you swearing that Mr. Mansell is also wrong in his recollection when he says he only paid you £10 for each of those pictures?— A. He is only recalling the copyright money; the picture money is separate to that.

“Q. Was that the custom, to pay a separate price for the picture and a separate price for the copyright?— A. Yes. There are several forms. If I only sell the copyright, then I have the picture back. Robinsons of Bristol only have the copyright.

“Q. Did that happen in those two cases?— A. No. I think Mr. Mansell has the pictures; I think he has the original pictures; yes, he did, I am sure. Mr. Mansell has all the original pictures. 10

“Q. Have you any recollection of signing a receipt transferring the copyright of these pictures to Mr. Mansell?— A. Yes.

“Q. Have you a copy of that document?— A. I do not keep that. They do not want to give that to me; they keep it themselves; it is a hold on me.

“Q. Do you have a copy?— A. No. I should not want such a thing. He is a buyer; he would not buy any more pictures.

“Q. Tell me to the best of your recollection the terms of the receipt.— A. It would say: ‘I hereby assign to Messrs. Alfred Vivian Mansell & Company’.

“Q. ‘I hereby assign’?— A. ‘to Alfred Vivian Mansell & Company the 20 copyright’.

“Q. ‘The copyright’?— A. ‘The sole copyright in my picture entitled, “Highland Cattle” to publish in any way he likes’.

“Q. You would use those words?— A. No; he uses those words, to be used by himself, or some words to that effect; an ordinary copyright form; but it is a printed form.

“Q. It is a printed form?— A. Yes, printed by the firm, binding on the artist.

“Q. It is not a typewritten form; it is a printed form?— A. Well, it may be typewritten; I would not swear to that. 30

“Q. Did you sign a separate receipt for each of these pictures, or only one covering the two of them?— A. No; it would be covering the two. When I sell a picture for copyright I have to sign a form for each picture. I cannot remember whether it was all one or not. It may be I sold four or six pictures to Mansell right off, and I think they are all on one; I could not tell you.

“Q. Apart from swearing it is your usual custom to sign these receipts, have you in fact any distinct recollection of putting your pen to paper in connection with these two pictures, or are you simply saying that that is your usual custom?— A. I am sure I signed it. 40

“Q. But you do not know whether you signed one receipt or two receipts?— A. I think Mr. Mansell bought several pictures at the same time as this one. You have only one of the pictures; there was a set of four, but only one picture is shown me. Two pictures are shown me, but there are other pictures.

“Q. Did you sign one, or two receipts, in connection with these pictures?— A. I should think most likely two.

“Q. Do you know?— A. I can swear there was one; I cannot swear it

was all on one paper. They are all on one list. I can swear I gave him a copyright receipt, because I had two of mine published then. It was a new thing to me.

“Q. Did you sign one, or two receipt forms covering these pictures?”

“MR. SHELLEY: If you do not remember, you are entitled to say ‘I do not remember’.— A. I do not remember, really; it is so many years back. I almost remember the first one, because there were so few I had to sign then.

“MR. STARK: Your answer is that you do not remember that?— A. I do not remember that, whether it was on one paper or two, but I signed it.

10 “Q. Do you remember signing anything?— A. Yes, certainly I would swear to that, because I should not have got out of the office if I had not. I had the cheque.

“Q. What amount of money were you paid for these pictures?— A. About £20, £15, £8, £6, £2, up to £20; all sorts of prices he paid me. It all depends what I asked.

“Q. You have no definite recollection as to the price of either?— A. No. How can you? I take him these pictures and ask him for a cheap price. I do not charge much. Sometimes I charge £20 for the copyright—sometimes.

“Q. You have painted dozens of these for Mr. Mansell?— A. Yes; 20 heaps.

“Q. Can you give me a rough idea?— A. I was in the war from 1914 to 1917. He did not buy any then. I should think four or five every year.

“Q. Since then?— A. Yes.

“(The witness withdrew.)

* * * * *

“Mr. Sydney Kendrick, sworn.

“Examined by Mr. Shelley.

“Q. Are you an artist?— A. I am.

“Q. Where do you live?— A. Fulthorpe Studios, Warwick Avenue, London.

30 “Q. Are you a British subject?— A. Yes.

“Q. Would you kindly look at that picture? Did you paint it?— A. Yes

“Q. I think it is called ‘Daughter of Erin’?— A. Yes.

“(Picture ‘Daughter of Erin’ put in and marked ‘S.K.1’.)

“Q. After you had painted it did you sell it?— A. I painted this picture for Mr. Mansell.

“Q. He asked you to paint it?— A. Yes.

“Q. After you had painted it did you sell it to him?— A. Yes, I did.

“Q. What about the copyright?— A. It was done for copyright purposes.

40 “Q. You mean it was painted with a view to assigning the copyright to Mr. Mansell?— A. Yes, entirely.

“Q. You knew he was a publisher and reproduced these pictures?— A. Yes.

“Q. Was that the only picture you painted for Mr. Mansell?— A. No, I have painted a good many for him.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence on
Commission
No. 2 (e)
Daniel
Sherrin
Cross-
examination
—continued.

Plaintiff's
Evidence on
Commission
No. 2 (f)
Sydney
Kendrick
Examination

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence on
Commission
No. 2 (f)
Sydney
Kendrick
Examination
—continued.

“Q. Mr. Mansell dealt with these things on a business footing, no doubt?—

A. Yes.

“Q. And when you got your cheque did you sign any documents?—

A. Yes.

“Q. What were they?— A. Sometimes I had a form to sign.

“Q. A form? What sort of form?— A. I cannot quite remember the form now.

“Q. What was the effect of it?— A. It was that Messrs. Vivian Mansell pays so much for the picture with full copyright.

“Q. You said sometimes there was a form, and now you have told us¹⁰ about that, and you were going to say sometimes something else?— A. He will send me a cheque for the picture afterwards and I send my own receipt back. My own receipt consists of: I am in receipt of so much for my picture entitled so and so, with full copyright.

“Q. Did one or other of those things happen in connection with this picture ‘Daughter of Erin’?— A. Yes.

“Q. You cannot tell us which?— A. I cannot tell you which.

“Q. But one or other of those things happened in the case of every picture that you sold to Mr. Mansell?— A. Every one.

“Cross-examined by Mr. Stark.

20

Plaintiff's
Evidence on
Commission
No. 2 (f)
Sydney
Kendrick
Cross-
examination

“Q. When you swear that one or other of those courses of action transferring the copyright occurred in the case of every picture, are you swearing from memory, or are you simply swearing that that is what you generally do, or what you should do?— A. That was the reason why Mr. Mansell gave me the commission; he wanted it for copyright purposes.

“Q. Have you any recollection whatever of assigning the copyright in writing of this particular picture?— A. Yes, distinctly.

“Q. Tell me about that recollection.— A. Because I remember painting that picture. I think it was in 1911 or 1912; it might be 1913, I am not quite sure, but it was the first picture I painted of an Irish girl, and that is³⁰ the reason why I have a recollection of it.

“Q. You have a recollection of painting the picture. Have you any recollection of assigning the copyright in that particular picture?— A. As far as my memory leads me, I know I always assigned.

“Q. That is not the question. Have you any recollection of assigning by a written document the copyright in this particular picture?— A. I cannot remember.

“Q. What remuneration did you receive for this picture?— A. It was either 25 or 30 or 35; I am not quite sure.

“Q. Guineas?— A. No; pounds.

40

“Q. Is Mr. Mansell wrong when he swears this picture was painted in 1914?— A. Well, I think he may be a little wrong there.

“Q. You think it was earlier than that?— A. It may be 1913; but that is what I said I was a little bit doubtful about, the absolute date.

“Q. Might it have been 1912?— A. No; I do not think I did much

business with Mr. Mansell until 1912, and that came later. I think that Mr. Mansell may be perfectly right there.

“Q. How many pictures have you painted for Mr. Mansell?— A. I should think 12, or more, very likely.

“Q. Were those largely painted prior to, or since the execution of this picture?— A. Some were painted before, and some have been painted since.

“Q. How many would you say have been painted since?— A. I suppose eight or nine.

“(The witness withdrew.)

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence on
Commission
No. 2 (f)
Sydney
Kendrick
Cross-
examination
—continued.

* * * * *

10 “Mr. Arthur Wardle, sworn.

“Examined by Mr. Shelley.

“Q. Are you an artist?— A. Yes.

“Q. I think you now live at 34 Alma Square, Saint John's Wood, in London?— A. Yes.

“Q. Are you a British subject?— A. Yes.

“Q. Do you remember, some years before the war, doing business with Mr. Mansell, or Vivian Mansell & Company?— A. Yes.

“Q. Did you assign to him a number of pictures?— A. I painted a number. I have painted a tremendous number of works for him.

20 “Q. Can you give us some sort of idea—50 or thereabouts?— A. It is more, I think, that I have painted; it seems to have ranged over 35 years.

“Q. Would you just look at these reproductions? I have five here. Can you identify these as being pictures painted by you. The names are ‘Kittens’, ‘Out of the Spinney’, ‘Aristocrats’, ‘The Otters Halt’ and ‘Stalkers’. Are those your pictures?— A. Those are all mine.

“(Picture ‘Stalkers’ put in and marked Exhibit ‘A.W.1’.)

“(Picture ‘The Otters Halt’ put in and marked Exhibit ‘A.W.2’.)

“(Picture ‘Out of the Spinney’ put in and marked Exhibit ‘A.W.3’.)

“(Picture ‘Kittens’ put in and marked Exhibit ‘A.W.4’.)

30 “(Picture ‘Aristocrats’ put in and marked Exhibit ‘A.W.5’.)

“Q. Can you tell us how you came to paint pictures for Mr. Mansell? Did you paint them speculatively and then offer them to Mr. Mansell as a possible purchaser, or did you get instructions?— A. With the exception of ‘Stalkers’ all these were commissioned.

“Q. Let us deal with the commissions first. I suppose you had other commissions from Mr. Mansell besides those four pictures?— A. Yes.

“Q. What was the course of business between yourself and Mr. Mansell when you were commissioned to paint a picture for him?— A. Usually he suggested some sort of idea. Many of these were from ideas he had suggested 40 they wanted. Sometimes I would make a note and give them an idea of what I would do.

“Q. Then you would go away and paint the picture?— A. Then I would paint it in the studio.

Plaintiff's
Evidence on
Commission
No. 2 (g)
Arthur
Wardle
Examination

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence on
Commission
No. 2 (g)
Arthur
Wardle
Examination
—continued.

“Q. Then having painted the picture, you would bring it to Mr. Mansell to look at?— A. Or he generally came up and saw the work I was doing for him.

“Q. You were in London?— A. Yes.

“Q. Then he agreed to buy it?— A. Most of those were an absolute commission.

“Q. Then, of course, there was not any question of agreeing to buy it?— A. ‘Stalkers’ was not; that was in the Academy.

“Q. Leaving ‘Stalkers’ aside, as soon as the pictures were ready did you hand them over to Mr. Mansell?— A. Yes. 10

“Q. Then, I suppose, you got your cheque?— A. Then I would have a cheque.

“Q. Did you sign any document at the same time?— A. My recollection of that is that I signed a receipt for the work I painted for his cheque and always I wrote at the bottom ‘with full copyright’.

“Q. Always?— A. I should say always I wrote that. I do not think I used to have a printed assignment; that I am not certain of.

“Q. You are quite certain that there was this receipt?— A. There was always the transfer of copyright in that way.

“Q. Does that apply to those four pictures, ‘Kittens’, ‘Out of the Spinney’ 20 ‘Aristocrats’ and the other?— A. That would apply in the same way that on the receipt for the cheque I signed for it ‘with full copyright’.

“Q. Now with regard to ‘Stalkers’, that was a picture you painted, and it was actually exhibited in the Academy?— A. It was in the Academy.

“Q. Did Mr. Mansell buy it from you?— A. He bought it afterwards. It did not sell there, and he bought it afterwards.

“Q. In that case was anything said or written about the copyright?— A. Except that there had been that same transfer.

“Q. There was the same transfer of copyright?— A. Yes, because, as has been said, all of these were actually done for that; they were for copyright 30 purposes.

“Q. When Mr. Mansell bought ‘Stalkers’, did you understand that he was buying that picture for copyright purposes?— A. He would buy it to reproduce.

“Q. In the case of that picture also did you sign a receipt having those same words at the bottom?— A. It is a long time ago. I cannot remember, except that in the usual course I should have done so.

“Q. Is it fair to put your evidence in this way, that that was, as far as you can remember, the invariable practice, that you signed a receipt in that form?— A. In that form, yes. 40

“Q. And that you have nothing in your recollection which suggests that anything different from the otherwise invariable practice was done in the case of any of these pictures?— A. I think it was always done in that same way.

“Cross-examined by Mr. Stark.

“Q. I believe you stated that Mr. Mansell made suggestions as to the subjects that you were to paint?— A. Quite frequently.

“Q. Did he invariably purchase the finished painting?— A. Always. I do not think I ever had a picture back.

“Q. That did not apply to this first picture, ‘Stalkers’? A. Yes; he bought that picture with the copyright.

“Q. That was the picture he bought from the Gallery?— A. He bought it afterwards, after it came back from the exhibition; he bought it in the 10 studio.

“Q. In what year did he purchase that picture?— A. I cannot remember. It is very easily identified. It was purchased the year following, I should say, the exhibition of the picture in the Academy.

“Q. Approximately what would be the date of that?— A. I have not any idea of the dates in this case. They have gone over a number of years.

“MR. SHELLEY: Here is the 1903 Royal Academy list of pictures, with an illustration of ‘Stalkers’ in it.— A. It would have been 1904.

“MR. STARK: 1904 was the date of the acquisition of ‘Stalkers’. What was the purchase price in that case?— A. It was a big picture and an important picture. I have some sort of recollection; I know it was exhibited 20 at the Academy at 300 guineas. My recollection is that Mr. Mansell offered me £100, and I said I would take £150. I think we ultimately came to something like £125 or £120; I cannot remember.

“Q. Is Mr. Mansell wrong when he swears the purchase price of that picture was £75?— A. Well, I should say so; I feel sure it was £125.

“Q. Was it a more valuable picture than the other four?— A. Altogether it was an important picture; it was a type of picture that I had sold time after time in the Academy at 300 guineas.

“Q. Will you carry your mind back still to this same picture, and put 30 aside for a moment what your usual practice was and tell me to the best of your recollection if you recall signing any assignment of the copyright in ‘Stalkers’?— A. I think I am quite sure that the receipt was signed ‘with copyright’.

“Q. Have you any recollection of signing that?— A. No; I do not recollect making the receipt at all; but I know that I invariably have done.

“Q. Would you have a copy of that in your possession?— A. No; there is no necessity for me to keep a copy of the assignment.

“Q. So that you do not know whether you followed your usual practice with this picture or not?— A. Do you think it is possible to remember?

40 “Q. If you do not remember, say so?— A. I do not remember. I only assume I did because I think I practically always do.

“Q. Coming to your next picture, ‘Out of the Spinney’, about what period of time was this painted?— A. I cannot recollect.

“Q. Mr. Mansell suggested that it was painted somewhere between 1909 and 1911. Would that be about right?— A. I should imagine that is

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Plaintiff's
Evidence on
Commission
No. 2 (g)
Arthur
Wardle
Cross-
examination

*In the
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Ontario.*

Plaintiff's
Evidence on
Commission
No. 2 (g)
Arthur
Wardle
Cross-
examination
—continued.

about the time. It seems to me that it is twenty years ago that it was painted.

“Q. Do you recall what amount of remuneration you received for this picture?— A. I think £20 or £25; I should think that was what I had for it. It was the class of thing that it seems to me I was generally getting £20 or £25 for from Mr. Mansell.

“Q. Do you remember whether you signed a receipt, or document assigning the copyright, in this picture?— A. Only in the same way.

“Q. Only in the same way you described?— A. Yes.

“Q. Does that answer apply to the remaining pictures that you have been examined on?— A. Yes. Lately Mr. Mansell has had a printed 10 assignment.

“Q. I am referring to this picture.— A. Going back to that, I do not remember signing a printed assignment.

“Q. What remuneration did you receive for the picture ‘The Otters Halt’?— A. That was a similar sort of thing. It was about the same price. The size of the picture, I think, was a little smaller, and, if so, probably £20 apiece.

“Q. Was that painted at about the same period of time?— A. I think ‘The Otters Halt’ was earlier.

“Q. Possibly before 1909?— A. I should think it was a year or so earlier, 20 but it is rather impossible to remember.

“Q. Then the picture ‘Kittens’?— A. Those things you have there were all rather round the same period. I was painting quite a lot for Mr. Mansell at that period.

“Q. Do you recollect the amount of the purchase price you received for this picture?— A. It was one of a series that I was having, as far as I remember, about £15 apiece for, £12 or £15 apiece.

“Q. Mr. Mansell’s recollection was that the purchase price was only £10. Would that be correct, so far as you know?— A. So far as I know; I expect it was. I was doing some series of about six pictures then, and it did make a 30 bit of difference in the price, I know. That belongs to a series of six.

“Q. Then the other picture which you painted, ‘Aristocrats’— A. That would be the same.

“Q. That is the same series?— A. There were three or four series of these things; there were six pictures.

“Q. Painted about the same time and for about the same remuneration?— A. It will be, I dare say, the same remuneration.

“(The witness withdrew.)

“MR. SHELLEY: We had intended to examine Mr. William Henry Margetson, but unfortunately he is ill and cannot attend. 40

“THE COMMISSIONER: The defendants will let me know within five days whether they propose to call any evidence?

“MR. STARK: Yes.”

* * * * *

No. 3. Extracts from Evidence of D. S. Porter, called on behalf of the Plaintiff.

Examination-in-chief by Mr. Bullen.

Q. Mr. Porter, with whom are you employed?

A. William E. Coutts Company Limited.

Q. And what is their particular line of business?

A. Publishers of greeting cards.

Q. Have you looked over, or may I show you if you have not—

HIS LORDSHIP: Q. Publishers of what? Christmas cards? A. We call them greeting cards.

10 MR. BULLEN: Q. Will you please look over the prints that you see in a book which is a duplicate of Exhibit 1, the same prints that are in Exhibit 1?

HIS LORDSHIP: Q. You have been through it before, haven't you?

A. I have just looked at it, just glanced at it before, yes.

MR. BULLEN: Q. Have you seen that particular type of card or cards like those before? A. Yes; we call these prints in our business.

Q. Call them prints? A. Yes.

Q. And are they used in your business? A. Yes; not these particular prints, but prints of this type.

20 Q. Are the particular prints that you see there and their type adaptable for Christmas cards? A. Some of them, yes.

Q. By the way, I forgot to ask you, is Coutts an English firm with a branch here, or is it a Canadian firm?

A. It is a Canadian firm.

Q. With a rather substantial business? A. The largest in Canada of its type.

Q. And what do you say—do you do any buying?

A. Yes.

30 Q. And what do you say as to the effect on whether or not you would buy a card of similar type had it been published in a newspaper? A. Well, had we known it was published or was to be published we would discard it.

Q. Why? A. Well, in our business the whole idea of it is, it must have originality or the sale is affected, and if it were published or about to be published the originality would be destroyed and its quality appeal lost.

Q. That is all, thank you.

* * * * *

Cross-examined.

BY MR. McCARTHY: Q. What is the address of Coutts & Company?

A. 215 Spadina Avenue, Toronto.

40 Q. I didn't get what—you are publishers of greeting cards and Christmas cards? A. Right.

Q. Selling to the retail trade? A. Yes.

Q. What do you say as to cards or prints such as you have seen which were pre-war, as to their value?

A. Well, the time of publication of any subject has no bearing on its appeal to us. It may or may not be suitable. Now, a Rafael actually pub-

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Plaintiff's
Evidence
No. 3
D. S. Porter
Examination

Plaintiff's
Evidence
No. 3
D. S. Porter
Cross-
examination

*In the
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Plaintiff's
Evidence
No. 3
D. S. Porter
Cross-
examination
—continued.

lished in 1796 would be equally suitable as one painted this year, provided the subject was suitable to our purpose.

Q. Have you looked through these to see whether they have any commercial value as of to-day? A. Those particular pictures there?

Q. Yes? A. Yes, I just looked through them.

Q. And do you suggest any of them have any commercial value from your standpoint? A. From my standpoint, I would say four or five would have.

* * * * *

Q. Did you ever buy any of these pictures?

A. Of those particular pictures there? 10

Q. Yes? A. I seem to recognize two, but I wouldn't state definitely that I have. That could be checked up, however.

Q. Which two do you seem to recognize? A. Two of the hunting scenes there.

Q. That was within the last three years?

A. Well, it likely would have been.

Q. About what price—does Mr. Mansell do the printing and sent them to you in lots? A. He does the complete print and sends them to us, and then we fabricate them into greeting cards.

Q. And about what do you pay per thousand? 20

A. Well, it varies depending upon the size and subject from about 26 shillings a thousand to 110, 100 or 110 shillings a thousand.

Q. What sizes are those in? 26 shillings a thousand would be what? A. 26 shillings a thousand is just about a two and a quarter by three and a quarter print.

Q. And the larger ones going up to—

A. I think that second exhibit there, B,—may I see it?—that would be about 110 shillings a thousand.

Q. That is number C? A. These figures are approximate. They range between those two prices. 30

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Plaintiff's
Evidence
No. 4
A. W. Arnott
Cross-
examination

No. 4. Extracts from the Evidence of A. W. Arnott, called on behalf of the Plaintiff.

Cross-examination by Mr. McCarthy.

MR. MCCARTHY: Q. Now then, you are saying now that young Mansell made two trips out here?

A. I believe so, sir. I can't say; I can't swear to that.

Q. You can't swear to that? A. It is what I remember.

Q. But you do distinctly remember the first trip, when he brought his wife? A. I remember the first trip, because I took the couple around the town, yes, sir, and the second trip I remember in so far as—you are speaking of the wedding, aren't you, the bridal trip? 40

Q. Don't talk so much, please. I am speaking of the trip when he brought his wife here, which I say was the first trip he made? A. As far as I can remember, sir.

Q. And that was on his honeymoon. I suggest to you that at that time he left these catalogues or price-lists, whatever you call them, or samples, Exhibits 8 and 9?

A. He left those in 1925 with me, if you want to know the time.

Q. Well, that is what I want to know. A. That settles the whole thing.

Q. How do you fix that date? A. By letter.

Q. Have you got the letter? A. I could get the letter, yes, sir.

Q. Well, let me have it, please. A. In December 24, 1925, I was written:

* * * * *

Q. Can you tell me what was the result of that? I don't want to waste 10 time going into a lot of correspondence.

A. The result was simply that I could not take on the agency, sir. It was never renewed. It was just a letter on a report from his son, and I did not take it up at all.

* * * * *

Q. Did you tell Mr. Pascoe and myself when we were both present that you thought that you were doing Mansell good in letting the "Star" reproduce those pictures?

A. I told him—I think your question to me at that time was, did I believe that these would be good advertising if they were put in the paper, and I said I thought that it would be good advertising for Mr. Mansell if he 20 gave permission to do it, did I not?

Q. You think you said that. I suggest that you said this, that you did not realize you were doing any harm, in fact you thought you were doing Mansell good, because these pictures are used almost exclusively on boxes and calendars, and anybody seeing them published in the "Star" if they appeal to their fancy as a picture for a calendar, it might be the means of selling them?

A. That was the only reason why I gave Pascoe permission to take those pictures—

Q. I am asking you if you said that?

A. Wait a minute. I am answering your question.

30 Q. No, you are not. A. I said that, yes. May I say something, your Honour?

HIS LORDSHIP: Your counsel will ask you if he wants to bring out any more.

MR. MCCARTHY: Q. And then you went on to say in that way it would benefit both Mansell and Arnott?

A. I believe I implied that, yes.

* * * * *

Re-examined by Mr. Bullen.

Q. When you say you have to explain it, what explanation do you want to make of it? A. I naturally realize the advantages of advertising in the 40 "Star" such as this.

Q. Yes? A. I left Mr. Pascoe, as understood by me, to see Mr. Mansell, that he might publish them by obtaining the copyright. It would necessitate in that that Mansell should agree that they should be advertising,

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Plaintiff's
Evidence
No. 4
A. W. Arnott
Cross-
examination
—continued.

Plaintiff's
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A. W. Arnott
Re-exami-
nation

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Plaintiff's
Evidence
No. 4
A. W. Arnott
Re-exami-
nation
—continued.

and thereby I was helping him, and as far as the buying of the goods was concerned, I would get a commission on it, and that would help me, but on no other understanding.

Q. Now, I wanted to ask you—

HIS LORDSHIP: Q. But that understanding was not put into words?
A. It was not—

Q. You did not state that? A. I did not say that about advertising, no.

Q. No, no, but did you say to Pascoe that he must not publish until he got Mr.— A. That he must get Mr. Mansell's permission to publish them, of course, that was implied. 10

Q. Never mind what was implied; what did you say?

A. That is what I said just now, sir.

Q. What did you say to Pascoe? A. That he would have to get—they were Mansell's publications, that as far as the copyright was concerned I knew nothing, he would have to see Mansell about that. Those were the words I used.

* * * * *

Plaintiff's
Evidence
No. 5
Joseph Story
Atkinson
Examination

No. 5. Extracts from the Evidence of Joseph Story Atkinson, called on behalf of the Plaintiff.

Examination-in-chief by Mr. Bullen.

Q. Mr. Atkinson, what is your position with the defendant company? 20
A. Secretary-Treasurer, sir.

Q. Were you Secretary-Treasurer in 1932?

A. I don't believe I was. I am afraid I couldn't tell you. I don't think so. I don't think I was, no.

Q. Well, who was Secretary-Treasurer in 1932?

A. I think Mr. W. C. R. Harris, since deceased.

Q. You were subpoenaed by my firm? A. Yes, sir.

Q. To attend here? A. Yes, sir.

* * * * *

HIS LORDSHIP: Q. The retail price of these things is ten cents, is it not?
A. Yes, your Honour. 30

* * * * *

Q. The papers that we have in here, Mr. Atkinson, Exhibit 3, are not the whole of the publication that goes out weekly? A. No, sir.

Q. The publication that goes out weekly—for the purposes of the notes—contain what is called the rotogravure section? A. Yes, sir.

Q. And then what other section? A. There is a comic section.

Q. There is a comic section? A. And two magazine sections.

Q. Two magazine sections? A. And one news section.

Q. And they are folded once when they leave your place? A. They are all in one copy, sir, yes.

Q. They are all in one copy. The newsboy on the street or the retailer 40 gets them folded once? A. He gets them in sections really, sir, as a matter of fact, and stuffs them himself. It doesn't matter; he gets them as one unit.

Q. He gets all the sections— A. All the sections together.

Q. —that you have described in one unit?

A. They go to him separately; he puts them together himself.

Q. But they are each an integral part of the "Toronto Star Weekly"?

A. Yes, sir.

* * * * *

Q. And the rotogravure section is the outside section of the paper?

A. Usually, sir, yes.

* * * * *

A. (After leaving witness box and returning) Mr. Hindmarsh says three or four copies are sent to England.

10 Q. Only three or four copies are sent to England?

A. So he tells me.

Q. That is your information? A. Yes, sir.

* * * * *

Q. So that I may take it that the rotogravure section is particularly novel to the "Star" and the other paper in Montreal that you have mentioned? A. In colour rotogravure, yes, sir.

Q. The colour? A. Yes, sir.

Q. That is an innovation in newspaper work?

A. Well, for about five years, sir.

20 Q. And, without puffing at all, the "Star" led the van in Canada? A. I think about even, sir, as a matter of fact. "La Presse," I think—

Q. About even with the Montreal paper?

A. Yes, sir.

Q. And you publicized or capitalized—and I am not condemning you for it—the fact that you had such an excellent rotogravure section and were able to publish such a section? A. I think so, sir, yes.

Q. Well, there was quite some publicity about it by your paper when the colour was put in? A. Yes, sir.

Q. It is a process that you are proud of? A. I think so.

30 Q. And you advertise extensively the fact that you have a rotogravure section? A. Yes, sir.

Q. And with your advertisers may I say that is played up more or less?

A. I think so.

* * * * *

MR. BULLEN: Q. Then take your issue of March 12, 1932—that is the first one we complain of, Mr. Atkinson—and I see that the rotogravure section itself carries considerable advertising? A. Yes, sir.

Q. That is patent to the Court from the exhibit itself? A. Yes, sir.

Q. For instance, I see in the March 12 edition on the last page, which is the same paper on which the offending article or portrait "Young Mariners" appears, is a large half-page ad of olive oil and Palmolive Soap? A. Yes, sir.

40 Q. And that pertains to several of the issues? A. Yes, sir.

Q. That is to say, on the very paper on which the offending print is published a large half-page ad is carried? A. Yes.

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Plaintiff's
Evidence
No. 5
Joseph Story
Atkinson
Examination
—continued.

Q. And you receive a revenue from that advertisement? A. Yes, sir.
 Q. Then take your issue of April 12, 1932, in which there appear to be six of the prints we complain of published, and I see that on the same paper, the same sheet of paper that contains the offending prints, is a large colour full-page ad of Sunworthy Wallpaper Dealers? A. Yes, sir.
 Q. From which you received a revenue? A. Yes, sir.

* * * * *

Q. That is to say, you get more revenue by reason of the fact that the advertising is in the rotogravure section? A. Yes.

* * * * *

MR. BULLEN: Q. Let me put it this way to you: what do you say as to whether that advertising would appear in the rotogravure section if you had not the pictures along with it? A. We could not print a straight advertising section, sir.

Q. You could not print a straight advertising section? A. Not very well, sir.

Q. So that the pictures do facilitate the merit of the advertising in the rotogravure section? A. I think so, sir, yes.

Q. And would you say to a very great extent? A. I think so.

Q. You think to a very great extent? A. Pardon me, sir. We do print separate sections sometimes. I did not mean to infer we never print a separate advertising section. We do that.

20

* * * * *

MR. BULLEN: And I am content, my Lord, if Mr. Hindmarsh will give me an honest estimate of the net profits of the "Star Weekly" for these various days; I will take it without an extensive audit, and that would obviate the necessity of going into all this. Instead of my getting the gross I would get the net. If Mr. Hindmarsh tells me it is an honest estimate I will take it. That would obviate my friend carrying out the latter part of the section, and save a lot of evidence.

HIS LORDSHIP: That is, the net profits of the production of the issues of the "Star Weekly" of March 12, April 2 and 9, May 7, 14, 21 and 28, June 4 and 18, and July 9, 1932.

30

MR. BULLEN: Yes, my Lord. That would obviate the necessity of my friend going into this question of what goes to make up his cost that seems so imperative on my friend, to prove every element of cost which he claims. Now, if Mr. Hindmarsh will say to me that he has made an honest estimate of net profit I will take it.

* * * * *

HIS LORDSHIP: Could something of this sort be done? Could such a statement as Mr. Bullen is suggesting be agreed upon, and put in writing and sealed up, to be used at the end of the case if it became relevant?

MR. BULLEN: Certainly, my Lord, quite readily.

MR. MCCARTHY: I think that could be done, my Lord.

40

No. 6. Extracts from the Evidence of Paul L. Baruch, called on behalf of the Defendant.

*In the
Supreme
Court of
Ontario.*

Examination-in-chief by Mr. McCarthy.

Defendant's
Evidence
No. 6
Paul L.
Baruch
Examination

Q. Mr. Baruch, you live in New York, I believe? A. I live in New York.

Q. And what is your business? A. I am a publisher of pictures and also a printer of pictures, greeting cards and similar items.

Q. And I believe you are the Secretary of the Picture Publishers' and Importers' Association of the United States? A. I am.

Q. Do you carry on business in your own name? A. I carry on business
10 in my own name.

HIS LORDSHIP: Q. The secretary of what did you say? A. Of the Picture Publishers' and Importers' Association of the United States.

MR. MCCARTHY: Q. And I believe you have been in this business all your life? A. Yes, sir.

Q. And your father and grandfather were in the business before you? A. Yes, sir.

Q. What does your business consist of? A. I purchase originals and copyrights from artists and print these pictures in my own printing plant in Elizabeth, New Jersey, and distribute the finished pictures for commercial
20 uses; for instance, framing for box tops, for candy boxes or stationery boxes, for the decoration of lamp shades or other gift articles, for pasting on greeting cards or for printing right on greeting cards, and also for advertising, calendars and similar uses. There are about two hundred and fifty different purposes we have compiled our prints can be used for.

Q. To what extent, if any, do you use the public press for the reproduction of your prints for advertising purposes? A. We try if we can get, to have our pictures reproduced in the public press, because we had very good success in different instances having our prints reproduced and having found that the advertising value has been excellent; especially one instance is in my memory.

30 Q. Yes? A. Very clear.

Q. What is that? A. In the year 1928, I guess it was in the month of either October or November, the editor of McCall's Magazine came to my office and asked me if I have a few pictures I could lend him for—

HIS LORDSHIP: Do particular instances—

MR. BULLEN: Hardly, my Lord, what the editor of McCall's said.

WITNESS: Oh, no, the editor of McCall's didn't say anything.

HIS LORDSHIP: I did not think that was—

MR. MCCARTHY: I don't want to give the conversations; I want to
give—

40 HIS LORDSHIP: I did not think that that was relevant in chief; it might be in cross-examination.

MR. MCCARTHY: Well, if your Lordship thinks that giving particular instances would not assist the Court, I am prepared to—

HIS LORDSHIP: We should have to go into all the circumstances of each instance. I did not think that was done.

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Defendant's
Evidence
No. 6
Paul L.
Baruch
Examination
—continued.

MR. McCARTHY: Well, if your Lordship thinks not. I was going into one particular instance as being illustrative perhaps of the whole.

Q. At any rate, Mr. Baruch, you say that you have found—

HIS LORDSHIP: Mr. Bullen did not get up, but seemed to be protesting. I do not think that is admissible.

MR. McCARTHY: Very well, my Lord.

Q. Then you say that you have found the results of advertising to be beneficial to your business? A. Yes.

Q. Through what mediums, what newspapers have you used for advertising purposes? A. We have pictures of our publications reproduced in 10 McCall's Magazine, in—

Q. What circulation would McCall's Magazine have? A. I couldn't say exactly to-day; I think at the time, 1928 and 1929, they had between 1,200,000 and 1,500,000. I am not quite sure about these figures.

Q. And any other papers besides McCall's? A. We had pictures of ours used in the magazine section of the "New York Times", Sunday edition, in the book review section of the "New York Times", in Scribner's and Harper's Magazines, and quite a number of others—American Home—I could not call them all off.

Q. But many of them? A. Yes, quite a number. 20

Q. And you say that you have found those reproductions in these newspapers beneficial to your business? A. Yes, as long as they carried our credit line or mentioning of our name. Otherwise the prospective customer certainly could not know where to secure the pictures.

Q. So carrying the credit line is a necessity? A. Yes, or the mentioning of the name in the editorial accompanying the picture.

Q. To what extent is reproduction in a newspaper in any way competitive with your business? A. I have not found any competition at all.

Q. Why? A. Well, I would have to explain a little wider. The interest of the public in buying a picture is dependent on a number of factors: first, 30 that the picture appeals to the public, and second that the picture has a certain novelty value. But the public, especially in America and I think also in Canada as far as my experience goes, is buying greatly what it sees most. A woman is rather inclined to buy a picture if she saw the picture in her neighbour's house, than she has the audacity of judgment to buy some new items. We have found that if, for instance, in the fashion line, if one particular dress has been very popular, practically every girl wants to buy the same dress. You have the same experience in pictures. It might sound funny to you, but it is absolutely a fact. So if a picture is published in a newspaper it certainly shows to the woman, who is mostly the buyer of pictures 40 in the different forms, that some higher authority has approved of this particular picture, and then she is rather willing to buy it.

Q. What has been your experience in regard to receiving orders following publication? A. What?

Q. Following publication? A. We have always had a very great improvement in sales of the particular item.

Q. Now, Mr. Baruch, have you seen these prints that are in question in this case? A. I have seen some of them.

Q. What do you say as to their value for selling purposes, or how would you characterize these prints—looking at Exhibit No. 1? A. There are a few pictures in here that might be still saleable. Most of them I could not conceive saleable at all.

Q. Why? A. Because they are too antiquated.

HIS LORDSHIP: Q. You are speaking now of 1935 or 1932? A. It doesn't make really much difference. They were also antiquated in 1932.
10 There are a few exceptions, however. With the exception of the three numbers F, K and Y.

HIS LORDSHIP: Q. Which letters are those? A. F, K and Y, the three hunting scenes.

MR. MCCARTHY: Q. The rest you say are antiquated? A. Yes, according to my experience.

Q. To what use could these prints be adapted at the present time? A. All of them?

Q. Yes? A. As far as my experience goes, I don't think for any use.

Q. You don't think for any use? A. No.

20 Q. These that you speak of, F, K and Y, for what purposes could they be used? A. F, K and Y could be used for picture framing and decoration of items that I mentioned before, and a small size perhaps for greeting cards.

HIS LORDSHIP: Q. What? A. In a small size for greeting cards.

MR. MCCARTHY: Q. Is there anything in the manner of reproduction in the newspaper which in any way injures the sale of the prints in this particular case? I don't know whether you have seen the editions of the paper in which these appear, Mr. Baruch? A. Yes, I saw them a few months ago.

Q. What would you say as to the manner in which they appear in the "Star Weekly", as to whether they in any way injure them, or what would
30 be the effect of cutting them up and pasting them in in the way they are? A. Well, in the first place, the reproduction as compared with reproduction in the Exhibit No. 1 is considerably inferior. Second—

HIS LORDSHIP: Q. The reproduction in the "Star"? A. The reproduction in the "Star" is inferior in quality to the reproduction as produced by Mr. Mansell, Exhibit 1. Second, the paper used by the "Star" is inferior, and I have made—I have experience that if you try to paste this paper on any cardboard the back printing will show through on account of the moisture in the glue, so that the picture would be mutilated. A number of the pictures in the "Star" have been cut off on the corners, and I consider the pictures in
40 the "Star" not fit for use in any of the purposes I mentioned.

MR. MCCARTHY: Q. And the only use they would be is the purpose for which they are used in the "Star"? A. Yes. I must admit they are very good reproductions as far as newspaper reproductions are concerned.

Q. But they would be no use for the other purpose for which these— A. I do not think so.

Q. So that they would only have the advertising value which you spoke of? A. Yes.

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Paul L.
Baruch
Examination
—continued.

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Cross-
examination

Cross-examination by Mr. Bullen.

Q. Your basis of comparison was that the more publicity given to these pictures the better Mr. Mansell would be able to sell them, didn't you? A. I said so, sure.

Q. Yes, you said so; and you said it was like a dress, that if a dress was common a woman rushed for it; you didn't use the word "rush"? A. Excuse me, I did not say anything of the kind.

Q. Well, what did you say? Why did a woman like to see the dress common or advertised? A. Because a woman is—I made it quite plain—by having the superior stamp of approval of the masses, the woman thinks that she has not made a mistake in buying the same item, going out and buying something very extraordinary or very different, she might be a little uncertain if she didn't make a very grave mistake.

Q. That is to say, the more she sees on the streets the more she is satisfied with her own judgment? A. Right.

Q. Is that right? A. With her judgment, yes.

Q. Yes; that is to say, the more she sees of her dress the more she is satisfied with her own judgment? A. May I add one thing? I mentioned in America and probably in Canada. I personally am still unfortunately a German subject, and your conditions are different, but I am talking about 20 America and Canada.

* * * * *

A. Entire features in part of the original are lost in the reproduction. For instance, back here you cannot recognize at all that these are some more Highland cattle, while on Mr. Mansell's reproduction you can very clearly see it.

Q. Yes? A. We consider Mr. Mansell's reproductions as perfect and good art reproductions; I do not consider this one here a perfect reproduction as far as art reproductions are concerned.

* * * * *

Q. By the way, when was your last purchase from Mr. Mansell? A. My last purchase from Mr. Mansell was in the year 1930. 30

Q. 1930? A. Right.

Q. Have you got with you the type of picture you purchased from Mr. Mansell? A. No, I have not, but I—

Q. Well, will you show me— A. I recognize pictures like the ones you have in Exhibit 1.

Q. Like the ones you have in Exhibit 1. A. Right.

Q. That is these. Will you pick out for me the ones in Exhibit 1 that are like the pictures that you purchased from Mr. Mansell in 1930? A. Yes, sir. Number F, number K; I don't know if I bought exactly number X, but something similar to it. 40

Q. Something similar to X? A. Yes. Picture Y, if I remember distinctly. Picture AA in small size.

Q. AA, the same picture in a smaller size?

A. Yes, in a small size.

Q. Understand me, Mr. Baruch; I am not nailing you down to the exact pictures that are there—similar types?

A. Oh, the other pictures I am positive that I bought identically the same ones, hundred thousand of these ones.

Q. In 1930 you bought from Mr. Mansell—

A. Or prior to it.

Q. And up to 1930? A. Yes, I bought these pictures.

Q. Those very pictures? A. Yes, exactly the same ones.

Q. All right, the very same pictures.

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—continued.

* * * * *

10 Q. But you did buy some? A. Well, I had sample books as you have here in Exhibit 4 in my office, so it is possible that we bought some.

Q. How do you know Exhibit 4 is a sample book?

A. I have been doing business with Mr. Mansell for a number of years; his books are known all over the world to the trade.

* * * * *

Q. Of these pictures, the types you have given us in Exhibit 1—what did you use them for? A. We used them for resale.

Q. For resale? A. Right.

Q. To whom? A. To manufacturers—

20 Q. I don't mean the names; I am not going to inquire that. A. Oh, no, I wouldn't give any names.

Q. To whom? A. To manufacturers of picture frames.

Q. To manufacturers of picture frames?

A. To manufacturers of lamp shades.

Q. Yes? A. To manufacturers of candy boxes or stationery boxes, to manufacturerers of decorated cigarette boxes.

Q. Christmas cards, might I suggest? A. No, not for Christmas cards.

Q. You didn't sell any for Christmas cards?

30 Q. We didn't sell this type of merchandise for Christmas cards, but we sold it for jig-saw puzzles, for the decoration of waste baskets, for the decoration of metal items, for the decoration—

Q. Of what? A. Metal items; for instance, flower pots, for the decoration of wooden furniture.

Q. There are a great many uses for this type of picture? A. Quite.

Q. Have you disposed of all the hundred thousand, or are you still selling them? A. I sell very few of them now.

Q. You sell very few of them now? A. Yes.

Q. Well, you bought them in 1930? A. I said yes, up to 1930.

40 Q. Up to 1930; and you bought a lot in 1930; when was your last sale? I want within the year; this is 1935.

A. You mean of Mr. Mansell's pictures?

Q. Well, yes, of the Mansell pictures that you have told me you bought in hundred thousands?

A. Last Saturday.

Q. Last Saturday? A. Yes.

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Q. Of the same type? A. Yes.

Q. Of the same type? A. Sold six pictures.

Q. You sold six? A. Yes.

Q. Well, I didn't hope to get it down as recent as that, last Saturday.
Did you sell some—and I suppose you sold some within a month before that?

A. Possible; I don't know.

Q. Well, do you think you did? A. Possibly, I say.

Q. Well, may I put it this way, that you have still got some on hand and
you are making an effort to sell them?

A. Very few.

Q. And you succeeded in selling some last Saturday?

A. Yes.

Q. You have got very few left? A. Very few, yes.

Q. If you got a hundred thousand in 1930 you have been successful in
disposing of them; is that right?

A. We disposed of most of them in 1930.

Q. You disposed of most of them right away?

A. Yes.

Q. They are readily saleable? A. Not only this, but a great number of
the last order we got from Mr. Mansell was for merchandise already sold
before we ordered it.

Q. You mean to say that you had sold the picture off the samples before
you got it from him? A. Correct.

Q. They were ready sellers? A. Yes, at that time very much so.

* * * * *

Q. That is to say, the novelty, if a merchant can get the first edition of
a picture, I suppose he will buy it more readily than if he thinks he is getting
the second or third? A. That depends upon the merchant. There are
merchants exactly like women; there are a great number of merchants who
would not buy the thing before they have found out that the merchandise is
saleable.

Q. You don't find in selling to the candy box manufacturers, for instance,
or the cigarette box manufacturers, for instance, or the art calendar manu-
facturers or producers or whatever you want to call them, that they want
something new? A. They certainly want something new, but—

Q. Certainly— A. Excuse me, I am not finished with answering the
question.

Q. Yes? A. And not only does the cigarette man or the calendar manu-
facturer or the stationery manufacturer or so forth, insist that the same
picture has not been sold to any other calendar manufacturer or stationery
manufacturer before, but he does not object to it if he is a candy manufacturer,
or that a stationery manufacturer has it on his box. He wants to be the only
one in his line.

Q. You mean to say that the candy manufacturer will not buy the picture
if he knows somebody else has used it before in another line. A. Oh, no,
excuse me, just the contrary. I said the candy manufacturer has no objection

whatsoever if the picture has been used already on a stationery box, but he makes it a condition that the same picture has not been used on a candy box before. That means in the same line as he is dealing in he wants to be the first, but he prefers it if he has some kind of proof that this picture has been saleable. I have it happen in my office every day that manufacturers of stationery or candy or any other item are coming in and they say, "Tell me what is selling in the picture trade right now?" And we tell him, "This new item has been a good seller in the spring season in the picture business." Then they come with the very logical conclusion, if it has been a good seller
 10 in the picture business in the spring, there is no reason why it should not be an attractive cover for boxed stationery in the fall, and they take it.

Q. And you suggest also that that same manufacturer that wants it to be the first in his line will buy it if he knows it has been published a week or a month or six months before in a newspaper? A. I don't see that he has any objection.

Q. I didn't ask you that. Do you find in your experience that he would?
 A. Yes.

Q. Did you ever have one do it? A. Absolutely.

* * * * *

Q. Can you tell me any instance that you sold Rolph, Stone, & Clark or
 20 Eaton's a card that you told them or they knew was published in any American journal or a Toronto paper? A. Yes, very much so.

Q. Within six months from the date of your sale?

A. Yes, very much so. We brought out a novelty item, picture item, cut out of wood, last year before Christmas. We had illustration of this picture upon request in the "American Home".

HIS LORDSHIP: Q. I beg your pardon?

A. We produced last year, about September, a number of pictures cut out of wood for the decoration of children's rooms. We illustrated these pictures with "American Home", and I think "Home and Garden". Eaton's
 30 buyer in New York came up to our office and placed orders for Eaton's, Toronto, Eaton's, Montreal, Eaton's Winnipeg and a few other Eaton stores. We shipped the merchandise up here and we received a number of re-orders from Eaton's. When I came up here in the end of April when this trial should have taken place, I had a few minutes' time and I walked up to Eaton's new store, and the first thing I saw up there was a display of my cut-outs, and in the centre of the wall where these cut-outs were pasted up was the page of the "American Home and Garden" or whatever the newspaper was pasted of them to illustrate to the prospective buyer that this merchandise was nationally advertised.

40 MR. BULLEN: Q. Now, what I am asking you—

A. That is what you asked me.

Q. That is all very interesting history too, but what I asked you about was a picture, an art picture?

A. This is an art picture.

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—continued.

Q. Well, have you got one to show me?

A. I am sorry, I haven't got one here.

Q. Was it a coloured picture? A. It was very much in colour.

Q. Well, I am just asking you; don't be insulted because I am asking you.

A. Well, I said cut out of wood and painted in colours.

Q. It was cut out of wood? A. Yes.

Q. And painted in colours, and then what? Then what was the process after that? A. And then it was lacquered.

Q. And then it was lacquered? A. Yes, and then it had a hanger on the back, and it was sold as a frieze. The whole thing was copyrighted in the 10 United States Office of Copyright, which illustrates that it was a pictorial item, otherwise it could not be copyrighted. Then it had a hanger on the back and could be hung on the wall.

* * * * *

HIS LORDSHIP: Q. It may be exactly, but I do not quite follow. What is this thing you are selling? Is it a— A. It is a reproduction of a picture.

Q. No, no, but what is the thing that Eaton's are selling here for the children's rooms? What is it?

A. It is a reproduction of a sketch only.

Q. I dare say, but what is the thing itself? What does it look like?

A. Well, it looks—

Q. How big is it? A. Oh, about this size.

Q. The size of one of these— A. One of these pictures.

Q. One of the Exhibit 1 pictures? A. Yes.

Q. And it is a wooden— A. It is a wooden article about three-eighths of an inch high.

MR. BULLEN: Q. Thick, you mean? A. Three-eighths of an inch thick, and the contours are cut out and the balance is painted on.

HIS LORDSHIP: Q. The contours are cut out? A. I could make a rough—

MR. BULLEN: Q. Is it what they call fretwork?

HIS LORDSHIP: Q. The contours are cut out?

A. Yes. If it would be a girl it would be cut out, you see, like this, then the balance would be painted on, only that it is a much cruder article of appeal to children.

Q. Then what did the "Home and Garden" print? The same picture, do you mean? A. "Home and Garden" came up to my office in New York saw these pictures, considered the value of these wooden pictures, asked us if we would permit them to reproduce a series of them in their paper with an article pointing out the value of them. We said yes, we would have no objection as long as they mentioned copyright and courtesy of my firm.

MR. BULLEN: Q. You have heard the expression fret-saw work? A. Fret?

Q. Yes, fret-saw work? A. Yes.
 Q. That is exactly what it is? A. We call it jig-saw.
 Q. Oh, jig-saw? A. Yes.
 Q. Jig-saw work? A. Yes.
 Q. I have heard it called fret-saw work. That is the same thing, is it?
 A. That is the manufacturing process.

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No. 7. Remarks of Counsel as to putting in sealed Estimate of Profits.

MR. BULLEN: As long as my friend makes the statement in open court that Mr. Atkinson has told him that this figure is Mr. Atkinson's honest estimate of the profits of the "Star Weekly", and that figure is to be put in writing and sealed up, I am content.

HIS LORDSHIP: That is the statement Mr. McCarthy made in my room.

MR. MCCARTHY: Yes, and that is the statement I would be prepared to repeat, my Lord, that after careful inquiry last night and further consideration this morning, the figure which I mentioned to your Lordship and my friend is Mr. Atkinson's best estimate of what he said would be the weekly profits of the "Star" in any particular week.

HIS LORDSHIP: Then the figure itself will be put—

MR. MCCARTHY: At that time, of course.

20 HIS LORDSHIP: Oh, yes, quite so. It will be put on a piece of paper and sealed up, and the envelope can be marked as an exhibit.

MR. MCCARTHY: Yes, my Lord.

HIS LORDSHIP: I am sure it is very wise to adopt that course, because the cost of proving any such thing would be appalling.

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No. 8. Extracts from the Evidence of Charles J. Quarrington, called on behalf of the Defendant.

Examination-in-chief by Mr. McCarthy.

Q. Mr. Quarrington, what is your occupation?

A. Well, I am in the insurance business just now.

30 Q. Up till last September what was your occupation?

A. I was supervisor of the picture department of the T. Eaton Company.

Q. I beg your pardon? A. Supervisor of the fine art and picture department of the T. Eaton Company.

Q. How long had you occupied that position?

A. Twenty-five years.

Q. During that time what do you say as to the practice of your company in using the pages of the "Star Weekly", that is, the coloured section or rotogravure section, for the purpose of advertising your pictures? A. Well, we used it all we could, at every opportunity.

40 Q. You used it all you could, at every opportunity?

A. That is, when Mr. Pascoe would come and look for pictures, we tried

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—continued.

every time to give him something that he could use, I mean without any stint or—

Q. Did you pay for that? A. No.

Q. What was there to indicate where the pictures came from? A. Well, the line of credit at the bottom, "Courtesy of the T. Eaton Company Fine Art Galleries" or "Picture Department", as it may have been.

Q. And what do you say as to the value of that to your company from an advertising standpoint?

A. I would say it was very valuable. It was a means of advertising that a word description could not give at all. I mean, you could advertise 10 a picture by description with words and it did not give a very clear meaning to the average buying public, but if they saw it in print, even though the print were not anything like as good as the original it gave them an idea of what the picture looked like in colour.

Q. Was it your experience or not that sales were effected through this medium? A. Yes, very much, I would say. We continued to give them pictures as long as they took them.

HIS LORDSHIP: Q. What were these? Paintings?

A. Paintings, and reproductions as well.

Q. Which you had for sale? A. Which we had for sale, yes, sir. 20

MR. MCCARTHY: Q. State whether you know of any case in which the saleability of the picture was in any way injured or affected by the advertising? A. I do not know of any case in which the picture was affected—the sale of the picture I think in every case, as far as I know, was enhanced by the advertising.

Q. Then, Mr. Quarrington, to what extent, if any, would the publishing of the pictures in the "Star" bring them into competition with those which you had for sale?

A. None whatever, I don't think.

Q. None whatever? A. None whatever, no. 30

Q. Why would you say that? A. Well, because the print was not suitable for framing that was in the "Star Weekly". The quality of the print and the paper that it was on made it unsuitable for framing—in a general way, I mean; I do not say that they were never framed, but in a general way they were not suitable for framing.

Q. Then did they enter into competition with the originals which you held for sale at all? A. Not at all; I am absolutely certain.

Q. Now, Mr. Quarrington, have you seen these pictures which are in question in this case? A. Only at a distance, from the courtroom.

Q. What do you say as to their value, having in mind that most of them 40 are pre-war stock, what do you say as to their saleability or suitability for sale in 1932?

HIS LORDSHIP: You are talking of sale for the purpose of framing?

MR. MCCARTHY: Yes.

Q. What could they be used for? Perhaps my question would be better put in that way. What could that class of picture be used for? Probably

they might be used for different purposes; if so, tell me? A. I don't know anything about lamp shades or anything else but framing; that is the only thing that I know anything about.

Q. Then just speak from your own knowledge; what about framing?
 A. Well, I don't think they would be very attractive to the average picture buyer now in the framing business. I am sure they would not be—with the exception of one or two. These hunting pictures may sell, but the others I don't think would be.

Q. You don't think the others would be? A. No.

10 Q. All right, thank you, Mr. Quarrington.

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Cross-examination by Mr. Bullen.

Q. Well, when you bought a picture you bought one picture of a type for the purpose of resale to Eaton's customers? A. Not one picture necessarily. We may buy a couple of hundred of one kind of picture, of one subject even, in some good subjects, of course.

Q. Of one subject? A. Yes.

Q. And your evidence amounts to this, that advertising the pictures that you had for sale paid you? A. Yes, sir.

20 Q. If you gave permission to the "Star" to run say a Raphael or a Millet or a Rembrandt that you had for sale, you found that it was a good medium to bring that picture to the attention of the public and that Eaton's had it, and they could buy it there if they wanted to buy it? A. The reproductions of it mostly, because, you see, those pictures—some of them that we gave the "Star" were not purchasable, I mean the picture itself, the—

Q. The original? A. The original, yes.

Q. You had a reproduction for sale? A. Yes.

Q. And what you say is that when you allowed the "Star" to put it in the rotogravure section that assisted you in the sale of that picture? A. Yes, sir.

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30 **MR. BULLEN:** Q. You never canvassed, of course, the candy trade who used these pictures? A. No, sir.

Q. You never canvassed the art trade who use them for greeting cards, such as Raphael Tuck, Coutts, and that line of publisher? A. Well, we have sold a cut to Coutts, pictures, originals, for Christmas cards, or loaned them to them, rather.

40 Q. You say you actually sold them or loaned them? A. We loaned them, that is right; that is, we loaned them under arrangements whereby we received a percentage of how many cards were sold, they paid us so much for the use of the picture in the— for instance, if Coutts wanted a picture and he could not afford to buy the original, he didn't want to take a chance on the profit he might make from the picture in making the outright purchase, we loaned him the picture, and then Coutts would pay us according to as many Christmas cards as he sold, a proportion.

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Q. For that particular picture? A. For that particular picture, yes, sir; but we still owned the picture, and Coutts used it as a postcard. We rather felt that was a good medium to sell the original, even.

Q. That is to say, you let Coutts use the card? A. Yes.

Q. For the purpose of advertising. You wanted to sell what you had in the picture? A. We wanted to sell the original picture, but still it was a profit to us that paid us fairly well to allow Coutts to do that.

Q. All you are saying is that Eaton's have articles for sale, and the more they can advertise them the better it is for them? A. Yes, I would say that.

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Q. Then what you say is that if you can advertise the very picture itself 10
or a reproduction of it, that works to your advantage to sell the original,
either the original picture or the reproduction that you have for sale? A. I
would say that, yes.

Q. Yes, you would say that. People see that picture, they know that
Eaton's have that picture for sale, and that is all Eaton's have for sale, is the
picture, is it not? A. What do you mean? I don't quite follow that.

Q. Take, for instance, the "Star" reproduces say Millet's "Gleaners" or
"Angelus" or something of that sort? A. Yes.

Q. And it says underneath it "Courtesy of T. Eaton Company Limited"?
A. Yes, sir. 20

Q. Now, the idea is that people know the T. Eaton Company Limited
have for sale either a hundred or two hundred reproductions of Millet's
"Gleaners"? A. Yes, sir.

Q. And you say that the advertising the "Star" does brings the customer
into the store to buy the picture? A. Not only me, but every other person
that sells that particular reproduction, gets the benefit of it. Not only the
T. Eaton Company, but everybody else who has that reproduction.

Q. If the customer knows that that other chap has got it for sale; but he
does not get that information from the "Star"? A. No, but he would likely
see it in the other stores, the picture, if it is a popular picture. 30

Q. In ninety-nine cases out of a hundred your sales are of one particular
picture; you do not sell in hundreds of thousands or tens of thousands or
anything of that sort? A. Of one picture, do you mean?

Q. Yes, one subject? A. One subject?

Q. Yes? A. Oh, over a period of years I would say yes.

Q. Over a period of years? A. Yes.

HIS LORDSHIP: Q. But yours is all retail trade? A. Yes.

Q. Not wholesale? A. Yes.

MR. BULLEN: Q. Yours is a retail trade and not a wholesale trade?
A. Yes. 40

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Q. You owned the picture and you had the picture for sale? A. Yes, sir.

Q. And you had one of the pictures? A. One, just one.

Q. Just the one? A. Yes.

Q. That is all you had? A. Yes.

Q. And you say by running it in the "Star" in the pictorial section you brought it home to the public for the purpose of trying to sell it? A. Well, yes and no. There were two—I think the "Star" had done a very good job in the picture trade generally in printing these pictures, and while this picture was not sold it may have been the means of bringing people in that would buy other pictures as the result of this thing being shown. I do not think that is a saleable picture. The store did not always pick saleable pictures from our stock. I mean, sometimes a picture that we didn't think very much of the "Star" liked from a general point of view, the public point of view, and we were glad to let them have it, because it brought people in and we may sell them another picture altogether.

Q. The whole purpose of it was to get advertising, to attract people to your store? A. That is right.

Q. You had not any means of reproducing a hundred thousand or a thousand of these pictures, and that was not the object of putting it in there at all? A. No, sir.

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No. 9. Extracts from the Evidence of Lawrence Ruddell, called on behalf of the Defendant.

Examination-in-chief by Mr. McCarthy.

20 Q. Mr. Ruddell, where do you live? A. I live in Toronto.

Q. And what is your present position? A. I am manager of the picture department of the Robert Simpson Company.

Q. You were at one time, I think—perhaps are still—a director of the Fine Arts Society of London, England? A. Yes, sir.

Q. And you are now the manager of the fine art department of the Robert Simpson Company. How long have you occupied that position? A. The Robert Simpson Company?

Q. Yes? A. Three years.

30 Q. What do you say as to whether your company has from time to time used the "Star", that is, the pictorial section, the coloured section of the "Star", to advertise your pictures that you have for sale? A. It has been our habit to employ the "Star Weekly" as often as possible.

Q. Why? For what reason? A. Because we found that it was a very good advertising medium, and in a number of cases we had sold the actual pictures that we gave them to reproduce.

Q. Did you receive any remuneration? A. No, sir.

Q. Or did the "Star"? A. No, sir.

Q. And you say that in several instances it resulted in sales? A. Yes, sir.

40 Q. Then what do you say as to whether the publication of pictures in that way competes in any way with the pictures or reproductions which you have for sale? A. In my opinion it did not compete at all, sir.

Q. Why? A. For one thing, the reproduction did not come up to the original, and would have no use to the ordinary purchaser of the "Star Weekly", certainly not as a pictorial decoration.

Q. Then what about the quality of the paper which is used? A. The

*In the
Supreme
Court of
Ontario.*

Defendant's
Evidence
No. 8
Charles J.
Quarrington
Cross-
examination
—continued.

Defendant's
Evidence
No. 9
Lawrence
Ruddell
Examination

*In the
Supreme
Court of
Ontario.*
Defendant's
Evidence
No. 9
Lawrence
Ruddell
Examination
—continued.

“Star Weekly” reproductions are the best of their kind I have seen, but at that they are still poor.

Q. Speaking as a director of the Fine Arts Society of London, England, how long have they been publishing pictures? A. Since 1876, I think, sir.

Q. What do you say as to this form of newspaper publicity as a means of disposing of pictures? A. It was our habit very often, and as frequently as possible, to get our own pictures in London, both originals and reproductions into such publications as the “Illustrated London News”.

Q. A copy of the “Sphere”—would the paper receive any remuneration for that? A. Occasionally the paper would pay so much for a page, but usually 10 we were very content to let them have it for nothing.

Q. A copy of the Christmas “Sphere” for the year 1934 has been put in, Mr. Ruddell; I show you pages beginning at 21 on, where apparently reproductions of art products are put in; is that a common method, or what would you say as to whether it is a usual method adopted by the London publishers to advertisers to advertise their pictures? A. Quite usual, sir.

Q. The paper that is used in those publications, of course, is infinitely superior to the ordinary newsprint? A. Yes, sir.

Q. Is it found that those enter into competition at all with the— A. No, sir, not at all.

Q. With the reproductions? A. I would say definitely not.

Q. Then, Mr. Ruddell, what is the Simpson Company? Do they go in simply for framing pictures, or— A. We buy unframed pictures to a small extent but, usually we buy them from the jobber framed.

Q. Framed? A. Yes, sir.

Q. Do you use them for any other purpose than for pictures? A. No, sir.

Q. Would you look through these pictures or prints in Exhibit 1 and tell me whether in your opinion those—having in mind that they are all pre-war productions or reproductions—what their value would be in 1932 for picture framing purposes? A. With very few exceptions, I personally would not 30 think of buying them.

Q. You would not? A. No, sir.

Q. Why? A. They are too old-fashioned.

Q. They are too old-fashioned? A. Especially the ones of this type.

Q. That is, the vignette? A. Which are so particularly dated.

Q. “This type”—you refer to a lady in a bathing suit, JJ and BB?
A. Yes.

Q. That is all, thank you.

* * * * *

Defendant's
Evidence
No. 9
Lawrence
Ruddell
Cross-
examination

Cross-examination by Mr. Bullen.

Q. When you say that the “Toronto Daily Star’s” running of a picture 40 is good advertising for Simpson’s, you mean that it brings to the attention the picture that Simpson’s have for sale to the public? A. Yes, sir.

Q. And Simpson’s are in the retail business? A. Yes, sir, definitely.

Q. They are not publishers? A. No, sir.

Q. Have you canvassed the Canadian trade at all, the box manufacturer, the cigarette box manufacturer, the candy box manufacturer or the art calendar producer or any of the manufacturers of the line that would need this type of picture? A. No, sir; I know nothing whatever about that business.

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Supreme
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Defendant's
Evidence
No. 9
Lawrence
Ruddell
Cross-
examination
—continued.

Q. You know nothing whatever about the business of a publisher here selling his pictures for candy boxes, for candy box purposes, greeting card purposes, art calendar purposes, waste basket cover purposes, or any of the various purposes we have heard that these pictures are adaptable for? A. No, 10 sir.

* * * * *

Q. When you stated that the Fine Arts people, whom you were with, loaned a picture to a publisher or a newspaper in England, they did not pay you for it? A. I said sometimes they did.

Q. Sometimes they did? A. But we were quite content for them not to.

Q. On the sometimes that they did, what did they pay you? A. Twenty guineas a page.

* * * * *

Q. I think you told my friend that you thought, with the exception of probably the hunting scenes here, these were too old-fashioned? A. That was my impression.

20 Q. That was your impression; and that is merely an impression, that is not based on experience in selling the pictures at all to the trade that purchase this particular type of picture? A. Not to the trade, no, sir.

* * * * *

No. 10. Extracts from the Evidence of Merritt Malloney, called on behalf of the Defendant.

Examination-in-chief by Mr. McCarthy.

Defendant's
Evidence
No. 10
Merritt
Malloney
Examination

Q. Mr. Malloney, you live in Toronto? A. Yes, sir.

Q. And you are the owner, I think, of Malloney's Art Galleries? A. Yes, sir.

30 Q. How long have you been engaged in that occupation? A. Thirty-two years.

Q. And in Toronto during that time? A. Yes, sir.

Q. To what extent have you made use of the rotogravure section of the "Toronto Star Weekly" for the purpose of advertising your pictures? A. On a number of occasions we have a painting, one might say one by Wright Barker of Bath, the English painter, sent a painting to me, and Mr. Pascoe asked me could he use that. I said, "Yes, gladly". Four days later I got a telephone call asking me would I sell the picture. I said, "Positively". He said, "Hold it to me. I want it. I will be down to-morrow morning". It was a firm of publishers, they make calendars and print in colour. And next 40 morning the gentleman come in, Mr. Lawson of Lawson & Jones, and said, "What is the price of it?" I said, "Five hundred dollars". He said, "It is sold". And I said, "Thank you," and that was that picture.

*In the
Supreme
Court of
Ontario.*

Defendant's
Evidence
No. 10
Merritt
Malloney
Examination
—continued.

On another occasion a picture was in the "Star Weekly", a lady came in and said, "What is the price of the picture?" And I said, "Three hundred and fifty dollars". She again purchased it.

Then the artists, when they brought a picture to me that I was to sell for them on consignment, if I had it put in the "Star Weekly" they would come back to me and say, "Oh, I say, I am awfully grateful to you to let me have that picture". The "Star" put it in—

Q. I don't want you to go into what people told you. A. The artist, I mean, would thank me for having a picture put in.

Q. Just a second, now. I want you to speak generally, not in individual cases. A. Yes, sir.

Q. Perhaps I should have asked you, you have pictures of your own and you sell on commission, do you? A. Yes, sir.

Q. People put pictures in your hands for sale? A. Yes, sir.

Q. Now, what I want to know is whether you are dealing with your own pictures that you have for sale or pictures which you have on commission for sale, to what extent you have made use of the coloured section of the "Star Weekly" for the purpose of advertising your pictures? A. On every occasion.

Q. On every occasion? A. Yes, sir.

Q. And on what terms? A. For the courtesy line. 20

Q. For the courtesy line? A. Yes, sir.

Q. State whether it has been beneficial in your case or not? A. Quite beneficial.

Q. Your business is confined to the sale of pictures, I believe? A. Yes, sir.

Q. How long have you followed that practice? A. Thirty-three years—thirty-two years.

Q. How long have you followed the practice of using the "Star" columns for advertising the pictures you had for sale or on commission? A. Ever since the "Star" started the publication. 30

Q. Have you found it beneficial not only in selling to private individuals but to art publishers? A. Yes, sir.

* * * * *

Defendant's
Evidence
No. 10
Merritt
Malloney
Cross-
examination

Cross-examination by Mr. Bullen.

Q. Mr. Malloney, you have an art gallery in the City of Toronto?
A. Yes, sir.

Q. And you gather up what originals you possibly can and sell them to the public? A. Yes, sir.

Q. That is your business? A. Yes, sir.

Q. You are not in the publishing business?

A. No, sir. 40

Q. How long have you been in the art gallery business?

A. Thirty-two years.

Q. So I take it that you are not able to speak at all as to what the trade

to whom Mr. Mansell sells wants?

A. No, sir.

* * * * *

Q. When you have a picture run in the "Star" in their rotogravure section you think that is some advantage to you to sell the original picture that you have got in your gallery? A. Yes, sir.

Q. It brings people to your gallery, and they inquire as to whether you have got that particular picture, and you sell it to them? A. Yes, sir.

* * * * *

Q. You have loaned them some; and they have also paid you for some?

A. No, sir.

10 Q. Did they never pay you for some? A. No, sir.

Q. Tell Mr. Mansell that they had? A. No, sir.

Q. Sure? A. Positively not.

* * * * *

Re-examination by Mr. McCarthy.

Q. Do you find that the publication in the "Star" or the reproduction in the rotogravure section of the "Star" affects in any way your ability to sell your picture?

A. Reverse; it helps.

Q. That is, they do not enter into competition?

A. Positively not.

* * * * *

20 No. 11. Extracts from the Evidence of Dave Britton, called on behalf of the Defendant.

Examination-in-chief by Mr. McCarthy.

Q. Mr. Britton, you are the sales manager, I think, for Phillips Toronto Limited? A. Yes, sir.

Q. Of Carlaw Avenue? A. Yes, sir.

Q. And have been for how long? A. Sales manager for eight years. I have been in their employ for fourteen years.

Q. What is their business? A. Manufacturers of mouldings and picture frames.

30 Q. Manufacturers of mouldings and picture frames?

A. Yes.

Q. Do you deal in the reproduction of pictures at all?

A. We do not publish any pictures.

Q. You do not publish any pictures? A. No, sir.

Q. Do you sell pictures? A. We buy them for framing and sell them framed.

Q. You buy them for framing and then sell them framed?

A. Yes, sir.

Q. Now, to what extent have you made use of the rotogravure section

*In the
Supreme
Court of
Ontario.*

Defendant's
Evidence
No. 10
Merritt
Malloney
Cross-
examination
—continued.

Defendant's
Evidence
No. 10
Merritt
Malloney
Re-exami-
nation

Defendant's
Evidence
No. 11
Dave Britton
Examination

*In the
Supreme
Court of
Ontario.*

Defendant's
Evidence
No. 11
Dave Britton
Examination
—continued.

of the "Star" for the reproduction of your pictures which you have for sale?
A. We gave some pictures to the "Star" on several occasions for publication.

Q. On what terms? A. We gave them to them; no obligation at all.

Q. Any credit line? A. Oh, yes. The publisher's name was given and our name, as a courtesy line.

Q. What is that? A. The publisher's name was given and our name.

Q. The publisher's name and your name were given?

A. Yes, sir.

Q. What do you say as to whether the publication in the "Star" or reproduction in the "Star" of these pictures entered into competition with your business at all?

A. Not at all.

Q. Why? A. Because the pictures in the "Star" were not suitable for framing.

Q. To what extent did it benefit your business?

A. It increased our sales.

Q. It increased your sales? A. Yes, sir.

Q. Over what period have you been adopting this practice? A. I think it all occurred in 1932.

Q. In 1932? A. I think so. 20

Q. And you say the result of it was to increase the sales? A. Yes, sir.

Q. And the "Star" paid you nothing? A. Except where the picture was destroyed.

Q. Except where the picture was destroyed in the reproduction? A. Yes, sir.

Q. If the picture was destroyed, then they paid for the— A. Paid the value of it.

Q. Paid the value of it? A. Yes.

Q. But they gave you the courtesy title or the credit line, and that was all you wanted? A. Yes, sir. 30

Q. And you say you found it beneficial to your business? A. Yes, sir.

Q. And increased your sales? A. Yes, sir.

* * * * *

Defendant's
Evidence
No. 11
Dave Britton
Cross-
examination

Cross-examination by Mr. Bullen.

Q. You did buy pictures from Mansell? A. Yes, sir.

Q. He is a well-known publisher? A. Yes, sir.

Q. Known very well in the trade? A. I would say so, yes.

* * * * *

Q. Prior to that when was the last you bought?

A. I couldn't say.

Q. Well, approximately? A. I couldn't tell you.

Q. Well, I understand it was about two years before that; am I right or wrong in the information? 40

A. You are wrong.

Q. Can you find out for me when it was?

A. I know it was prior to 1929.

Q. What quantity did you buy, do you remember?

A. Couldn't tell you that.

Q. And was it the same type of picture, not perhaps the same subject, that we see in Exhibit 1—and perhaps the size may vary, because these are sold in different sizes, are they not? A. Yes, sir.

* * * * *

*In the
Supreme
Court of
Ontario.*

Defendant's
Evidence
No. 11
Dave Britton
Cross-
examination
—continued.

10 No. 12. Extracts from the Evidence of Harry Comfort Hindmarsh, called on behalf of the Defendant.

Examination-in-chief by Mr. McCarthy.

Q. Mr. Hindmarsh, you are the Vice-President of the defendant company, the Star Printing and Publishing Company? A. Yes, sir.

Q. And in 1932 you were the managing editor?

A. Yes.

Q. As such what was your duty in connection with the rotogravure section of the "Star Weekly"? A. I had to make the final selection of all pictures in colour.

Q. You had to make the final selection?

20 A. The final selection.

Q. Of all pictures in colour. And who was it who collected the pictures for your inspection?

A. Mr. Pascoe brought most of them.

Q. Mr. Pascoe brought most of them, and you had the final say as to what should be included? A. Yes, sir.

Q. Then what was the practice of your company in reference to the publication of these pictures? From what sources were they obtained? A. At the beginning we could publish originals only, and we went to those who had them, either dealers or private individuals.

30 Q. Yes? A. Latterly, when we became a bit more expert, we could reproduce reprints, and then we went to the dealers in reprints or the manufacturers of them and borrowed them.

Q. When you became more expert your field widened and you could reproduce prints, and you went to the manufacturers or the people who printed them? A. Yes, sir.

Q. Up to the time in question in this action, which is about June, 1932, on what terms did you publish these prints or originals? A. For the credit line.

Q. For the credit line? A. Yes.

40 Q. That is, you paid nothing for them?

A. No, sir. If we commissioned an artist to paint a picture for us, as we did on three or four occasions, we sometimes paid the artist for his actual work of painting the picture.

Defendant's
Evidence
No. 12
Harry
Comfort
Hindmarsh
Examination

*In the
Supreme
Court of
Ontario.*

Defendant's
Evidence
No. 12
Harry
Comfort
Hindmarsh
Examination
—continued.

Q. What do you say as to whether you experienced any difficulty in getting pictures on those terms?

A. It was an easy matter. The public—the owners of pictures were very anxious to make the arrangement with us.

* * * * *

Q. Then will you go on and tell us what took place after that between you and Mr. Mansell? A. Well, after Mr. Mansell was good enough to assure us that he did not intend to take action and that we might finish the job on any that we had in hand, he said that he had brought with him on this trip to Canada a collection of very fine new pictures, that he had them in his room at the King Edward Hotel, and that they were infinitely superior to, as he expressed it, this old stuff, which was fifteen or seventeen years old.

MR. BULLEN: Q. You are telling us now, Mr. Hindmarsh, what he said? A. Yes, sir. And that he would like, be glad if I would look at them.

MR. MCCARTHY: Q. Yes? A. I told him of course that we would be glad to do that. He remarked that we ought to pay something for these. I asked him how much he thought we ought to pay for them.

MR. BULLEN: Q. Is that the used ones?

A. That was these new, these fine new pictures which he had brought over with him. He said he thought we ought to pay twelve dollars a print for these pictures. I asked him whether that was a minimum or a maximum price, and he said, "Oh, a minimum price." Then I explained to him that Mr. Pascoe was at that time given the task of collecting all these pictures for us, foraging for them, and I would like him to meet Mr. Pascoe and they could arrange to have Mr. Pascoe look them over; so I sent for Mr. Pascoe, he came in, and he and Mr. Mansell soon discovered that they came from the same part of England, and they were tickled to death about it and had quite a little visit recalling old times and so on, and then it was arranged or I asked Mr. Mansell when he would like to have Mr. Pascoe go over and see him, suggested that afternoon, and he said no, he was busy, and then I suggested the next morning and he said, well, yes, the next morning, but he would telephone Mr. Pascoe. Before this he made a remark which is interesting now. Mr. Mansell explained to me that the "Star's" habit at that time of presenting these pictures on a page by cutting them up and crowding them in together, cutting pieces out of them and so on, destroyed their value as far as use for other purposes was concerned, that they were no good for framing, no good for anything else, because we had cut them up and the pictures were not complete.

* * * * *

A. Of course Mr. Mansell during our conversation seemed to think that we had gone quite a long ways in using other people's prints in this way, and I kept explaining to him that we had permission.

40

* * * * *

Q. Mr. Mansell also told us that there was some discussion by you as to increasing the sale of pictures by means of this advertising that you gave them?

A. I told Mr. Mansell—you mean the sale of the “Star”?

Q. No, increasing the sale of the pictures which were published in the “Star”, the sale by the owners or—

A. Oh, yes, yes, I told Mr. Mansell that they found the arrangement most acceptable, welcomed it and found that it did increase their business.

Q. During the interview did Mr. Mansell ever assume a threatening attitude at all? A. No, no. He made himself politely very clear that he did not think that was good business, this reproduction of prints in this way, but there was no bad temper except when he gave Mr. Arnott the third degree.

* * * * *

MR. MCCARTHY: Q. Then he said that Mr. Pascoe brought in a large roll of prints which he went through; do you remember that incident? A. Yes. I was trying to convince Mr. Mansell that this was common practice with us, the matter of borrowing prints from firms, manufacturers, retailers and others who had them. He seemed to think it was unusual, and I asked Mr. Pascoe to bring into my office all the prints we had on hand which we had borrowed or which he, Mr. Pascoe, had borrowed from other firms, and from which I would or had made a selection. Pascoe went out and came back with a great big bunch of this stuff and put it down and Mr. Mansell went through it and said that he identified some more of his own pictures in the lot, but that was how that came about.

Q. And what was said about the pictures of his own which he identified?

A. Well, he expressed some further surprise that we should have them, because he owned the copyright.

* * * * *

Cross-examination by Mr. Bullen.

Q. The situation was that you knew perfectly well as a publisher that the pictures were a subject in which copyright could subsist? A. It could subsist.

* * * * *

Q. Now, you suggested in the conversation this morning that at one part of it Mr. Mansell stated that the cost of obtaining the prints from him would be twelve dollars?

A. Yes, sir.

Q. He used the word “dollars”, did he?

A. Yes, sir.

Q. And he was referring to what? The prints that you had used or the ones that were over at the King Edward Hotel? A. No, the new stock.

Q. The new stock? A. Which he had at the King Edward.

*In the
Supreme
Court of
Ontario.*
Defendant's
Evidence
No. 12
Harry
Comfort
Hindmarsh
Examination
—continued.

Defendant's
Evidence
No. 12
Harry
Comfort
Hindmarsh
Cross-
examination

*In the
Supreme
Court of
Ontario.*

No. 13. Extracts from the Evidence of Claud A. L. Pascoe, called on behalf of the Defendant.

Examination-in-chief by Mr. McCarthy.

Defendant's
Evidence
No. 13
Claud A. L.
Pascoe
Examination

Q. Mr. Pascoe, you are an employee of the Star Publishing Company, the defendants herein? A. Yes, sir.

* * * * *

Q. Can you remember anything else in regard to the interview? A. With Mr. Mansell?

Q. Yes? A. Yes, very distinctly. When Mr. Mansell left there was a clear-cut arrangement between Mr. Hindmarsh and himself that I was to call at the King Edward Hotel and inspect some pictures of his which he defined as his latest and very fine work, and make a selection from those to bring over to Mr. Hindmarsh, for which we were going to pay twelve dollars apiece.

* * * * *

Plaintiff's
Evidence
in Reply
A. W. Arnott
Examination

No. 14. Extracts from the Evidence of A. W. Arnott, called by the Plaintiff in reply.

Examination by Mr. Bullen.

MR. BULLEN: Q. What I am particularly anxious about is, did you tell him they were pre-war stock?

A. No, sir.

* * * * *

PART III—EXHIBITS

EXHIBIT No. 18—PLAINTIFF'S EXHIBIT

Letter Plaintiff to Artists' Supply Co. Ltd.

August 18, 1923.

MESSRS. THE ARTISTS' SUPPLY CO.
77 York Street,
Toronto.

Dear Sirs:

We receive so little business from you that we consider it advisable to
10 be quite free of any obligation that we may have with you, although our
agreement made many years since was with Messrs. Ridout & Co., so will
you therefore note that our agreement is terminated, but we shall be very
pleased to execute any orders which you may send us in the future.

To be quite frank with you it is our intention to have a free hand, and
should we receive enquiries from buyers in Canada, we are at liberty to do
business either with them direct, or advise you of their enquiry.

We are, Dear Sirs,

Yours faithfully,

"A. VIVIAN MANSELL".

20

EXHIBIT No. 19—DEFENDANT'S EXHIBIT

Letter Plaintiff to Manager Artists' Supply Co. Ltd. and Reply

December 24, 1925.

Dear Mr. Arnott:

Evidently my son, Gilbert, has called to see you, and I should imagine
the letter he has sent me has been given down in your office.

My son asks me for our full V.A.S. collection,—Loose Wrappers, etc.,
etc., to be sent you, but before making up these books, I thought it advisable
to write and ask you outright if you think that business will result. I think
it necessary to ask you this insomuch as our business did drop off, so heavily
30 with you, and judging from what my son has written me with regard to some
of our competitors—Messrs. Raphael Tuck, etc., whom he tells me do not
rely on an agent now, but send out a representative from time to time.

Will you consider the matter in all its bearings and let me know if you
think there is a probability of your giving our matters sufficient time, and if
you think that business, good business, is likely to result.

Our V.A.S. collection of pictures are quite easy to handle, but when it

EXHIBITS

Ex. No. 18.
Letter
Plaintiff to
Artists'
Supply Co.
Ltd.
18 Aug. 1923

Ex. No. 19
Letter
Plaintiff to
Artists'
Supply Co.
Ltd.
24 Dec. 1925
and reply
22 Jan. 1926

EXHIBITS
 Ex. No. 19.
 Letter
 Plaintiff to
 Artists'
 Supply Co.
 Ltd.
 24 Dec. 1925
 and reply
 22 Jan. 1926
 —continued.

comes to Confectionery Box-Tops and printing orders for Cigarette Stiffeners, Show-Cards, etc., it is quite a different matter, and in this I feel sure you will agree with me, and recognize my point of view.

Please do not think I wish to throw cold water on what my son has evidently arranged with you, but in view of the poor results from Canada in the past I am doubtful about the future. I should be very interested to hear from you at your earliest convenience.

With kind regards, and wishing you everything of the best for the coming year, I am,

Yours truly,

10

“A. VIVIAN MANSELL”.

Mr. Arnott

Messrs. The Artists' Supply Co. Ltd.,
 Toronto.

January 22, 1926.

MR. A. V. MANSELL,
 c/o A. V. Mansell & Co.,
 London, England.

Dear Sir:

Your letter of December 24th arrived here a week ago but I have been 20 holding off answering it until I could find out a little more from my friends in the business respecting possibilities of your line.

Calendars. With respect to this line, the tendency has been to buy the cheaper make of goods from the United States, but Mr. Adams of the National Art Co. is willing to try your lines on the road when he receives the samples your son asked to have sent to him but has no word as to say what the possibilities are but is simply trying them out.

Respecting box makers and the candy manufacturers who put up their own boxes. I can say nothing respecting these until the samples are here for me to show to the customers who are interested. Several of these upon 30 whom your son called seem to be interested and want samples submitted this month. Your son told me that certain samples would be sent for me to submit to these people which I promised I would do.

Respecting my handling your agency. I might state that I had promised Mr. Gilbert to call upon these different people with your samples in the light of what he had discovered could be done, but whether I would continue I told him would depend upon what the prospects would seem to be when I had done this.

If it was going to be some pettifogging small business as it has been in the past I naturally could not handle it as my time is too valuable for this but if 40 it shows possibilities worth while I would put a man on specially to look after this trade as I have two or three men travelling for me who could look after

this as it would not necessitate continuous efforts like some other businesses. By that I mean those interested in these goods buy in seasons and buy largely and repeat orders would be all that would have to be attended to.

I quite understand your hesitancy and when I saw your son I advised him that the best way would be for you to have a man come over once a year at the best season and get after this business direct.

I found before that the competition naturally was keen and that the local lithographers and engravers were to a very large extent, taking hold of anything worth while turning out in a big way; which along with the American
10 competition made the English market an extremely small one unless a man were after the business all the time, and the difficulty in that respect was the returns by which he would be paid for his labour.

Summing the whole thing up it is altogether problematical. Personally I would like to serve you if it were possible; whether that is the case or not, I am in as much doubt as yourself. I believe, however, that Mr. Gilbert's work here, from what he seemed to think, held out a prospect which would not be wise to throw away but will have to be taken at once if it is to be made profitable.

I would advise you send at once to us, and I will return them to you if
20 you wish, such as Mr. Williard is anxious to see for box wrappers which he is open to buy 250,000, but again it is a matter of price as well as pattern, and about this I am not informed as Mr. Gilbert was not able on account of his hurried business to let me have the facts. Then there are Neilsons, Brownie Candy Co. and Pattersons, who could all be called upon.

These samples must be sent out the very first instant to be of any use.

Yours very truly,

ARTISTS' SUPPLY CO. LTD.

Per.

EXHIBIT No. 13—PLAINTIFF'S EXHIBIT

30

Letter H. F. A. Tygesen to Defendant

April, 1932.

TO THE TORONTO DAILY STAR NEWSPAPER
80 King Street West, Toronto.

Sir:

I am sending you a collection of 100 prints any of which you have my permission to publish in the colour section of the "Star Weekly" with the regular credit line, I have always received from you. I am anxious to so advertise this line so that I can better promote their sale here and I consider such publication the best of advertising.

EXHIBITS

Ex. No. 19.
Letter
Plaintiff to
Artists'
Supply Co.
Ltd.
24 Dec. 1925
and reply
22 Jan. 1926
—continued.

Ex. No. 13.
Letter
H. F. A.
Tygesen to
Defendant
April, 1932

EXHIBITS
 Ex. No. 13.
 Letter
 H. F. A.
 Tygesen to
 Defendant
 April, 1932
 —continued.

These pictures are numbered 459, 573, 526, 450, 113, 239, 334, 315, 3009, 389, and other numbers.

I agree to accept responsibility for their publication for the reasons stated above.

I am yours faithfully,

H. F. A. TYGESEN.

Ex. No. 15.
 Letter
 Artists'
 Supply Co.
 Ltd., to
 Defendant
 20 June, 1932

EXHIBIT No. 15—PLAINTIFF'S EXHIBIT

Letter Artists' Supply Co. Ltd. to Defendant

June 20, 1932.

10

THE STAR WEEKLY,
 King Street West,
 Toronto, Ont.

Gentlemen:

Please publish no more pictures obtained from us, in your colored section after this date, and oblige,

Yours very truly,

ARTISTS' SUPPLY CO. LIMITED

Per. A. W. ARNOTT

Ex. No. 16.
 Letter
 Artists'
 Supply Co.
 Ltd., to
 Defendant
 8 July, 1932

EXHIBIT No. 16—PLAINTIFF'S EXHIBIT

Letter Artists' Supply Co. Ltd. to Defendant

July 8, 1932.

20

THE STAR WEEKLY,
 c/o The Toronto Daily Star,
 80 King Street West,
 Toronto 2, Ontario.

Dear Sirs:

On the 20th of June we delivered to your Mr. Pascoe a letter addressed to the Star Weekly requesting that no more of the pictures borrowed from this Company be reproduced in your paper. It has come to our attention that a picture appears in this week's edition which has been reproduced from 30 one of the pictures which was loaned by this Company some time ago to your Mr. Pascoe.

We wish to draw your attention to the request which we have already made, and to ask you to refrain from reproducing any pictures which have been borrowed from this Company in your paper.

Yours very truly,

ARTISTS' SUPPLY CO. LIMITED.

EXHIBITS
Ex. No. 16.
Letter
Artists'
Supply Co.
Ltd., to
Defendant
8 July, 1932
—continued.

AWA:ME

Per. A. W. ARNOTT

Note.—This letter bears the following notations.

- (1) This picture was subject of injunction fight.
- (2) N.B.—Note agency mark on stationery.
- (3) Answered Sat. July 9.

10

EXHIBIT No. 17—PLAINTIFF'S EXHIBIT

Letter Defendant to Artists' Supply Co. Ltd.

THE TORONTO STAR

Saturday, July 9, 1932.

Ex. No. 17.
Letter
Defendant
to Artists'
Supply Co.
Ltd.
9 July, 1932

Dear Mr. Arnott:

Your letter of July 8 has been handed to me for reply. In accordance with your request we will use no more of the pictures kindly loaned to us by your firm.

I hope that you are quite well and that your summer holiday will be an enjoyable one.

Yours very truly,

“CLAUD A. L. PASCOE”.

The Artists' Supply Co. Ltd.,
York Street, Toronto.

EXHIBITS

Ex. No. 23.
Letter
Defendant's
Solicitor to
Plaintiff's
Solicitors
4 Feb. 1935

EXHIBIT No. 23—DEFENDANT'S EXHIBIT

Letter Defendant's Solicitor to Plaintiff's Solicitors

February 4, 1935.

MESSRS. McMASTER, MONTGOMERY, FLEURY & CO.,
Barristers, etc.,
Temple Building,
Toronto 2, Ontario.

Attention of Mr. Fowler

Dear Sirs:

Re: Mansell v. Toronto Star

I had a very comprehensive conference with my clients in regard to this 10
action, and because it appears to them as it does to me, that the expense
involved in the case is out of all proportion to the importance of the issues
involved, they have instructed me to write you on the subject.

For the purpose of this letter, and the suggestions I am about to make, I
am conceding that my clients, acting innocently and relying on the statements
of the persons from whom they obtained the prints, published the same,
which I will contend, in the event of our being forced to trial, they had the
legal right to do, even though your client be successful in establishing his
copyright, which I very much doubt his ability to do.

But as I say, for the purpose of this letter I am admitting the actual 20
publication of the prints, and I am ignoring our various defences and our
claim that your client instead of suffering loss as the result of the publication
was benefited by the publication now complained of, it being well known
that established houses in England pay the papers to reproduce prints they
are anxious to sell, using this means of bringing the same to the attention of
the public; in fact I have bought certain prints having learned from the press
where I could obtain the same. Ignoring, then, the legal contentions of the
parties, what I now desire to suggest to you is that in my opinion this action
should be settled and my clients are willing to make what I consider a very
handsome offer in furtherance of this suggestion—namely, they will pay your 30
client \$60.00 for each of the prints they published—38 in all—which amounts
to \$2,280.00; they will also pay a reasonable sum—to be agreed on—to answer
your costs to date; and in order to expedite a decision they agree to pay the
expenses of cabling this offer to your client and if necessary the cost of his reply.

In the event of your client refusing this offer I propose to ask leave to
amend our defence by paying into Court the sum above mentioned for the
sake of peace, but without admitting liability, and reserving my right to
read this letter at the trial in the event of your client deciding to refuse this
offer.

Would you be kind enough to communicate with your client at once at 40
our expense and advise me of his decision, because we are arranging for counsel

to proceed to England at once to conduct the examination on the Commission in the event of our offer being refused, and I suggest that in the meantime all expense in connection with the pending Commission be stayed until we have time to discuss this proposal fully.

Yours very truly,

ALEXANDER STARK,

Solicitor for the Toronto Daily Star

EXHIBITS
Ex. No. 23.
Letter
Defendant's
Solicitor to
Plaintiff's
Solicitors
4 Feb. 1935
—continued.

EXHIBIT No. 6—PLAINTIFF'S EXHIBIT

Estimates prepared by the Plaintiff of Printing Costs for printing 10 250,000 copies of each of the Pictures claimed for, in the sizes in which they were reproduced by the Defendant.

Ex. No. 6.
Estimate of
Printing
Costs
26 Sept. 1935

(NOTE:—Each estimate is dated 26th September, 1935, and bears the following notation:—"The above prices are subject to inclusion of the use of the particular subject and original block in each case.")

"Daisies" JJ.

250,000 size $2\frac{3}{4} \times 5\frac{3}{8}$

	Ptg. & Paper			Ptg. Paper & Electros		
	£	s.	d.	£	s.	d.
20 Est. 4566 (14 up).....	72	7	6	72	7	6
Paper $14\frac{1}{2} \times 23$	20	14	0	20	14	0
Electros.....				18	12	3
	<hr/>			<hr/>		
	93	1	6	111	13	9
	93	1	6	111	13	9
	<hr/>			<hr/>		
	£186	3	0	£223	7	6

"Fishing" L.

250,000 size $4\frac{1}{2} \times 3\frac{1}{2}$

	Ptg. & Paper			Ptg. Paper & Electros		
	£	s.	d.	£	s.	d.
30 Est. 4567 (12 up).....	77	0	8	77	0	8
Paper $14\frac{1}{2} \times 23$	24	3	0	24	3	0
Electros.....				17	0	0
	<hr/>			<hr/>		
	101	3	8	118	3	8
	101	3	8	118	3	8
	<hr/>			<hr/>		
	£202	7	4	£236	7	4

EXHIBITS

Ex. No. 6.
 Estimate of
 Printing
 Costs
 26 Sept. 1935
 —continued.

250,000 size $3\frac{1}{4} \times 4\frac{1}{2}$

"Cherries" FF.

	Ptg. & Paper			Ptg. Paper & Electros			
	£	s.	d.	£	s.	d.	
Est. 4567 (12 up).....	77	0	8	77	0	8	
Paper $14\frac{1}{2} \times 23$	24	3	0	24	3	0	
Electros.....				15	19	0	
	<hr/>			<hr/>			
	101	3	8	117	2	8	
	101	3	8	117	2	8	
	<hr/>			<hr/>			
	£202	7	4	£234	5	4	10

"Violet" Z.

250,000 size $3 \times 3\frac{3}{8}$

	Ptg. & Paper			Ptg. Paper & Electros			
	£	s.	d.	£	s.	d.	
Est. 4570 (20 up).....	61	9	8	61	9	8	
Paper 14×23	14	7	6	14	7	6	
Electros.. ..				11	14	0	
	<hr/>			<hr/>			
	75	17	2	87	11	2	
	75	17	2	87	11	2	
	<hr/>			<hr/>			
	£151	14	4	£175	2	4	20

"Aristocrats" AA.

250,000 size $4\frac{1}{4} \times 4\frac{1}{4}$

	Ptg. & Paper			Ptg. Paper & Electros			
	£	s.	d.	£	s.	d.	
Est. 4568 (12 up).....	78	18	2	78	18	2	
Paper $14\frac{1}{2} \times 23$	24	3	0	24	3	0	
Electros.....				20	4	0	
	<hr/>			<hr/>			
	103	1	2	123	5	2	
	103	1	2	123	5	2	
	<hr/>			<hr/>			
	£206	2	4	£246	10	4	30

"Duck and Green Peas" P.

250,000 size 3½ x 5

	Ptg. & Paper			Ptg. Paper & Electros		
	£	s.	d.	£	s.	d.
Est. 4568 (12 up).....	78	18	2	78	18	2
Paper 14½ x 23.....	24	3	0	24	3	0
Electros.....				19	3	0
	<hr/>			<hr/>		
	103	1	2	122	4	2
	103	1	2	122	4	2
	<hr/>			<hr/>		
	£206	2	4	£244	8	4

10

EXHIBITS

Ex. No. 6.
 Estimate of
 Printing
 Costs
 26 Sept. 1935
 —continued.

"Summertime" KK.

250,000 size 3¼ x 5

	Ptg. & Paper			Ptg. Paper & Electros		
	£	s.	d.	£	s.	d.
Est. 2568 (12 up).....	78	18	2	78	18	2
Paper 14½ x 23.....	24	3	0	24	3	0
Electros.....				20	4	0
	<hr/>			<hr/>		
	103	1	2	123	5	2
	103	1	2	123	5	2
	<hr/>			<hr/>		
	£206	2	4	£246	10	4

20

"A daughter of Erin" S.

250,000 size 6½ x 3

	Ptg. & Paper			Ptg. Paper & Electros		
	£	s.	d.	£	s.	d.
Est. 4572 (12 up).....	79	13	2	79	13	2
Paper 14½ x 23.....	24	3	0	24	3	0
Electros.....				20	4	0
	<hr/>			<hr/>		
	103	16	2	124	0	2
	103	16	2	124	0	2
	<hr/>			<hr/>		
	£207	12	4	£248	0	4

30

EXHIBITS

Ex. No. 6.
 Estimate of
 Printing
 Costs
 26 Sept. 1935
 —continued.

250,000 size $4\frac{1}{2} \times 5\frac{5}{8}$

"Meadowsweet" CC.

	Ptg. & Paper	Ptg. Paper & Electros
	£ s. d.	£ s. d.
Est. 4573 (24 up).....	92 14 0	92 14 0
Paper 23 x 38.....	32 4 0	32 4 0
Electros.....		55 6 0
	124 18 0	180 4 0
	124 18 0	180 4 0
	£249 16 0	£360 8 0

10

250,000 $4\frac{1}{2} \times 5\frac{3}{8}$

"Girl of Florence" GG.

	Ptg. & Paper	Ptg. Paper & Electros
	£ s. d.	£ s. d.
Est. 4573 (24 up).....	92 14 0	92 14 0
Paper 23 x 38.....	32 4 0	32 4 0
Electros.....		53 4 0
	124 18 0	178 2 0
	124 18 0	178 2 0
	£249 16 0	£356 4 0

20

250,000 $5\frac{3}{4} \times 4\frac{1}{4}$

"Otter's Halt" T.

	Ptg. & Paper	Ptg. Paper & Electros
	£ s. d.	£ s. d.
Est. 4573 (24 up).....	92 14 0	92 14 0
Paper 23 x 38.....	32 4 0	32 4 0
Electros.....		53 4 0
	124 18 0	178 2 0
	124 18 0	178 2 0
	£249 16 0	£356 4 0

30

“The Intruder” E.

250,000 4 x 5½

	Ptg. & Paper	Ptg. Paper & Electros
	£ s. d.	£ s. d.
Est. 4573 (24 up).....	92 14 0	92 14 0
Paper 23 x 38.....	32 4 0	32 4 0
Electros.....		46 16 0
	<hr/>	<hr/>
	124 18 0	171 14 0
	124 18 0	171 14 0
	<hr/>	<hr/>
	£249 16 0	£343 8 0

10

EXHIBITS
Ex. No. 6.
Estimate of
Printing
Costs
26 Sept. 1935
—continued.

“Out of the Spinney” M.

250,000 size 3⅞ x 5⅞

	Ptg. & Paper	Ptg. Paper & Electros
	£ s. d.	£ s. d.
Est. 4573 (24 up).....	92 14 0	92 14 0
Paper 23 x 38.....	32 4 0	32 4 0
Electros.....		48 18 0
	<hr/>	<hr/>
	124 18 0	173 16 0
	124 18 0	173 16 0
	<hr/>	<hr/>
	£249 16 0	£347 12 0

20

“The Kill” K.

250,000 size 4½ x 7¼

	Ptg. & Paper	Ptg. Paper & Electros
	£ s. d.	£ s. d.
Est. 4575 (16 up).....	105 15 10	105 15 10
Paper.....	43 9 4	43 9 4
Electros.....		46 16 0
	<hr/>	<hr/>
	149 5 2	196 1 2
	149 5 2	196 1 2
	<hr/>	<hr/>
	£298 10 4	£392 2 4

30

EXHIBITS

Ex. No. 6.
 Estimate of
 Printing
 Costs
 26 Sept. 1935
 —continued.

250,000 size $4\frac{1}{4}$ x $5\frac{1}{8}$

"At the Seaside" BB.

	Ptg. & Paper			Ptg. Paper & Electros		
	£	s.	d.	£	s.	d.
Est. 4574 (28 up).....	92	9	2	92	9	2
Paper 23 x 38.....	28	7	0	28	7	0
Electros.....				54	12	0
	<hr/>			<hr/>		
	120	16	2	175	8	2
	120	16	2	175	8	2
	<hr/>			<hr/>		
	£241	12	4	£350	16	4

10

250,000 size $4\frac{1}{8}$ x 5

"Table d'hote with Music" EE.

	Ptg. & Paper			Ptg. Paper & Electros		
	£	s.	d.	£	s.	d.
Est. 4574 (28 up).....	92	9	2	92	9	2
Paper 23 x 38.....	28	7	0	28	7	0
Electros.....				52	3	0
	<hr/>			<hr/>		
	120	16	2	172	19	2
	120	16	2	172	19	2
	<hr/>			<hr/>		
	£241	12	4	£345	18	0

20

250,000 size $4\frac{1}{8}$ x $4\frac{3}{4}$

"Let's be Friends" N.

	Ptg. & Paper			Ptg. Paper & Electros		
	£	s.	d.	£	s.	d.
Est. 4574 (28 up).....	92	9	2	92	9	2
Paper 23 x 38.....	28	7	0	28	7	0
Electros.....				49	11	8
	<hr/>			<hr/>		
	120	16	2	170	7	10
	120	16	2	170	7	10
	<hr/>			<hr/>		
	£241	12	4	£340	15	8

30

"Noonday Rest" X.

250,000 size 4¼ x 6½

	Ptg. & Paper	Ptg. Paper & Electros
	£ s. d.	£ s. d.
Est. 4576 (21 up).....	98 9 8	98 9 8
Paper 23 x 34½.....	33 12 0	33 12 0
Electros.....		52 1 3
	<hr/>	<hr/>
	132 1 8	184 2 11
	132 1 8	184 2 11
	<hr/>	<hr/>
	£264 3 4	£368 5 10

10

"A Brunette" R.

250,000 size 4 x 6⅛

	Ptg. & Paper	Ptg. Paper & Electros
	£ s. d.	£ s. d.
Est. 4576 (21 up).....	98 9 8	98 9 8
Paper 23 x 34½.....	33 12 0	33 12 0
Electros.....		46 11 0
	<hr/>	<hr/>
	132 1 8	178 12 8
	132 1 8	178 12 8
	<hr/>	<hr/>
	£264 3 4	£357 5 4

20

"Fast Asleep" Q.

250,000 size 3⅞ x 6⅛

	Ptg. & Paper	Ptg. Paper & Electros
	£ s. d.	£ s. d.
Est. 4576 (21 up).....	98 9 8	98 9 8
Paper 23 x 34½.....	33 12 0	33 12 0
Electros.....		44 12 6
	<hr/>	<hr/>
	132 1 8	176 14 2
	132 1 8	176 14 2
	<hr/>	<hr/>
	£264 3 4	£353 8 4

30

EXHIBITS

Ex. No. 6.
Estimate of
Printing
Costs
26 Sept. 1935
—continued.

EXHIBITS

Ex. No. 6.
 Estimate of
 Printing
 Costs
 26 Sept. 1935
 —continued.

250,000 size $4\frac{1}{4}$ x $6\frac{3}{8}$

"Old, Old, Story" II.

	Ptg. & Paper			Ptg. Paper & Electros		
	£	s.	d.	£	s.	d.
Est. 4576 (21 up).....	98	9	8	98	9	8
Paper 23 x $34\frac{1}{2}$	33	12	0	33	12	0
Electros.....				52	1	3
	<hr/>			<hr/>		
	132	1	8	184	2	11
	132	1	8	184	2	11
	<hr/>			<hr/>		
	£264	3	4	£368	5	10

10

250,000 size $5\frac{1}{2}$ x $8\frac{1}{2}$

"Reflections" W.

	Ptg. & Paper			Ptg. Paper & Electros		
	£	s.	d.	£	s.	d.
Est. 4577 (16 up).....	112	9	2	112	9	2
Paper 25 x $37\frac{1}{2}$	52	0	0	52	0	0
Electros.....				66	12	0
	<hr/>			<hr/>		
	164	9	2	231	1	2
	164	9	2	231	1	2
	<hr/>			<hr/>		
	£328	18	4	£462	2	4

20

250,000 size $5\frac{1}{4}$ x $8\frac{1}{8}$

"Tally Ho" Y.

	Ptg. & Paper			Ptg. Paper & Electros		
	£	s.	d.	£	s.	d.
Est. 4577 (16 up).....	112	9	2	112	9	2
Paper 25 x $47\frac{1}{2}$	52	0	0	52	0	0
Electros.....				60	18	8
	<hr/>			<hr/>		
	164	9	2	225	7	10
	164	9	2	225	7	10
	<hr/>			<hr/>		
	£328	18	4	£450	15	8

30

"Shamrock" C.

250,000 size $4\frac{7}{8} \times 6\frac{3}{8}$

	Ptg. & Paper	Ptg. Paper & Electros
	£ s. d.	£ s. d.
Est. 4578 (20 up).....	101 17 8	101 17 8
Paper 23 x 36.....	37 3 9	37 3 9
Electros.....		56 11 8
	<hr/>	<hr/>
	139 1 5	195 13 1
	139 1 5	195 13 1
	<hr/>	<hr/>
	£278 2 10	£391 6 2

10

EXHIBITS
 Ex. No. 6.
 Estimate of
 Printing
 Costs
 26 Sept. 1935
 —continued.

"Highland Cattle" G.

250,000 size $4\frac{7}{8} \times 6$

	Ptg. & Paper	Ptg. Paper & Electros
	£ s. d.	£ s. d.
Est. 4578 (20 up).....	101 17 8	101 17 8
Paper 23 x 36.....	37 3 9	37 3 9
Electros.....		53 3 4
	<hr/>	<hr/>
	139 1 5	192 4 9
	139 1 5	192 4 9
	<hr/>	<hr/>
	£278 2 10	£384 9 6

20

"Captain and His Crew" A.

250,000 size $7\frac{1}{2} \times 5\frac{1}{2}$

	Ptg. & Paper	Ptg. Paper & Electros
	£ s. d.	£ s. d.
Est. 4579 (18 up).....	106 6 0	106 6 0
Paper 25 x 36.....	44 2 0	44 2 0
Electros.....		67 1 0
	<hr/>	<hr/>
	150 8 0	217 9 0
	150 8 0	217 9 0
	<hr/>	<hr/>
	£300 16 0	£434 18 0

30

EXHIBITS

Ex. No. 6.
 Estimate of
 Printing
 Costs
 26 Sept. 1935
 —continued.

250,000 size 5 x 7

"A Nibble" J.

	Ptg. & Paper			Ptg. Paper & Electros		
	£	s.	d.	£	s.	d.
Est. 4579 (18 up).....	106	6	0	106	6	0
Paper 25 x 36.....	44	2	0	44	2	0
Electros.....				55	16	0
	<hr/>			<hr/>		
	150	8	0	206	4	0
	150	8	0	206	4	0
	<hr/>			<hr/>		
	£300	16	0	£412	8	0

10

"Stalkers" and "Off to the Hunt" D & F.

250,000 size 5 x 7¼

	Ptg. & Paper			Ptg. Paper & Electros		
	£	s.	d.	£	s.	d.
Est. 4579 (18 up).....	106	6	0	106	6	0
Paper 25 x 36.....	44	2	0	44	2	0
Electros.....				59	0	6
	<hr/>			<hr/>		
	150	8	0	209	8	6
	150	8	0	209	8	6
	<hr/>			<hr/>		
	£300	16	0	£418	17	0

20

"Highland Cattle" O.

250,000 size 5¼ x 7½

	Ptg. & Paper			Ptg. Paper & Electros		
	£	s.	d.	£	s.	d.
Est. 4579 (18 up).....	106	6	0	106	6	0
Paper 25 x 36.....	44	2	0	44	2	0
Electros.....				63	15	0
	<hr/>			<hr/>		
	150	8	0	214	3	0
	150	8	0	214	3	0
	<hr/>			<hr/>		
	£300	16	0	£428	6	0

30

250,000 size $6\frac{3}{4}$ x $8\frac{3}{4}$

"An Eastern Belle" I.

	Ptg. & Paper	Ptg. Paper & Electros
	£ s. d.	£ s. d.
Est. 4580 (12 up).....	118 9 2	118 9 2
Paper 23 x 38.....	64 8 0	64 8 0
Electros.....		57 8 0
	<hr/>	<hr/>
	182 17 2	240 5 2
	182 17 2	240 5 2
	<hr/>	<hr/>
	£365 14 4	£480 10 4

10

"A Spanish Beauty" H.

250,000 size $6\frac{1}{4}$ x $8\frac{1}{4}$

	Ptg. & Paper	Ptg. Paper & Electros
	£ s. d.	£ s. d.
Est. 4580 (12 up).....	118 9 2	118 9 2
Paper 23 x 38.....	64 8 0	64 8 0
Electros.....		55 5 0
	<hr/>	<hr/>
	182 17 2	238 2 2
	182 17 2	238 2 2
	<hr/>	<hr/>
	£365 14 4	£476 4 4

20

"Kittens" DD.

250,000 size $2\frac{1}{2}$ x $3\frac{1}{2}$

	Ptg. & Paper	Ptg. Paper & Electros
	£ s. d.	£ s. d.
Electros, 4-col. @ 17/9d each.....		17 15 0
Est. 4516 (20 up).....	50 7 0	50 7 0
Paper $13\frac{1}{2}$ x 23 @ 11/6d Rm.....	15 10 6	15 10 6
	<hr/>	<hr/>
	65 17 6	83 12 6
	65 17 6	83 12 6
	<hr/>	<hr/>
	£131 15 0	£167 5 0

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EXHIBITS

Ex. No. 20.
Statement of
Distribution and Net Sale
of the "Star
Weekly"
3 Oct. 1935.

EXHIBIT No. 20—PLAINTIFF'S EXHIBIT

Statement of Distribution and Net Sale of the "Star Weekly"

1932	TOTAL DISTRIBUTION	NET SALE	
January 2	243,581	239,640	
9	244,872	240,931	
16	245,855	241,914	
23	246,556	242,615	
30	247,508	243,566	
February 6	249,158	243,938	
13	249,652	244,432	10
20	249,948	244,728	
27	250,111	244,890	
March 5	250,587	245,014	
12	251,669	246,097	
19	252,791	247,218	
26	254,066	248,493	
April 2	253,713	249,512	
9	254,257	250,054	
16	254,325	250,122	
23	252,973	248,722	20
30	251,469	247,218	
May 7	250,150	244,850	
14	249,685	244,385	
21	248,589	243,289	
28	247,717	242,417	
June 4	245,659	237,613	
11	243,927	235,881	
18	242,191	234,143	
25	239,559	231,512	
			"M. Argue" 30

Ex. No. 7.
Statement of
Business
Done 1918-
33 with
Artists'
Supply Co.
14 Oct. 1935

EXHIBIT No. 7—DEFENDANT'S EXHIBIT

Statement of business done for period 1918 to 33 with
Artists' Supply Co.

£ s. d.	£ s. d.	£ s. d.
1918.....	1921..... 2 8 5	1924..... 17 19 2
1919.....	1922..... 54 18 9	1925..... 23 13 1
1920.....	1923..... 26 8 1	1926..... 13 17 11
1927..... 37 2 8	1928..... 19 12 3	1929..... 1 11 10
1930.....	1931.....	1932.....
1933.....		
	Total..... £197 12. 2.	

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EXHIBIT No. 22—PLAINTIFF'S EXHIBIT

Statement of Receipts from the Sale of "Star Weekly" for Certain weeks

THE "TORONTO STAR"

The following is the record of Receipts from the sale of the "Star Weekly" for the weeks mentioned below.

	March 12th, 1932.....	\$17,181.94
	April 2nd, 1932.....	17,417.98
	April 9th, 1932.....	17,455.57
	May 7th, 1932.....	17,099.43
10	May 14th, 1932.....	17,067.30
	May 21st, 1932.....	16,991.57
	May 28th, 1932.....	16,931.31
	June 4th, 1932.....	16,599.56
	June 18th, 1932.....	16,359.86
	July 9th, 1932.....	16,125.12

HSS.

EXTRACTS FROM STATUTES AND OTHER DOCUMENTS
PRINTED FOR CONVENIENCE OF REFERENCE

No. 1 The Fine Arts Copyright Act of 1862, 25 and 26 Vic. Chapter 68.

20 AN ACT FOR AMENDING THE LAW RELATING TO COPYRIGHT IN WORKS
OF THE FINE ARTS, AND FOR REPRESSING THE COMMISSION OF
FRAUD IN THE PRODUCTION AND SALE OF SUCH WORKS.

WHEREAS by law, as now established, the authors of paintings, drawings, and photographs have no copyright in such their works;

1. The author, being a British subject or resident within the dominions of the Crown, of every original painting, drawing, and photograph which shall be or shall have been made either in the British dominions or elsewhere, and which shall not have been sold or disposed of before the commencement of this Act, and his assigns, shall have the sole and exclusive right of copying, 30 engraving, reproducing, and multiplying such painting or drawing, and the design thereof, or such photograph, and the negative thereof, by any means and of any size, for the term of the natural life of such author, and seven years after his death; (proviso not printed).

2. Nothing herein contained shall prejudice the right of any person to copy or use any work in which there shall be no copyright, or to represent any scene or object, notwithstanding that there may be copyright in some representation of such scene or object.

EXHIBITS

Ex. No. 22.
Statement of
Receipts
from the Sale
of the "Star
Weekly" for
Certain
Weeks
18 Oct. 1935

STATUTES,
&c.

No. 1
Extracts
from Fine
Arts Copy-
right Act,
1862.

STATUTES,
&c.

No. 1
Extracts
from Fine
Arts Copy-
right Act,
1862.
—continued.

3. All copyright under this Act shall be deemed personal or moveable estate, and shall be assignable at law; and every assignment thereof, and every licence to use or copy by any means or process the design or work which shall be the subject of such copyright, shall be made by some note or memorandum in writing, to be signed by the proprietor of the copyright, or by his agent appointed for that purpose in writing.

4. There shall be kept at the hall of the Stationers Company, by the officer appointed by the said Company for the purposes of the Copyright Act, 1842, a book or books, entitled "The Register of Proprietors of Copyright in Paintings, Drawings and Photographs" wherein shall be entered a memorandum of every copyright to which any person shall be entitled under this Act, and also of every subsequent assignment of any such copyright; and such memorandum shall contain a statement of the date of such agreement or assignment, and of the names of the parties thereto, and of the name and place of abode of the person in whom such copyright shall be vested by virtue thereof and of the name and place of abode of the author of the work in which there shall be such copyright, together with a short description of the nature and subject of such work, and in addition thereto, if the person registering shall so desire, a sketch, outline, or photograph of the said work; and no proprietor of any such copyright shall be entitled to the benefit of this Act until such registration; and no action shall be sustainable nor any penalty be recoverable in respect of anything done before registration.

5. (Provision as to keeping the register, not printed).

6 to 11. (Penalty provisions, not printed).

No. 2.
Extracts
from
Imperial
Copyright
Act, 1911.

No. 2 Extracts from "The Imperial Copyright Act of 1911, 1 & 2 Geo. 5, Chapter 46".

1. (1) Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original literary dramatic musical and artistic work, if—

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(a) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid; and

(b) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within such parts of His Majesty's dominions as aforesaid;

but in no other works, except so far as the protection conferred by this Act is extended by Orders in Council thereunder relating to self-governing dominions to which this Act does not extend and to foreign countries.

* * * * *

6. (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction or interdict, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right.

40

7. All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

* * * * *

24. (1) Where any person is immediately before the commencement of this Act entitled to any such right in any work as is specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall, as from that date, be entitled to the substituted right set forth in
10 the second column of that schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder:

Provided that:—

(a) if the author of any work in which any such right as is specified in the first column of the First Schedule to this Act subsists at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right,
20 then at the date when, but for the passing of this Act, the right would have expired the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine; but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled at his option either—

(i) on giving such notice as hereinafter mentioned, to an assignment
30 of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration; or

(ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement may be determined by arbitration, or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment;

40 The notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post to the author, or if he cannot with reasonable diligence be found, advertised in the "London Gazette" and in two London newspapers:

STATUTES,
&c. —

No. 2.
Extracts
from
Imperial
Copyright
Act, 1911.
—continued.

STATUTES,
&c.

No. 2.
Extracts
from
Imperial
Copyright
Act, 1911.
—continued.

- (b) where any person has, before the twenty-sixth day of July, nineteen hundred and ten, taken any action whereby he has incurred any expenditure or liability in connection with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section 10 becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration.
- (2) For the purposes of this section, the expression "author" includes the legal personal representatives of a deceased author.
- (3) Subject to the provisions of section nineteen sub-sections (7) and (8) of section thirty-three of this Act, copyright shall not subsist in any work made before the commencement of this Act, otherwise than under, and in accordance with, the provisions of this section.

Application to British possessions

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25. (1) This Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, shall extend throughout His Majesty's dominions: Provided that it shall not extend to a self-governing dominion, unless declared by the Legislature of that dominion to be in force therein either without any modifications or additions, or with such modifications and additions relating exclusively to procedure and remedies, or necessary to adapt this Act to the circumstances of the dominion, as may be enacted by such Legislature.

(2) If the Secretary of State certifies by notice published in the "London Gazette" that any self-governing dominion has passed legislation 30 under which works, the authors whereof were at the date of the making of the works British subjects resident elsewhere than in the dominion or (not being British subjects) were resident in the parts of His Majesty's dominions to which this Act extends, enjoy within the dominion rights substantially identical with those conferred by this Act, then, whilst such legislation continues in force, the dominion shall, for the purposes of the rights conferred by this Act, be treated as if it were a dominion to which this Act extends; and it shall be lawful for the Secretary of State to give such a Certificate as aforesaid, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, manufactured in a foreign 40 country, under the law of the dominion, differ from those under this Act.

26. (1) The Legislature of any self-governing dominion may, at any time, repeal all or any of the enactments relating to copyright passed by Parliament (including this Act) so far as they are operative within that dominion; Provided that no such repeal shall prejudicially affect any

legal rights existing at the time of the repeal, and that, on this Act or any part thereof being so repealed by the Legislature of a self-governing dominion, that dominion shall cease to be a dominion to which this Act extends.

(2) In any self-governing dominion to which this Act does not extend, the enactments repealed by this Act shall, so far as they are operative in that dominion, continue in force until repealed by the Legislature of that dominion.

(3) Where His Majesty in Council is satisfied that the law of a self-governing dominion to which this Act does not extend provides adequate protection within the dominion for the works (whether published or unpublished) of authors who at the time of the making of the work were British subjects resident elsewhere than in that dominion, His Majesty in Council may, for the purpose of giving reciprocal protection, direct that this Act, except such parts (if any) thereof as may be specified in the Order, and subject to any conditions contained therein, shall, within the parts of His Majesty's dominions to which this Act extends, apply to works the authors whereof were at the time of the making of the work, resident within the first-mentioned dominion, and to works first published in that dominion; but, save as provided by such an Order, works the authors whereof were resident in a dominion to which this Act does not extend shall not, whether they are British subjects or not, be entitled to any protection under this Act except such protection as is by this Act conferred on works first published within the parts of His Majesty's dominions to which this Act extends:

Provided that no such Order shall confer any rights within a self-governing dominion, but the Governor in Council of any self-governing dominion to which this Act extends, may, by Order, confer within that dominion the like rights as His Majesty in Council, is, under the foregoing provisions of this subsection, authorized to confer within other parts of His Majesty's dominions.

For the purposes of this subsection, the expression "a dominion to which this Act extends" includes a dominion which is for the purposes of this Act to be treated as if it were a dominion to which this Act extends.

STATUTES, &c. —

No. 2.
Extracts from Imperial Copyright Act, 1911.
—continued.

No. 3 STATUTORY RULES & ORDERS, 1923, Page 168

2. IMPERIAL COPYRIGHT—CANADA

Certificate, dated Dec. 6, 1923, by the Secretary for the Colonies under Sec. 25 (2) of the Copyright Act 1911 (1 & 2 Geo. 5. Ch. 46) as to Legislation by the Dominion of Canada.

No. 3
Certificate under Sec. 25 (2) of Copyright Act, 1911, 6 Dec. 1923.

1923 No. 1605

I, the undersigned, one of His Majesty's Principal Secretaries of State, do hereby certify, pursuant to Sec. 25, sub-section (2) of the Imperial Copyright Act 1911 that the Dominion of Canada has passed legislation (that is

STATUTES, to say the Copyright Act 1921 and the Copyright Amendment Act 1923)
 &c. _____ under which works, the authors whereof were at the date of the making of
 No. 3 the works British subjects resident elsewhere than in the Dominion of Canada
 Certificate under Sec. 25 or (not being British subjects) were resident in the parts of His Majesty's
 (2) of Copy- Dominions to which the said Imperial Act extends, enjoy within the Dominion
 right Act, of Canada, as from the 1st day of January, 1924, rights substantially identical
 1911, 6 Dec. with those conferred by the said Imperial Act.
 1923.
 —continued.

DEVONSHIRE.