

In the Privy Council

ON APPEAL FROM THE SUPREME COURT OF CANADA

Between:

ISAAC W. C. SOLLOWAY AND HARVEY MILLS
(Defendants) Appellants

—and—

J. P. McLAUGHLIN
(Plaintiff) Respondent

—and—

SOLLOWAY MILLS & CO. LIMITED AND SOLLOWAY
MILLS & CO. LIMITED (A Company incorporated under
the laws of the Dominion of Canada)
(Defendants not appearing)

AND BY WAY OF CROSS-APPEAL

Between:

J. P. McLAUGHLIN
(Plaintiff) Appellant

—and—

ISAAC W. C. SOLLOWAY AND HARVEY MILLS
(Defendants) Respondents

Record of Proceedings

GARD, LYELL & CO.,
Leith House, 47, Gresham St.,
London, E.C. 2.

for the Appellants.

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

for the Respondent.

TORONTO
THE HUNTER-ROSE COMPANY, LIMITED
1936

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—and—

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(Defendants) Respondents

RECORD OF PROCEEDINGS

INDEX — PART I

PLEADINGS, EVIDENCE, ORDERS, ETC.

No.	Description of Document	Date	Page
1.	Amended Statement of Claim.....	January 29th, 1931.....	1
2.	Demand for Particulars	March 4th, 1931	6
3.	Reply to Demand for Particulars	March 20th, 1931.....	9
4.	Further Particulars delivered in pursuance of the Order of the Honourable Mr. Justice Wright dated the 10th of April, 1931.....	April 14th, 1931	10

No.	Description of Document	Date	Page
5.	Statement of Defence of the Defendant Isaac W. C. Solloway.....	May 16th, 1931.....	11
6.	Statement of Defence of the Defendant Harvey Mills.....	May 16th, 1931.....	11
7.	Order of O. E. Lennox, Assistant Master, permitting amendment to Statement of Claim	July 28th, 1931.....	12
8.	Statement of Defence of the Defendant Solloway Mills & Co. Limited (A Company incorporated under the laws of the Province of Ontario)	May 16th, 1931.....	13
9.	Statement of Defence of the Defendant Solloway, Mills & Co. Limited (A Company incorporated under the laws of the Dominion of Canada)	October 13th, 1931.....	14
10.	Demand for Particulars.....	January 20th, 1932	15
11.	Reply to Demand for Particulars.....	January 22nd, 1932.....	16
12.	Order of the Honourable Mr. Justice Kelly referring the whole action to the Master for trial	February 24th, 1932	17
13.	Endorsement on the Record by the Master referring the case to the Assistant Master.....	February 25th, 1932	18
14.	Order of W. J. Reilley, Registrar in Bankruptcy granting leave to proceed notwithstanding Bankruptcy of Ontario Company...	May 12th, 1932	18
PLAINTIFF'S EVIDENCE			
15.	Opening proceedings at trial before Assistant Master	October 11th, 1932	19
16.	Charles Gordon Spanner, Examination	October 11th, 1932	21
17.	Frank Tucker, Examination	October 11th, 1932	23
18.	John Patrick McLaughlin, Examination	October 11th, 1932	25
	Cross-Examination	October 11th, 1932	29
	Re-Examination	October 11th, 1932	36

No.	Description of Document	Date	Page
19.	Arthur Wilfred Robinson,		
	Examination	October 11th, 1932.....	36
	Cross-Examination	October 11th, 1932.....	37
	Re-Examination	October 11th, 1932.....	38
20.	Perrin Minter Seaborn,		
	Examination	October 11th, 1932.....	38
	Cross-Examination	October 12th, 1932.....	69
	Re-Examination	October 12th, 1932.....	76
21.	Walter Henry Jacobs,		
	Examination	October 12th, 1932.....	76
	Cross-Examination	October 12th, 1932.....	80
	Re-Examination	October 12th, 1932.....	82
22.	George Ernest Parkes,		
	Examination	October 12th, 1932.....	84
23.	George W. Kimmerly,		
	Examination	October 12th, 1932.....	89
	Cross-Examination	October 12th, 1932.....	95
	Re-Examination	October 12th, 1932.....	97
24.	Percy J. Kingsmill,		
	Examination	October 13th, 1932.....	100
	Cross-Examination	October 13th, 1932.....	107
	Re-Examination	October 13th, 1932.....	112
25.	P. M. Seaborn (Recalled),		
	Examination	October 13th, 1932.....	123
	Cross-Examination	October 13th, 1932.....	125
	Re-Examination	October 13th, 1932.....	126
26.	Frederick Charles Hill,		
	Examination	October 13th, 1932.....	127
	Cross-Examination	October 20th, 1932.....	170
	Re-Examination	October 26th, 1932.....	192
27.	J. P. McLaughlin (Recalled),		
	Examination	October 26th, 1932.....	194
	Cross-Examination	October 26th, 1932.....	195

DEFENDANT'S EVIDENCE

28.	William Mansel Ketchen,		
	Examination	October 26th, 1932.....	196
29.	Harold Sidney Reading,		
	Examination	October 26th, 1932.....	198

No.	Description of Document	Date	Page
30.	Harold D. Holden, Examination	October 26th, 1932.....	201
	Cross-Examination	October 26th, 1932.....	211
	Re-Examination	October 26th, 1932.....	234
31.	Report of O. E. Lennox, Assistant Master.....	January 30th, 1933.....	237
32.	Reasons for Report of O. E. Lennox, Assistant Master	January 30th, 1933.....	238
33.	Notice of filing Report of O. E. Lennox, As- sistant Master.....	February 27th, 1933....	243
34.	Notice of Appeal to Single Judge from the Report of O. E. Lennox, Assistant Master.....	February 10th, 1933....	244
35.	Judgment of the Honourable Mr. Justice Kerwin	June 13th, 1933.....	247
36.	Reasons for Judgment of the Honourable Mr. Justice Kerwin.....	June 13th, 1933.....	248
37.	Notice of Appeal from the Judgment of the Honourable Mr. Justice Kerwin.....	June 23rd, 1933.....	250
38.	Reasons for Judgment of the Court of Appeal The Honourable Mr. Justice Davis	June 5th, 1934	252
	The Honourable Mr. Justice Macdonnell	June 5th, 1934	256
39.	Judgment of the Court of Appeal.....	June 5th, 1934	260
40.	Order of the Registrar of the Supreme Court of Canada dispensing with printing of certain exhibits.....	October 12th, 1934	261
41.	Judgment of the Supreme Court of Canada....	February 28th, 1936 ..	262
42.	Reasons for Judgment of the Supreme Court of Canada—The Honourable Mr. Justice Dysart (ad hoc).....	February 28th, 1936 ...	263
43.	Petition of the Appellants Isaac W. C. Sol- loway and Harvey Mills for special leave to appeal from the Judgment of the Su- preme Court of Canada	271
44.	Order of His Majesty in Council giving the Appellants special leave to appeal.....	July 24th, 1936.....	285

PART II.
EXHIBITS

No.	Description of Exhibit	Date	Page
1.	Receipt, Ontario Company to J. P. McLaughlin, for 3,500 shares Sudbury Basin Mines Limited deposited with Ontario Company to finance purchase of 7,000 shares.....	October 16th, 1929.....	296
2.	Bought note sent by Ontario Company to J. P. McLaughlin confirming purchase of 1,800 shares of Sudbury Basin Mines Limited....	October 16th, 1929.....	297
3.	Bought note sent by Ontario Company to J. P. McLaughlin confirming purchase of 5,200 shares of Sudbury Basin Mines Limited....	October 16th, 1929.....	298
4.	Letter, Ontario Company to J. P. McLaughlin	October 21st, 1929.....	308
5.	Receipt for collateral, Solloway Mills & Co. Limited to J. P. McLaughlin.....	October 22nd, 1929.....	309
6.	Letter, Solloway Mills & Co. Limited to J. P. McLaughlin	October 24th, 1929	310
7.	Receipt for 500 shares collateral, Solloway Mills & Co. Limited to J. P. McLaughlin....	October 25th, 1929	310
8.	Receipt, Solloway Mills & Co. Limited to J. P. McLaughlin, for 1,500 shares collateral ...	October 28th, 1929	311
9.	Receipt, Solloway Mills & Co. Limited to J. P. McLaughlin, for 2,000 shares of collateral	October 28th, 1929	311
10.	Letter, Solloway Mills & Co. Limited to J. P. McLaughlin	December 13th, 1929	312
11.	Receipt, Solloway Mills & Co. Limited to J. P. McLaughlin, for 2,500 shares collateral....	December 16th, 1929	313
12.	Receipt, Solloway Mills & Co. Limited to J. P. McLaughlin, for 2,500 shares collateral ..	December 3rd, 1929	312
13.	Receipt, Solloway Mills & Co. Limited to J. P. McLaughlin, for \$8,000.00 cash margin....	December 20th, 1929....	313
14.	Account sent to J. P. McLaughlin by Ontario Company	October 31st, 1929	309

No.	Description of Exhibit	Date	Page
15.	Account for November, 1929, sent by Solloway Mills & Co. Limited to J. P. McLaughlin....	November 30th, 1929....	312
16.	Account for December, 1929, sent by Solloway Mills & Co. Limited to J. P. McLaughlin....	December 31st, 1929....	313
17.	Minute Book of Solloway Mills & Co. Limited (Dominion Company) Volume 2 (not printed in full).		
	(a) By-law Number 12, Dominion Company, authorizing sale of Ontario business to Ontario Company.....	December 20th, 1928....	291
	(b) Agreement transferring Ontario business from Dominion Company to Ontario Company.....	December 20th, 1928....	293
17b.	Minute Book of Solloway Mills & Co. Limited (Dominion Company) Volume 1 (not printed in full).		
	(a) By-law Number 5 of Solloway Mills & Co. Limited (Dominion Company) authorizing purchase of partnership assets	May 31st, 1928.....	288
	(b) Agreement between I. W. C. Solloway and Harvey Mills and Dominion Company	May, 1928.....	289
18.	Minute Book of Solloway Mills & Co. Limited (Ontario Company) (not printed in full). By-law Number 6 of Ontario Company authorizing purchase of Ontario business from Dominion Company	December 20th, 1928....	292
19.	Account of J. P. McLaughlin from Ontario Company's ledger from 16th October, 1929 to 14th January, 1930.....	January 14th, 1930.....	314
20.	Duplicate receipts for shares of Sudbury Basin Mines Limited deposited by J. P. McLaughlin with Solloway Mills & Co. Limited		
	(a) Receipt (not printed).....	October 16th, 1929	
	(b) Receipt (not printed).....	October 22nd, 1929	
	(c) Receipt (not printed).....	October 25th, 1929	
	(d) Receipt (not printed).....	October 29th, 1929	
	(e) Receipt (not printed).....	December 3rd, 1929	
	(f) Receipt (not printed).....	December 16th, 1929	

No.	Description of Exhibit	Date	Page
21.	Stock register showing Certificates of Sudbury Basin Mines Limited received and delivered by Solloway Mills & Co. Limited (Ontario Company)	October 16th to 29th, 1929	
	(not printed—see photostatic copies page 1)	January 8th to 14th, 1930	
22.	Cage Book, Solloway Mills & Co. Limited (Ontario Company) showing daily record of number of shares of Sudbury Basin Mines Limited received and delivered	June 29th, 1929, to 6th March, 1930	
	(not printed—see photostatic copies page 19)		
23.	Buy and sell slips other than those referable to J. P. McLaughlin	October 16th, 1929	300
24.	Duplicate bought note showing names of selling brokers, number of shares purchased from each and price on execution of purchase of 7,000 shares for J. P. McLaughlin	October 16th, 1929	299
25.	Duplicate bought and sold notes for all transactions in Sudbury Basin Mines Limited other than that of J. P. McLaughlin	October 16th, 1929	303
26.	Four client brokers' confirmations (not printed)	November 4th, 1929	
27.	Clearing sheets, Solloway Mills & Co. Limited (not printed—see photostatic copies page 23).	October 16th, 1929	
28.	Client brokers' ledger (being ledger recording transactions with other brokers who are customers). (not printed).		
28a.	Client brokers' ledger (being ledger recording transactions with other brokers who are customers). (not printed).		
29.	Trading ledger, Solloway Mills & Co. Limited (Ontario Company). (not printed).		

No.	Description of Exhibit	Date	Page
	(a) Sudbury Basin Mines Limited (see photostatic copies page 45).		
	(b) Stock ledger control (see photostatic copies pages 98 to 101).....	August 15th, 1927 to October 12th, 1929	
29a.	Trading ledger of Solloway Mills & Co. Limited (Ontario Company) showing Dominion trading account in Sudbury Basin Mines Limited (not printed—see photostatic copies page 68).....	October 12th, 1929 to January 21st, 1930	
30.	Trading ledger Solloway Mills & Co. Limited (Dominion Company) showing account with Ontario Company. (not printed).	April 30th, 1929	
30a.	Trading ledger Solloway Mills & Co. Limited (Dominion Company) (not printed—see photostatic copies page 75).....	October 12th, 1929 to January 21st, 1930	
30b.	Trading ledger of Solloway Mills & Co. Limited (Dominion Company) showing Ontario Company account (not printed—see photostatic copies page 74).....	May 1st, 1929 to September 26th, 1930	
31.	Stock position card Sudbury Basin Mines Limited (not printed—see photostatic copies page 81).....	November 30th, 1929 to December 23rd, 1929	
32.	Stock position cards. (not printed).		
33.	Ontario Company general ledger. (not printed).		
	(a) Dominion Company's trading account with Ontario Company. (see photostatic copies, pages 82 to 85).		
	(b) Dominion Company Correspondents' Account (see photostatic copies pages 85 to 88). Dominion Company's Correspondents control account (see photostatic copies page 93).		
	(c) Dominion Company current account (see photostatic copies page 86).		

No.	Description of Exhibit	Date	Page
	(d) Dominion Company branches account (see photostatic copies pages 89 to 92)		
	(e) Dominion Company Branches control account (see photostatic copies pages 93 to 94).		
34.	General Ledger (Ontario Company). (not printed).	March, 1932	
35.	General Ledger (Dominion Company). (not printed).		
	(a) Trading account with Ontario Com- pany, Dominion Correspondents and Dominion Branches (see photostatic copies page 95)	December 1st, 1928 August 31st, 1929	
	(b) Stocks owing (Dominion) Trading account control (see photostatic copies page 95)	November 30th, 1928 August 31st, 1929	
	Stocks owing (Dominion Company) Trading account control (see photo- static copies page 103)	December 31st, 1931 to January 22nd, 1932	
	(c) Dominion Correspondents Control account (see photostatic copies page 96)	November 30th, 1928 August 31st, 1929	
	(d) Ontario Company's current account (see photostatic copies page 96)	August 31st, 1929	
	(e) Profit and Loss account (see photo- static copies pages 97 and 103)	January, 1930 to December 31st, 1931	
	(f) Deficit and Surplus account (see photostatic copies page 104)	January, 1929, to March, 1932	
36.	Transfer General Ledger. (not printed)	January, 1930, to January, 1931	
37.	General Ledger (Dominion Company). (not printed)	1927 to January 1st, 1929	
38.	Private Ledger. (not printed).		
39.	Clearing Brokers' ledger A - F. (not printed).		

No.	Description of Exhibit	Date	Page
39a.	Clearing Brokers' ledger G - Mc. (not printed).		
39b.	Clearing Brokers' ledger M - Z. (not printed).		
40.	Sheet showing deposit of stock in Safety Deposit Box in Canadian Bank of Commerce with cards attached (not printed—see photostatic copies page 105)	November 22nd, 1928 to February 27th, 1930	
41.	Receipts (31 in all) for Sudbury Basin Mines Limited certificates of stock from brokers other than Solloway Mills & Co. Limited. (not printed)	October 17th, 1929 to December 12th, 1929	
42.	Confirmation of sales made by other brokers other than for Solloway Mills & Co. Limited	October 16th, 1929	304
43.	Recapitulation ledger. (not printed).		
44.	Statement showing disposition of share certificates of Sudbury Basin Mines Limited deposited by J. P. McLaughlin with Solloway Mills & Co. Limited	October 18th to 21st, 1929	305
45.	Schedule showing certain certificates received by Ontario Company from clearing October 17th, 1929, and later disposition of same	October 17th, 1929	307
46.	Partial list of Sudbury Basin certificates delivered to J. P. McLaughlin	January 14th, 1930	315
47.	Statement showing calculation of Plaintiff's Claim as at 14th, January, 1930	January 14th, 1930	318

AMENDED STATEMENT OF CLAIM
IN THE SUPREME COURT OF ONTARIO

(Writ issued January 27th, 1931)

*In the
Supreme
Court of
Ontario.*

No. 1.
Amended
Statement of
Claim,
29th
January,
1931.

Between:

J. P. McLAUGHLIN

Plaintiff

—and—

SOLLOWAY, MILLS & CO., LIMITED AND ISAAC W. C.
SOLLOWAY AND HARVEY MILLS, SOLLOWAY, MILLS
& CO., LIMITED, (a Company incorporated under the laws
of the Dominion of Canada).

10

Defendants.

Amended this 13th day of
August, 1931, pursuant to
order dated July 28, 1931.

“E. Harley”

Senior Registrar S.C.O.

Amended this 1st day of May,
1931, pursuant to Order
dated April 22nd, 1931.

20

“E. Harley”

Senior Registrar S.C.O.

STATEMENT OF CLAIM

1. The plaintiff is a retired gentleman residing in the City of Toronto.

2. The defendant Solloway, Mills & Co., Limited, hereinafter referred to as the defendant Company, is a corporation which was incorporated under the laws of the Province of Ontario at the instance of the defendants Isaac W. C. Solloway and Harvey Mills, and operated by them as their agents for the purpose of carrying on an ostensible brokerage business in the City of Toronto and other places.

30

2(a). The defendant Solloway Mills & Co., Limited (incorporated under the laws of the Dominion of Canada) is a company incorporated under the laws of the Dominion of Canada at the instance of the defendants Isaac W. C. Solloway and Harvey Mills, and is hereinafter referred to as “the defendant the Dominion Company”.

*In the
Supreme
Court of
Ontario.*
—
No. 1.
Amended
Statement of
Claim,
29th
January,
1931.

—continued

3. At the times material hereto the defendants Isaac W. C. Solloway and Harvey Mills held out and represented to the public that the defendant Company was carrying on a responsible brokerage business in the City of Toronto, and that it was prepared to act, and would act as an agent and broker for those who wished to engage it, for the purpose of the purchase and sale of shares of stock, and the said defendant Company held itself out and represented itself accordingly, and invited clients and customers to appoint it their agent and broker.

4. The said defendants further held out and represented that the defendant company would, upon being properly secured, purchase and hold for customers, shares of stock on margin, and the defendant Company invited the clients and customers to engage it to purchase shares of stock on margin, and to deposit with it cash and shares of stock as collateral security to secure such margin transactions. 10

5. On the 16th October, 1929, the plaintiff engaged the defendant Company as his agent and broker to purchase on margin 7,000 shares of stock in Sudbury Basin Mines Limited at the market price, and as security for the unpaid balance on account of the margin required by the defendant Company, the plaintiff deposited with the defendant Company 3,500 shares of stock in Sudbury Basin Mines Limited. 20

6. The defendant Company accordingly advised the plaintiff that it had bought from certain specified brokers for his account and risk 5,750 shares of stock in Sudbury Basin Mines Limited at \$7.00 per share, and 1,250 shares of stock in Sudbury Basin Mines Limited at \$6.95 per share, and charged his account with the sum of \$48,937.50, together with the sum of \$525.00, the agent's brokerage.

7. On October 21st, 1929, the defendant Company advised the plaintiff that at the prevailing market prices, his account would require an additional deposit of \$4,500.00 to bring it up to the proper marginal requirements.

8. On October 22nd, 1929, in pursuance of the said notification, the plaintiff deposited with the defendant Company to be held by it as collateral security 1,500 shares of stock in Sudbury Basin Mines Limited. 30

9. On October 24th, 1929, the defendant Company advised the plaintiff that, at the prevailing market prices, his account would require an additional deposit of \$1,500.00 to bring it up to the proper marginal requirements.

10. On October 25th, 1929, pursuant to the said notification the plaintiff deposited with the defendant Company to be held by it as collateral security, 500 shares of stock in Sudbury Basin Mines Limited.

11. On the 28th October, 1929, pursuant to a notification received from the defendant Company, the plaintiff deposited with the defendant Company a further 1,500 shares of stock in Sudbury Basin Mines Limited, to be held by it as collateral security for his account. 40

12. On December 3rd, 1929, pursuant to a further notification from the defendant Company, the plaintiff deposited with it 2,500 shares of stock in Sudbury Basin Mines Limited to be held by it as collateral security for his account.

13. On December 16th, 1929, pursuant to a further notification from the defendant Company, the plaintiff deposited with it 2,500 shares of stock in Sud-

bury Basin Mines Limited to be held by it as collateral security for his account.

14. On December 20th, 1929, pursuant to a further notification from the defendant Company, the plaintiff deposited with it the sum of \$8,000.00 to be held by it as security for his account.

15. Of the 14,000 shares of Sudbury Basin Mines Limited delivered to the defendant Company to be held by it as collateral security, as herein set out, on the purchase of the 7,000 shares of Sudbury Basin Mines Limited herein-before referred to, the defendant Company held only 2,200 shares pursuant to the contract and agreement entered into with the plaintiff, and representations
10 made to him, and converted the remainder to its own use and sold the same at the prices set out in the next succeeding paragraph herein.

16. The following is a statement of the sales of shares of stock in Sudbury Basin Mines Limited delivered by the plaintiff to the defendant Company as collateral security for the purchase of 7,000 shares of stock in Sudbury Basin Mines Limited, and wrongfully sold by the defendant Company at the instance of and in pursuance of its general arrangement with its co-defendants:—

	October 16—	2,500	shares	Sudbury	Basin	@	\$7.00—	\$17,500.
	18—	400	"	"	"	"	6.70—	2,680.
	18—	400	"	"	"	"	6.50—	2,600.
20	19—	200	"	"	"	"	6.25—	1,250.
	23—	600	"	"	"	"	6.45—	3,870.
	24—	500	"	"	"	"	6.35—	3,175.
	24—	400	"	"	"	"	6.35—	2,540.
	28—	500	"	"	"	"	6.20—	3,100.
	29—	1,500	"	"	"	"	4.90—	7,350.
	30—	400	"	"	"	"	5.45—	2,180.
	Nov. 2 & 4—	300	"	"	"	"	6.25—	1,875.
	2—	1,000	"	"	"	"	5.95—	5,950.
	4—	200	"	"	"	"	6.15—	1,230.
30	13—	100	"	"	"	"	4.95—	495.
	Dec. 4—	400	"	"	"	"	3.80—	1,520.
	4—	400	"	"	"	"	3.80—	1,520.
	6—	1,000	"	"	"	"	3.86—	3,860.
	10—	200	"	"	"	"	3.90—	780.
	12—	500	"	"	"	"	3.71—	1,855.
	17—	300	"	"	"	"	3.50—	1,050.
							<u>11,800</u>	<u>\$66,380.</u>

17. The remaining 2,200 shares of stock in Sudbury Basin Mines Limited originally deposited with the defendant Company as collateral security,
40 were returned to the plaintiff when his account was closed out as hereinafter stated.

18. The defendant Company did not purchase the 7,000 shares of Sudbury Basin Mines Limited ordered by the plaintiff to be purchased on October 16th, 1929, and did not hold the same for the plaintiff's account as represented to the plaintiff.

*In the
Supreme
Court of
Ontario.*

No. 1.
Amended
Statement of
Claim,
29th
January,
1931.

—continued

*In the
Supreme
Court of
Ontario.*

No. 1.
Amended
Statement of
Claim,
29th
January,
1931.

—continued

19. On January 13th, 1930, the plaintiff demanded that the defendant Company deliver to him the shares of stock which were agreed to be purchased for his account, together with the shares of stock deposited with it to be held by it as collateral security, upon payment of the balance of \$42,143.00 which was represented to be due to it on account of the purchase price of the said 7,000 shares of stock in Sudbury Basin Mines Limited.

20. The defendant Company thereupon, on the 13th January, 1930, went upon the market and purchased 7,000 shares of Sudbury Basin Mines Limited, which it had represented to the plaintiff as having purchased at \$6.95 per share and \$7.00 per share, at prices ranging from \$92.90 per share to \$3.40 per share. 10

21. The defendant Company further went upon the market on the 13th January, 1930, and purchased 11,800 shares of stock in Sudbury Basin Mines Limited in order to deliver the same to the plaintiff in place of the stock it had converted to the use of the defendants and sold at prices mentioned in paragraph 16 hereof, which shares of stock were purchased by the defendant Company at prices ranging from \$2.90 to \$3.40 per share.

22. The defendant Company repeatedly represented to the plaintiff that it was carrying the shares of stock herein mentioned for the account of the plaintiff, and that there was due for interest on his account at various times amounts totalling \$680.32, which amount was charged to the account of the plaintiff and paid by him when he closed his account out with the defendant Company on January 13th, 1930. 20

23. The plaintiff alleges that the defendants Solloway and Mills agreed and conspired together to carry on the business of the defendant Company as an ostensible brokerage business, and that they should represent to the public that it would buy and sell shares of stock for and on behalf of the public and those wishing to do business with it, while, in fact, it was agreed between them that the defendant Company was not to purchase the shares of stock which they should contract to purchase on margin, or in the alternative that it should make countersales for House Account or cross sales so that it would not be required to take delivery of shares for the account of its clients, and it would receive moneys and securities from clients as margin which it would not be necessary for it to use in the purchase of stock, and that the same should be converted to the use of the defendants by payment of the same or the proceeds thereof to the defendants Solloway and Mills as dividends on the shares they held in the defendant Company or otherwise. 30

24. It was further agreed between the defendants that the defendant Company should sell stocks that were hypothecated with it as collateral security for margin accounts, and convert the same to the use of the defendants and pay the proceeds thereof to the defendants Solloway and Mills as dividends on the shares held by them in the defendant Company and otherwise. 40

25. And it was further agreed between the defendants that the shares of stock sold as mentioned in the next preceding paragraph should be repurchased by the defendant Company for delivery to customers as and when required, and when the same were repurchased at lower prices than at which they were sold the defendant Company would not account to the customers for

the difference between the price at which their stock was sold and the price at which similar stock was re-purchased for delivery.

25 (a). It was further agreed between the defendants that the defendant Company should dispose of shares of stock deposited with it as collateral security or purchased for the account of clients, to the defendant the Dominion company, and should sell the same for the account of the defendant the Dominion company whereby the defendants Isaac W. C. Solloway and Harvey Mills would receive the benefit of such transactions.

10 26. It was further agreed between the defendants that the money realized on the transactions carried on by the defendant Company should be paid over to and become the property of the defendants and the defendant Company was organized by the defendants Solloway and Mills for the purpose of distributing the said profits under a cloak of apparent legality by way of dividends on shares held by them in the defendant Company.

27. The plaintiff further alleges that the defendants conspired and agreed together to do all the acts herein mentioned and to represent to the public and those wishing to deal with the defendant Company that it was carrying on a reputable and legal brokerage business, while in fact it was organized for the purpose of, and was carrying on business in violation of the provisions of the
20 Criminal Code in respect to gaming in shares of stock.

27 (a). By reason of the conspiracies and agreements herein alleged, the plaintiff has suffered damage and has been induced to deal with the defendants as herein set out, to the injury and detriment of the plaintiff. The damage so suffered by the plaintiff is the loss on the money invested through the defendants as indicated in the defendants books of account, the loss of interest on the same, the loss of the money owing by the defendants to the plaintiff as may be found on an accounting herein, and the loss of the use of the same.

28. THE PLAINTIFF THEREFORE CLAIMS:—

30 (a) The sum of \$33,320.00, being the profit made by the defendants on the sale of 11,800 shares of Sudbury Basin Mines Limited stock delivered by the plaintiff to the defendant Company, and sold by it and re-purchased for delivery to the plaintiff at a lesser price.

(b) The recovery of \$28,637.50 paid by the plaintiff to the defendant Company upon the representation that the defendant Company had paid for the account of the plaintiff the sum of \$48,937.50 for 7,000 shares of Sudbury Basin Mines Limited purchased for the account of the plaintiff, when in fact it paid \$20,300.00.

(c) The sum of \$525.00 paid to the defendant Company for brokerage.

(d) The sum of \$680.32 paid to the defendant Company for interest.

40 (e) Interest on the above amounts.

(f) The sum of \$100,000.00 damages.

DELIVERED at Toronto this 29th day of January, 1931, by McRUER, EVAN GRAY, MASON & CAMERON, 372 Bay Street, Toronto, Solicitors for the Plaintiff.

*In the
Supreme
Court of
Ontario.*

No. 1.
Amended
Statement of
Claim,
29th
January,
1931.

—continued

DEMAND FOR PARTICULARS

*In the
Supreme
Court of
Ontario.*
—
No. 2.
Demand for
Particulars,
4th March,
1931.

TAKE NOTICE that you are hereby required to deliver to the Solicitors for the Defendant Solloway, Mills & Company Limited, within five days from the service of this Demand upon you, particulars of the following allegations contained in the Plaintiff's Statement of Claim:—

(a) *Paragraph Three.*

Particulars of the alleged invitations to clients and customers to appoint this Defendant their agent and broker, stating by whom made, the date or dates of such invitation, and whether the same was verbal or in writing, in the latter case identifying the document. 10

(b) *Paragraph Four.*

Particulars of the alleged representation that the "Defendant Company would, upon being properly secured, purchase or hold for customers, shares of stock on margin," stating by whom made, the date of such representation, and whether the same was verbal or in writing, in the latter case identifying the document or documents.

(c) *Paragraph Four.*

Particulars of the alleged invitation to "clients and customers to engage it to purchase shares of stock on margin," stating by whom made, the date of such invitation, and whether the same was verbal or in writing, in the latter case identifying the document. 20

(d) *Paragraph Five.*

Particulars of the alleged engagement, stating whether the same was verbal or in writing, in the latter case identifying the document.

(e) *Paragraph Six.*

Particulars of the alleged advice, stating its date and whether the same was verbal or in writing, in the latter case identifying the document.

(f) *Paragraph Six.*

Particulars of the "specified brokers," giving the names of such brokers, and the amount of stock alleged to have been purchased from such brokers. 30

(g) *Paragraph Seven.*

Particulars of the advice referred to in this paragraph stating whether the same was verbal or in writing, in the latter case identifying the document.

(h) *Paragraph Nine.*

Particulars of the alleged advice referred in this paragraph, stating whether the same was verbal or in writing, in the latter case identifying the document.

(i) *Paragraph Ten.*

Particulars of the Five Hundred shares of stock in Sudbury Basin Mines Limited, alleged to have been deposited with the Defendant, giving the number of the Certificates. 40

(j) *Paragraph Eleven.*

Particulars of the alleged notification, stating whether verbal or in writing, in the former case stating by whom made, in the latter case identifying the document.

(k) *Paragraph Twelve.*

Particulars of the alleged notification, stating whether the same was verbal or in writing, in the former case stating by whom made, in the latter case identifying the document.

(l) *Paragraph Twelve.*

Particulars of the Twenty-five Hundred shares of stock in Sudbury Basin Mines Limited, alleged to have been deposited with the said Defendant.

(m) *Paragraph Thirteen.*

10 Particulars of the alleged notification, whether the same was verbal or in writing, if verbal by whom made, if in writing identifying the document.

(n) *Paragraph Thirteen.*

Particulars of the Twenty-five Hundred shares of stock in Sudbury Basin Mines Limited, alleged to have been deposited with the said Defendant, giving the numbers of the Certificates.

(o) *Paragraph Fourteen.*

Particulars of the alleged notification, stating whether the same was verbal or in writing, in the former case by whom made, in the latter case identifying the document.

(p) *Paragraph Sixteen.*

20 Particulars of the alleged general arrangement, stating its date, whether the same was verbal or in writing, in the latter case, identifying the document.

(q) *Paragraph Sixteen.*

Particulars of the Certificate numbers of the shares of Sudbury Basin Mines Limited, alleged by this paragraph to have been sold as therein set out.

(r) *Paragraph Nineteen.*

Particulars of the alleged demand "that the Defendant Company deliver to him the shares of stock which were agreed to be purchased for his account," stating whether the same was verbal or in writing, in the former case to whom made, in the latter case identifying the document.

30 (s) *Paragraph Twenty-two.*

Particulars of the alleged repeated representations referred to in this paragraph, stating the dates of such representations, whether the same were verbal or in writing, in the former case by whom made, in the latter case identifying the document.

(t) *Paragraph Twenty-three.*

Particulars of the alleged agreement and conspiracy, stating the dates of such agreement and conspiracy, whether the same was verbal or in writing, and if in writing identifying the document.

40 (u) Particulars of the alleged agreement between the Defendants, stating its date, whether the same was verbal or in writing, in the latter case identifying the document.

(v) *Paragraph Twenty-five.*

Particulars of the alleged agreement, stating its date, whether the same was verbal or in writing, in the latter case identifying the document.

(w) *Paragraph Twenty-six.*

Particulars of the alleged agreement between the Defendants, stating its

*In the
Supreme
Court of
Ontario.*

No. 2.
Demand for
Particulars,
4th March,
1931.

—continued

*In the
Supreme
Court of
Ontario.*
—
No. 2.
Demand for
Particulars,
4th March,
1931.

date, whether the same was verbal or in writing, in the latter case identifying the document.

(x) *Paragraph Twenty-seven.*

Particulars of the alleged Agreement and conspiracy, giving its date, whether the same was verbal or in writing, in the latter case identifying the document.

(y) *Paragraph Twenty-seven.*

Particulars of the alleged representations "to the public and those wishing to deal with the Defendant Company", stating the date or dates of such representations, and whether the same were verbal or in writing, if verbal by whom made, if in writing identifying the document or documents. 10

(z) *Paragraph Twenty-eight (c).*

Particulars of the brokerage alleged to have been paid by the Plaintiff to the Defendant, stating the dates and amounts paid and the particulars of each transaction in connection with which such brokerage is alleged to have been paid.

(aa) *Paragraph Twenty-eight (d).*

Particulars of the interest alleged to have been paid by the Defendant to the Plaintiff, stating the dates and amounts and particulars of the transactions in connection with which such interest is alleged to have been paid.

(bb) *Paragraph Twenty-eight (f).*

Particulars of the alleged "damages for conspiracy to defraud." 20

(cc) *Paragraph Twenty-eight (f).*

Particulars of the alleged "damages for civil wrongs to do," and particulars of the alleged civil wrongs.

AND FURTHER TAKE NOTICE that the Defendant requires the said particulars for the purpose of pleading to the Plaintiff's Statement of Claim and requires ten days further time to plead after such particulars are delivered.

DATED at Toronto this 4th day of March, A.D., 1931.

SLAGHT & COWAN,
1401 Sterling Tower, Toronto, 30
Ontario,
Solicitors for the Defendant
Solloway Mills & Company,
Limited.

REPLY TO DEMAND FOR PARTICULARS

*In the
Supreme
Court of
Ontario.*

No. 3.
Reply to
Demand for
Particulars.
20th March,
1931.

The following information is given in reply to the demands for particulars delivered by the solicitors for Solloway Mills & Company, Limited, and the solicitors for Isaac W. C. Solloway, without prejudice to the right of the solicitors for the plaintiff to object that the plaintiff is not in law bound to supply the defendant with such particulars or other similar particulars.

In reply to sections (a), (b), (c), (p), (t), (u), (v), and (w) the plaintiff refuses to give particulars, and states that said matters are peculiarly within the
10 knowledge of the defendants.

(d) The Engagement referred to in paragraph 5 was a verbal engagement made with an employee of the defendant, Solloway Mills & Company Limited.

(e) The advice referred to in paragraph 6 of the Statement of Claim is contained in two written documents dated the 16th of October, 1929, in the plaintiff's possession, and which are open to inspection.

(f) The specified brokers referred to in paragraph 6 of the plaintiff's Statement of Claim are indicated in the written documents referred to in reply to paragraph (e) the amount of stock said to be purchased from each broker is not known by the plaintiff, and is a matter within the knowledge of the defend-
20 ants.

(g) The advice referred to in paragraph 7 is contained in a letter dated the 21st of October, 1929, from Solloway Mills & Company Limited to the plaintiff; the said advice was also orally communicated.

(h) The advice referred to in paragraph 9 of the Statement of Claim is contained in a letter dated the 24th of October, 1929, from the defendant Company to the plaintiff and was also given orally. The particulars of the 500 shares of stocks deposited with the defendant is shown in a receipt dated the 25th of October, 1929, given by the defendant Company.

(j) The notification referred to in paragraph 11 of the Statement of
30 Claim was orally communicated to the plaintiff.

(k) The notification referred to in paragraph 12 of the Statement of Claim was orally communicated to the plaintiff. The particulars of the shares deposited referred to in paragraph 12 of the Statement of Claim are contained in a receipt given by the defendant Company dated the 3rd of December, 1929.

(m) The notification referred to in paragraph 13 of the Statement of Claim is contained in a letter dated 13th of December, 1929, from the defendant Company to the plaintiff, and also was orally communicated. Particulars of the shares deposited as set out in paragraph 13 of the Statement of Claim are set out in a receipt of the defendant Company dated the 16th day of December, 1929.

(o) The notification referred to in paragraph 14 of the Statement of
40 Claim was orally communicated to the plaintiff.

(q) The shares referred to in paragraph 16 of the Statement of Claim are the shares delivered by the plaintiff to the defendant Company as recited by the Statement of Claim, particulars of which are in the knowledge of the defendant.

*In the
Supreme
Court of
Ontario.*

No. 3.
Reply to
Demand for
Particulars.
20th March,
1931.

—continued

(r) The demand referred to in paragraph 19 of the Statement of Claim was made by the plaintiff orally at the head office of the defendant Company.

(2) The representations referred to in paragraph 22 of the Statement of Claim are contained in monthly statements sent out by the defendant Company, by calls for margin by the defendant Company, and by the course of conduct of the defendants, their servants and agents.

DATED at Toronto this 20th day of March, 1931.

McRUER, EVAN GRAY, MASON
& CAMERON,

372 Bay Street, Toronto, 10
Solicitors for the Plaintiff.

TO: MESSRS. SLAGHT & COWAN,
372 Bay Street, Toronto,
Solicitors for the Defendant
Solloway Mills & Company
Limited.

AND TO: R. I. FERGUSON, ESQ.,
372 Bay Street, Toronto.
Solicitor for the Defendant
Isaac W. C. Solloway. 20

No. 4

FURTHER PARTICULARS DELIVERED PURSUANT TO
THE ORDER OF THE HONOURABLE MR. JUSTICE
WRIGHT DATED THE 10TH DAY OF APRIL, 1931

No. 4.
Further
Particulars
delivered
pursuant to
the Order of
Wright, J.,
dated
10th April,
1931,
14th April,
1931.

(a), (b) and (c) The representations referred to therein were made by the defendants by printed announcements appearing on the places of business operated and carried on by the defendants; by advertisements in the daily press appearing from time to time throughout the period that the defendants carried on business; and by statements on the letter paper, bill heads, and other like documents used in the conduct of the business of the defendants; and by the course of conduct of the defendants in accepting orders from the public for execution on the various stock exchanges; and by their course of conduct in accepting an order from the plaintiff for execution on the stock exchange and accepting from the plaintiff from time to time money and securities as margin to secure the purchase of the shares of stock ordered to be purchased by the plaintiff. 30

DELIVERED at Toronto this 14th day of April, 1931, by McRUER, EVAN GRAY, MASON & CAMERON, 372 Bay Street, Toronto, Solicitors for the plaintiff.

No. 5

STATEMENT OF DEFENCE OF THE DEFENDANT, ISAAC W. C. SOLLOWAY

1. This defendant admits that the defendant, Solloway, Mills & Company, Limited, is a Company incorporated under the laws of the Province of Ontario and was carrying on a brokerage business at the City of Toronto, but save as hereinafter expressly admitted denies all other allegations in the plaintiff's Statement of Claim.

2. This defendant denies that he ever, at any time, had any business trans-
10 actions whatever with the plaintiff.

3. This defendant denies that he made any representations to the plaintiff of any kind on his own behalf, or on behalf of his co-defendants, or any other person, or that he conspired with his co-defendants to do any of the things alleged in the plaintiff's Statement of Claim, or at all, or agreed with his co-defendants to do any of the things or acts alleged in the plaintiff's Statement of Claim, or that the plaintiff has suffered any damage by reason of any act or transaction performed by this defendant.

4. This defendant submits that this action should be dismissed with costs.

20 DELIVERED at Toronto this 16th day of May A.D., 1931, by MESSRS. SLAGHT & COWAN, 372 Bay Street, Toronto, Ontario, Solicitors for the above-named Defendant, Isaac W. C. Solloway.

*In the
Supreme
Court of
Ontario.*

No. 5.
Statement of
Defence of
Defendant
Isaac W. C.
Solloway,
16th May,
1931.

No. 6

STATEMENT OF DEFENCE OF THE DEFENDANT, HARVEY MILLS

1. This defendant admits that the defendant, Solloway, Mills & Company, Limited, is a Company incorporated under the laws of the Province of Ontario and was carrying on a brokerage business at the City of Toronto, but save as hereinafter expressly admitted denies all other allegations in the plaintiff's Statement of Claim.

2. This defendant denies that he ever, at any time, had any business trans-
30 actions whatever with the plaintiff.

3. This defendant denies that he made any representations to the plaintiff of any kind on his own behalf, or on behalf of his co-defendants, or any other person, or that he conspired with his co-defendants to do any of the things alleged in the plaintiff's Statement of Claim, or at all, or agreed with his co-defendants to do any of the things or acts alleged in the plaintiff's Statement of Claim, or that the plaintiff has suffered any damage by reason of any act or transaction performed by this defendant.

4. This defendant submits that this action should be dismissed with costs.

40 DELIVERED at Toronto this 16th day of May A.D., 1931, by MESSRS. SLAGHT & COWAN, 372 Bay Street, Toronto, Ontario, Solicitors for the above-named defendant, Harvey Mills.

No. 6.
Statement of
Defence of
Defendant
Harvey Mills
16th May,
1931.

*In the
Supreme
Court of
Ontario.*

ORDER OF O. E. LENNOX, ESQ., PERMITTING AMENDMENT TO
STATEMENT OF CLAIM.

IN THE SUPREME COURT OF ONTARIO

No. 7.
Order of
O. E.
Lennox, Esq.
Assistant
Master,
permitting
Amendment
to
Statement
of Claim.
28th July,
1931.

O. E. LENNOX, ESQUIRE,
Assistant Master

}

Tuesday, the twenty-eighth
day of July, 1931.

Between:

J. P. McLAUGHLIN,

Plaintiff,

—and—

10

SOLLOWAY MILLS & COMPANY LIMITED, AND
ISAAC W. C. SOLLOWAY AND HARVEY MILLS

Defendants.

UPON the application of counsel for the plaintiff, in the presence of counsel for the defendant, and upon hearing read the pleadings and the affidavit of Francis Andrew Brewin filed, and upon hearing what was alleged by counsel aforesaid.

2. IT IS ORDERED that the plaintiff be at liberty to amend the writ of summons and the pleadings by adding Solloway, Mills & Co., Limited (a company incorporated under the laws of the Dominion of Canada) as a party defendant to this action. 20

3. IT IS FURTHER ORDERED that the plaintiff be at liberty to amend the Statement of Claim by striking out of paragraph 28(b), the following words, "Plaintiff had paid to the", and adding after the words "defendant company" in the third line of the said paragraph 28(b) the following words, "had paid for the account of the plaintiff".

4. IT IS FURTHER ORDERED that the plaintiff be at liberty to amend the Statement of Claim herein by adding thereto the following paragraphs:

"2 (a) The defendant Solloway Mills & Co., Limited (incorporated under the laws of the Dominion of Canada) is a company incorporated under the laws of the Dominion of Canada at the instance of the defendants Isaac W. C. Solloway and Harvey Mills, and is hereinafter referred to as "the defendant the Dominion Company". 30

"25 (a) It was further agreed between the defendants that the defendant company should dispose of shares of stock deposited with it as collateral security or purchased for the account of clients, to the defendant "the Dominion Company, and should sell the same for the account of the "defendant the Dominion Company whereby the defendants Isaac W. C. Solloway and Harvey Mills would receive the benefit of such transactions." 40

5. IT IS FURTHER ORDERED that the costs of this application be costs to the defendants in any event of the cause.

STATEMENT OF DEFENCE OF THE DEFENDANT, SOLLOWAY, MILLS & CO. LIMITED (A COMPANY INCORPORATED UNDER THE LAWS OF THE PROVINCE OF ONTARIO).

In the Supreme Court of Ontario.

IN THE SUPREME COURT OF ONTARIO

Between:

J. P. McLAUGHLIN,

Plaintiff,

—and—

10 SOLLOWAY, MILLS & COMPANY, LIMITED, ISAAC
W. C. SOLLOWAY AND HARVEY MILLS,

Defendants.

No. 8.
Statement of
Defence of
the
Defendant,
Solloway,
Mills & Co.,
Limited,
(a company
incorporated
under the
laws of the
Province of
Ontario).
16th May,
1931.

STATEMENT OF DEFENCE OF THE DEFENDANT, SOLLOWAY MILLS & COMPANY, LIMITED.

1. This defendant admits that it is an incorporated Company under the laws of the Province of Ontario but save as hereinafter expressly admitted, denies all allegations contained in the plaintiff's Statement of Claim.

2. This defendant denies that it had any dealings whatever with the plaintiff.

20 3. If this defendant had any dealings with the plaintiff, which is not admitted but denied, each and every order received by the said defendant was carried out, performed and transacted pursuant to the plaintiff's instructions, and this defendant neither made any representations to the plaintiff of any kind or misrepresented any transaction to the plaintiff, or improperly sold any shares belonging to the plaintiff, or purchased shares, as alleged by paragraphs 20 and 21 of the plaintiff's Statement of Claim, or improperly charged the plaintiff with brokerage or interest, or conspired with its co-defendants, or either of them, or at all, to effect the price of s'ock, or made any secret profit, as alleged by the plaintiff's Statement of Claim.

30 4. In the alternative this defendant alleges that if the plaintiff did business with the defendant, the plaintiff and the defendant met on or before the 14th day of January, 1930, and agreed the figures on either side and stated an account between them, and it was agreed that the plaintiff owed the defendant a balance of \$42,334.92, and this defendant was holding for the plaintiff 21,000 shares of Sudbury Basin, whereupon the plaintiff paid the defendant the said sum of \$42,334.92, and this defendant delivered to the plaintiff the said 21,000 shares of Sudbury Basin Mines, Limited, and thereafter the plaintiff and the defendant had no business whatever between them.

40 5. In any event the plaintiff's claim is barred by delay and laches.

6. This defendant submits that this action should be dismissed with costs.

DELIVERED at Toronto this 16th day of May A.D. 1931, by MESSRS. SLAGHT & COWAN, 372 Bay Street, Toronto, Ontario, Solicitors for the above-named defendant, Solloway, Mills & Company, Limited.

*In the
Supreme
Court of
Ontario.*

STATEMENT OF DEFENCE OF THE DEFENDANT, SOLLOWAY MILLS & CO. LIMITED (A COMPANY INCORPORATED UNDER THE LAWS OF THE DOMINION OF CANADA).

No. 9.
Statement of
Defence of
the
Defendant,
Solloway,
Mills & Co.,
Limited
(a company
incorporated
under the
laws of the
Dominion of
Canada).
13th
October,
1931.

IN THE SUPREME COURT OF ONTARIO

Between:

J. P. McLAUGHLIN,

Plaintiff,

—and—

SOLLOWAY MILLS & CO. LIMITED, AND ISAAC W. C. SOLLOWAY AND HARVEY MILLS, SOLLOWAY MILLS & CO. LIMITED (a Company incorporated under the laws of the Dominion of Canada),

10

Defendants.

STATEMENT OF DEFENCE OF THE DEFENDANT SOLLOWAY MILLS AND CO. LIMITED, INCORPORATED UNDER THE LAWS OF THE DOMINION OF CANADA.

1. This defendant denies each and every allegation contained in the plaintiff's Statement of Claim except those herein expressly admitted.

2. This defendant has had no dealings or transactions with the plaintiff whatever. 20

3. This defendant denies the allegations contained in paragraph 25(a) of the plaintiff's amended Statement of Claim, and particularly denies that there was any Agreement between the defendants or any of them as to the disposition of shares of stock deposited with any of the defendants as collateral security purchased for the account of clients and denies that any stocks or shares were sold or disposed of as alleged by the said paragraph.

4. This defendant denies that it dealt with any stocks which were the property of the plaintiff, or in which the plaintiff had any interest, and says that the fact is that all stocks dealt with by this defendant were properly acquired in the ordinary course of this defendants' business, without notice of any right or interest of the plaintiff therein or thereto. 30

5. This defendant denies that it conspired with its co-defendants or any of them to defraud the plaintiff or the public in general, or agreed with its co-defendants or any of them not to purchase shares of stocks ordered by clients or customers or made counter sales for its own benefit or the benefit of its co-defendants or any of them to the injury of the plaintiff, or converted to its own use any stocks belonging to the plaintiff or in which the plaintiff had an interest.

6. In any event this defendant denies that the plaintiff has suffered any damage. 40

DELIVERED at Toronto this 13th day of October, A.D. 1931, by MESSRS. SLAGHT & COWAN, 372 Bay Street, Toronto, Ontario, Solicitors for the defendant Solloway Mills & Co. Limited (Dominion).

No. 10

DEMAND FOR PARTICULARS
IN THE SUPREME COURT OF ONTARIO

Between:

J. P. McLAUGHLIN,

Plaintiff,

—and—

10 SOLLOWAY MILLS & CO. LIMITED, AND ISAAC W. C.
SOLLOWAY AND HARVEY MILLS, SOLLOWAY MILLS
& CO. LIMITED (a Company incorporated under the laws of
the Dominion of Canada), Defendants.

*In the
Supreme
Court of
Ontario.*
—
No. 10.
Demand for
Particulars
20th
January,
1932.

TAKE NOTICE that the Defendants require you within three days from the service of this notice upon you to deliver to their solicitors particulars in writing of the Plaintiff's Statement of Claim as follows:—

Paragraph 6: Particulars of the specified brokers giving the names of such brokers and the amount of stock alleged to have been purchased from such brokers and the dates.

20 *Paragraph 10:* Particulars of the five hundred shares of stock in Sudbury Basin Mines Limited alleged to have been deposited with the Defendants giving the number of the certificates.

Paragraph 12: Particulars of the twenty-five hundred shares of stock in Sudbury Mines Limited alleged to have been deposited with the Defendants.

Paragraph 13: Particulars of the twenty-five hundred shares of stock in Sudbury Basin Mines Limited alleged to have been deposited with the said Defendants giving the number of the certificates.

Paragraph 16: Particulars of the certificate numbers of the stock of Sudbury Basin Mines Limited alleged by these paragraphs to have been sold.

30 *Paragraph 19:* Particulars of the alleged demand "that the Defendant Company delivered to him the shares of stock which were agreed to be purchased for his account stating whether the same was verbal or hand-written and if any writing identifying the documents."

Paragraph 23: Particulars of the alleged agreement and conspiracy stating the acts relied on by the Plaintiffs as constituting the said conspiracy.

Paragraph 27: (a) Particulars of the alleged loss on the moneys invested through the Defendants stating the amount invested and the alleged loss thereon.

(b) Particulars of the loss of interest on the same.

AND FURTHER TAKE NOTICE that the Defendants require the said particulars for the purpose of trial of this action.

40 DATED at Toronto this 20th day of January, 1932.

SLAGHT & COWAN,
320 Bay Street,
Toronto 2, Ont.
Solicitors for the Defendants.

TO: Messrs. McRuer, Evan Gray, Mason & Cameron,
372 Bay Street,
Toronto 2, Ontario.
Solicitors for the Plaintiff.

*In the
Supreme
Court of
Ontario.*

REPLY TO DEMAND FOR PARTICULARS

No. 11.
Reply to
Demand for
Particulars,
22nd
January,
1932.

The particulars asked for by the Demand for Particulars delivered by the solicitors for the defendants on the solicitors for the plaintiff on the 21st day of January, 1932, with respect to paragraphs 6, 10, 12, 13, 16, 19 and 23 of the plaintiff's Statement of Claim have already been furnished to the defendants' solicitors in the plaintiff's Reply to Demand for Particulars served on the defendants' solicitors on the 20th day of March, 1931. By order of the Assistant Master dated the 12th day of May, 1931, a motion by the defendants for the particulars now asked for in regard to paragraph 27 (a) of the Statement of Claim, was dismissed. The right to demand such particulars is denied by the plaintiff on the ground that it is only made for the purpose of vexation and delay. 10

Without admitting liability to furnish particulars, the following information, already furnished to the defendants' solicitors, is herein repeated without prejudice to the right of the solicitors for the plaintiff to object that the plaintiff is not in law bound to supply the defendants with such particulars, or other similar particulars.

1. The specified brokers referred to in paragraph 6 of the plaintiff's Statement of Claim, are indicated in two written documents dated the 16th day of October, 1929, in the plaintiff's possession, and which are open to inspection. The amount of stock said to be purchased from each broker is not known by the plaintiff, and is a matter within the knowledge of the defendants. 20

2. The particulars of the 500 shares of stock deposited with the defendant referred to in paragraph 10 of the plaintiff's Statement of Claim are shown in a receipt dated the 25th October, 1929, given by the defendant company.

3. The particulars of the shares deposited, referred to in paragraph 12 of the Statement of Claim, are contained in a receipt given by the defendant company dated the 3rd day of December, 1929.

4. Particulars of the shares deposited, as set out in paragraph 13 of the Statement of Claim, are set out in a receipt of the defendant company dated the 16th day of December, 1929. 30

5. The shares referred to in paragraph 16 of the Statement of Claim are the shares delivered by the plaintiff to the defendant company as recited by the Statement of Claim, particulars of which are in the knowledge of the defendants.

6. The demand referred to in paragraph 19 of the Statement of Claim was made by the plaintiff orally at the head office of the defendant company.

7. The plaintiff refuses to give the particulars asked for in respect to paragraph 23 and 27 (a) of the Statement of Claim, and states that the said matters are peculiarly within the knowledge of the defendants. 40

DELIVERED at Toronto this 22nd day of January, 1932, by McRUER, EVAN GRAY, MASON & CAMERON, 372 Bay Street, Toronto, Solicitors for the Plaintiff.

ORDER OF THE HONOURABLE MR. JUSTICE KELLY REFERRING THE WHOLE ACTION TO THE MASTER FOR TRIAL.

In the Supreme Court of Ontario.

IN THE SUPREME COURT OF ONTARIO

Law Stamps \$2.30 The Honourable Mr. Justice Kelly } Wednesday, the twenty-fourth day of February, 1932.

No. 12. Order of the Honourable Mr. Justice Kelly, referring the whole action to the Master for trial. 24th February 1932.

Between:

J. P. McLAUGHLIN,

Plaintiff,

10

—and—

SOLLOWAY MILLS & CO. LIMITED, AND ISAAC W. C. SOLLOWAY AND HARVEY MILLS, SOLLOWAY MILLS & CO. LIMITED (a Company incorporated under the laws of the Dominion of Canada),

Defendants.

This action coming on this day for trial at the Sittings of this Court holden at Toronto for the trial of actions without a jury in the presence of counsel for the plaintiff and for the defendants, and upon reading the pleadings in this action and upon hearing what was alleged by counsel aforesaid, and the parties by their counsel consenting hereto

- 2. THIS COURT DOTH ORDER AND ADJUDGE that this action be and the same is hereby referred to the Master of this Court at Toronto for trial.
3. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff do recover from the Defendants or the Defendants do recover from the Plaintiff the amount found due by the said Master by the Defendants to the Plaintiff or by the Plaintiff to the Defendants forthwith after the confirmation of the said Master's Report.
4. AND THIS COURT DOTH FURTHER ORDER that the said Master do determine the question of the costs of this action and of the said Reference, and that the said costs be taxed and be paid as the said Master shall direct.

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

JUDGMENT signed this 2nd day of March, 1934.

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

30

No. 13

ENDORSEMENT ON RECORD

*In the
Supreme
Court of
Ontario.*
—
No. 13.
Endorse-
ment on
the Record
by the
Master,
referring the
case to the
Assistant
Master.
25th
February,
1932.

On consent of the Parties by their counsel the whole action is hereby referred to the Master under Section 67 of the Judicature Act.

See Notes of argument and discussion before me by counsel on February 24th, 1932.

Toronto, February 25th, 1932.

“H. T. KELLY”

J.

Mr. O. E. Lennox, Assistant Master, Please take matter or action. 10

“I. HILLIARD”

Master S.C.O.

No. 14

ORDER OF REGISTRAR GRANTING LEAVE TO PROCEED

IN THE SUPREME COURT OF ONTARIO
IN BANKRUPTCY

No. 14.
Order of
Registrar
granting
leave to
Proceed.
12th May,
1932.

W. J. Reilley, Esq.,
Registrar in Bankruptcy,
In Chambers:

}

Thursday, the twelfth day
of May, 1932.

IN THE MATTER OF the authorized assignment of Sol- 20
loway Mills & Company Limited, (A Company incorporated
under the laws of the Province of Ontario)

AND IN THE MATTER OF an action in the Supreme Court
of Ontario.

Between:

J. P. McLAUGHLIN,

Plaintiff,

—and—

SOLLOWAY MILLS & CO. LIMITED, AND ISAAC W. C. 30
SOLLOWAY AND HARVEY MILLS, SOLLOWAY MILLS
& CO. LIMITED (a Company incorporated under the laws of
the Dominion of Canada), Defendants.

UPON the application of the plaintiff for leave to proceed with an action against the debtor corporation and other parties, no one appearing for the said debtor corporation although duly served with the Notice of Motion as appears

by the affidavit of F. A. Brewin filed, and upon reading the affidavit of J. P. McLaughlin filed, and the Exhibit therein referred to and upon hearing what was alleged by counsel for the plaintiff.

2. IT IS ORDERED that the plaintiff be at liberty to proceed with his action against Solloway Mills & Co., Limited, (A Company incorporated under the laws of the Province of Ontario) in the said action notwithstanding the authorized assignment of the said corporation.

3. AND IT IS FURTHER ORDERED that nothing in this Order shall be construed as determining whether or not the Plaintiff has any debt provable in
10 bankruptcy against the estate of the debtor Company by reason of any judgment obtained in the said action.

4. AND IT IS FURTHER ORDERED that the Trustees of the property of the said debtor be at liberty to defend the said action on behalf of the said debtor, and in no event of the cause shall the said Trustees, G. T. Clarkson and J. A. Turcotte be personally liable for any costs arising out of the said action.

5. AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause in the action unless otherwise ordered in the action.

“W. J. Reilley,”
Registrar.

*In the
Supreme
Court of
Ontario.*

No. 14.
Order of
Registrar
granting
leave to
Proceed.
12th May,
1932.

—continued

20

No. 15

OPENING PROCEEDINGS AT TRIAL BEFORE ASSISTANT MASTER

Evidence taken at the Trial of the action before O. E. Lennox, Esq., Assistant Master, at Osgoode Hall, pursuant to the order of the Honourable Mr. Justice Kelly, on October 11, and continuing on the 12th, 13th, 14th, 19th, 20th, and 26th, 1932.

PRESENT:

J. C. McRuer, K.C., and F. A. Brewin, *for Plaintiff*;

A. G. Slaght, K.C., and R. I. Ferguson, *for Defendants* I. W. C. Solloway and Harvey Mills;

30 W. J. P. Jenner, *for Trustee in Bankruptcy of Defendant Ontario Company.*

MR. BREWIN: I want to apply to the court for leave to amend paragraph (f) of the original claim. It is a small matter and I haven't given any notice to my friend.

MR. FERGUSON: That is not the proper way to proceed; my friend should not make an application to the court for leave to amend his statement of claim without notice of some kind.

MR. BREWIN: I am making the application now and the amendment I am asking for is for leave to strike out of paragraph (f) of the original claim the words “for conspiracy to defraud, and civil wrongs to do.” I do not think
40 it is a matter of any great importance; it does not affect the trial of the action or take my friend by surprise and the case will proceed exactly the same as if those words were there.

MR. FERGUSON: If it does not matter, the paragraph should be left as

No. 15.
Opening
proceedings
at Trial
before
Assistant
Master,
11th
October,
1932.

*In the
Supreme
Court of
Ontario.*

No. 15.
Opening
Proceedings
at Trial
before
Assistant
Master,
11th
October,
1932.

—continued

it stands; my friend should not be given leave to amend when he says it does not matter at all; my friend may be changing the whole style of action.

ASST. MASTER: It would not change your defence, at all, would it Mr. Ferguson? It is an alternative plea.

MR. FERGUSON: It certainly changes the plaintiff's claim, and that is the basis of the action. He cannot come along at the middle of the trial, or at the opening of the trial and change his plea; we come to trial prepared to meet the case based on a certain set of facts, and I do not think my friend should be allowed to amend at this stage without formal notice.

ASST. MASTER: I allow the amendment. 10

MR. FERGUSON: I want to make formal objection to your jurisdiction to hear the case.

ASST. MASTER: It is the same objection as in the Rochester case.

MR. FERGUSON: Yes.

ASST. MASTER: The only regret I have is that you did not raise this objection several weeks ago and I might have been relieved of this case.

MR. FERGUSON: My friend might file the Order of Mr. Justice Kelly.

MR. JENNER: May I make the position of my friend Mr. Titus and myself clear to the court. Mr. Titus is solicitor for the trustee of the Ontario Company in bankruptcy and I am appearing here with Mr. Titus for the Ontario company in bankruptcy. The Order taken out which gives leave to proceed against the Ontario company is in the same form as the Order taken out in the Rochester case, and a copy of that Order should be filed. 20

ASST. MASTER: It is among the papers.

MR. JENNER: So long as you have a copy of that Order it is all right. The position we take is that any judgment which may be recovered against the Ontario company, before it is entitled to rank against the assets, must be proven in bankruptcy. My friend, Mr. Titus, and I propose to merely take a watching brief only entering into the case actively if we thought there was some matter which called for action, and we therefore ask leave to be silent as much as possible but with leave also to arise if some matter should render that necessary. 30

ASST. MASTER: The Order of Mr. Justice Sedgewick makes the provision that any judgment obtained in this court will have to be proved in bankruptcy.

MR. JENNER: Yes, but in spite of that there may be some matters as between the defendants themselves that the trustee in bankruptcy may be very interested in from the standpoint of the possibility of a provable debt in bankruptcy and it also might go to the matter of the amount as to which the Ontario company in bankruptcy might be responsible for. 40

ASST. MASTER: Yes, I have noted that.

MR. BREWIN: We propose to prove our case against the Ontario company and the effect of the judgment is neither here nor there as far as this trial is concerned; we have leave to proceed against them. I am going to call Mr. Spanner first to prove that certain documents and books we are putting in came from the file of the court and were delivered to the court by the defendant company or its agents in the course of the other trial.

CHARLES GORDON SPANNER, SWORN, EXAMINED BY MR. BREWIN:

MR. FERGUSON: I understand from my friend that he proposes to prove certain books and records by this witness. This witness is the court reporter who took the notes of evidence at a trial held before you last spring, and as I understand it, this witness has never had any other connection than that with records belonging to Solloway Mills & Company.

ASST. MASTER: He acted as registrar and reporter.

MR. FERGUSON: How he can prove any book or record as the property of Solloway Mills & Co. Ltd., is a mystery to me. He can say in the Rochester case certain books and records were filed, but how that can be admissible at this stage or prove anything is another mystery to me.

ASST. MASTER: I don't suppose it will prove anything any more than those books are in the custody of the court, and it can be proved what books they are later on.

MR. BREWIN: I propose to prove they are the books of the company. The present custodian of the books, Mr. Spanner, can say where he got them.

ASST. MASTER: It is just a matter of expediting the hearing of the case; Mr. Spanner acted as registrar and reporter in the other case and he has had the custody of these books.

MR. FERGUSON: It may be that only one or two of these books or records will be relevant in this case.

MR. BREWIN: My suggestion is that all these books and records be marked alphabetically for identification purposes subject to be proved later and then the relevancy of them as exhibits may be shown and proven in detail.

ASST. MASTER: You proceed the way you want to do it.

Q. Mr. Spanner, you were the registrar of this court in the trial of the action in which one Rochester was plaintiff and Solloway Mills & Co. Ltd., were defendants? A. Yes.

Q. At that trial certain documents, I suppose, were filed as exhibits?

A. Yes.

Q. And I now ask you to produce and mark in some way for identification, with the letter (a), (b) and so on the documents in your custody that were filed as exhibits in that case? A. There were 124 exhibits.

Q. Perhaps we can put it this way you see a certain number of documents and records about you; now were these documents and records filed as exhibits?

A. Yes.

Q. In the case of Solloway Mills & Co. Ltd., and Rochester? A. Yes.

Q. Can you mark them in some way to identify the documents? A. Yes.

Q. May I ask one question, do they show markings on them made by you indicating from whose custody they purported to come?

A. The exhibit stamp does not provide any way of showing from whose custody the exhibit came.

Q. Does it provide for showing by whom they were filed?

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 16.
Charles
Gordon
Spanner,
Examination.
11th
October,
1932.

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 16.
Charles
Gordon
Spanner,
Examination.
11th
October,
1932.

—continued

A. No, it gives the exhibit number and the style, Rochester v. Solloway Mills, the date it was filed, and Mr. O. E. Lennox, Asst. Master, is at the bottom of the stamp. I have here a book which was marked as Exhibit No. 32 in the action of Rochester v. Solloway Mills, marked on March 1, and I will identify it with the letter (a) on the inside cover with a circle around it in lead pencil. I have here a book which was marked Exhibit 40—do you want me to repeat the same detail in every case?

Q. If you could make a statement which would cover the whole lot, perhaps that would be the quickest way?

A. The following books were marked as Exhibits in the case of Rochester v. Solloway Mills & Co. Ltd., before O. E. Lennox, Esq., Assistant Master. I have identified one which was marked as Exhibit 32, with the letter (a) with a circle around it. I am now marking Exhibit 40, with the letter (b). 10

Book, Exhibit 34, with the letter (c).

Book, Exhibit 117(a) with the letter (d).

I have a bundle of sheets which has the exhibit stamp of O. E. Lennox, Esq., produced on March 3, which has no exhibit number on it which was apparently omitted. The exhibit was intended to be marked, I would say, as exhibit 83. This will now be marked Exhibit (e).

Another bundle of the same kind of sheets marked exhibit 82, which I will 20 mark (f).

Book, Exhibit 116, I mark with the letter (g).

Cards, Exhibit 91, with the letter (h).

Book, Exhibit 16, with the letter (i).

Book, Exhibit 21(a), with the letter (j).

Book, Exhibit 31(a), with the letter (k).

Bundle of sheets of paper, Exhibit 21, marked (l).

Bundle of same kind of sheets, Exhibit 31, marked (m).

Book, Marked Exhibit 20(a), marked with the letter (n).

Book, Marked Exhibit 20(b), marked with the letter (o). 30

Book, Marked Exhibit 20, marked with letter (p).

Book, Marked Exhibit 80, marked with letter (q).

Book, Marked Exhibit 30, marked with letter (r).

Book, Marked Exhibit 19, marked with letter (s).

Book, Marked Exhibit 81, marked with letter (t).

Minute Book, marked Exhibit 118, marked with letter (u).

Minute Book, marked Exhibit 85, marked with letter (v).

Minute Book, marked Exhibit 86, marked with letter (w).

Q. Is that all there is? A. Yes.

Q. All these books you have produced—they have been in your custody, or 40 the custody of the court, under your direction, since the trial of the Rochester and Solloway Mills case? A. Yes.

MR. FERGUSON: These are not all the books filed in the Rochester case? A. No.

Certified,
A. P. GORMAN,
Reporter.

MR. FERGUSON: I assume these books are filed here subject to the rights in the Rochester v. Solloway Mills case.

ASST. MASTER: You mean the appeal?

MR. FERGUSON: Yes, sir. What I mean is, these books cannot be tied up in this case to delay or hinder the appeal in the Rochester case. That is understood, I presume.

ASST. MASTER: There won't be any objection to that. They are here.

MR. FERGUSON: They are brought in here as exhibits in the Rochester case. There is an appeal pending in the Rochester case and these books are required, and any use of them in this case must be subject to our prior rights in the Rochester case.

ASST. MASTER: I do not think there is any doubt about that, Mr. Ferguson.

MR. BREWIN: I will call Mr. Tucker. Here, again, I am going to prove a sheaf of documents. Mr. Tucker comes from the Trustee of the Ontario Company. He has in his possession filed documents, and I am asking him to produce these documents and say where he got them from. There, again, I will prove their relevancy, and at a later stage prove where they came from and what they are.

MR. FERGUSON: Same objection. Same objection as in Mr. Spanner's evidence. Mr. Tucker does not know anything about these documents, at all.

FRANK TUCKER (Sworn).

EXAMINED BY MR. BREWIN:

Q. Where are you employed, Mr. Tucker? A. E. R. C. Clarkson and Sons.

Q. What connection have you with Solloway, Mills & Company, Limited?

A. My understanding is we came into custody of certain records located at 14 King Street, East about April of this year.

Q. Yes, but do you know whether your firm have any official position with regard to Solloway, Mills & Company, Limited? A. I understand that Mr. G. T. Clarkson is co-trustee with Mr. Turcott of Turcott and Merrill of Montreal in the Solloway, Mills & Company, Ontario Company.

Q. And as such I suppose he would have certain documents of the Company.

MR. FERGUSON: Objected to.

WITNESS: Yes, we have custody of a large quantity of documents at 14 King Street East.

MR. BREWIN: Q. Now you have, I see, filed documents with you. Will you explain to the Court what those are and where you got them, as far as you know. A. Well, in answering that question I might as well recite our whole experience in connection with it. Mr. Brewin asked that we produce for him certain company documents in relation to the account of J. P. McLaughlin, and shortly after, Mr. Ferguson.

MR. FERGUSON: I am going to object to anything that took place between me. . .

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 16.

Charles
Gordon
Spanner,
Examination.
11th
October,
1932.

—continued

Plaintiff's
Evidence.
No. 17.
Frank
Tucker,
Examination,
11th
October,
1932.

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 17.
Frank
Tucker,
Examination,
11th
October,
1932.

—continued

WITNESS: It is merely stating what my contact has been with these documents.

MR. BREWIN: Q. I do not think it is necessary for you to do that, Mr. Tucker. A. Well, these documents I have here were those.

MR. FERGUSON: I can shorten that up, Sir. We found these documents and I put them in a brown envelope and left them in Solloway, Mills (Ontario) Company's files and Mr. Tucker has the brown envelope with these documents in it. If that is what Mr. Tucker wants to prove they might as well go in with these documents in the brown envelope unless Mr. Tucker has changed some of them. They were in Solloway's office. 10

WITNESS: I can assure you I have not removed or changed any of them, Mr. Ferguson.

MR. BREWIN: Q. Then I think you have told us they come from the documents in the possession of the Company. A. Yes, sir.

Q. I ask that they be tied together in some way so that they won't be missed, and marked as an exhibit.

A. Do you want them listed in detail or just as a bundle? I made a list of them.

Q. Could we have the list marked as an exhibit? What is the list? A. Just a rough description of what each document might be. 20

Q. It is your description of the document. A. Yes.

Q. Well, I think you could put them in as one exhibit and have them marked as exhibit X. A. Or would you rather that they be enumerated here?

Q. No, I do not think it will be necessary.

A. I would like to have for the Company's files a list of what we are leaving here so that we can have it as a matter of record.

ASST. MASTER: Don't you think it would be advisable to have Mr. Tucker read out the list?

MR. BREWIN: Yes, we will do that. A. I will just read the headings as they are described here. (Reads) 30

"J. P. McLaughlin v. Solloway, et al. List of Records required. Canadian Bank of Commerce Safety Deposit Account and 4 cards enumerating Sudbury Basin shares. Bundle 3,—1 and 2, respectively, I have given you. Then 3—20 Sell slips, Statements from Miscellaneous Brokers. Forty-three Sell sheets, carbon copies, as of October 16, 1929. They look like "Sell sheets, are they?

Q. Clearing Sheets. A. Clearing Sheets. And a bundle of Buy and Sell statements from miscellaneous brokers. A bundle of receipt slips from Solloway, Mills. A bundle of ledger Memos and two receipt slips for securities—Solloway, Mills. A file of buy and sell slips, Solloway, Mills. A bundle of ledger memos, Bought and Sold. A bundle of miscellaneous memos, receipt slips, etc. One stock position card, Sudbury Basin, having marked on it "Exhibit 19, McLaughlin v. Solloway, Mills." And Clients Ledger Sheet, J. P. McLaughlin, Bay and Adelaide Branch. That is the lot. 40

MR. FERGUSON: No questions.

MR. BREWIN: I will call Mr. McLaughlin.

JOHN PATRICK McLAUGHLIN (Sworn).

EXAMINED BY MR. BREWIN:

Q. You are the plaintiff in this action, are you not, Mr. McLaughlin?

A. Yes, Sir.

Q. Will you describe your dealings with Solloway, Mills & Company Limited? A. Yes, sir. I went to their office at the corner of Bay and Adelaide, I guess, and met their representative there—the manager of the office, Mr. Robinson.

Q. Have you got the initials? A. Wilfred, I believe—Wilfred Robinson.

10 I asked him how much Sudbury Basin stock he would purchase for me with 3,500 shares of Sudbury Basin as collateral. He said he would find out, and he went to a telephone. He came back and told me he would buy 7,000 shares, so I went out and came back with the 3,500 shares and gave them to him and instructed him to buy me 7,000 shares of Sudbury Basin. I asked him for a receipt and got a receipt which he gave me for the collateral.

Q. What is this I hand you? A. That is the receipt I received from Mr. Robinson for the 3,500 shares I placed with him as collateral.

MR. SLAGHT: I wish to call the attention of the Court, or take formal objection to the fact as put by the witness on the ground that the evidence now
20 being put in would not be evidence against Mr. Solloway, personally, or Mills, personally, and it is objected to as not being admissable against them. It is evidence relative to a conversation at which they were not present.

ASST. MASTER: I will note the objection, Mr. Slaght.

MR. SLAGHT: And I presume it won't be necessary to rise repeatedly and that my objection may be taken as made whenever testimony of that character is introduced.

MR. BREWIN: Q. I think I could satisfy Mr. Slaght by asking you now during the course of your dealings with this Company if you had any personal interviews with Mr. Solloway or Mr. Mills? A. No, I never had.

30 Q. Have you finished describing what that document is?

A. This is the receipt with the number of each certificate I gave him—of the 3,500 shares I gave him as collateral for the purchase of 7,000 shares.

EXHIBIT NUMBER 1: Receipt, Solloway, Mills & Company, Limited to J. P. McLaughlin for 3,500 shares of Sudbury Basin as collateral.

Q. Have you told us the date of this transaction?

A. October 16, 1929.

MR. SLAGHT: I gather this is the first of the transactions—the first of the dealings.

40 MR. BREWIN: Yes.

Q. Did you have any further conversation with Mr. Robinson on this occasion? A. Not on that date, no.

Q. You have told us that you instructed him to buy for you these shares of Sudbury Basin. A. Yes.

Q. Did you receive any note or . . . A. I received a confirmation the following day.

*In the
Supreme
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Ontario.*

—
Plaintiff's
Evidence.
No. 18.
John Patrick
McLaughlin,
Examination,
11th
October,
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*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 18.
John Patrick
McLaughlin,
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11th
October,
1932.

Q. I shew you two documents—I had better shew you one first. What is that document, Mr. McLaughlin? A. That is a confirmation that they had purchased 1,800 shares of Sudbury Basin for me at \$7 a share.

Q. Where did you get that from? A. In the mail.

Q. What is the date? A. October 16th, 1929.

Q. I show you another document, what is that Mr. McLaughlin? A. That is a confirmation of the purchase of 1,250 and 3,950,—1,250 at \$6.95, and 3,950 at \$7 a share.

Q. And the date of that? A. The same date—October 16th.

Q. How did you receive that? A. By mail.

10

—continued

EXHIBIT NUMBER 2: Confirmation (buy slip) October 16th, 1929, Sudbury Basin, 1,800 shares at \$7.00.

EXHIBIT NUMBER 3: Buy confirmation slip, October 16th, 1929, Sudbury Basin, 5,200 shares.

Q. Did you receive any further communication? When was the next communication that you received in connection with this transaction? A. I received a call for margin.

Q. What form did that call take? A. By letter.

Q. I produce a letter to you, do you recognize that? A. Yes.

Q. Will you describe to the Court what it is?

20

A. It is a letter to me advising me that at the prevailing market prices my account requires an additional deposit of \$4,500 to bring it up to the proper marginal requirement. "Please let us have an immediate remittance to cover. Solloway Mills & Company, Limited, per S. M. Walker".

Q. You say you received that through the mail? A. Yes.

Q. What is the date of that? A. October 21st, 1929.

Q. And what did you do as a result of having received that communication? A. The following day I took them up some certificates of Sudbury Basin stock.

Q. Where did you take the certificates? A. To Mr. Robinson,—the same place.

Q. And did you get a receipt at that time? A. Yes.

Q. I show you a document. Will you tell me what that is? A. October 22nd, 1929, a receipt for 1,500 shares of Sudbury Basin.

EXHIBIT NUMBER 4: Letter, October 21st, 1929, Solloway Mills & Company, Limited to J. McLaughlin, being a call for additional margin.

EXHIBIT NUMBER 5: Receipt, October 22nd, 1929, Solloway Mills & Company to J. P. McLaughlin, for 1,500 shares of Sudbury Basin.

40

Q. Did you have any conversation with Mr. Robinson about this transaction at that time? A. I just went in and gave him the stock.

Q. You did not give him any particular instructions about what to do with the stock? A. No, it was just in response to their call for margin. It was quite understood what it was for. It was understood we knew what it was for.

Q. What was your next communication with regard to this matter?

A. I have another letter calling for margin. Another letter demanding further margin.

Q. I show you another letter. Will you tell the Court what that is? A. A letter dated October 24th, 1929, to J. P. McLaughlin, which reads as follows:

“Dear Sir: At prevailing market prices, your account requires an additional deposit of Fifteen Hundred Dollars (\$1,500) to bring it up to proper marginal requirements.

“Please let us have an immediate remittance to cover. SOLLOWAY, MILLS & CO. LIMITED, Per ‘S. M. Walker’.”

EXHIBIT NUMBER 6: Letter, October 24th, 1929, Solloway Mills & Co. Limited to J. McLaughlin, being a call for additional margin.

10

Q. And what did you do as a result of that? A. I responded the following day with some more stock.

Q. I show you a document. Will you tell the Court what that is?

A. This is dated October 25th, 1929, and it is a receipt for 500 shares of Sudbury Basin.

Q. Who did you receive it from? A. From Mr. Robinson.

EXHIBIT NUMBER 7: Receipt, October 25th, 1929, Solloway Mills & Company Limited to J. McLaughlin, for 500 shares of Sudbury Basin.

20 Q. I show you two more documents, will you tell the Court what they are?

A. One is a receipt for 2,000 shares of Sudbury Basin stock, dated October 28th, 1929. The other is a receipt for 1,500 shares, dated the same date.

Q. Will you explain to the Court how you got those documents? A. Well I got a demand for margin, I suppose, and I took this stock down in response to their demand and delivered this stock as security.

Q. How was the demand made, do you recollect? A. By mail.

Q. Have you got the letter? A. No, I have not the letter. There is a possibility there might have been a demand by telephone, you know. I am not clear. Most of them were letters. There might have been a call by telephone.

30 Anyway this was in response to a call by telephone or letter.

Q. And those receipts were given to you by Mr. Robinson? A. Yes.

EXHIBIT NUMBER 8: Receipt, October 28th, 1929, Solloway Mills & Co. Limited to J. P. McLaughlin, for 1,500 shares of Sudbury Basin.

EXHIBIT NUMBER 9: Receipt, October 28th, 1929, Solloway Mills & Co. Limited to J. P. McLaughlin, for 2,000 shares of Sudbury Basin.

Q. I show you another document, Mr. McLaughlin. Will you tell the Court what that is, please? A. It is dated December 13th, 1929, and reads as follows:

40 “Dear Sir: At prevailing market prices, your account requires an additional deposit of Seventy-nine Hundred dollars (\$7,900) to bring it up to proper marginal requirements.

“Please let us have an immediate remittance to cover. SOLLOWAY, MILLS & CO. LIMITED, Per S. M. Walker.”

Q. And what did you do when you received that communication? A. I responded the following day with the security.

Q. What date is that? A. December 13th, 1929.

*In the
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Plaintiff's
Evidence.
No. 18.
John Patrick
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—continued

*In the
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Plaintiff's
Evidence.
No. 18.
John Patrick
McLaughlin,
Examination,
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October,
1932.

—continued

EXHIBIT NUMBER 10: Letter, December 13th, 1929, Solloway Mills & Co. Limited to J. P. McLaughlin, re: call for additional margin.

WITNESS: This document is dated December 16th, 1929, and is a receipt for 2,500 shares of Sudbury Basin stock.

Q. How did you come to get that Mr. McLaughlin?

A. I got this from Mr. Robinson for stock I gave him as collateral.

EXHIBIT NUMBER 11: Receipt, December 16th, 1929, Solloway Mills & Co. Limited to J. P. McLaughlin, for 2,500 shares of Sudbury Basin. 10

Q. I produce another document to you Mr. McLaughlin, what is that?

A. This is dated December 3rd, 1929, and is a receipt for 2,500 shares of Sudbury Basin.

Q. How did you come to get possession of that?

A. That was a receipt for 2,500 shares of stock, from Mr. Robinson, that I delivered as security or collateral.

EXHIBIT NUMBER 12: Receipt, December 3rd, 1929, Solloway Mills & Co. Limited to J. P. McLaughlin, for 2,500 shares of Sudbury Basin.

Q. I hand you another document. Can you tell the Court what that is Mr. McLaughlin? A. That is a receipt for \$8,000 cash, dated December 20th, 1929. 20

Q. How did you come to receive that? A. That was a receipt from Mr. Robinson for \$8,000 cash I gave him.

Q. Did he tell you what it was required for? A. Did Mr. Robinson tell me?

Q. Yes. A. The call, as a rule, came from another office—from their head office—so I just responded to the call I would get from Head Office.

Q. What was the nature of the call in that case? A. I don't know whether they asked for cash or not. They always asked for cash. 30

Q. The deposit of \$8,000 was the result of a call which came from the Company, as far as you know? A. Yes.

MR. SLAGHT: When you say "cash", you mean cash, not a cheque?

A. Not a cheque.

MR. BREWIN: Q. Did you, at any time, receive statements showing your account with Solloway Mills & Co. Limited during this period? A. Yes.

Q. I show you three documents. Will you tell the Court what they are?

ASST. MASTER: Just a minute until that Exhibit is marked.

EXHIBIT NUMBER 13: Receipt, Solloway Mills & Co. Limited to J. P. McLaughlin for \$8,000 cash. 40

WITNESS: These are statements received at the end of each month, showing the position of my account, and the interest charges they had put through.

MR. BREWIN: Q. How did you receive those? A. By mail. One covers October; the other covers November, and the other covers the month of December.

Q. We had better have them marked separately as Exhibits.

EXHIBIT NUMBER 14: Statement of account for October, 1929.
 EXHIBIT NUMBER 15: Statement of account for November, 1929.
 EXHIBIT NUMBER 16: Statement of account for December, 1929.

Q. Will you go on and describe to the Court your dealings with Solloway Mills & Co. Limited?

A. Well, it was covered pretty well,—all the business I did with them was through Mr. Robinson, and I complied with their requests for margin, and the account continued from the time it was opened on October 16th, 1929, until about the day that Solloway and Mills were arrested.

10 Q. How was the account put an end to then? A. I went to their head office and asked them for delivery of the stock.

Q. And you received delivery of how many shares? A. I had them deliver the 21,000 shares to the Bank of Commerce at the corner of King and Jordan Streets.

Q. And I suppose you paid something for the shares at that time? A. I paid whatever was due at that time—the balance due—whatever the statement amounted to I paid over. It was paid by the Bank.

Q. Did you have any further transactions with Solloway, Mills? A. No.

Q. You have described the transactions which are the basis of your claim?

20 A. Yes.

Q. Did you, at any time, discuss or arrange with the employees of the Defendant Company any special terms or special arrangements under which your collateral was to be held? A. No.

Q. Or as to the way in which your shares that were purchased, were to be purchased or held? A. No.

Q. You had no special discussion of that nature? A. No.

Q. Did you know whether you were dealing with Solloway Mills & Company, Limited, the Dominion Company, or Solloway Mills & Company, Limited, the Ontario Company? A. I did not know.

30 Q. Where did all these conversations, or, rather, your dealings with Mr. Robinson take place? A. In his office.

Q. Where was that? A. Adelaide and Bay.

Q. And that was, I presume, an office of the Defendant Company?

A. Yes.

CROSS-EXAMINED BY MR. SLAGHT:

Q. Mr. McLaughlin, you are an old timer in the North Country? A. Yes.

Q. And prior to 1929, like some of the rest of us that lived up there, you had, in the early days, been familiar to some extent, with mining and with brokerage transactions? A. Yes.

40 Q. In other words you have dealt with brokers in mining stocks before?

A. Yes.

Q. Over what period of years roughly? A. Very little until 1919.

Q. Not much until 1919? A. No.

Q. And then there was an interval from 1919 down to 1929. Were you in and out of the market during that period? A. No, I usually bought the stock and put it away,—held it.

*In the
 Supreme
 Court of
 Ontario.*

—
 Plaintiff's
 Evidence.

No. 18.
 John Patrick
 McLaughlin,
 Examination,
 11th
 October,
 1932.

—continued

Plaintiff's
 Evidence.
 No. 18.
 John Patrick
 McLaughlin,
 Cross-
 Examination
 by
 Mr. Slaght,
 11th
 October,
 1932.

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 18.
John Patrick
McLaughlin,
Cross-
Examination
by
Mr. Slaght,
11th
October,
1932.

- Q. You were trading, off and on, during that ten year period? A. Yes.
- Q. And would you mind telling me some of the brokerage firms you dealt with in that interval? A. I dealt with A. L. Hudson & Company.
- Q. Through their Toronto office? A. Yes.
- Q. Did they have a North Country office? A. No.
- Q. They were on the Standard Stock and Mining Exchange, I believe? A. Yes. I dealt with Arthur E. Moysey & Company.
- Q. They were also Standard Stock and Mining Exchange Brokers? A. Yes. And with Solloway Mills & Company, and with F. J. Crawford.
- Q. When you mention Solloway Mills & Company you mean to tell me that you had had earlier dealings with them? A. No.
- Q. When you say this Company you now have in mind the dealings we are interested in? A. Yes.
- Q. What other Company? A. I dealt with F. J. Crawford & Company.
- Q. You are speaking of the ten year period prior to dealing with us? A. Yes.
- Q. They are also Standard Stock & Mining Exchange Brokers? A. Yes.
- Q. Anybody else? A. I think there might have been one or two others, but I do not recollect just now. Crang & Company, of course, I have done business with since.
- Q. I am not interested in "since"? A. I think that would cover it.
- Q. And may I take it that in your dealings with those firms you received from them Bought and Sold notes covering your transactions—confirmations? A. Yes.
- Q. And in your dealings with Solloway Mills & Company Limited you also received confirmations? A. Yes.
- Q. And you did not repudiate the terms on which you were dealing as set out in the confirmations. A. No.
- Q. Then let me call your attention to Exhibits two and three which contain some language which interests me. Looking at Exhibit 2, you will find on the third line of the printing here—"That all securities from time to time carried in the customer's marginal account, or deposited to protect the same may be loaned by the Broker, or may be pledged by him. Either separately or together with other securities. Either for the sum due thereon or for a greater sum. All without further notice to the customer." Do you complain, in this action, that the Brokers made any breach of that arrangement with you? A. I do not get you. I do not get what you—
- Q. It is not fair to put it to you to argue your case, and the Court will have to decide it, but I just thought I would shorten it by asking if you complain of a breach on their part of that arrangement? A. I did not complain.
- Q. You did not complain at the time? A. No.
- Q. Do you complain now? Can you point to any breach of that arrangement on the knowledge you gathered to get your lawsuit ready?
- A. If I may explain my attitude to these things, Mr. Slaght. My understanding has been that a Broker or Merchant can have printed on his forms whatever he may wish to, but that does not mean it is binding according to law. That has been my understanding always with regard to different things that are printed, but I never enquired particularly about it.

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Q. As far as you are concerned, you were getting these things right along, and you left them with the impression, as far as anything you did, that it was satisfactory to you? A. Yes, I thought I was dealing with responsible and reliable people.

Q. And, therefore, you made no complaint of the terms they set out here regarding the dealing? A. No, I did not.

Q. And besides your suggestion that arrangements of that kind are not binding according to law, is there any complaint, if they should happen to be binding according to law,—have you any complaint or have you any facts that
10 you can call the Court's attention to that you suggest are breaking that arrangement?

MR. BREWIN: I do not think we intend to prove our case solely by this witness, and he cannot be expected to set out his rights in connection with the damages he is here to prove.

MR. SLAGHT: I think I am entitled to know how he puts it.

MR. BREWIN: It is a matter of law and account, and I do not think it is fair to get this witness to give any expositions.

ASST. MASTER: I think he has gone far enough, Mr. Slaght. He said he thought he was dealing with responsible people, and so forth.

20 MR. SLAGHT: All right, we won't press that further.

Q. Then, Mr. McLaughlin, this Sudbury stock which you turned in came from what source to your hand when you handed it over?

MR. BREWIN: I object to that question. I do not think it is relevant. It does not go to the credibility. It is of no concern in this case where Mr. McLaughlin got the stock.

MR. SLAGHT: My instructions are it was not his, and he is not the proper Plaintiff, and if anybody lost money for which they are entitled to recover it is not this man. When a Plaintiff comes to Court he must show he has been hurt.

30 ASST. MASTER: He could be a nominee of the true owner, I suppose.

MR. SLAGHT: Well, if he is a nominee he did not lose anything, and your ultimate task will be to find out whether this man lost anything, and surely I should not be shut off from asking proper questions.

MR. BREWIN: What I am saying is, as far as this action is concerned, it must be proved conclusively that Mr. McLaughlin had these shares. That is relevant. It is entirely irrelevant as to how he got them. We are not prepared to meet any case of that sort, and my friend has not proved it. It does not go to the damage suffered. Mr. McLaughlin has a right to recover. The fact is he was in possession of those shares, and dealt throughout as the owner, and it is
40 neither here nor there whether someone else has any personal interest.

MR. SLAGHT: Supposing he had stolen them? I am not suggesting that as against Mr. McLaughlin. But for the sake of argument, supposing he had stolen them could he get damages. Should I be shut off in showing he has not a dollar's interest in these shares.

MR. BREWIN: Unless it is pleaded that he stole them, it has nothing to do with this case, even if he did steal them. As far as this case is concerned, it does not matter a bit whether Mr. McLaughlin stole those shares.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 18.

John Patrick
McLaughlin,
Cross-
Examination
by
Mr. Slaght,
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October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 18.
John Patrick
McLaughlin,
Cross-
Examination
by
Mr. Slaght,
11th
October,
1932.

ASST. MASTER: I do not think it makes any difference whether he is a nominee or agent. There is an assumption of ownership. If you are going to plead anything of that kind, as you suggest, Mr. Slaght, you will have to plead it.

MR. SLAGHT: We have pleaded he suffered no loss, and under that plea I submit this is evidence. Surely, if this case has any merit in it the Court is entitled to know whether he has lost anything.

ASST. MASTER: I do not know what this evidence is directed to. The only way that it could be relevant, as I understand, would be, if you were going to prove this man was an operator, or trading in the market. If it is directed towards that point it would be relevant. 10

MR. SLAGHT: Well, according to my instructions,—I may be wrongly instructed,—these were not his transactions; they were transactions for some well known operator with whom he was co-operating to play the market. We find we have not got the real man before this court at all, and if the gentleman wants to come out of ambush and get on the record we will have him here, too.

MR. BREWIN: My friend is just showing the objectionable nature of the evidence by his statement to the Court. If he has any such case as he announces he may prove it, but surely without pleading it he cannot go into a question of this sort, which I submit has no legal relevance at all. 20

ASST. MASTER: A case like that should be pleaded. A customer might charge his broker with fictitious trading and market operations, and I suppose, on the other hand, a broker might charge his customer with using his brokerage house for the same purpose, but I think, Mr. Slaght, it should be pleaded if that is the nature of the evidence.

MR. SLAGHT: My instructions do not enable me to plead and state to the Court a conspiracy to affect the market price,—they do not go that far, but they do go to this extent,—this man has not lost anything. I want to know whether this man lost any money, or whether he got that money back, and I submit it is very relevant on the pleadings just as they stand to show that he is not a loser, and I propose to show you why. 30

MR. BREWIN: I submit, sir, it is not relevant to the question of damages herein.

ASST. MASTER: I do not think it is relevant whether he was acting as an agent or nominee. As I said before if you are proving conspiracy amongst a group of men that would be admissible, but if you are not, I do not think it is relevant.

MR. SLAGHT: Then, with deference, and for the better protection of my records, may I ask a series of three or four questions. I have forgotten the exact question I have asked. The witness will understand he is not to answer until the Court has ruled upon it. 40

Q. I suggest to you, Mr. McLaughlin, as Plaintiff, that these shares delivered as collateral to the Defendant Corporation were shares of other persons, and not your own property. What do you say?

MR. BREWIN: I am objecting to that.

MR. SLAGHT: Q. I suggest to you, Mr. McLaughlin, that in connection with these shares delivered to the Defendant, and shares purchased for you in

—continued

the sense that you gave an order for them, that throughout this matter you, personally, sustained no individual money loss, but the loss was somebody else's?

MR. BREWIN: I object to that.

MR. SLAGHT: Q. I suggest to you that the cash you paid in to margin your account was not your cash, and that you did not lose that cash or any part of it, but that it was somebody else's money, and that you lost nothing by reason of parting with the cash. What do you say?

MR. BREWIN: I object to that question.

MR. SLAGHT: I take it those are all ruled as being inadmissible?

10 ASST. MASTER: Yes.

MR. SLAGHT: And I ask leave at this stage, as a precaution, and so that this case may be tried but once, to amend the defence, although my own view is that probably it is not necessary, in connection with this suggested defence, by a short allegation that the Plaintiff had no personal interest in the shares or money for which he seeks compensation. That application to amend could be reserved, or you could allow it now, I suggest.

MR. BREWIN: Do you wish to hear argument on that, sir. It is an extraordinary sort of motion.

20 ASST. MASTER: I will consider it. I do not think you need argue it very much now.

MR. SLAGHT: I merely made the application. I submit modern practice is such that if the Court finds it has enough evidence to allow an amendment, and if the evidence disclosed a state of affairs which would disentitle the Plaintiff who is seeking a large sum of money,—if it shows he has not been damned—it would assist the Court in determining whether or not this action was ill founded. However, you are reserving the application?

ASST. MASTER: Yes.

MR. SLAGHT: Q. You paid \$8,000 in in cash, you say, Mr. McLaughlin?
A. Yes.

30 Q. Isn't that a large sum of money for a man to handle in cash when all modern business is done by cheque? A. I do not know whether it would be considered large or not.

Q. Was it your desire to cover up the source of the money that prompted you to pay it in cash? A. No.

Q. Are you willing to tell me where you got the bills?

MR. BREWIN: My friend is just trying to get around the same thing we have already had a ruling on. I object to that.

MR. SLAGHT: Q. Do not answer this until the Court has ruled.

40 Q. I ask you, where you got the bills, and I suggest it was not your own money at all, and I ask you to state whether or not it was your own money?

ASST. MASTER: That is the same thing, Mr. Slaght.

MR. SLAGHT: That is ruled out?

ASST. MASTER: Yes.

MR. SLAGHT: Q. Now when you closed out your account, as I understand it, the shares that you had not ordered to be sold were delivered to you. You got delivery with reasonable promptitude? A. Yes.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 18.
John Patrick
McLaughlin,
Cross-
Examination
by
Mr. Slaght,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 18.
John Patrick
McLaughlin,
Cross-
Examination
by
Mr. Slaght,
11th
October,
1932.

—continued

- Q. So there is no complaint on that score? A. No.
- Q. And did you receive from the Defendant Corporation from time to time statements of account showing how your account stood? A. Yes.
- Q. Will you produce some of these, if you can let us have them—the earliest one—and I call your attention to some matters in that? A. That is the first one, there.
- Q. You are producing Exhibit No. 14, an account which begins with October 16th, 1929? A. Yes.
- Q. And it correctly sets out, as I understand it, under the word "Bought" the number of shares that you had, at all events, instructed them to buy? 10
- A. Yes, right here,—7,000 shares.
- Q. That amounts to—? A. 7,000 shares.
- Q. 7,500 isn't it? A. No, you are not very good with your addition.
- Q. 3,500, 1,800, and 5,200, how much is that? A. That is right.
- Q. How much is it? A. No, that is 10,500, there is a mistake there.
- Q. It is 10,500? A. They did not buy them for me. They bought 7,000 shares.
- Q. Well, on this account they carry out balances of \$49,000. The last balance is \$49,523.48? A. Yes.
- Q. That purports to be, or indicated to you, that they claimed a money 20 balance from you of that amount? A. Yes.
- Q. Whether it is correct or not we need not argue for the moment?
- A. No.
- Q. Then looking down on the account they show here, under a purple heading,—it looks like a rubber stamp—"stock position"? A. Yes.
- Q. Under the stock position they show 16,000 Sudbury Basin. That would be the "Long" I suppose? A. Yes.
- Q. You understood that to mean that in your position with your broker you were Long 16,000 Sudbury Basin? A. Yes.
- Q. The 3,500 you gave them as security is shown here? A. Yes. 30
- Q. Then the 7,000, even, they show as having been bought for you?
- A. Yes.
- Q. Whether or not it was bought we won't argue? A. No.
- ASST. MASTER: That makes up the 10,500 shares that appear in the "Bought" column? A. Yes.
- MR. SLAGHT: Q. Now from time to time while you were trading with them, and until you closed with them, I assume that you got with some regularity each month a similar statement which would change, both as to the money they claimed owing from you to them and the stock that they showed as your stock position, Long, in their office? A. Yes. 40
- Q. I am looking at one which shows the stock position as 21,000, and the cash you owed them, \$42,142.92? A. Yes.
- Q. Now their statements, throughout the months appear to be accurate as far as you were concerned? A. Yes.
- Q. You took no exception to them? A. No.
- Q. Then you instructed the Defendant Corporation Brokers to turn over certain of your shares to the Canadian Bank of Commerce? A. Yes.

Q. I have here a receipt, but perhaps we can shorten it by asking you if you make any complaint by reason of their not having turned over to the Bank the shares you asked them to turn over? A. No.

Q. So you are satisfied with that? A. Yes.

Q. Now when you put up shares as collateral instead of cash, was that a convenience to you? A. Yes.

Q. And your purpose was to speculate in a larger quantity of the same stock on margin? A. Yes.

10 Q. And may I take it you had had enough dealings with Brokers to know if the Corporation Defendants had not accepted shares you would have had to furnish cash as margin to trade? A. Yes.

Q. And had you furnished cash, as you did in part, did you expect them to deposit your cash in their own bank account? A. Yes, I suppose so.

Q. With their other monies? A. Yes.

Q. And give you credit for that amount of cash? A. Yes.

Q. Then may I take it that you knew you could not get your shares that you put in as collateral back unless or until you closed your account, either by ordering them sold or by paying any balance? A. Yes.

Q. You would know that? A. Yes.

20 Q. You did receive back some of the shares, and some were sold for you under your direction? A. None were sold under my direction.

Q. Then you carried them all and took them all back? A. Yes.

Q. Did you keep an account, yourself, in any books, of your trading with the Defendant Corporation? A. I just kept the records.

Q. You did not keep a book record? A. No.

Q. You kept the documents that came through the mail or otherwise from them to you? A. Yes.

Q. And you depended on the Defendant Corporation to keep the accounts between you as debtor and creditor, showing how they stood? A. Yes.

30 Q. The money you would owe them and the stock they would owe you? A. Yes.

Q. And you have no complaint to make of the record in their books as to those respective amounts from time to time? A. None at all, no.

MR. JENNER: Just one matter, sir, before the re-examination. My friend drew the pleadings both for the Ontario Company and Mr. Solloway,—the Defences. The Defences were drawn in your office for the Ontario Company as well as for the Defendant, Solloway?

MR. SLAGHT: I think that is so. Before liquidation we were acting for the Ontario Company.

40 MR. JENNER: And before arguing at all as to the merits, if such an amendment should be allowed, I think the Ontario Company should also be allowed to make the same objection.

MR. SLAGHT: I would not make any objection to that.

MR. BREWIN: If such an amendment were made I suppose it would be necessary to re-open everything and go into it thoroughly?

MR. SLAGHT: Yes, if any amendment is made it would apply equally to all.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 18.
John Patrick
McLaughlin,
Cross-
Examination
by
Mr. Slaght,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 18.
John Patrick
McLaughlin,
Re-
Examination
by
Mr. Brewin,
11th
October,
1932.

RE-EXAMINED BY MR. BREWIN:

Q. Mr. Slight asked you about the notations on these confirmation notes, marked Exhibits 2 and 3 in this action. When you went into the office of the Defendant Company did Mr. Robinson or anybody else point out what was written on the confirmation notes? A. No.

Q. When you received the confirmation notes did you read through those notations? A. No.

Q. Did you know what was in them? A. No, I never read it at all.

MR. FERGUSON: Q. You got the confirmation all right? A. Yes.

Q. You saw the confirmations? A. Yes.

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ARTHUR WILFRED ROBINSON: (SWORN)

EXAMINED BY MR. BREWIN:

Plaintiff's
Evidence.
No. 19.
Arthur
Wilfred
Robinson,
Examination,
11th
October,
1932.

Q. Mr. Robinson, you, I think, have been here and have heard the Plaintiff describe certain transactions with Solloway Mills and Company Limited from the period October, 1929, to January, 1930. What was your position at that time? A. I was manager of the Bay Street Branch.

Q. That is at Bay and Adelaide? A. Yes.

Q. Of the Defendant Company? A. Of Solloway Mills & Company.

Q. And do you remember Mr. McLaughlin? A. Yes.

Q. Do you remember seeing him? A. Yes.

Q. Can you remember at all the nature of his dealings with the Company?

A. I remember Mr. McLaughlin coming into the office and asking how much stock he could buy in putting up 3,500 shares of Sudbury Basin as collateral. I telephoned the Marginal Department at the head office where all the book-keeping was done, and they called me back and said they would purchase 7,000 shares.

Q. What sort of business was the Defendant Company carrying on so far as you knew? A. A Brokerage business.

Q. And you dealt with Mr. McLaughlin as a Broker dealing with a client, as far as you knew? A. Yes.

Q. Did you have any special arrangements with him, or discussions with him, with regard to the terms under which either collateral deposited by him was to be held? A. We hadn't anything unusual. The same arrangements as we had with all our clients.

Q. Did you, at any time, point out to him any special rights the Company was reserving with regard to loaning shares or disposing of them? A. No.

MR. FERGUSON: Now, now. This is my friend's witness. My friend is not entitled to lead the witness.

MR. BREWIN: I do not think that is leading. However, I will try and frame my questions in a less objectionable way.

MR. FERGUSON: All I ask is that you let him tell the story.

MR. BREWIN: Q. What arrangements did you have with him? A. I just had the usual arrangement. There was n't anything particularly discussed with Mr. McLaughlin.

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Q. Well did you have anything to do with the keeping of the shares deposited as collateral? A. The shares were deposited with our office and we gave Mr. McLaughlin a receipt for same.

Q. What happened to the shares then, as far as you know? A. They were transferred to Head Office, and we got a receipt from them.

Q. And you would have no knowledge of whether they were sold or disposed of? A. No, all the bookkeeping was done at head office.

Q. Which company were you employed by,—Solloway Mills and Company, Limited, Dominion Company or Solloway Mills and Company, Limited, Ontario Company? A. Well, I think it was the Ontario Company.

Q. I am not sure whether in my questions to you I covered all the conversations and discussions that Mr. McLaughlin had with you? A. Well, I telephoned him on various occasions in giving him the position of the market. I telephoned him at his home the same as we would with any of our clients, and gave him a quotation on Sudbury Basin as it happened to be on that particular day.

Q. And from time to time it was not through your office that the notices were sent out, but you received collateral from him?

A. The notices were sent from the Marginal Department, and Mr. McLaughlin, I believe, did most of his transactions with me, personally, and he could come in and say he had had another marginal call, and deposit with me certain securities.

Q. What were your arrangements with him? A. I did not have any arrangements with him.

Q. I think I can remind the witness he said before his arrangements were those as of a broker with a client? A. The usual arrangement.

Q. Was there anything unusual or different from the ordinary dealings between a client and broker, and if so, will you tell the Court about it?

A. Nothing unusual between Mr. McLaughlin and myself.

Q. Did you have any knowledge of the Defendant Companies selling shares of their clients deposited as collateral? A. I had no knowledge.

Q. Or delivering them out? A. No.

Q. And did you have any knowledge of whether the Defendant Company was taking, what we might call, "a Short position"? A. No, we hadn't any knowledge of what head office was doing.

Q. And you never discussed any such thing with Mr. McLaughlin?

A. No.

CROSS-EXAMINED BY MR. FERGUSON:

Q. Was Mr. McLaughlin known to you, Mr. Robinson? Did you know Mr. McLaughlin before he came in to see you? A. No.

Q. You met him as an ordinary customer? A. Yes.

Q. You had been employed by Solloway Mills & Company Limited for some time prior to this? A. Yes.

Q. And, as you told us, you were the Manager of the Bay Street Branch?

A. I told him,—I guess I was. He came into my office.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 19.
Arthur
Wilfred
Robinson,
Examination,
11th
October,
1932.

—continued

Plaintiff's
Evidence.
No. 19.
Arthur
Wilfred
Robinson,
Cross-
Examination
by Mr.
Ferguson,
11th
October,
1932.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 19.
Arthur
Wilfred
Robinson,
Cross-
Examination
by Mr.
Ferguson,
11th
October,
1932.

—continued

Q. There was no difference in your relations with Mr. McLaughlin than there was with any other customer that came in? A. No.

Q. And Solloway Mills and Company Limited, were, at that time, doing business on the Standard Stock and Mining Exchange? A. Yes, sir.

Q. And you knew nothing, at all, about what happened to the share certificates after they left your office? A. No, we just turned them over to Head Office and got our receipt.

Q. You had nothing whatever to do with the clearing of shares through the Clearing House? A. No, sir.

Q. Or the making up of any Clearing House statements? A. No, sir. 10

Q. McLaughlin was in and out of your office until some time in January, 1930? A. I think Mr. McLaughlin was in only when he came on a marginal call. I do not think I would see Mr. McLaughlin at any other time unless he would come in with securities.

Q. And do you recall the time he came in and asked for his 21,000 shares of Sudbury Basin? A. No.

Q. And was there a rumour about at that time that Mr. McLaughlin was trying to catch the firm short for 21,000 shares? A. Not that I heard.

MR. BREWIN: That is an extraordinary way to adduce the evidence.

MR. FERGUSON: This is cross-examination, is it not, Mr. Brewin? 20

MR. BREWIN: I think Mr. Ferguson put one over on me that time. I did not hear it at first, or I would have objected sooner.

RE-EXAMINED BY MR. BREWIN:

Q. How long were you employed by the Defendant Companies? A. Until the business closed up in 1930—July, 1930. I am just trying to recall when I started with them. I believe it was just two years.

Q. Did you know of the existence at that time of the two Companies,—Solloway Mills and Company Limited (Dominion Company), and Solloway Mills and Company Limited (Ontario Company)? A. I cannot recall.

Q. I propose to call Mr. Seaborn next. I presume I will take some time with him— 30

ADJOURNED at 12.45 p.m. to 2 p.m.

RESUMED at 2.15 p.m.

MR. BREWIN: I will call Mr. Seaborn.

PERRIN MINTER SEABORN: (SWORN)

EXAMINED BY MR. BREWIN:

Q. Mr. Seaborn, what was your connection with the Defendants, Solloway Mills & Company, Limited? Or, rather, I had better say, there were two companies. What was your connection with the Dominion Company? A. From July, 1930, I was Secretary-Treasurer of the Dominion Company. 40

Q. And what was your connection with Solloway Mills and Company, Limited, the Ontario Company? A. I was Secretary-Treasurer of that Company also during the same period.

Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

- Q. Are you still the Secretary-Treasurer of those Companies? A. Well—
- Q. I understand they are in bankruptcy, but you were, at the time the winding up order was made of the Dominion Company, and the Ontario Company went into bankruptcy? Up to that time you continued as Secretary-Treasurer? A. Yes.
- Q. Were you connected with either of the companies before that time? A. I was an employee before that time, yes.
- Q. Will you tell me the nature of your employment and how long you were employed? A. I was there somewhere around a year as the Dividend Clerk.
- Q. You say "somewhere around a year". You mean a year before you were appointed Secretary-Treasurer? A. A period of a year I was there. I think it was about a year before that I left the employ.
- Q. And, I suppose, as Secretary-Treasurer, during that time, you have become familiar with some of the records of the Company? A. Yes.
- Q. And as Secretary-Treasurer you were in charge of the records of the Company, were you, during the period in which you were Secretary-Treasurer? A. Yes.
- Q. Now there have been a number of documents filed here and marked as Exhibits. Documents that were filed in Court, and they are Exhibits in the case of Rochester vs. Solloway Mills, and I am going to ask you to produce various—see if you can see amongst these documents—they are various documents of the Company—as we come to them and when you see them I want you to indicate where they are, and I will have them handed to you.
- First of all, do you see anywhere here, the share registers of the Ontario Company? A. (No answer).
- Q. Well, if you can find them you will produce them later? A. I will, but I presume they would be in the hands of the liquidators at the present time.
- Q. I understood they have been filed in the other action, but if that is not the case we can proceed with other documents. I ask you to produce the Minute Books of Solloway Mills & Company Limited (Dominion Company)?
- A. These are the two books.
- Q. What are these books that you are producing now? A. These are the Minute Books of the Dominion Company.
- Q. You identify them as the Minute Books of the Dominion Company, is that right?
- MR. FERGUSON: I object to this evidence.
- MR. BREWIN: On what ground, Mr. Ferguson.
- MR. FERGUSON: On the obvious ground that this witness does not know whether they are the Minute Books, or not, of the Dominion Company.
- ASST. MASTER: He was the Secretary-Treasurer.
- MR. FERGUSON: That is not the way to prove Minute Books of a company.
- MR. BREWIN: Q. Well were they in your custody, these books, whatever they are, as records of the company? A. Yes.
- Q. And they come from the custody of the Company? A. Yes. They were produced in the other trial as that.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

MR. FERGUSON: Shall I take it I need not take the further objection that these documents are not evidence against Mr. Mills or Mr. Solloway?

MR. BREWIN: I propose later to shew the connection of Mr. Solloway with the Company, and in that way make the books and documents evidence against Mr. Solloway, but if your ruling is at this stage I should shew the connection of Mr. Solloway with the Company I can do that now, but I propose to adduce evidence to shew that Mr. Solloway was a director of the company at the time these records purport to have been made, and, further, that he was an active director.

ASST. MASTER: There is certainly a difference between the objection raised this morning that conversations between Mr. Robinson and the Plaintiff is not evidence against the individual defendants, but the Minute Books are evidence of what they are. If they have been signed by the individual defendants they are evidence against the individual defendants. 10

MR. BREWIN: My submission on that point is that all records of the Company are admissible if I can later prove in some way the connection of the defendants with the Company, that they were directors and took an active part in the management of the Company. It is more convenient for the Court, I think, to prove these documents first in this way, but my suggestion is that they be admitted as evidence against the Ontario Company and conditionally as evidence against the individual defendants if I am able to shew the connection. 20

EXHIBIT NUMBER 17: Minute Book (Dominion Company).

EXHIBIT NUMBER 17(a): Minute Book (Dominion Company).

Q. Did you ever see any signatures of the defendant, I. W. C. Solloway?

A. Yes, I have seen signatures which I presume are his.

Q. And so you would be able, without purporting to be an expert, to identify what appears to be his signature on any documents I might shew you.

A. Yes.

Q. Well, will you please turn up in the Minute Book there, which has just been filed as an exhibit, by-law number 1, first of all. A. I do not see any by-law number 1 in this Minute Book, exhibit 17. 30

Q. You have looked over the other exhibit, have you, exhibit 17(a), and you cannot find by-law number 1. A. No, it is not in exhibit 17(a).

Q. Have you there minutes of a meeting of the 1st December, 1927?

A. 20th December, 1928, appears to be the first in this book. This book starts on the 15th February, 1930, exhibit 17(a).

Q. Well, we will have to go on to something else, Mr. Seaborn. I cannot, for the moment, find those records in the Minute Books I have asked you for.

MR. FERGUSON: If you want the defence counsel to be your witness I think I can point it out to you here. You have not got the right book. 40

MR. BREWIN: Q. I asked you, Mr. Seaborn, if you could produce from the Minute Books of the Company, by-law number 1, and also the minutes of a meeting of the 1st December, 1927, and you have looked through the Minute Books you have produced and you cannot find either of those at the present time. Is that right? A. That is right.

Q. If, before the end of the trial, you can find those records anywhere,

will you please do so and let me know? A. Yes. I have not them in my own custody.

Q. Will you turn up the minutes of a meeting on the 31st May, 1928. A. That book apparently—that is contained in some other record because this begins on the 20th November, 1928—oh, just a minute, please. Yes, that is correct. This begins on the 20th day of November, 1928.

Q. Will you try and find out if you can whether the record of that meeting is in the minute books or if there is any other minute book continuing that record. Have you in that Minute Book by-law number 12? A. Yes, by-law
10 number 12 is here—exhibit 17.

Q. Mr. Seaborn, you are producing from exhibit 17 what purports to be by-law number 12. Who is that by-law signed by? A. The signatures appearing in the book are I. W. C. Solloway, President, and L. L. Masson, Secretary.

Q. And I observe that they sign for these shareholders as well as for the directors. Is that correct? A. There is a clause underneath which says—“Ratified and confirmed by the shareholders” and those two signatures appear.

Q. And is that Mr. Solloway’s signature, as far as you know? A. As far as I know it is, yes.

Q. Have you there a minute of the meeting on or about the 20th December,
20 1928? A. There is a meeting of the Board of Directors which was held on the 20th December, 1928.

Q. And who is that signed by, Mr. Seaborn? A. The signatures appear to be those of I. W. C. Solloway and L. L. Masson.

Q. I see there is a meeting of the shareholders. The last one was a meeting of the directors. Can you tell me what is the signature to what purports to be the minutes of the meeting of shareholders on the 20th December, 1928?

A. It appears to be signed by I. W. C. Solloway and L. L. Masson.

Q. Can you identify that as his signature then—Mr. Solloway’s signature? A. It appears to be.

Q. I ask you to produce the minutes of the meeting of the 19th March,
30 1928. That, again, is in the period prior to what you tell me is included in this book. If you can find those records—the minutes of that meeting on the 19th March, 1928, I ask you to inform the Court so that we can have them produced.

MR. FERGUSON: There must be another Minute Book in the records.

MR. BREWIN: Q. Will you turn to a minute of the meeting of directors, or it might be shareholders, I do not know which, of the Dominion Company, on the 12th November, 1930,—no, 1929, I am sorry. Is that there? A. Yes, there is the minutes of a meeting of directors, shewn in this book.

Q. Can you identify the signature to those minutes? A. They appear to
40 be the signatures of I. W. C. Solloway, President, and H. H. Hendrickson, Secretary.

Q. Can you produce the minutes of a meeting of the 14th December, 1929?

A. Yes, those appear to be the minutes of a meeting of directors.

Q. On the 14th December, 1929. A. Yes.

Q. Will you look at the signatures to those minutes and identify them for me. A. The signatures appear to be those of I. W. C. Solloway, President, and H. H. Hendrickson, Secretary, and L. L. Masson, Secretary-Treasurer.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff’s
Evidence.
No. 20.

Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 20.

Perria
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

Q. Will you turn to the minute book of Solloway, Mills & Company, Limited, Ontario Company, and turn to by-law number 1 of that Company. Will you see if you can identify the signatures to that by-law. A. This appears as by-law number 1 and is signed by, I would say, Gordon N. Shaver and Stuart Paulin. Those are the signatures as they appear to be.

Q. Will you turn to by-law number 6 as appears in this book which you have produced. I had better ask the witness at this stage what is the book he is producing in shewing us these by-laws. A. It states on the front cover it is Solloway, Mills and Company, Limited (Ontario).

Q. And where does it come from? A. It was produced in the Court here 10 just now.

Q. But do you recognize it, at all, as coming from the custody of the defendant company? A. It appears to be a minute book that came from their custody.

Q. And it is now marked as exhibit 18.

MR. FERGUSON: Same objection to this one as the other one. This witness cannot prove this minute book because he did not make any of the entries or had anything to do with the preparation of them.

EXHIBIT NUMBER 18: Minute Book (Ontario Company).

MR. BREWIN: Q. You were referring us to by-law number 6 that appears there. Can you turn to the signature that appears in that by-law and say whose is it? A. It appears to be signed by Gordon N. Shaver, and I suppose that is Stuart Paulin. 20

Q. Then will you turn over after that to what purports to be Schedule "A" in this book, and appears to be an agreement dated December, 1928. Will you look and see who that appears to be signed by? A. There are 4 signatures. It appears to be signed by I. W. C. Solloway as President; Harvey Mills as Secretary-Treasurer, and the heading on those two signatures is Solloway, Mills & Company, Limited, incorporated under the Companies' Act, Canada.

Q. And do they sign in any particular capacity? It is shewn that they sign as President. Mr. Solloway signs as President, and Mr. Harvey Mills as Secretary-Treasurer. Is that right? 30

A. That is what the record here shews.

Q. And then there follows what purports to be the signature of Solloway, Mills & Company, Limited, incorporated under the Companies' Act, Ontario. What are the signatures there? A. It appears to be those of Gordon N. Shaver and Stuart Paulin as President and Secretary-Treasurer respectively.

Q. Will you turn to a meeting of the directors on the 20th December, 1929? A. This states on the top it is the minutes of a meeting of provisional directors held on December 20th. 40

Q. I point out to you, Mr. Seaborn there is more than one meeting, apparently, held on that date, and I draw your attention to the minutes of a meeting of the directors held at the King Edward Hotel on Thursday, the twentieth day of December, 1928, at the hour of 4.30 in the afternoon. Will you look at the signature that appears to have been signed to those minutes and tell me whose it is?

A. It appears to be that of I. W. C. Solloway as President, and L. L. Masson as Secretary-Treasurer.

Q. And I would like you to read to the Court just to shew the election of officers that appears to have been made at that meeting.

A. (Reads) "It was moved, seconded and carried unanimously to immediately proceed with the election of officers of the Company for the ensuing year. The election having taken place and ballots cast, the following were found to have been elected. President—I. W. C. Solloway; Vice-President—Harvey Mills; Secretary-Treasurer—Lawrence L. Masson."

10 Q. Can you tell me who were the directors of the Ontario Company at the time that Mr. McLaughlin dealt with them, namely, in October, 1929, to January, 1930.

A. I do not know as I can tell you. I could not say definitely who were, no.

Q. I don't know whether I can cross-examine this witness. He was examined for discovery as an officer of the defendant corporation, and it might facilitate matters if I were to remind him of some of his answers in that case. He gave evidence on all these points as to the various directors. We cannot produce the Share Register, although we can have him look through these records he has produced.

20 MR. SLAGHT: I have no objection to this course. I intervene with a view to saving time. My friend has no right to cross-examine this witness without the leave of the Court, and certainly, Mr. Seaborn's demeanour is anything but that of an adverse witness. He has always been willing to give any information he has and is careful not to speak as to things he does not know about. If my friend could facilitate matters by reading two or three questions and answers at a time and then say, "As far as you know is that still correct", instead of reading through two or three volumes, I would have no objection to that course rather than to indulge in cross-examination as I understand he has suggested. In other words lead the witness by indicating what he believes to be the fact and then ask the witness if he could assent to that. To that extent I would agree to my friend leading the witness unless I had some reason to object and change my attitude, but to that extent I would be glad to facilitate.

MR. BREWIN: Q. I turn for a minute to the capitalization of the Dominion Company. Formerly, on examination for discovery you informed us that—I refer you to question 471—(Reads) "470. Q. Mr. Seaborn, have you informed yourself with regard to the capitalization of the Dominion Company?" A. Yes.

40 "Q. 471: Can you tell me about it, please? A. Yes. There are "25,000 shares of no par value stock."

"Q. 472: That is the whole capitalization?"

"A. That is the total capitalization of the Company."

Q. As far as you know is that answer correct? A. Yes, that information, I think, I got at that time. You asked me to produce it at the examination, and I did.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

Q. Then at question 482 you answered me with regard to how this stock was held during 1929, in this way.

"A. From the beginning of the year till November 12th, 1929, 24,995 "shares were held in the name of I. W. C. Solloway and Harvey Mills and "from November 12th, 1929, to the end of the year there were 24,995 "shares in one certificate and one share in another certificate held in the "name of I. W. C. Solloway; the one share in the name of I. W. C. Sol- "loway was held throughout the year of 1929. There was one share in "the name of Harvey Mills for the whole of 1929 and there was one share "in the name of L. L. Masson held throughout the year 1929. Then there 10 "was one share in the name of L. S. Eckardt throughout 1929. There "was one share in the name of J. A. Cooper till May 6th, 1929, and from "May 6th to the end of the year 1929 that share was held in the name of "Harold Hendrickson."

Q. Can you confirm that information now as correct to the best of your knowledge? A. Yes, I think that was correct at that time.

Q. And I asked you at question 484 about the capitalization of the Ontario Company and you said—"There are 5,000 shares of no par value stock issued." And I asked you at question 487 who were the holders in 1929 of its shares and you say—"There were two shares in the name of I. W. C. Solloway, two shares 20 "in the name of Harvey Mills, two shares in the name of L. L. Masson, "two shares in the name of Irma Freeman Silverthorne and two shares in "the name of Lawrence Smith Eckardt, and 4,990 shares in the name of "Solloway, Mills & Company, Limited, Dominion Company."

MR. SLAGHT: Mr. Ferguson tells me the Minute Book contains all the information now being read to you and is already in as an exhibit. If that is so, we are surely wasting time asking this young man about the contents of an exhibit that is already in.

MR. BREWIN: That may be so, but the Court does not want to go through the Minute Books in detail. 30

MR. SLAGHT: In argument my friend could refer to that.

MR. BREWIN: Very well, I won't go any further into that then.

Q. Do you know who was the President of the Ontario Company from October, 1929 to January, 1930? That, again, I think, appears in the record.

A. It appeared in the record at that time and I gave, at that time, the name of the man.

Q. To the best of your knowledge and information, who was the President at that time? A. I think I. W. C. Solloway was at that time.

Q. And of the Dominion Company at that time? A. Yes, I think I. W. C. Solloway was president of the Dominion Company, too. 40

Q. Since you were secretary-treasurer of the Ontario Company from whom did you receive directions as to the policy of the Company?

MR. SLAGHT: I do not think Mr. Seaborn was secretary-treasurer prior to the commencement of this action. I may be wrong.

MR. BREWIN: No, he was not.

MR. SLAGHT: Then I do not think that will be of any use to the Court,— something that occurred after this action was instituted. Mr. Seaborn only

came into the company after criminal proceedings were started and after the carrying on of business with the public ceased, as I understand it. So I object to this evidence.

ASST. MASTER: I have noted your objection, Mr. Slaght.

MR. BREWIN: The purpose of this evidence is to shew the connection of the defendant, Solloway, with the Company. It will be suggested, I have no doubt, and it is suggested in the pleadings that the defendant, Solloway, was not responsible for what was done by the defendant Company, and if he was an active director of the company, actively engaged in directing its policy after the
 10 time my client dealt with him when he is supposed to have been the President, it is a reasonable inference to assume he was also active during the time our client dealt with him. And further, I think the evidence of his participation in the affairs of the Company subsequently.

ASST. MASTER: No, at the best it is only second best evidence. Mr. Seaborn is not in a position to speak of the time prior to this action.

MR. BREWIN: It is possible that I may have some difficulty in shewing that Mr. Solloway was actively carrying on his duties as President and Director at the time our client dealt with the Defendant Company, and I submit it is relevant and I am entitled to shew that he held the same position later and at a
 20 later date was active, and to ask the Court to infer from that,— I may have much stronger evidence than I have now in addition to that, but I think I am entitled to get that on the record.

MR. SLAGHT: I submit not. I do not know what the answer would be, but I submit not, particularly when it has been disclosed where the transactions under your review in this action are concerned the Company was operating with the public there were a great many branches and a large contact with the public in a business way with which Mr. Seaborn had absolutely nothing to do. He was not connected with the Company. Then during the period now sought to be put upon the record it is after the issue of the writ, and it is
 30 after the regime when no business was being done with the public. The Company's affairs were practically being brought to a conclusion as far as the public is concerned, and I submit it is not evidence of Mr. Solloway having to do with either the active supervision of the Company or in particular, any of the transactions under review.

MR. BREWIN: Is it your ruling I cannot ask the question?

ASST. MASTER: Yes. I think Mr. Slaght's objection is well taken. You should confine yourself to the time and material in connection with this action to start with, anyway.

MR. BREWIN: I presume your answer means that I must shew the rele-
 40 vancy of this later, but it seems to me that with the difficulty I am under of having to prove my case by employees of the defendant Company it is only reasonable that any little thread of evidence or small inference should be allowed in in this way, and the subsequent actions are good evidence as well as the situation that existed during this actual period. I imagine my friends are going to contend that Mr. Solloway knew nothing about this particular account and, therefore, he is not responsible. In order to prove the books as evidence

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

against him I have to shew his active direction of the Company. He was active at one period, surely he was active at another.

ASST. MASTER: I do not think it is proper at this stage.

MR. BREWIN: Well, may I reserve my right to put the question at some later stage if it appears relevant then?

ASST. MASTER: Yes.

MR. BREWIN: Q. Now, Mr. Seaborn, will you produce for me the ledger statement shewing the dealings of the Ontario Company with the Plaintiff.

A. There is one around here somewhere, I think.

Q. Will you describe to the Court as well as you can what that document is.

A. This is a sheet from a machine ledger. It is headed at the top "Clients Ledger" and at the left hand corner is "McLaughlin, J. P., 29 Munroe Park Avenue, Toronto."

Q. Where does that document come from, Mr. Seaborn? A. It comes from the ledgers of Solloway, Mills & Company.

Q. And would it be included with a number of other similar statements in some ledger book. A. Yes.

MR. SLAGHT: You mean of other clients?

MR. BREWIN: Yes, of other clients. A. Yes.

Q. I would ask that that be marked as an exhibit.

EXHIBIT NUMBER 19: Ledger sheet (Clients Ledger).

MR. SLAGHT: In order that there may be no misunderstanding, I thought my objection this morning that matters connected with the Plaintiff and the Corporation were not admissible against the individual defendants. Perhaps it was not broad enough to cover documents. It was taken to cover conversations at the time. I desire to put forward the same objection with regard to documents of the corporation.

ASST. MASTER: Mr. Ferguson made an objection when you were out Mr. Slaght, in connection with the minutes. I said the objection would not hold throughout because some of the minutes were signed by him.

MR. SLAGHT: Yes, but in matters like this account which, so far as the evidence indicates, he had nothing, personally, to do with, I desire to be put on record as objecting to the admissibility of such documents unless it is shewn that he had, personally, to do with their preparation or otherwise. The same for Mr. Mills.

MR. BREWIN: Q. Now, Mr. Seaborn, Mr. McLaughlin has described how he deposited certain shares of stock as collateral to his account, and he was given receipts. Did the company retain copies of those receipts?

A. Yes, there ought to be copies of the receipts kept. Q. Will you see if you can find such receipts in that file and see if you can produce them to the Court?

A. I have here what appear to be the receipts.

Q. May I just go back for a minute. That ledger statement you produced came out of the file marked exhibit X for identification in this case. Is that correct? A. Yes.

Q. Now you are producing from the same file, marked X for identifica-

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tion, certain documents. Will you tell the Court what they are—what they purport to be?

A. Each receipt has got "Solloway, Mills & Company, Limited" on the heading of it, and it says "Stock Receipt," which, I suppose, are the receipts.

Q. You have how many of them attached together there? A. There are seven altogether.

Q. And do you say that those documents, which purport to be receipts, came from the custody of the defendant company? A. I think they were at one time in the custody of the defendant Company. They have been produced this morning, as I understand it, from the hands of the Trustee as being the documents.

Q. I would ask that they be marked as an exhibit.

EXHIBIT NUMBER 20: Stock receipts (7), Solloway Mills and Company Limited to J. P. McLaughlin.

Q. Will you produce, if you can, the Security Register of the Defendant, Solloway Mills and Company Limited for the period in which the Plaintiff dealt with them? A. That is the—

Q. That is October, 1929, it starts? A. There is a Register here, which, I believe, was marked as an Exhibit in another trial which appears to be a Stock Register. It has got "1929-Q to Z" on the outside, which, I presume would contain the stock book.

Q. Can you turn up any sheets in that Register that purport to deal with Sudbury Basin Mines stock? A. Yes, there are sheets of Sudbury Basin in the record.

Q. Will you please describe that book again for me? What was your description of it, Mr. Seaborn? A. I had no description of it. I would say it was a Stock Register.

Q. Security Register? A. Security Register, yes.

Q. Will you tell me where that comes from? I know it is one of the documents that are said to be in the custody of the Court, and marked as an Exhibit, but have you ever seen it before? A. Yes.

Q. Was it in the custody of the Company at the time you saw it before?

A. Yes, it was produced from the—

Q. It was one of the documents kept by the Company? A. Yes.

EXHIBIT NUMBER 21: SECURITY REGISTER.

Q. You have another book in your hand now, Mr. Seaborn. Will you describe to the Court what that book is and what you know about it?

A. This record, which has just been produced, I do not remember ever having definitely settled exactly what it was, even in my own mind, but the sheets are headed up "delivery received in balance", and it apparently runs as a ledger of shares on hand, or something of that nature. I am not certain of it at all.

Q. And where did that book come from? A. This came from the records of the Company.

EXHIBIT NUMBER 22: Book containing cage record.

Q. I ask you to look in the file marked Exhibit X for identification and

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 20.

Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

turn up and see if you have the clients' Buy and Sell slips in Sudbury Basin Mines Limited on the 16th October?

A. There are a group of Buy and Sell slips. These slips are marked "Buy" and "Sell" slips. I believe they have to do with Sudbury Basin.

Q. Mr. Seaborn,—I am leading the witness here, but I think, perhaps my friends won't object,—you were asked by the Solicitors for the Plaintiff to segregate or set aside the documents of the Company which purported to have some bearing in this action. Is that correct? A. Yes.

Q. And you prepared them and put them in a file. Is that correct?

A. That is correct, yes. I did that some time ago, and produced them to 10
the Court.

Q. As far as you know does that file that you have produced contain those documents that you separated at the request of the Plaintiff's Solicitors?

A. These appear to be the documents, yes.

Q. You looked through the documents of the Company for the purpose of securing the documents that the Solicitors for the Plaintiff asked you for? That is correct? A. Yes, we were asked to produce the documents.

Q. Now turn back again to the clients Buy and Sell Slips. Would those be, so far as you know, all of the clients Buy and Sell slips in Sudbury Basin for that day—October 16th? 20

MR. SLAGHT: I object to that question. As I understand it, the witness was not in the employ of the Company on the date in question. He was not handling these matters and I suggest that it is not proper for him to speak as to them. He is making a poor case. My friend might as well say he looked around and those are the Company's papers, and as far as he can tell those are all he can find of the Buy and Sell slips, but to ask the witness to pass upon whether that was all there were at that date, I submit is not fair.

ASST. MASTER: Q. Have you looked through the records of the Company to find Buy and Sell slips on that date in that stock, and are you producing to-day what you have found? A. Yes. 30

MR. BREWIN: Q. You looked through to find documents on that particular date, did you not, that purported to be Buy and Sell slips for that particular date—16th October? A. Yes.

Q. How many slips have you there?

MR. SLAGHT: That will lead to confusion. You mean, some years later he looked to find slips of October 16th?

MR. BREWIN: Yes.

ASST. MASTER: What you want to know is, when did he look.

MR. BREWIN: Q. When did you look for those documents? A. Some-
time during 1931 I think. 40

Q. In the course of preparation for this trial at any rate? A. Yes. There are sixteen slips. I notice one here—a Sell slip of Sudbury Basin of which the original and the duplicate are still here. I don't know how you want that counted, as to whether that is one or two, or what.

Q. Well, I think, just how many documents there are there? A. Well, there are eighteen.

Q. I ask that they be marked as an Exhibit.

EXHIBIT NUMBER 23: Buy and Sell slips (18) Sudbury Basin.

Q. Now, Mr. Seaborn, in your search for documents bearing on this case, did you look for confirmations to clients for Sudbury Basin for October 16th, and if you did look have you those documents in that file? A. Yes, I have.

Q. Will you produce them? A. Pardon me just a moment. The Buy slips relating to the purchase for Mr. McLaughlin on that day are in a separate group here, and I did not produce them with the rest of the Buy and Sell Slips. Do you want me to include those with the others?

10 Q. I do not quite follow you? A. There are some Buy and Sell slips here on which the name of J. P. McLaughlin appears, which, I suppose, belong to the trades of Mr. McLaughlin for that day.

MR. FERGUSON: As I understand it, sir, Exhibit 23 are Buy and Sell slips in Sudbury Basin on which the name, McLaughlin, does not appear.

ASST. MASTER: It is just a question whether Mr. Brewin wants them all together or not.

MR. FERGUSON: And that those documents which the witness is holding in his hand have the name McLaughlin on them.

MR. BREWIN: Q. Yes, but I am asking for the confirmations. Aren't you dealing now with the last Exhibit, and saying you have two further slips
20 that were not included? A. Yes.

Q. Now, I think we understand that. What are you producing now, Mr. Seaborn? A. Here are some confirmations and buy slips on which the name of J. P. McLaughlin appears, and they are clipped together. Now I wanted to know, when you ask me to produce confirmations, whether you wanted these confirmations produced with the rest as they are all dated October 16th.

Q. I will ask you to produce those, and then to produce the other ones. What are you producing now?

A. I am producing four Buy Slips and two Confirmations—duplicate confirmation notes on which the name of J. P. McLaughlin appears.

30 Q. And they come from the custody of the Defendant Company? A. Yes.

Q. And now I asked you before, and I ask you again, to say whether, in your search for documents, you got other confirmations to clients in Sudbury Basin Mines Limited for the 16th October, other than the ones you have already produced? A. Yes, I have some.

EXHIBIT NUMBER 24: Confirmations and Buy Slips, October 16th, 1929.

Q. And those documents that you produced came out of the file marked Exhibit X for identification? A. Yes, that is correct.

40 Q. Now I ask you to produce the confirmations to clients other than those you have already produced. I think you have them there. Will you tell me how many you have?

A. Twenty-one confirmations. These are duplicate confirmations.

Q. Those are, you told me, I think, confirmations to clients of October 16th?

A. Yes.

Q. And here, again, I think I am leading you, but it is a fact, is it not, that you looked through the records of the Company sometime during the course of preparation for the trial of this action and found those documents in the pos-

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

session of the Company, and are the only documents that seem to come under that general description? A. Yes, that is correct.

EXHIBIT NUMBER 25: Bundle of Confirmations to clients.

MR. FERGUSON: Q. They are just Buy confirmations?

A. No, those are the whole of the confirmations—twenty-one Buy and Sell confirmations.

MR. BREWIN: Q. Can you produce, Mr. Seaborn, documents described as "Clients Brokers Confirmations" of October 16th, that were in the possession of the Defendant Company? A. I have some confirmations here which have the names of Brokers on them. I presume that is what you mean. 10

Q. You are producing how many documents, Mr. Seaborn?

A. There are four.

Q. Four documents, and you have described them as Clients Brokers Confirmations for October 16th. Will you tell me where they came from?

A. They came out of this file marked Exhibit X, and I presume before that, they apparently did come from the records of the Company.

Q. And there, again, you were asked, I think, to search for all the documents answering that description in the custody of the Company? A. Yes.

Q. And you did search, in the course of preparation for this trial, and those are all the documents that you found answering that description? 20

A. Yes.

Q. Mr. Seaborn, you have produced the Clients Brokers Confirmations for the 16th October. Have you the same documents for the 18th October?

A. I do not see any in this file.

Q. There appears to have been some misunderstanding, Mr. Seaborn, the last thing I asked you for were the Clients Brokers Confirmations for October 16th, and what can you tell me about those documents now?

A. I say in Exhibit 25, as produced, they are all clipped together. I said they are the Client's confirmations. I notice there are confirmations to brokers in here as well. 30

Q. And is that for October 16th? A. These are all dated October 16th.

Q. And all the documents that you were previously describing, namely, Clients Brokers Confirmations on October 16th, are there. Is that correct?

A. Yes.

Q. Now you produce something else, will you tell me what that is?

A. Exhibit 26 are the Brokers confirmations for November 4th.

EXHIBIT NUMBER 26: Clients Brokers Confirmations for November 4th.

Q. Will you produce the Clients Brokers Confirmations for the 18th October? A. I do not see those here. These documents do not appear to be here in this folder. 40

Q. And what about the 24th October, 28th October, and 4th November? We have the 4th November, the 9th November, and the 12th December.

A. There does not appear to be any confirmations other than the ones for the 4th November. It is quite possible they were looked for and there were none found. Since the ones for the 4th November have been produced, I would suggest that is the answer why the others do not appear here.

Q. Have you in the file, marked Exhibit X, any Clearing Sheets of the Defendant Company dated 16th October?

A. Yes, I have clearing sheets for that date.

Q. Will you describe those documents to the Court which you have produced from Exhibit X?

A. There is no identification as to what they are but they have been produced, and I have always produced them as being copies of the Clearing Sheets, the originals of which go to the Clearing House.

Q. Where do those documents come from?

10 A. They come from the records of Solloway Mills and Company Limited.

Q. And they are, as far as you know in your search of all documents that can be described as "Clearing Sheets" of October 16th of the Defendant Company that you could find when you searched recently? A. Yes.

Q. I would ask that they be marked as an Exhibit.

EXHIBIT NUMBER 27: Clearing Sheets, October 16th.

Q. I would ask you, Mr. Seaborn, to produce what was described to me as the Clients Brokers Ledgers of the Defendant Company?

20 A. There is one volume here which has on the front of it a typewritten sticker with "Clients Brokers" on it, and it appears to be that book known as the "Clients Brokers Ledger".

Q. And where does that come from, Mr. Seaborn?

A. This was found in the records of the Company.

Q. And it comes from the records that were filed in Court—it is one of the records that was filed in the Rochester vs. Solloway Mills action, is it not?

A. Yes.

Q. You have, to-day, found it in the Courtroom among the documents produced by Mr. Spanner? A. Yes.

Q. And what is that second ledger that you are producing?

30 A. This also is a Clients Brokers Ledger. On the outside they have some names here—Butler, Hevenor; Colling and Colling; Crang; Eastwood; Lorsch; and Scott, on a slip of paper here, but I believe the two books constitute what is known as the "Clients Brokers Ledger".

Q. Do they come from the custody of the Defendant Company?

A. Originally, yes.

Q. And they were documents that you have to-day found in Court and amongst those produced by Mr. Spanner? A. Yes.

EXHIBIT NUMBER 28: Clients Brokers Ledger.

EXHIBIT NUMBER 28a: Clients Brokers Ledger.

40 Q. Now I ask you to produce a book which is described as the "Dominion Company Trading Account" with the Ontario Company?

A. I have two volumes here which apparently run, in point of time, one after the other. The first one commences May 1st, 1927 and ends October 12th, 1929, and it is labelled, "Solloway Mills and Company Limited—Dominion Trading Accounts—Ontario Company Ledger."

EXHIBIT NUMBER 29: Solloway Mills and Company Limited, Dominion Trading Accounts, Ontario Company Ledger. (May 1/27-Oct. 12/29)

WITNESS: And the other book is marked, "Dominion Trading Account,

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 20.

Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

Ontario Company Ledger", and it commences October 12th, 1929 and ends January 21st, 1930.

EXHIBIT NUMBER 29a: Dominion Trading Account, Ontario Company Ledger, (Oct. 12/29-Jan. 21/30).

Q. Where do those accounts that you have produced, and which have been marked as Exhibits 29 and 29a come from?

A. They were here in the custody of the Court, apparently, and previous to that time they were part of the records of Solloway Mills and produced as such.

Q. They come from the custody of Solloway Mills? A. Originally, yes.

Q. They are amongst the documents produced by Mr. Spanner this morning? A. Yes. 10

Q. Now I ask you to produce the trading gaccount in the Dominion Company's books? A. This is a record which is labelled "Solloway Mills and Company Limited, Trading Accounts, 1927 and 1928, and up to April 30th, 1929, Ontario Company Ledger".

EXHIBIT NUMBER 30: Trading Accounts, 1927-1928, to April 30th, 1929, Ontario Company Ledger.

WITNESS: It starts in 1927 and 1928 and it says "and up to April 30th, 1929".

MR. FERGUSON: Q. What kind of book is that? 20

A. It is a bound ledger. There is a label on it—"Trading Accounts".

MR. BREWIN: Q. And you have another book there, what is that, Mr. Seaborn? A. This is labelled "Dominion Trading Accounts—Dominion Company Ledger". It commences October 12th, 1929 and ends January—some date, I cannot get it here—1930.

EXHIBIT NUMBER 30a: Dominion Trading Accounts, Dominion Company Ledger, October 12th, 1929 to January, 1930.

Q. Is that a continuation of the other?

MR. FERGUSON: No, there is a gap there.

WITNESS: It commences October 12th, and ends January, 1930. 30

MR. BREWIN: Q. And do you know where the account between the two periods would have got to, Mr. Seaborn? That is to say, Exhibit 30 went as far as April, 1929, as I understand it, and Exhibit 30a begins in October, 1929. What happened to the book that contains the account in the interval, do you know? A. I did not even know it was produced at the other trial.

MR. McRUER: Mr. Ferguson suggests it may be at their office.

MR. FERGUSON: There was another book, and it is probably back in the office of Solloway Mills now. The Trustee might be able to produce it. It fills in the gap between those two books.

MR. BREWIN: Q. Those Exhibits 30 and 30a, where do they come from, Mr. Seaborn? A. They were originally in the office of the Company. 40

Q. And in the custody of the Company? A. Yes.

Q. And where did you get them from to-day when you produced them?

A. They were here.

Q. In Court? A. Amongst the other records.

Q. The records brought in by Mr. Spanner and proved by Mr. Spanner?

A. Yes.

Q. Have you amongst the documents in Exhibit X, marked for identification, what may be described as a Stock position card? A. Yes, there is a card here marked "Stock position", in Sudbury Basin.

Q. And what date does it show on it? A. 1929, November 30th, up to December 23rd.

Q. Can you tell the Court where that card comes from? A. This comes from the records of the Company.

Q. Which Company would that be, Mr. Seaborn? A. That, I cannot say. I produced it from the records. It was tied up in a bundle. I do not know
10 which Company.

Q. And I believe you were asked to search for similar cards in Sudbury Basin during the period in which the Plaintiff dealt? A. Yes.

Q. Did you do that? A. Yes.

Q. And that was the only one you were able to find? A. Yes, that is true.

EXHIBIT NUMBER 31: STOCK POSITION CARD (Sudbury Basin).

Q. Would you recognize a bundle of similar cards from which this was obtained? A. Yes.

Q. Do you see in front of you a bundle produced, apparently, from the
20 Courtroom, of documents amongst those that Mr. Spanner produced this morning? A. Yes.

Q. Does this card marked Exhibit 31, come from amongst those cards?
A. Yes.

Q. And you, yourself, was responsible, were you not, for taking it out from the other cards of a similar nature? A. Yes.

Q. How would you describe those cards which you have there? A. Well, the only description I can give of them is that they are the stock position cards.

Q. And where did they come from? We have heard they were in Court to-day, but are they the records of the Company which came from the custody
30 of the Company? A. That is where I found them.

EXHIBIT NUMBER 32: Bundle of stock position cards.

Q. What do those tags that appear in Exhibit 32, appear to be, Mr. Seaborn? A. Just an index—A, B, C,—

Q. An alphabetical index of the cards, and what do they indicate?

A. The cards are headed with the name of the stock, and the A's are all together.

Q. Listed alphabetically by the first letter of the stock? A. Yes.

Q. And we now list what you have found Exhibit 31? A. Amongst the
S's.

40 Q. I would ask you to produce, Mr. Seaborn, the General Ledgers, first of all, of Solloway Mills and Company Limited, Ontario Company? A. These are a mass of ledger sheets on which—there is a sheet here—apparently they were all tied together at one time—on which is labelled "Solloway Mills and Company Limited, Ontario Company, General Ledger".

Q. I would ask that that be marked as an Exhibit.

EXHIBIT NUMBER 33: Solloway Mills and Company Limited, Ontario Company General Ledger.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

WITNESS: I do not know exactly what period this covers but it appears to be 1930-1929.

Q. Mr. Seaborn, can you tell me where Exhibit 33 comes from? A. This record comes from the records of Solloway Mills and was produced here this morning, apparently, by Mr. Spanner. I was not present at the time, but it was, I understand, amongst the records produced by him.

Q. You have now two further ledgers. Will you tell me what they are?

A. This one is labelled "General Ledger".

MR. JENNER: It is most advisable that the Exhibits that have been produced here, some of them were used in the Rochester action, I have heard them referred to as a bundle of loose sheets, I think it is very important that those sheets should be kept securely tied, and not thrown around as loose sheets. 10

MR. BREWIN: We are very anxious that that be done.

MR. JENNER. I suggest that time be taken to tie them up properly.

ASST. MASTER: I think Mr. Seaborn produced practically all these books.

MR. FERGUSON: Yes, they could go in separately.

MR. McRUER: They will be marked separately unless something is said to the contrary.

MR. BREWIN: Q. These documents, that I will mention to you, and which you are producing, are documents, unless something else is said,—unless you disagree with this later—are documents that were produced by you from the records of the Company and from the custody of the Company and were filed as Exhibits in the action of Rochester vs. Solloway Mills, and were further produced here this morning by Mr. Spanner as such records? A. Yes, that is true. 20

Q. And, therefore, there will be no need for me to repeat to you, as we go along, any questions about that, but if any of these documents which I ask you to describe are not documents which come from the custody of Solloway Mills, documents of the category I have mentioned, then you will point them out to the Court. A. Yes. 30

Q. Now what is that which you have there, Mr. Seaborn?

MR. FERGUSON: As I understand the ledger which the witness is holding it is a ledger which commences sometime after January, 1930. That is correct, is it not, Mr. Seaborn? A. Yes, I think it does. I am not sure.

Q. Well, now, I submit it has no relevancy to this action, for the same reason, as to who were the directors of the Company in July, 1930, when Mr. Seaborn was first appointed secretary. This ledger deals entirely with matters and things which took place long after the matters in connection with this action arose, and most of it took place after the writ was issued. I think the writ was issued in this action on the 4th February, 1931, and the greater part of those ledgers the witness now has before him deal with transactions which took place even after that date. So I submit they are not admissible. 40

MR. McRUER: In reply to that, Sir, I submit a ledger is a matter that is in a little different category to some other documents because one book of a company fits into another and carries on the entries and co-relates them. So that you cannot, really, offer evidence in regard to a book up to, say, the 1st January, 1930, without shewing how those previous entries were carried on through into

a book of 1930 or 1931. If the entries, themselves, are called into question later on, that is a question as to the weight to be given to the evidence, or if the identity of the book is called into question, that is also a matter of the weight to be given to the evidence, but that does not make the document inadmissible, at all, if it deals with transactions that are before the Court or the result of them.

ASST. MASTER: I think the books should be allowed in subject to the objection.

10 MR. FERGUSON: I wish to raise the same objection again. This action is based on somewhat different grounds than the action which you tried last spring (Rochester v. Solloway, Mills, et al). There is first the question of damages based on a claim of conspiracy. Now the conspiracy occurred surely before these transactions took place, and not afterwards.

MR. McRUER: May I just make myself clear on that. You will see, Sir, in the Statement of Claim that one of our claims is that these defendants did not account to the plaintiff for the proceeds of these sales and for the profit they made, which they ought to have accounted for. And we can go on right through the books down to the issue of the writ, and afterwards, to shew that they did not account for it.

20 ASST. MASTER: I can see your point, Mr. Ferguson,—there is a difference between this trial and the former one (Rochester v. Solloway, Mills).

MR. FERGUSON: You will remember in the former trial that that book was allowed in on some theory of my friends that he could follow the fund from now till doomsday. It was on that ground that you allowed the ledgers in to shew who was on the pay-roll of Solloway, Mills & Company after January, 1930. That was the theory on which those books were admitted at the previous trial. There is no such claim here. I do not think my friend, Mr. McRuer will propound such law to you. I do not think they are on the same basis, at all.

ASST. MASTER: I think this is a good place to adjourn.

ADJOURNED at 4.30 p.m. to 10.30, October 12th, 1932.

30 RESUMED OCTOBER 12TH, 1932, 10.30 A.M.

PERRIN MINTER SEABORN (Recalled).

EXAMINATION RESUMED BY MR. BREWIN:

Q. Mr. Seaborn, when we adjourned yesterday afternoon we were discussing some general ledgers which you had before you, and I do not know whether, Sir, you ruled in regard to them, or not.

ASST. MASTER: Yes; I ruled they were admissible.

MR. BREWIN: Q. Will you produce them this morning.

A. This ledger, which is labelled "Solloway, Mills & Company, Limited, Ontario Company," has already been received as an exhibit.

40 Q. Yes, then you had some other general ledgers?

A. There are four binders containing sheets which purport to be general ledgers, and I notice in the one I am now producing here there is a folder in-

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

side which says "Solloway, Mills & Company, Limited, Ontario Company, Head Office" which, I presume, would be an Ontario Company ledger. And the dates in this ledger seem to run from about December, 1931—it may be previous to that—up to about March, 1932.

EXHIBIT NUMBER 34: General Ledgers (Ontario Co.)

WITNESS: I am now producing a ledger in which there is a folder inside which contains this information—"Solloway, Mills & Company, Limited, Dominion Company," and the ledger appears to cover from January, 1930, to sometime around February, 1932. Those are just two general dates I have taken from the ledger sheets.

10

EXHIBIT NUMBER 35: General Ledgers (Dominion Co.)

MR. FERGUSON: Same objection to this ledger going in, Sir.

ASST. MASTER: Yes.

WITNESS: I am now producing a binder, on the outside of which is marked the word "Transfer General Ledger". It does not seem to give any information as to what General Ledger it is. It seems to cover a period somewhere between 1930—I would say around January, 1930, up to January, 1931—some period around there. It is apparently a transfer binder of the ledger sheets.

EXHIBIT NUMBER 36: Transfer General Ledger.

20

MR. BREWIN: Q. I am producing a series of sheets tied together on which there is a card in the front of it which states—"Solloway, Mills & Company, Limited, Dominion Company General Ledger." It apparently covers the period from sometime in 1927 on into 1928 and up to about January 31, 1929. EXHIBIT NUMBER 37: Dominion Company General Ledger, 1927—Jan., 1929.

MR. BREWIN: Q. Mr. Seaborn, the last four exhibits and other documents that you are producing come from the custody of the Company. Have you produced any that do not come from the custody of the Company, and if so, will you tell the Court? A. Yes, sir, through the medium of the Court.

30

Q. Yes, and further, they are documents you have found among the documents in the Court produced by Mr. Spanner. A. Yes.

Q. And if there is a difference in these documents, you will tell us about them? A. Yes.

Q. Now will you produce the Minute Book which we were looking for yesterday, and could not find, of Solloway, Mills & Company, Limited—I think it is the Dominion Company. This exhibit will be marked 18(a). What does that document purport to be, Mr. Seaborn? A. It says, "Solloway, Mills & Company, Limited".

MR. FERGUSON: This is the Dominion Company's Minute Book, and the Dominion Company's Minute Book was marked exhibit 17. So it should be marked exhibit 17(b).

40

EXHIBIT NUMBER 17(b): Minute Book (Dominion Company.)

MR. BREWIN: Q. Will you turn up what purports to be by-law number 1 of the Company? A. Yes.

Q. Will you look at the signature and tell me whose it appears to be?

A. It appears to be that of J. A. Kennedy, as Secretary, and H. J. Donley, as President.

Q. Then will you turn up the minutes of a meeting of the 1st December, 1927, and will you tell me what are the signatures to that minute. A. The signatures appear to be those of I. W. C. Solloway, Chairman, and Harvey Mills, Secretary.

Q. You told me the other day you had had occasion to see the signature of I. W. C. Solloway. Are you familiar with the signature of Mr. Mills? A. No, not as an expert. I have seen his signature and it appears to be his.

10 Q. Have you, in the course of your duties, had occasion to see the signature of Mr. Mills? A. Yes.

Q. And is that Mr. Mills' signature, in your opinion? A. Yes.

Q. You have seen that signature more than once, from time to time, have you, Mr. Seaborn? A. Yes, I have seen the signature. I have never seen it signed, actually, but I have seen the signature from time to time.

Q. And the same is true of Mr. Solloway's signature? A. Yes, that is true.

Q. Then will you look at the minutes of a meeting of the 31st May, 1928?

A. Yes.

20 Q. Will you look at the signature there and tell me whose it purports to be? A. It appears to be that of I. W. C. Solloway, Chairman, and M. O. Webster, Secretary.

Q. Whose signature is that, in your opinion? A. This one here?

Q. Yes. A. In my opinion, it appears to be Mr. I. W. C. Solloway's.

Q. Will you turn up an agreement dated the blank day of May, 1928, which appears to be between Mr. Solloway and Mr. Mills, on the one part, and Solloway, Mills & Company, Limited, of the second part, and will you turn to the signatures there and tell the Court whose they are?

30 A. It is the signature of Solloway, Mills & Company, Limited, and is signed by, apparently, I. W. C. Solloway.

Q. Will you turn to what appears as by-law number 5 in these minutes and tell me whose signature appears to by-law number 5. A. That of I. W. C. Solloway, President and M. O. Webster, Secretary.

Q. Can you identify those signatures, or either of them? A. I recognize the one of Mr. Solloway's as appearing to be his. I do not know the other signature.

Q. Will you now produce a book that is described as a Private Ledger of the Defendant Company.

40 MR. FERGUSON: Now I want to raise the same objection to the production of this book. I do not suppose it is in any different position than the General Ledger that was commenced after the issue of the writ in this action. You are familiar, Sir, with the contents of this Private Ledger because it was filed in the Rochester case, and the only thing of interest it really does contain is the payment of certain dividends to Mr. Solloway, and the record of the payment of those dividends is immediately prior to the events that occurred in this case. I may be wrong there. I think it occurred somewhere in December in 1929. The other dividend is a payment which was made long after the writ was issued in

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 20.

Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

this case. Surely,—there are certain records of the bank accounts in the book which could hardly have any bearing, I would think, in this case, and there are payments out of the bank account which, you will remember, were made long after the writ was issued here. So I want to take the same objection.

ASST. MASTER: It is in the same position as the ledgers.

MR. FERGUSON: Yes, sir.

MR. BREWIN: Q. You describe that book as a "Private Ledger", Mr. Seaborn? A. There is no mark on it to identify it as such but I notice the first account is called "Bank interest earned", and the next account is "I. W. C. Solloway, Personal Account"; and so on. I do not see why it should be called any particular name. I do not see any identifying mark on it. 10

Q. Can you tell me whether it is a book belonging to the Ontario Company or the Dominion Company? A. That I could not tell you what Company it belongs to.

Q. Can you identify the handwriting in which the entries in that book have been made? A. I do not recognize the writing. No, I do not recognize the writing.

Q. These books that you are producing, Mr. Seaborn, as coming from the custody of the Company, are books that may be either from the custody of the Dominion or the Ontario Company? A. Yes, that is true. 20

Q. They are all kept together, and when you are producing them you cannot say whether they come particularly from the custody of one company or the other.

MR. FERGUSON: That is objected to.

ASST. MASTER: Well, it is leading. I would have thought you would want that.

MR. FERGUSON: I want the witness to give the evidence, but I do not want Mr. Brewin to put it quite that way.

MR. BREWIN: Let it go then.

Q. Will you produce, Mr. Seaborn,—has that been marked as an exhibit yet? 30

EXHIBIT NUMBER 38: Private Ledger.

Q. Mr. Seaborn, there appear in this Private Ledger marked as exhibit 38, a number of different accounts bound together. Will you look through them and describe to the Court the nature of those different accounts? A. That is, by reading the heading of the sheet?

Q. I think that would be the best way. A. I will read the headings of the first two accounts in the book. There is one page headed "Bonus and Special Commission Accounts, (Funds Disbursed by Mr. I. W. C. Solloway). Capital Stock Account, Canadian Bank of Commerce Savings Account, Dividend Account." 40

MR. FERGUSON: Just before the witness goes on. You will remember when the book was last produced, Sir, your attention was drawn to the fact that there were several accounts dealing with the services of various legal firms for the benefit of the two companies.

ASST. MASTER: Yes.

MR. FERGUSON: And at the last trial when the book was produced you

consented that those pages be sealed up and the public should not be allowed access to that exhibit as far as that account is concerned.

MR. McRUER: We do not want to embarrass anybody by that. The only thing I am interested in is the headings of the account. The contents of the account I do not think we are interested in, one way or the other, but the heading is of some importance because it does shew that this was a sort of co-relation of both companies—for the Dominion and Ontario Companies—but as to the contents, we are not interested in them.

ASST. MASTER: That is one or two pages, Mr. Ferguson?

10 MR. FERGUSON: Two pages.

ASST. MASTER: Well, we can seal them up.

WITNESS: (Resumes reading from Exhibit 38) "Deposits in regards to litigation made with various courts; Interest Received—Call Loans; Legal Fees; Transferred from Ontario and Dominion Companies' General Ledgers, September 16, 1930; Royal Bank Building Account, Royal Bank American Funds Account; Trial Expense (Special Account), Account I. W. C. Solloway; Private Ledger Control. The word 'Private' has been struck out and in pencil is written the word 'General'. 'Private Ledger', February balance; March Balance, Private Ledger; Private Ledger, April Balance; May Balance, Private Ledger; June Balance, Private Ledger; July and August 25th/30, Private Ledger; Anglin Norcross Limited; Reconciliation of Bank Balance, New York Agency; Private Ledger, Reconciliation of Balance March 31, 1930; Reconciliation of Bank Balance, April, 1930; Reconciliation of Bank Balance, June and July, 1930; Advances to Directors; Continental Illinois Bank; Canadian Bank of Commerce, Current Account; Charles B. Dolphin; Goldie McCullough Company Limited, Montreal Trust Company; Bank of Nova Scotia Call Loan; Bank of Nova Scotia Deposit Receipt; National Trust Company; New Building; Otis Fenson Elevator Company; Royal Bank Dominion Account; Royal Bank Special Account; Royal Trust Company, Staff Bonus Account; Toronto General Trust Company." Those are the headings of all the sheets.

Q. All these accounts were bound together in what you have called the "Private Ledger" when it came from the custody of the Company. A. This ledger was in the hands of the Dominion Government, I believe, at the time the Rochester case went on and it was produced as evidence. I do not remember who put it in, but I remember enquiring for it at the time I was asked to produce it in the Rochester action, and at that time it was in the hands of someone else. I did not actually see the ledger, at all, until to-day when it was produced here.

40 Q. I think you saw it when you were examined for discovery. A. Yes, I saw it at that time.

Q. At that time you did produce it from the custody of the Company—at the time of your examination for discovery. A. Yes, I produced it then.

Q. And at that time did it contain the accounts which you have now read out to the Court? A. Well, I presume it did, yes.

Q. You have not added anything to it or taken anything away? A. No.

Q. Now will you produce, Mr. Seaborn, the Brokers Ledger which, I un-

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

derstand, comprised two books,—one having the names of the brokers, and the other the names of the stock? A. Apparently, there are three volumes which are labelled "Solloway, Mills & Company, Limited, Clearing Brokers, N to Z, and Clearing Brokers, G to Mc., and Clearing Brokers, A to F, and the names of the brokers appear at the head of the sheet.

Q. You have produced three books, and I would ask that they be marked as exhibits.

EXHIBIT NUMBER 39: Clearing Brokers Ledger A—F;

EXHIBIT NUMBER 39(a): Clearing Brokers Ledger G—Mc.;

EXHIBIT NUMBER 39(b): Clearing Brokers Ledger N—Z;

10

Q. These three exhibits you have produced are all the books that can be described as Brokers Ledger? A. Yes, that is true.

Q. In the possession of the Company. Will you produce to the Court a record of the Safety Deposit Box? I think that is in that file. A. There is a ledger sheet and four cards. The ledger sheet bears the title—"Canadian Bank of Commerce, Safety Deposit Account," and the cards—"Sudbury Basin Mines, Safety Deposit Box." There is one card here that bears the title—"Royal Bank Collateral Security, Sudbury Basin," and one "Sudbury Basin" has got "Royal" on the side.

Q. I ask that those be marked exhibit number 40.

20

EXHIBIT NUMBER 40: Ledger sheets and 4 card cases. (Record of Safety Deposit Box).

Q. Exhibit 40, which you have just produced, came from the file marked Exhibit X for identification. A. Yes.

Q. Will you now turn up for me what I have described as a record of securities from the bank? A. I do not see that record here, if there is any such record. I do not know of any record which you are asking for.

Q. Will you produce to the Court receipts from various brokers,—receipts from the following brokers:—Lorsch, Eastwood, Scott, Butler, Colling, and Crang for Sudbury Basin certificates delivered to them for the following dates —October 17th, 19th, 21st, 25th, 29th, November 5th and December 12th, 1929.

30

A. I do not see those receipts here. I beg your pardon, I see them here.

Q. Mr. Seaborn, I call your attention to the fact that the documents I have just asked you for were the same documents you were requested by the solicitors for the Plaintiff to produce on a former occasion. You were asked to look through the records of the Company and produce any documents that answer to the description I have just given to you.

A. Yes.

Q. You did look, and what you are now producing is the result of your search? A. Yes, that is true.

40

Q. Will you tell the Court how many receipts you have there? A. I have 31 receipts.

EXHIBIT 41: Receipts (31) for Sudbury Basin. Certificates.

Q. Will you produce for me, Mr. Seaborn, documents described as Client Brokers "Bought From" and "Sold To" slips of October 16th, 1929. The documents I have just described—the Client Brokers Bought From and Sold To slips

were amongst the documents which you were requested by the Plaintiff's solicitor to search for among the records of the Company. A. Yes.

Q. Did you make that search? A. Yes.

Q. What did you find? A. I did not find any. Unless they were included with the original Buy slips. I searched through the Buy Slips and could not find anything which you describe.

10 Q. In this file of documents which you prepared for the solicitors for the Plaintiff of documents dealing with this case did you find any other documents dealing with this case which have not been put in and marked as an exhibit which appear in the file marked X? A. There is a group of confirmations from other brokers which have not yet been put in as an exhibit.

Q. I think I asked for these before, and I think through some mistake they were not put in before, and I suggest that they be marked separately now as an exhibit. What is your description of these documents which you are now producing, Mr. Seaborn? A. They are confirmations from other brokers which were sent—which were apparently sent to Solloway, Mills & Company as they appear as a client on these confirmations.

Q. And the date is October 16th, 1929. Is that correct? A. Yes, that is correct.

20 Q. Will you count the number of such statements? A. Twenty.

Q. I ask that they be marked as exhibit 42.

EXHIBIT NUMBER 42: Client Brokers confirmations (20).

WITNESS: You have asked me to produce the documents in this folder. I find here some more, apparently, of the same category, although some of them appear to be confirmations made between brokers,—not the actual—not confirmations such as exhibit 42, but they read on one side, "Bought from You" and on the other side, "Sold To You." There are eleven of them.

30 MR. BREWIN: Q. Will you describe as well as you can the documents which you have just produced? A. Yes. They appear to be from different brokers, and they are headed up on one side—"Bought From You" and on the other side—"Sold To You". Some appear to be copies of confirmations addressed to J. H. Crang, Stobie Forlong, J. T. Eastwood, and the others appear to be from brokers addressed to Solloway, Mills & Company.

EXHIBIT NUMBER 42(a): Bought and Sold Brokers Confirmations.

Q. What time was it, again, that you became Secretary-Treasurer of the Companies? A. It was in July, 1930.

Q. Some of the entries in this private Ledger, a great many of them are after that date. Do you know who would have made those entries?

A. I do not recognize the writing. I could not tell you.

40 Q. Can you say whose duty it was to keep such an account? A. I cannot tell you whose duty it was at that time to keep that record.

Q. I just want to run over with you now, Mr. Seaborn, some of the questions we discussed with you on examination for discovery, and I do not know whether Mr. Ferguson will agree with the same procedure that Mr. Slight acceded to yesterday, that is, that I read out some of these questions and ask Mr. Seaborn if he disagrees with them now.

MR. FERGUSON: My friend can proceed. I do not want to be taken as

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 20.

Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

acceding to him reading wholesale from the examinations for discovery because, as I recollect the examination for discovery there were quite a number of questions which I thought were quite objectionable. If my friend will leave it open for me to take any objection.

MR. BREWIN: Yes.

Q. "Question 148: Then what happened to the Sudbury Basin Stock?
"A. It was treated as a \$10 bill is treated in the bank.

"Question 149: Just put in and negotiated irrespective of the balance
"that was required to be kept on hand to meet the various clients' require-
"ments.

10

"Question 150: But irrespective of the balance that would be necessary
"to have on hand to meet the requirements of the various clients. A. I
"would go so far as to say that it was used amongst the shares of others for
"deliveries."

Q. Do you agree with those answers?

MR. FERGUSON: I would rather my friend would not read so many questions and answers at one time.

MR. BREWIN: They all go together. If the witness does not understand, I can read them again. Do you agree with your answers to those questions? A. Yes.

20

Q. Then question 162. Mr. McRuer asked you,—“So you go to the box
"and you get from the box the shares that are required to be delivered.

"A. That is exactly the case."

"Question 163: And that is done irrespective of whether you have still en-
"ough on hand to meet the requirements of other clients? A. I would say it
"was done irrespective of the registered name or from whom the stock was
"received."

"Question 164: And irrespective of the requirements of other clients?

"A. If it was necessary to be delivered to the clearing I would say yes."

Q. Do you agree with those answers that you made then, Mr. Seaborn? 30

A. Yes.

Q. At question 165 Mr. McRuer said—

"Question 165: The fact is, and we don't need to quibble about it, the
"books show there was a very great short position on Sudbury Basin right
"at the time of Mr. McLaughlin's transaction and for the next two or three
"months afterward while he was a client of the house? A. I would think
"so, yes."

Q. Do you agree with that answer? A. Yes.

Q. You do? A. I don't—I did not just quite follow that question through
to see how that answer would be satisfactory.

40

Q. I will read it again:—(Reads Question 165 and answer, as quoted at
line 13 above).

Q. Do you agree with that now? A. That there was a Short position—
yes.

Q. At Question 186 you were asked—

"Question 186: Then their accounts show that they maintained a large

“short position in Sudbury Basin?” I suppose ‘they’ refers to the Company or Companies. A. Yes.”

Q. Do you agree with that answer? A. Yes.

Q. I am sorry. I did not read to you your answer there. (Reads) “A. I believe there is an account that indicates something like that.”

MR. FERGUSON: What question is that?

MR. BREWIN: Question 186.

Q. What account did you refer to when you made that answer, Mr. Seaborn? A. There was an account in the ledger under the heading of “Sudbury” in one of the Trading Ledgers.

Q. Is it in one of the ledgers you have produced in this trial?—the account you have referred to here? A. If it has not been removed yet.

Q. Isn’t it what you call the Dominion Trading Account? A. Yes, that is the account I referred to.

Q. Then at Question 211, Mr. McRuer said—

“Question 211: Then can you ascertain for me the share position in regard to Sudbury Basin on October 21st, 1929? A. I can refer to a ledger in which there was a position as you state.

“Question 212: A share position shewn. A. Yes.

Q. You made those answers, Mr. Seaborn, on examination for discovery? A. Yes.

Q. And when you are referring to the ledger shewing what you call “A share position” there, what were you referring to? A. I was referring to the position as shewn in the ledger at the righthand side.

Q. I do not follow what you mean by “Ledger at the righthand side”.

A. Well, in the trading ledger,—that is the share position is shewn in the trading ledger.

Q. Then question 216—(Reads)

(Question 216, and answer)

MR. FERGUSON: I object to this now.

ASST. MASTER: Yes, it is a little too late now. The question and answer will be struck from the record.

MR. BREWIN: I am going to put a question now which Mr. McRuer will argue is relevant at this stage. I will put the question. Q. Since you have been Secretary-Treasurer of the Company who directed the policy of the Company?

MR. FERGUSON: Well, now, I object to that.

MR. McRUER: Well, now, I understand this was a matter of some discussion, Sir, yesterday, and that it was, more or less, reserved as to the relevancy of a question, which was to this effect—“Who has directed the policy of the Company since McLaughlin had his transactions with the Company?” I submit that is very relevant evidence under our pleadings as drawn and as our case is laid. In our Statement of Claim we claim that the defendants, Solloway, Mills & Company Limited, referred to as “the defendant company” was incorporated at the instance of Solloway and Mills and operated by them as their agents for the purpose of carrying on an ostensible brokerage business in Toronto and other places, and we make a somewhat similar claim in regard to the Dominion Company, and we say that at the times material, Solloway and

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 20.

Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

Mills held out and represented they were carrying on a responsible brokerage business and invited clients and customers to deal with them. And then we say they further represented that the Company would, upon being properly secured, purchase and hold for customers, shares of stock on margin. This is all leading up to what I am going to contend. Then we plead they were engaged to purchase stocks for the Plaintiff on the terms as set out in the pleadings. And then we plead that they either did not buy the stocks or that they bought them and sold them immediately at higher prices or certain prices which were higher than those which they subsequently acquired them for. And that they also sold the collateral, and when the account was closed out they bought it in again, or on application being made to close it out they bought it in again at a lower price. 10

Then we go on and say that "the defendant company repeatedly represented to the plaintiff that it was carrying shares of stock herein mentioned for the account of the plaintiff, and that there was due for interest on his account at various times amounts totaling \$680.32, which amount was charged to the account of the plaintiff and paid by him when he closed his account out with the defendant company on January 13th, 1930."

Then paragraph 23—(Reads) "The plaintiff alleges that the defendants, Solloway and Mills agreed and conspired together to carry on the business of the defendant company as an ostensible brokerage business and that they should represent to the public that it would buy and sell shares of stock for and on behalf of the public and those wishing to do business with it, while, in fact, it was agreed between them that the defendant company was not to purchase the shares of stock which they should contract to purchase on margin, or in the alternative that it should make countersales for House Account or cross sales so that it would not be required to take delivery of shares for the account of its clients, and it would receive moneys and securities from clients as margin which it would not be necessary for it to use in the purchase of stock, and that the same should be converted to the use of the defendants by payment of the same or the proceeds thereof to the defendants Solloway and Mills as dividends on the shares they held in the defendant Company or otherwise." 20 30

And then paragraph 24—"It was further agreed between the defendants that the defendant company should sell stocks that were hypothecated with it as collateral security for margin accounts, and convert the same to the use of the defendants,—” and so on. A similar allegation there.

And then paragraph 25—"And it was further agreed between the defendants that the shares of stock sold as mentioned in the next preceding paragraph should be re-purchased by the defendant company for delivery to customers as and when required, and when the same were re-purchased at lower prices than at which they were sold the defendant Company would not account to the customers for the difference between the price at which their stock was sold and the price at which similar stock was re-purchased for delivery." 40

Now that brings me to the relevancy of this evidence. We say that they agreed when the stocks were re-purchased they would not account. Now our action is one for an accounting and one for damages against these parties for

having agreed between themselves and being instrumental in causing the Company to fail to account, and that we may prove that by proving failure to account, continuing right up to the date of this trial, and by proving that these were the parties, either one of them, or both, who were instrumental in managing the Company which was failing to account right up to the date of this trial. And we say it is our money the Company has there and that these gentlemen were instrumental in keeping us from getting it by this illegitimate procedure.

10 MR. FERGUSON: I do not think the conduct of the Company from the date of the trial is a relevant issue, at all, in this action. The action is brought for a definite sum of money. "The sum of \$33,320.00, being the profit made
20 "by the defendants on the sale of 11 800 shares of Sudbury Basin Mines Limited stock." And secondly, "The recovery of \$28,637.50 paid by the plaintiff to the defendant Company" upon certain representations set forth.

And then they claim brokerage. And then they claim interest. And then there is an additional claim above that for the sum of \$100,000.00 damages, which, I presume, must be an alternative claim. Now my friend says we have not accounted. Our defence is that we have accounted, and that the parties, upon the settlement of this account, had a complete accounting which was accepted by the plaintiff, and my friend, I submit, must shew that the account, at that date, was wrong. So
30 that, essentially, in all of these actions, particularly in this action, as framed by the statement of claim, it is an action for an accounting on this particular transaction and an accounting of what happened to the collateral stock deposited. That ends the issue then and there. If you find that the account, as delivered to McLaughlin, was wrong, it is your duty, sitting here as a court, to set it right, and that ends the issue between the parties. My friend could not recover more than, say, the improper profits that the defendant firm might have made. Now he claims an alternative \$100,000. damages. I submit, Sir, the facts which occurred after the event,—what was done after the issue of the writ, or who had conduct, or who had direction of the Company,—which give rise to this
40 claim cannot, in any case, be evidence to shew what our policy was before the event occurred. It is the old story. You will remember the case in regard to a wharf that had no lights on it and somebody walked over the edge and was drowned, and they attempted to adduce evidence that after the accident had occurred the defendant company had erected lights on the wharf, and they attempted to shew that the placing of lights on the wharf after the accident was an admission of responsibility to put the lights on before. I submit this would be in the same category. I do not see how it could be evidence, at all, and I do not see how it could be admissible, or even if it were admitted its weight would be so slight in view of the general principle of not admitting events that
40 occurred after the writ is issued it would be of no value whatever. My friend must rest his case on the design of the defendants prior to the date McLaughlin dealt with Solloway, Mills & Company, Limited, and if he cannot shew intent and co-operation between these defendants before McLaughlin dealt with them, or at the time, then, I say, his case must fail, and any evidence he adduces of events afterwards, cannot avail in any event.

MR. McRUER: My friend has got one event wrong,—about the date of the issue of the writ, which was on the 27th January, 1931, and, at any rate,

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

Mr. Seaborn was in their employ for a considerable time before January, 1931. But there is no rule of law that says I cannot adduce evidence of acts after the conspiracy to have proven there was a conspiracy and acting together and in consort,—a course of conduct after the date of the overt acts. But my friend has not answered my point, at all, that my claim is that you conspired that you would deprive us of receiving the money that we are justly entitled to, and if it is found we are entitled to \$63,000., and it is found that these parties agreed together that we should not get the \$63,000. then we are entitled to judgment from then against them for the damage that we suffered, that is, the \$63,000. that we have been deprived of, and that is perfectly simple, and if it is shown 10
that they were still operating a Company which was failing to account for or at a later date, that is evidence to be given proper weight to—to be weighed. I would not say it would prove the case to the hilt, but it is evidence the Court could consider.

ASST. MASTER: The view of failing to account is something I did not consider yesterday, but from the other point of view there would be no argument about the evidence between the time Mr. Seaborn was there up to the issue of the Writ. I understood the Writ was issued before Mr. Seaborn came on the scene at all. I think the question should be limited from the time Mr. Seaborn took over up to January 27th, 1931, when the Writ was issued. The unfortunate 20
part of it is the change of Counsel. I do not want to break faith with Mr. Slight. The argument he put up yesterday was very strong, but the circumstances would seem to be somewhat different. Will you limit your question to that.

MR. BREWIN: Mr. Seaborn. You became Vice-President and Secretary-Treasurer of both Companies on the 30th of October, 1930, and the Writ in this action was apparently issued on the 27th January, 1931. So that, for a period of about two or three months, at any rate, you had held this position. During that time who directed the policy of the Company?

A. Well, during that period I think that the meetings of all the Directors,—you see, the Company was not actively engaged in any business at that time, 30
and the meetings of the Directors held were in Vancouver and other points West, and I do not believe I was present at any of the meetings. I presumed before, when I answered that same question, that it was Mr. Solloway who would direct the policy of the Company.

Q. As far as you were concerned you were an officer of the Company?

A. Yes.

Q. And you must have had some knowledge of it. As far as you were concerned who was directing the policy of the Company? A. Well, as far as I was concerned Mr. Solloway was.

Q. You were examined by Mr. McRuer for discovery, and I will read to 40
you Question number 281 and 282. Question 281—"I asked you, I think, Mr. Seaborn, to inform yourself of the short position of the Company on the "respective dates on which these calls for margin were made. Did you do "that? A. Yes."

Question 282—"Then October 21st, 1929, would be the first one? A. The "position of the Dominion Company with the Ontario Company was short "97,717 shares on October 21st, 1929."

MR. FERGUSON: My friend should get the evidence some other way.

ASST. MASTER: It is only a question of speeding it up.

MR. FERGUSON: My friend is going to call other evidence I presume.

MR. BREWIN: Yes, I will call other evidence.

Q. Now, from these records it would appear, from the Dominion Trading Account the suggestion, at any rate, is made that the Dominion Company was selling short, and you were asked in your examination for discovery whether they put up any money to cover their margins, and your answer was, "I do not see any evidence of it in their ledger". Was that answer correct? A. Yes.

10 Q. Which Company, so far as you understand it, was carrying on business and dealt directly with the Plaintiff in this case? A. The Ontario Company.

Q. I imagine this information will appear in the Minute Books, but in case you have some difficulty in turning it up, when did Mr. Mills cease to be an officer of the Company? Perhaps I could help you on that. You answered that question at Question 364, (Reads)—Question 364—"Did you find out when "Mills ceased to be an officer of the Company? A. Yes, it was on April "30th, 1930".

20 Would that answer be correct? A. Yes. At that time I got it from the Minute Books.

Q. Now if this ledger of the Dominion Company—this Trading Account—showed a debit balance, was any interest charged on that debit balance? Does it appear that any interest was charged on that debit balance as shown in the account? A. I do not see any evidence of it in the ledger.

MR. FERGUSON: Which account are you speaking of, Mr. Brewin?

MR. BREWIN: Q. Of the Dominion Trading Account? A. You are speaking generally,—generally any debit balance.

Q. I think my question referred to the debit balance of the Dominion Company as shown on the books? A. Yes, generally.

30 Q. Now there were three questions—459, 460 and 461. I will read them to you. (Reads).

Question 459.—"You see what you said was the Dominion Company was "selling short through this period? A. Yes."

Question 460.—"The Dominion Company that was operated and owned by "the same parties as the Ontario Company? A. Yes."

Question 461.—"Were selling short through this period while the clients of "the Ontario Company were buying, or this client was buying? A. Yes."

Q. Were those answers correct? A. Yes.

40 Q. At Question 553—Question 553.—"When the Dominion Company sold "short did you find out who was responsible for giving instructions that "that should be done? A. That is, who gave the orders for the purchases "and sales in the Trading Account?"

Question 554.—"Yes?" (Answer not read).

MR. FERGUSON: Just a moment.

MR. BREWIN: Q. Who were the people, when the Dominion Company sold short, who gave the orders for the purchases and sales in the Trading Ac-

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 20.

Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

count? A. I think those orders came from the Trading Room as I understand it in that form. That all happened a long time before.

Q. Well, you were able to answer that before, Mr. Seaborn? A. Yes, they were in the Trading Room. There were several men employed in that capacity.

Q. You were able to give me two names before? A. I can give two names of whom I think was doing that—Mr. Parks and Mr. Kimmerly.

Q. You were asked on your examination for discovery, Mr. Seaborn, to find out whether the Dominion Company, at the time Mr. McLaughlin was trading, rented any separate building or room. Have you been able to find anything in the accounts indicating that? Can you answer that question now? 10

A. I do not recall having looked.

Q. During the period that Mr. McLaughlin was dealing with Solloway Mills and Company Limited you said the Ontario Company. We asked you before to look through the accounts of the Company and see if you could find anything at all to indicate whether the Company was renting any premises of any sort in Ontario?

A. I do not recall having looked through the books for that information.

Q. Have you, in your experience since, found any evidence of any separate rent being paid by the Dominion Company? A. I have not found any evidence. 20

Q. Or is there any evidence of separate occupation of any premises by the Dominion Company at this period?

A. I cannot recall a lot of things to memory.

Q. Have you anything in your mind to indicate that the Dominion Company occupied any separate premises during the period we are dealing with?

A. They had an office of their own, as far as I can remember, in the old Metropolitan Building, but I cannot recall the date.

Q. I asked you before, at Question 615 of your examination for discovery — (Reads),— 30

Question 615,—“Mr. Seaborn, when we examined you the last day you were “going to find out whether the rent of any room in the Metropolitan Building was paid by the Dominion Company. Have you been able to find that “out?”

Q. The Metropolitan Building is the one you are referring to now?

A. Yes.

MR. FERGUSON: The witness may have found out a lot of things since he was examined for discovery.

MR. BREWIN. I asked him if he had found out anything since then, and he said he had. 40

MR. FERGUSON: Well, you will have to take his answer, whatever it is.

MR. BREWIN: Q. Have you any knowledge of which Company paid the rent in the Metropolitan Building?

A. I do not know, unless I looked up the records. I might be able to find something there.

Q. Now do you know in what ledger the rent appears? A. I cannot say offhand. It is kind of hard to recall all this stuff just at the moment. I may

have looked it up at one time. I do not recall it just now.

Q. With regard to salaries paid to the employees of the Company during this period. Can you tell me of anything that would indicate any payment by the Dominion Company of salaries, or whether the payment was made by the Ontario Company?

A. Well, I do not actually recall. All I know is, when I was there I was paid in cash. I did not know, at that time, which Company it was who made the payments.

Q. Is there anything to show that the Dominion Company paid anything
10 for operating expenses in Ontario during 1929 and 1930.

A. I have never searched the records for that information as I remember it. I may have at one time but I do not recall that information offhand.

CROSS-EXAMINED BY MR. FERGUSON:

Q. Mr. Seaborn, I believe you were made Secretary-Treasurer of the Defendant Company, which is the Ontario Company, and also of the Dominion Company, in October, 1930? A. Yes, I think that was the date.

Q. Now at that date where were the books of the Company? A. They were—

Q. Do you agree with me when I say the books of the Company were, at
20 that date, in the hands of the Crown? A. Yes, I believe most of them were at that time.

Q. And they had been seized in January, 1930? A. Yes.

Q. And the books that you have identified as being the books of either one or the other of the two Companies had been seized in January, 1930, by the Crown? A. Yes, I think that was the date.

Q. And those books came back into the possession of the Company when?

A. I do not recall the actual date.

Q. Would I be correct in saying they came back into the possession of the Company on or about the time of the first criminal trial which took place in
30 Ontario late in October or early in November of 1930? A. Yes, we received them back, I believe—I do not just remember when we received them back—we received them back so many times I get confused.

Q. Between January, 1930, and October, 1930, the books had been out at the trial in the West? A. Yes, I believe so.

Q. They had been taken to Calgary? A. Yes.

Q. And then they had been brought back across the Continent again to Toronto? A. Yes.

Q. And then they were shipped West again? A. Yes, a lot went back the second time.

Q. And there was a seizure made at Winnipeg of all of these books by the
40 Crown there? A. Yes.

Q. And that all happened prior to the date you had got possession of the books? A. Yes.

Q. Then you told us they came back into the possession of the Company after October, 1930? A. Yes, I believe that was the time.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn.
Examination,
11th
October,
1932.

—continued

Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn,
Cross-
Examination
by Mr.
Ferguson.
12th
October,
1932.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 20.

Perrin
Minter
Seaborn,
Cross-
Examination
by Mr.
Ferguson.
12th
October,
1932.

—continued

Q. Were they in the possession of the Company long before this?

A. No—

Q. They were used almost immediately again by the Crown? A. Yes.

Q. Then they were in the Crown's possession, do you recall, how long after that? A. It was some time,—I do not remember how long.

Q. So they were first used in Toronto at a trial held—which first came on in March, 1931. That is correct, isn't it? A. Yes.

Q. And then they were retained here until June of 1931? A. Yes, they were still in the possession of the authorities.

Q. Then, am I correct in stating, late in June, 1931, after the trial that took place in Toronto, some of them were returned to the Company again? 10

A. Yes, and I think at that time some were sent out West again.

Q. There was a further seizure made, and the books were all sent to Vancouver? A. Yes, that is correct.

Q. And then they came back from Vancouver. Do you recall the month?

A. It seems to me it was in the summer of 1930—some time in the summer.

Q. 1931, you mean? A. Yes.

Q. Sometime in the summer? A. Yes.

Q. Would it be in September—some time in September, 1931, they were returned from Vancouver? A. Yes, I believe it was around there some time. 20

Q. And they went from there to the office of Edward Morgan & Company?

A. Yes.

Q. And you received them from Edward Morgan & Company in September, 1931? A. Yes.

Q. And during that time Messrs. Edward Morgan & Company were working, from time to time, on these books? A. Yes, I believe they were.

Q. And the Accountants in the West were working on them? A. Yes.

MR. McRUER: When my friend says "working on them", I hope he is not suggesting they made any changes in the books. 30

MR. FERGUSON: I am not suggesting anything, Mr. McRuer.

MR. McRUER: This witness knows nothing about what they were doing in the West. They were using the books for preparation for trial, I suppose. He does not know they were working on them. They were not doing anything to the books.

MR. FERGUSON: They were doing a lot of work on them.

MR. McRUER: "Going over them" might be more accurate.

MR. FERGUSON: Q. From the date they were first seized—from January, 1930, these books were in and out of the Company's hands at least twice? 40

A. Yes, to my knowledge, they were.

Q. They had been across the continent twice? A. That is true.

Q. So that you really did not receive custody of these books until some time late in the summer of 1931? A. It was some time near there.

Q. Now with the exception of the Minute Book of the Company, which is Exhibit 17b—it will not be Exhibit 17b—it is Exhibit 17a, in which there are a number of signatures of yours there. Did you have anything to do with the preparation of the remaining books that have been filed here as Exhibits? A. No.

Q. Let us take some specific example. For instance, the Dominion Trading Account, which has been marked as Exhibit 29, did you make any entries in those books? A. That is, the Trading Account. No, I did not make any entries in them.

Q. Did you make any entries on the Stock Position Cards, Exhibit 31?

A. No.

Q. And the General Ledgers,—have you made any entries in the General Ledgers that have been filed as Exhibits here, say, Exhibits Numbers 33—to be more specific so that there won't be any confusion, I show you Exhibit No. 33. 10 the General Ledger of the Ontario Company, and Exhibit No. 37, the General Ledger of the Dominion Company, which are the loose sheets bound together. Did you have anything to do with making any entries in those two exhibits?

A. Well, the only entries I would have had anything to do with were entries that were made through the Dividend Account,—I presume the account was kept in those ledgers. That is the only thing I would have anything to do with.

Q. You were the Dividend Clerk in Solloway Mills office while you were there? A. Yes.

Q. Your duties were confined, I take it, entirely to that work? A. Yes.

20 Q. So that you did not have anything to do, except in so far as you— you had nothing to do with making entries in the other books? A. That is true.

Q. And you have just taken the books as you found them in Solloway Mills office? A. Yes.

Q. Now is it also true that the other records,—for instance, those records which were in the folder marked Exhibit X for the purpose of identification, which contained all the Brokers Confirmations, the Buy and Sell Slips, etc., you had nothing to do with the entries made on those documents? A. No, I had nothing to do with them.

30 Q. And you do not know anything more about the documents than what is stated in the document itself?

A. Nothing more than what is on the face of them, no.

Q. Then you have no personal knowledge of the documents whatever?

A. No, no personal knowledge.

Q. And am I right, in stating, Mr. Seaborn, that they are simply documents which have been discovered by yourself, or somebody else in the office of Solloway Mills? A. That is correct.

Q. Now, looking again at Exhibit 17, and the signatures of Mr. Solloway, you, of course, did not see Mr. Solloway make these signatures? A. No.

40 Q. Nor did you see the seal attached to any of the minutes? A. No.

Q. And the Minute Book is in the same position as the other records, that is, you just take it as you find it? A. That is correct.

Q. There is no personal recollection of it except after you were appointed Secretary? A. That is correct.

Q. Now my friend referred you to the Minute Book of the Dominion Company and made particular reference to the minute of the meeting of the 31st May, 1928. Can you tell me the particular event that took place on that date, Mr. Seaborn? A. 31st May, 1928.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 20.

Perrin
Minter
Seaborn,
Cross-
Examination
by Mr.
Ferguson.
12th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn,
Cross-
Examination
by Mr.
Ferguson.
12th
October,
1932.

—continued

Q. Yes. A. I do not just recall what took place.

Q. Well now, from your search of the records, Mr. Seaborn, as I understand it the Dominion Company took over from the Partnership on the 31st May, 1928. Is that correct? Well, this minute book will speak for itself, I suppose. It is referred to in the minutes of meeting of the 31st of May, 1928?

A. Yes, it is referred to in that minute.

Q. And the agreement follows in the Minute Book? A. Yes, there is an agreement there.

Q. And under that agreement the stock was issued to Mr. Solloway and Mr. Mills to the amount of 24, 995 shares? A. It appears as the case. 10

Q. And paragraph "4B" reads—

"A part consideration payable by the Purchaser for the assets and property hereby purchased, is the sum of Two hundred and fifty thousand dollars (\$250,000.00) which is hereby applied by the Vendors and accepted by the Purchaser in full payment for the five shares of no par value described for by the applicants for Letters Patent incorporating the Purchaser; all such shares are to be free from liabilities for calls or otherwise and the stock certificates therefore are to declare the said shares fully paid up and non-assessable, and the Purchaser hereby releases the Vendors from all liability in respect of the said shares." 20

A. That is what is in the book.

Q. Now, then, that was Exhibit 17b I was reading from. Now we refer to Exhibit 17, which is the next volume of the Dominion Company Minute Book, and you notice here a meeting held on the 20th December, 1928, in which a by-law is passed approving of an agreement between the Dominion and the Ontario Companies. That is correct, Mr. Seaborn, isn't it? A. Yes.

Q. And under this agreement of the 20th December, 1928,— and it is referred to in the minutes of meeting as By law No. 12 of the Dominion Company, and that was a by-law providing for the taking over by the Ontario Company of the Dominion Company's business in the Province of Ontario. Now turning to By-law 12, which is marked in the Minute Book—the by-law has a Schedule 'A', which has the agreement attached to it, and you will note that the Dominion Company, by paragraph one—reads: 30

"(1) The Dominion Company hereby sells, assigns, transfers and sets over unto the Ontario Company the following assets:

(a) The goodwill, business and undertaking of the Dominion Company in connection with the general brokerage and financial business carried on by the Dominion Company solely in the Province of Ontario;"

Then it sets out a number of other things,—“All cash in hand,” etc.

“All accounts and notes receivable from any person firm or corporation 40 in any way connected with or arising out of the business of the Dominion Company carried on in the Province of Ontario, except such accounts as have been transferred to the stock revenue account or the suspension account in the books of the Dominion Company as of the 30th November, 1928, and except also the accounts of Messrs. I. W. C. Solloway and Harvey Mills.

(d) All customers accounts subject to settlement by the Ontario Com-

pany or the various customers from time to time in shares or money according to the nature of the stock trading."

And then—

"(e) All furniture, fixtures, office equipment, leases, contracts and agreements in any part of or connected with the operation of the general brokerage and financial business in the Province of Ontario;"

And then—

"(f) The equity in three seats on and memberships in the Standard Stock and Mining Exchange, it being understood that the three seats and memberships are now held in the names of I. W. C. Solloway, Arthur Levine and Joseph Cameron;"

And then—

"(g) All shares and share warrants, rights to shares, bonds, debentures and other securities belonging to, carried by or in the possession of the Dominion Company with respect to or in connection with the operation of its general brokerage and financial business in the Province of Ontario."

Q. Now then, after this date, Mr. Seaborn, do you know from your own knowledge whether or not the Dominion Company had any offices in the Province of Ontario? A. Of my own knowledge—?

Q. I mean from your knowledge gained either personally when you were with the Company, or as Secretary of the Company since?

A. Well, I understood they had an office in the Metropolitan Building.

Q. The Dominion Company had an office in the Metropolitan Building? Anywhere else? A. No, I do not think so.

Q. Who carried on the grain transactions? A. No.

Q. Now I produce, Mr. Seaborn, Exhibit 37, which is the Dominion Company General Ledger. Now at a page where I have placed a marker, there is a rent account which commences November 20th, 1928, in which there is rent apparently paid to the Downtown Realty. You see, that, do, you? A. Yes.

MR. McRUER: On December 3rd, 1928 is it?

MR. FERGUSON: That is right.

WITNESS: Yes, there is rent there.

Q. Now then, we will go on to another sheet in this Dominion Company's General Ledger, in which there is another marker, and the sheet is headed "Rent"? A. Yes.

Q. Balance carried forward on the 3rd day of July, 1928, as \$14.90, and then there are payments of rent shown as having been paid to the Chartered Trust, Gibson, Chartered Trust, down to January 31st, 1929, when the account is transferred to "Profit and Loss"?

MR. McRUER: No, but the last rent is not paid January 31st, 1929, the last item of rent.

MR. FERGUSON: December 26th, 1928.

MR. McRUER: Is to Chartered Trust. That is the transfer, December 26th. What is the date of that one, Mr. Seaborn? A. December 21st, 1928.

MR. FERGUSON: Q. Well, now, Mr. Seaborn, in December, 1928 we had the Ontario Company organized and entering into an agreement with the Dominion Company to carry on a general brokerage business in the Province of

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 20.

Perrin
Minter
Seaborn,
Cross-
Examination
by Mr.
Ferguson.
12th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn,
Cross-
Examination
by Mr.
Ferguson.
12th
October,
1932.

Ontario. Did the Dominion Company continue to carry on at other places in Canada? A. I believe they did, yes.

Q. And do you know when these two general ledgers were commenced?

A. Not without referring to the pages, I could not tell you.

Q. What was the relationship between the Dominion and Ontario Company in December, 1928, in Ontario?

A. Well, from the agreement, apparently the relationship was that the Ontario Company was to do a general brokerage business.

Q. Of course, I know the agreement will speak for itself, Mr. Seaborn. What happened—there were certain books marked which have been filed there, 10 and marked "Dominion Trading Account", Mr. Seaborn? A. Yes.

Q. Now after December 20th, 1928, do you know to whom those books belonged—to whom that account belonged? I mean, do you know whose account that was?

A. It was the Dominion Company's account with the Ontario Company.

Q. And was the Dominion Company a broker?

MR. McRUER: How does he know anything about it, except what the book shows itself. I do not think the cross-examination should go on suggesting things and Mr. Seaborn make any statement about them when he has said before he does not know anything about them. All he can say is what is written in 20 on the account.

ASST. MASTER: Mr. Seaborn was not there at the time. I suppose it is a question of argument.

MR. FERGUSON: Q. How long had you been employed by Solloway Mills—when did you go into their employ? A. In 1929—July, 1929.

Q. And you continued with them until when?

A. Until the same month in 1930.

Q. And during that time you were employed in the Dividend Department, you told us? A. Yes. I don't just recall now, it is quite a long time ago. It was 19—, I don't know whether it is 1928 or 1929 now. Yes, I think it was 1929 30 to 1930 I was there.

Q. Do you recall distinctly it was the Dividend Department you were in?

A. Yes, I recall that.

Q. There is no doubt in your mind about that part of it? A. No.

Q. And I understand you have been doing some accounting? A. Yes.

Q. And are you more or less familiar with accounting in brokerage matters? A. Yes.

Q. Well, I want you to explain to the Court how an accountant calculates the amount of shares on hand in a brokerage office. Take, for example, the one we are familiar with here—that is, the brokerage office of Solloway Mills and 40 Company, Limited. The first shares he calculates as being on hand, I suppose, are those shares actually in the cage, in the office, itself? A. Yes.

Q. Where else would there be shares that would be considered as on hand?

A. Owing from Brokers.

Q. Shares owing from other Brokers? A. Yes.

Q. Do you mean shares borrowed by other Brokers?

A. Yes, that would be owing from—over the Clearing.

—continued

Q. Any other kind of shares brokers might be owing—what about shares borrowed by other brokers?

A. Yes, they would be considered as owing to the firm.

Q. Do you know if it is the custom between brokers for one broker to borrow shares from another broker? A. Yes.

Q. That is an out and out loan of shares? A. Yes.

Q. And do you know of your own knowledge, being around the brokers office, if it is the custom on other Exchanges beside the Standard Stock and Mining Exchange? A. Yes, I believe—I don't know as there is any necessity for it at times, but I believe the custom is—at least they borrow from the Banks—they give securities to the Banks and borrow money on them.

Q. I am speaking now—I understand it is the custom on the Standard Stock and Mining Exchange, to-day, for one Broker to call up another Broker and say, casually, "Will you loan me 50,000 shares of so-and-so for a few days", is that a custom of the Standard Stock and Mining Exchange?

A. That has been a custom on the Exchange, yes.

Q. But speaking of the days in 1928 and 1929 when you were employed by Solloway Mills, it was the custom among the Brokers of the Standard Stock and Mining Exchange to borrow shares from their friends across the street?

A. Yes, I understand so.

Q. And it would be good accounting practice to calculate those shares as being on hand for delivery? A. Yes, they are on call always.

Q. That is to say the Broker who loaned the shares, in calculating the shares which he had for delivery would add those shares to whatever shares he had actually on hand? A. Yes.

Q. And then there would be shares loaned to individuals, who, strictly speaking, were not Brokers? A. Yes, there might be.

Q. Would I be right in stating that such a case might arise in a customer making a short sale? A. Yes.

Q. Then there might be shares, I suppose, deposited with the Banks as collateral security for loans? A. There might be.

Q. Then what about the shares which were being shipped back and forth from office to office? What were those called? A. Shares in transit.

Q. And they, I understand, were calculated as being always on hand—shares in transit? A. Yes.

Q. Now have I missed any that would enter into the calculation? That is, the shares actually in the cage; shares owing from other Brokers to Clearing; shares loaned to other Brokers; shares in transit; and shares deposited with the Banks as collateral? I think that covers the list pretty well?

A. Yes, that seems to be it.

ADJOURNED at 1 p.m. to 2.15 p.m.

RESUMED at 2.15 p.m.

PERRIN MINTER SEABORN (Recalled).

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 20

Perrin
Minter
Seaborn,
Cross-
Examination
by Mr.
Ferguson.
12th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

CROSS-EXAMINATION CONTINUED BY MR. FERGUSON:

Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn,
Cross-
Examination
by Mr.
Ferguson.
12th
October,
1932.
—continued

Q. During the course of your connection with Solloway Mills and Company, Limited, Mr. Seaborn, did you ever do any bookkeeping on behalf of the Company? A. Only so far as dividends is concerned.

Q. This morning, in answer to a question from Mr. Brewin as to who gave any general directions, and who decided the policy of the Company, you said you presumed Mr. Solloway was directing the policy of the Company? A. Yes.

Q. Do you base that on the fact that Mr. Solloway was the President of the Company, or for some other reason.

A. Because he was the President of the Company? 10

Q. Did you ever receive any instructions, personally, from Mr. Solloway?

A. No, I have not, personally.

RE-EXAMINED BY MR. BREWIN:

Plaintiff's
Evidence.
No. 20.
Perrin
Minter
Seaborn,
Re-
Examination
by
Mr. Brewin.
12th
October,
1932.

Q. Mr. Seaborn, you told Mr. Ferguson when he was cross-examining you this morning, I think, that all the books you have produced were books received back from the custody of the Crown and taken into the custody of the Company, is that right? A. Yes.

Q. And so far as you know, yourself, were they changed in any way, altered, added to, when they were in the custody of the Crown?

A. I do not think so, no. I do not think there are any changes. 20

Q. I am only asking you of your own knowledge?

A. Well, to my knowledge, there were not any changes.

Q. I am calling Mr. Jacobs as the next witness.

WALTER HENRY JACOBS (Sworn).

EXAMINED BY MR. BREWIN:

Plaintiff's
Evidence.
No. 21.
Walter
Henry
Jacobs,
Examination,
12th
October,
1932.

Q. Mr. Jacobs, were you in the employ of Solloway Mills and Company, Limited? A. Yes.

Q. During what period?

A. August 16th, 1929, to November 8th, 1930.

Q. And what were your duties—in what capacity were you employed? 30

A. I supervised the Securities Department.

Q. And in the course of your duties did you have to supervise any records of the Company showing the securities on hand, and the delivery of those securities? A. Yes.

Q. And we have had produced as a record of the Company in this trial, a book which has been described as the "Security Register". Would that have been one of the books under your control? A. Yes.

Q. Do you see that book here? Exhibit No. 22. Would you describe that book? It has been called a Security Register?

A. "Security Ledger" would be a more proper designation. 40

Q. Now there is another book being shown to you. What is that book?

A. That is the Securities Register.

- Q. I am showing you a ledger marked as Exhibit 21, can you identify that ledger? A. Yes.
- Q. And what does it purport to contain?
- A. A record of the securities received and delivered, in detail.
- Q. By Solloway Mills and Company, Limited? A. Yes.
- Q. And that book was kept under your control? A. Yes.
- Q. And the entries were made, I suppose, under your direction? A. Yes.
- Q. Now will you turn to sheets headed "Sudbury Basin" and with the date of October 16th, 1929. Now you see here a number of entries starting on
 10 the seventh line of the right hand page that you have opened here. Will you explain what that first entry purports to indicate?
- A. A certificate for 500 shares of Sudbury Basin in the name of F. J. Crawford & Company, I presume, received from J. P. McLaughlin.
- Q. And you follow that line straight across—what does it show?
- A. Delivered to Lorsch & Company on October 17th.
- Q. Now if you follow down that page you will see further similar records of shares that purport to have been delivered by Mr. McLaughlin, and on the other side of the page those that were apparently delivered out. It says here "To whom delivered", and there are various names. What does that indicate?
- 20 A. It is the name of the broker or client to whom the actual certificate was delivered.
- Q. And do you know if that is an accurate record of shares received and delivered out to your knowledge?
- A. I would say that would be an accurate record.
- Q. It represents shares received by Solloway Mills and delivered out?
- A. Yes.
- Q. Now I refer you to Exhibit 22. Will you look at that please and tell what that purports to show? First of all, is that another of the books that would have been kept under your directions? A. Yes.
- 30 Q. Will you turn up Sudbury Basin—the pages under which Sudbury Basin is mentioned. Turn up the date of October 16th, for instance. Now will you tell me what you see under October 16th?
- A. Received a total of 5,775 shares, and delivered a total of 1,680 shares.
- Q. Then there is another figure on the extreme left hand?
- A. That is the number of shares on hand—15,810 shares on hand at the end of the day.
- Q. And how was that record made up? A. I cannot say, just at that time. It was made up from a recapitulation of the various deliveries.
- Q. How was the balance arrived at?
- 40 A. Just simply by adding the amount of securities received and subtracting the amount delivered.
- Q. It is a merely a record of what shares were kept in—was there one box kept at the offices of the Company, so far as you know, and one actually which you had charge of?
- A. Generally speaking there might be two or three boxes.
- Q. But it was all included in this record? A. Yes.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 21.
Walter
Henry
Jacobs,
Examination,
12th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 21.
Walter
Henry
Jacobs,
Examination
12th
October,
1932.

—continued

Q. What was kept in that box or boxes that you described?

A. All the securities that were being retained by the Company with the exception of certain securities retained in the Safety Deposit Box, and the total of that would not appear here.

Q. All the securities kept by the Company, except those in a Safety Deposit Box? A. Or those kept by the Banker, or in transit. Those represent the actual securities in the box in the room.

Q. Will you read out what appears to be the situation on the 17th October—well, I think, perhaps, all we are interested in is the balance of shares in the box on that date? A. The balance was reduced by some 4,600 shares. 10

Q. Leaving a balance of how many shares? A. 11,255.

Q. Now that record was kept under your supervision? A. Yes.

Q. And was it an accurate record? A. No, I cannot say that it was.

Q. Have you any reason for supposing it was not an accurate record?

A. Yes.

Q. Will you explain what you mean by that? Where would any inaccuracy in it lie? A. It was quite possible that a delivery or receipt was not listed on the recapitulation, and it would not be discovered until the middle of the month, or the end of the month, when we counted the securities and compared them with those records, and there were numerous differences. 20

Q. Would they be for any substantial amount?

A. Substantial in a number of cases.

Q. If you found out the difference later would you make any correction in the book? A. I think, in most cases the balance at the end of the month was merely altered.

Q. Then, if we were to run through this whole sheet on the different days we would find—the balance would be eventually corrected in some way or other, and the amount shown as the balance throughout the month would represent pretty fairly, I suppose, fairly accurately the amount of shares on hand?

A. Yes. 30

Q. I mean, for instance, if we find at any time during the month—if you will look down the sheet from October 1st, to the 30th—at no time, apparently, were there more than 15,810 shares on hand. Is it a reasonable deduction from that to say that at no time was there really any more than that number of shares on hand? A. I would say not, in view of that.

Q. You are turning to a second page headed November 1st, 1929?

A. An entry marked "Adjust", 50 shares delivered.

Q. And that entry would represent a checking up on the inaccuracy of any position that was shown there? A. I would assume so.

Q. During the time you were employed did you know whether you were employed by the Ontario or Dominion Company? A. I would not know which. 40

Q. Did Mr. Solloway, who was president of this Company at the time, ever receive delivery of any shares from the box to your knowledge?

A. Not to my knowledge.

Q. Would he have been familiar with that record at all? A. No.

Q. Who, amongst the employees or other people connected with the Com-

pany, would have been able to have obtained access to the box in which these shares were kept? A. You mean the names of the staff?

Q. Was it limited to any particular member?

MR. FERGUSON: I object.

MR. BREWIN: I don't see why my friend should object.

MR. FERGUSON: We are not the slightest bit interested in who had the power to see these boxes, or who had access to them; all the Court is interested in is who actually did have access to them, and who were the persons who did look at the boxes.

10 MR. BREWIN: Q. I have passed from the record, and I am now asking the witness who had access to the box he has described in which the securities were kept? A. Only three members in the Department.

Q. Who were they? A. Morton, Adshead, and Gauthier.

Q. Any one else, who was not a member of the Department? A. No.

Q. Would Mr. Solloway have access?

MR. FERGUSON: Now I object to that.

ASST. MASTER: It does not matter very much, Mr. Brewin.

MR. BREWIN: Q. Was there a practice by which you made up a list of the shares in the box from day to day? A. Yes.

20 Q. How was that made—by a checking up with the actual securities in the box? A. It was made up from the total in this book, I believe.

Q. Was it made up in any other way?

A. I was not familiar with it so I do not know.

Q. Were lists made from day to day? A. Yes.

Q. In your Department? A. Yes.

Q. And where were they sent to? A. I don't know of my own knowledge.

Q. Under whose direction were these lists made?

A. I cannot tell you that.

30 Q. You were in charge of this Department, were you not? Who instructed you about it? A. I never had any instructions on it.

Q. Do you mean to say you just stepped in and knew what to do without any instructions at all? A. It was the practice, and the list was made up.

Q. It was the practice before you took over, was it? A. Yes.

Q. And how were you familiar with that practice?

A. I saw the sheet being made up.

40 Q. You were in the Department, were you, before you were put in charge of it? A. No.

Q. How did you come to see the sheet being made up then?

A. After I went into the Department.

Q. Did you ever inquire why this sheet was made up, or who it was sent to? A. Yes.

Q. Well what was the result of your enquiry?

A. I may be wrong in my previous statement that I did not know who it was for. I will qualify that by saying I never saw it delivered to the person it was intended for, but I understood it was for Mr. Parkes.

Q. And that was the practice in your office, was it? A. Yes.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.

No. 21.

Walter
Henry
Jacobs,
Examination,
12th
October,
1932.

---continued

CROSS-EXAMINED BY MR. FERGUSON:

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 21.

Walter
Henry
Jacobs,
Cross-
Examination
by Mr.
Ferguson,
12th
October,
1932.

Q. You were in charge of the cage, I understand, Mr. Jacobs? A. Yes.

Q. That was from the summer of 1929 until November 18th, 1930?

A. November 8th, I think was the date.

Q. Had you ever worked for other brokers besides Solloway Mills?

A. Not previously.

Q. Have you worked for brokers since? A. Yes.

Q. You are familiar with the process of Clearing? A. Yes.

Q. And it was in your Department that the Clearing Sheets were prepared? 10

A. No.

Q. You got the Clearing Sheet into your Department? A. Yes.

Q. And it was on the Clearing Sheet that you prepared the certificates and securities for delivery to Clearing? A. Yes.

Q. You did have charge of that work, being in charge of the cage?

A. Yes.

Q. Now, then, let me understand, the Clearing Sheet was brought into your Department—prepared? A. Yes.

Q. And on the one side it shows the shares to be received by the firm, and on the other side it shows the shares to be delivered? A. Yes.

Q. Will you explain to the Court the procedure in getting the Clearing Sheet ready to deliver to the Clearing House, together with the securities that were to go with it? 20

A. The Clearing Department made up sheets of all transactions for the day, and they consulted with the Securities Department, as to how many shares they could deliver of the stock sold, and from that information they made up the sheets which they eventually supplied to us.

Q. The only purpose of consulting with your Department as to the number of shares that could be delivered was to decide what shares they could leave off, and what shares they could put on that had been previously sold? A. Yes. 30

Q. But outside of that consultation for that purpose the Clearing Sheet came to you and it was entirely on that Clearing Sheet that you prepared your security? A. Yes.

Q. A copy of the Clearing Sheet for October 16th, 1929, has been filed here as an Exhibit, and I show it to you now. It is Exhibit No. 27. You recognize that as a copy of the Clearing Sheet, Mr. Jacobs?

A. That would not be a copy of the sheet supplied to us.

Q. It would not be a copy of the sheet supplied to you?

A. It would be a copy of the blotter—a list of all trades for the day.

Q. Well, were the balances struck before the sheet came in to you? 40

A. Yes.

Q. Then this is not the sheet, at all, that you had before you? A. No.

Q. Well, now, you got what I presume was a summary of the Clearing Sheet? A. Yes.

Q. That would be a record of the balances of shares to be received, or to be delivered as the case might be? A. It would be the total number of shares of each stock to be received or delivered on that date.

Q. And that balance sheet would be compiled from the blotter that you have in front of you there now? A. Yes.

Q. You had to deliver the Clearing Sheet and the securities, the following day, as I understand it? A. Yes.

Q. Now what did you actually do to get your securities ready for delivery?

A. They were taken out of the box.

Q. Suppose on this day you had sold more Sudbury Basin than you had purchased, and the Clearing Sheet came down to you that you were to deliver, say, 500 shares of Sudbury Basin. Take that as an example. Tell the Court
10 what you did, physically, to make delivery of those 500 shares?

A. The Clearing Sheet contained information as to the denomination of the shares which we must deliver, and if that 500 shares were required in two 2's and a 1, we would remove from the box three certificates—two 200's and one for 100.

Q. How did you select the certificates? Say you had to deliver three certificates, that is, to cover three sales, two for 200, and one for 100?

A. The 100 share certificate from the front of the box, or from the top of the pile.

Q. Do you mean by that you would take the first 100 share certificate you
20 came to in the box?

A. We were particular to do that.

Q. Would you have any record of the name in which that certificate stood?

A. None.

Q. But, as I understand, these certificates in the box would be all fully endorsed and ready for delivery? A. Yes.

Q. So what you actually did was to reach for the first certificate you could get your hands on for 100 shares? A. Yes.

Q. Regardless in whose name it stood? A. Yes.

Q. And would you have any record of how that certificate came into the
30 office? A. No.

Q. Then, I take it, you would do the same thing in respect of the share certificates for 200 shares each? A. Yes.

Q. You would do the same thing? A. Yes.

Q. Then am I right in saying you would take the two certificates for 100 shares each, and one for 100 shares, and hand them to the delivery boy?

A. They were handed to a stenographer to list the numbers.

Q. And what actually happened to the certificates themselves?

A. They were given to the boy who looked after the Clearing, who took them for endorsement and guarantee, and so on.

Q. And then what would he do?
40

A. Take them over to the Clearing House.

Q. Let us take the other end of the transaction, as far as the cage is concerned, Mr. Jacobs. We will suppose that the opposite situation occurred, namely, that you were to receive from Clearing that day 500 shares, and somebody delivered them from the Clearing House to you. What would you do with the certificates that came in? A. Check them first to see they were all there. Check them for endorsements.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 21.

Walter
Henry
Jacobs,
Cross-
Examination
by Mr.
Ferguson,
12th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 21.
Walter
Henry
Jacobs,
Cross-
Examination
by Mr.
Ferguson,
12th
October,
1932.

—continued

Q. I mean in storing them away for safe keeping?

A. They were always put at the back.

Q. Of what box? A. Of the particular section of the box in which Sudbury Basin would be filed.

Q. Would you mark them in any way as being identified with any client's transaction? A. No.

Q. And any time they were required for delivery you just took them out and delivered them as you have told us? A. Yes.

Q. Now from your experience in brokers offices, and you say you have worked in other offices connected with the Standard Stock and Mining Exchange? 10

A. Yes.

Q. Is that the practice in vogue among the brokers offices on the Standard Stock and Mining Exchange? A. With certain modifications.

Q. I mean at that time? A. I cannot say at that time.

Q. Well, is it the practice to-day, with, as you say, certain modifications?

A. Yes.

Q. That is to say, I take it from what you have told us, that one 200 share certificate of Sudbury Basin was just as good as another? A. Just the same.

Q. Would you say you treated them just the same as a Bank would treat a 20 dollar bill? A. Just the same, practically.

Q. Had you any occasion while you were at the office of Solloway, Mills, to enquire by whom you were employed? A. No.

Q. It never interested you? A. No.

Q. Now are you the Mr. Jacobs in whose name a great many of the certificates which were in Solloway, Mills office seem to have been transferred to from time to time? A. I am.

Q. Did you have any personal interest in those certificates? A. None.

Q. You held them for whom? A. The Company.

Q. What was the purpose in having those certificates transferred to your name? A. The Company was a limited company, and stock in the name of a limited company was not good delivery to the Clearing. 30

Q. And was it good delivery when transferred into the name of an individual? A. Yes.

Q. So do I understand it was done for the purpose of convenience only?

A. That is all.

RE-EXAMINED BY MR. BREWIN:

Q. Who did this stock belong to that was transferred into your name?

A. Well, it belonged to the clients of the Company, I assume, the same as any other stock we have in the box. 40

Q. And you were describing the necessity of leaving off certain shares on certain days. Was it necessary to leave a lot of shares off when those heavy deliveries had to be made?

A. I was not familiar with that Department, so I could not say.

Q. Well, don't you remember that at all?

A. No, I haven't any knowledge of it.

Plaintiff's
Evidence.
No. 21.
Walter
Henry
Jacobs,
Re-
Examination
by Mr.
Brewin,
12th
October,
1932.

Q. You described to my friend the system you were operating then, and you said at the present time there were certain modifications in the system?

A. Yes.

Q. Can you tell us those briefly?

A. Yes. The stock that was fully paid for is automatically transferred for safe keeping. We don't use it.

Q. Is that the only modification you had in mind when you said that?

A. That is all.

10 Q. Did you ever have any occasion to refer to what we call "Stock Position Cards"?

MR. FERGUSON: This is not re-examination.

MR. BREWIN: You asked him about the system.

MR. FERGUSON: No, I did not ask him anything about Stock Position Cards.

MR. BREWIN: Well, I would ask leave of the Court to ask this question if it is not strictly in reply. It all arises out of the matters my friend has been examining on.

Q. Did you have anything to do with the Stock Position Records?

20 A. I would like to see the Stock Position Records. I had nothing directly to do with these.

Q. Did you have any occasion to refer to them?

A. I do not think so, but I cannot say definitely.

Q. You say you had nothing directly to do with them? What did you have to do with them indirectly?

A. We had to supply them with certain information.

Q. What information did you supply them with for the purpose of making up those. A. Stock in hand; stock in transfer; stock in Safety Deposit Box; stock hypothecated against loans.

Q. Whom did you supply with that information?

30 A. The Department that made up these cards.

Q. What Department was that? A. I suppose you would call it the Stock Record Department. It was a new thing.

Q. Who was in charge of that Department? A. Mr. Hope.

Q. I am showing to you Exhibit No. 19, which has on its heading "Stock Position—Sudbury Basin". Would you, in the ordinary course of your duties, supply information for the making up of that record? A. Yes.

Q. And what part of the information set out there would you supply, and what does the card indicate?

40 A. It would supply the amount on hand; the amount in transfer; the amount in Safety Deposit Box; and the amount in the Bank; and the amount hypothecated against loans.

Q. And so far as you know would that be an accurate—you would have supplied accurate information?

A. At that date. That was started around the end of November.

Q. 1929? A. Yes.

Q. And from that time on you supplied information for the purpose of making up cards of which this is a sample? A. Yes.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 21.

Walter
Henry
Jacobs,
Re-
Examination
by Mr.
Brewin,
12th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 21.

Walter
Henry
Jacobs,
Re-
Examination
by Mr.
Brewin,
12th
October,
1932.

—continued

Q. Now we have here several columns; you have told us you would supply the information for those. One is "Stocks on hand"; "Stocks in Transfer"; "Safety Deposit". The next column—"Hypothecated against loans", would that include all the stocks you had on hand and under your control? A. Yes.

Q. Can you tell me who would supply the information with regard to the other matters set out in this account? For instance, we have an adjusting account here. Did you have anything to do with that? A. No.

Q. And we have something described here as "House Account", or the word "House" is put there. Did you have anything to do with that? A. No.

Q. Who would supply that information? 10

A. I don't know the individual.

Q. What Department would be responsible for that?

A. It would come from the Main Office—the General office.

Q. Who would be in charge of that? A. Mr. Masson, I suppose.

Q. He was the Secretary of the Company, was he? A. I believe so.

Q. Then you had nothing to do with preparing the records of stocks "owed by us to"? A. No.

Q. And you don't know who would supply that information, do you?

A. Yes,—I think the Department—I don't recollect what that stock was headed by Mr. Hughes. 20

Q. Did you know that the Company was short a large number of shares?

A. No, I did not.

GEORGE ERNEST PARKES (Sworn).

EXAMINED BY MR. BREWIN:

Plaintiff's
Evidence.
No. 22.

George
Ernest
Parkes,
Examination.
12th
October,
1932.

Q. What is your occupation, Mr. Parkes? A. At the present time?

Q. Yes? A. Secretary-Treasurer of a Golf Club.

Q. Were you ever in the employ of Solloway Mills & Company, Limited?

A. Yes, sir.

Q. In what capacity were you employed? A. I was a trader.

Q. Well, will you describe what your duties were as trader? 30

A. I handled all the orders that came in the Trading Room.

Q. And what office did you work in? A. In the Metropolitan Building.

Q. Whereabouts? What room? Was there a separate room for trading?

A. Yes.

Q. What was it called? A. The Trading Room.

Q. And whereabouts in the Metropolitan Building?

A. Well, it was on the corner of Adelaide and Victoria.

Q. Whereabouts in the Metropolitan Building was the Trading Room,—or the floor, for instance? A. The second floor, I guess.

Q. And what part of the second floor? A. Well it is at the corner of 40
Adelaide and Victoria, on the corner. The room faces both.

Q. And who occupied that office with you?

A. Oh, there were six or seven clerks, I guess.

Q. By the way, have I asked you what time you were employed as trader, during what period?

A. From 1928—about the middle of 1928 until I left.

Q. When did you leave? A. 1930, I guess.

Q. And were you in charge of the Trading Department? A. I was, yes.

Q. During what period? A. From 1928 until I left.

Q. And you told us you were in the corner office of the second floor of the Metropolitan Building. Can you describe briefly the layout of the general offices?

MR. FERGUSON: I do not understand what this has to do with the case.

MR. BREWIN: I just want to find out all about it.

10 WITNESS: Well, the wire room—all the telegraph operators were in the office outside of our place, and the confirmation room—where they made out the confirmations.

Q. And those telegraph operators' room—would you call that the wire room? A. Yes.

Q. And, therefore, would you be able to communicate with all the Branch Offices? A. Yes, sir.

Q. And with the Standard Stock and Mining Exchange?

A. No, the Standard Stock and Mining Exchange wire was in our room.

20 Q. You had wires in your room direct to the Standard Stock and Mining Exchange? A. Well, we had telephones.

Q. Now do you know who had the seat on the Standard Stock and Mining Exchange which was operated by the Company? A. Who had the seats?

Q. Yes? A. Mr. Cameron, Mr. Irvine, and Mr. Solloway.

Q. And whereabouts in this building—were the records of the Company kept in this building? A. I cannot tell you that.

Q. Would you have any records, yourself, that you had to keep?

A. No. I never kept any records at all.

Q. I suppose in the course of trading, did you make out slips of any sort?

A. I have, yes.

30 Q. What would be done with them when you finished with them?

A. They were sent to the confirmation room.

Q. Which was next to yours? A. Yes.

Q. Were those the only written records you had? A. Yes.

Q. What kind of slips were they? A. Buy and Sell slips.

Q. You might identify one or two examples of them. You have a number of documents marked Exhibit 23. Are those the Buy and Sell slips you are referring to? A. Yes, sir.

Q. And you say that is the only type of written document you made up yourself, or kept in any way?

40 A. That is the only thing we kept. We did not even keep those. They went to the confirmation room.

Q. But you made these out in your room?

A. Some of them. Some of these came from the wire room. They made them out. For instance, that one (indicating) was made out in the wire room. This is (indicating) made down in the Board room.

Q. Now I just ask you to run through these slips marked as Exhibit 23 and tell me if they would have been made out in your room?

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 22.

George
Ernest
Parkes,
Examination.
12th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 22.
George
Ernest
Parkes,
Examination.
12th
October,
1932.

—continued

A. The first three were made out in our room; the next two are from the wire room. This one—100 shares Sudbury Basin, \$695.00—that is made out in our room. This is the same as that one (indicating).

Q. Duplicates? A. Yes. This one is made out in the Trading room.

Q. 100 shares at \$7.00, white slip?

A. Yes. The rest of them are all wire room, nine.

Q. I produce to you Exhibit No. 24, which purports—they seem to be four Buy Slips. Would they come from your office?

A. This one was made out in our office.

MR. McRUER: Q. That is the second one?

A. These two—the first two were made out in my office; the other one is from the Board room. 10

MR. BREWIN: Q. How do you tell the difference, Mr. Parkes? How do you know whether they are made out in the wire room or the Board room?

A. I can tell from the writing.

Q. Whose writing is that? A. That is Mrs. Kelly's. She was the switchboard operator. I don't know whose writing that is.

Q. How do you know that came from your office?

A. Well, it is all the one thing.

Q. Now, in some of these Buy Slips you see a name written in here. The forms provide for the putting of a name in. What name would be put in there? What name is supposed to go in there? A. On which? 20

Q. Here, for instance. In some of these slips you will see a printed line headed with "name", and after that a name is written in. What does that indicate? A. I don't just understand what that means.

Q. You made out these slips? A. I did not make them out, no.

Q. Well, they were made out in your office. What is the meaning of that in such a slip? A. Well, that one is 'phoned from the Board room.

Q. What does "R. C. Smyth" mean? A. That is the man's name.

Q. Why are you writing that man's name in there? 30

A. Well, I guess he put an order in to buy that many shares.

Q. It indicates the name of the client? A. Yes.

Q. So that, throughout these slips, when you see the word "name", and something filled in, it would indicate the name of the client for whom you were buying or selling? A. Yes.

Q. Now, I notice in the first two there is a dash put in. What does that indicate? A. It means it was sold for Solloway, Mills & Company.

Q. One is "Buy" or "Sell"?

A. Yes. This one, they bought, and in this one they sold.

Q. So it is a fair inference wherever we find one without a name filled in it was either a purchase or sale for the House? A. That is right. 40

Q. And that was your system in the office, was it—when it was a sale or purchase for the House not to write the name in, but merely put a dash in these forms? A. That was our system.

Q. Then I infer from what you were saying, that you were making sales for the House? A. Yes, sir.

Q. What do you mean when you say "for the House"?

A. Well, trading for them.

Q. No, what do you mean by the word "House"?

A. I don't know what you mean by "House" myself.

Q. That is how you described these sales—as sales for the House?

A. Sales for Solloway, Mills & Company.

Q. Did you know whether they were sales for the Ontario or Dominion Company? A. No, sir.

Q. You did not know at all? A. No, sir.

Q. Did you know that there were two companies? A. Yes, sir.

10 Q. When did you first know that?

A. I forget. I cannot tell you what date.

Q. When you were making these sales for the House you did not pay any attention to whether they were for the Ontario Company or the Dominion Company?

MR. FERGUSON: Now this is cross-examination.

MR. BREWIN: Q. Did you pay any attention? A. No.

Q. Did anybody tell you to pay any attention to the distinction between the Ontario and Dominion Companies? A. No, sir.

Q. In all the trading that you carried on did you ever make any distinction 20 between the Ontario and Dominion Companies?

A. Well, I was working for the Ontario Company, myself.

Q. How do you know that? A. I was told.

Q. Who told you that? A. I forget.

Q. Will you try and remember who told you that? When—at the time you were trading? A. I rather fancy it was Mr. Masson.

Q. Mr. Masson, I think you said, was the Secretary? A. Yes.

Q. Well, now, what was your policy with regard to sales on account of the House? A. What do you mean by "House"?

Q. When did you sell for the House? A. When did I?

30 Q. Yes. A. If I thought the stock was a good sell I would sell it.

Q. What do you mean by a good sale?

A. Well, if I thought it was going down.

Q. I suppose you made quite a large number of sales for the House in this way, did you? A. Both Buys and Sells.

Q. And one of the witnesses, Mr. Jacobs, has given evidence he sent you a list of shares in the box from day to day. What was the purpose of that?

A. Well, it had stock owed us by brokers; stock owed to clients; stock owed by clients.

Q. Why was that statement sent to you?

40 A. So I could judge my trading.

Q. Do you mean by that, so that you could see whether it was advisable to sell for the House or not? A. That is the idea, yes.

MR. FERGUSON: Just remember this is your witness, Mr. Brewin.

MR. BREWIN: Q. Now I suppose when you took up this position as Trader and this employment from the Company you got instructions about what you were expected to do?

MR. FERGUSON: I object to that now.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 22.

George
Ernest
Parkes,
Examination.
12th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 22.

George
Ernest
Parkes,
Examination.
12th
October,
1932.

—continued

MR. BREWIN: Q. I am just leading up to it. Did you get any instructions when you took over this position that you told us about? A. Well I was a Clerk in the Trading Room for about nine months before I took it over.

Q. When you did take it over, did you receive any instructions as to what you were to do there? A. Yes, I did.

Q. What were the nature of your instructions when you took it over?

A. They were just general.

Q. Describe them generally then? A. Well, if I thought a stock was a good sell, or a good buy, I bought or sold. My job was to trade and make money by buying and selling stock.

Q. And were you told—had you anything to do with the delivery of shares? A. No, sir.

Q. Were you told—did your instructions cover anything to do with these records of the shares in the box at all? How was that connected with you?

A. I had nothing to do with that at all.

Q. Why did you receive them, then? A. I received the list.

Q. Yes, you told us before that you received a list,—was that not the result of your instructions?

A. That had nothing to do with the delivery of shares—the list I had.

Q. No, you said you had a list of the shares on hand? A. Yes.

Q. And you told us you got that list for the purpose of knowing whether to buy or sell. Was that part of your instructions to get such a list before you bought or sold for the House? A. Part of my instructions to get the list?

Q. Yes. A. I do not remember any instructions on that point.

Q. At any rate that was the system you followed? A. That was the system.

Q. Now when you received those general instructions you have told us about, who did you receive them from? A. I received some from Mr. Staats.

Q. Who else? A. Mr. Kimmerley.

Q. Who else? A. Mr. Solloway.

Q. Are those all the gentlemen who gave you these general instructions?

A. Yes, sir.

Q. You have told us Mr. Solloway gave you instructions. Will you describe the instructions that he gave you? A. He did not give me any particular instructions, specifically.

Q. What were the general instructions? A. I have already told you—buying and selling stock where I thought it was a sale or a buy.

Q. Did you know that the Company had a very big short position?

MR. FERGUSON: Don't answer that question.

ASST. MASTER: Did he know what the position of the Company was? 40

MR. BREWIN: Q. Did you know the position the Company had with regard to stocks, generally? A. Yes, sir.

Q. What did you know about that? A. Well, I knew—I used to get the position at different stages every month, or I could go and look at the books myself any time.

Q. Did you see the stock position records?

A. Well I used to get it from Mr.—I forget who the man was who used to give it to me.

Q. I show you a sample of what we call the "Stock position record"?

A. I did not see any of them. I used to get it in a list.

Q. Is this record that I am producing now what you are referring to?

A. No, I used to get it on a list. I used to go to the fellow and ask him, but I did not look at it because I did not know much about figures. I did not have anything to do with them.

Q. You would sometimes go to the fellow? A. There were so many different men on it I cannot tell you who.

Q. Do you recognize this book, Exhibit 34? A. No.

10 Q. Now you said you used to go to some fellow and get some information. What sort of information was that? A. What the Short position was, or the Long.

Q. You don't know where he got that from? A. Well, he must have got it out of the book.

Q. And you don't know what book he got it from? A. I don't know that, no.

Q. Was all that information available for you if you did want to see it?

A. Yes, sir.

20 Q. You said you were told to sell whenever you saw fit, and buy when you saw fit. Throughout the fall of 1929, perhaps you will say the whole of 1929, were you selling or buying, generally speaking? A. That is pretty hard to answer.

Q. Can't you give me a general indication? A. I haven't the faintest idea.

Q. You don't remember whether you were selling more or buying more? A. I cannot tell you.

Q. Do you know whose shares you were selling for the House? A. No.

Q. You don't know where they got the shares from? A. No, sir.

30 Q. As far as you were concerned they were sold irrespective of the dealings with clients?

MR. FERGUSON: I object to that.

WITNESS: I had nothing to do with the clients.

MR. BREWIN: Your witness, Mr. Ferguson.

MR. FERGUSON: No questions.

GEORGE W. KIMMERLY: (Sworn)

EXAMINED BY MR. BREWIN:

Q. What is your occupation, Mr. Kimmerly? A. I am running a Golf Course at present.

40 Q. Are you, by any chance associated with Mr. Parkes? A. I am his partner.

Q. Were you, at any time, in the employ of Solloway Mills & Company, Limited? A. Yes, sir.

Q. What period? A. In the fall of 1926 to the summer of 1930.

Q. In what capacity were you employed? A. Everything but office boy.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 22.

George
Ernest
Parkes,
Examination.
12th
October,
1932.

—continued

Plaintiff's
Evidence.
No. 23.

George W.
Kimmerly,
Examination.
12th
October,
1932.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 23.
George W.
Kimmerly,
Examination.
12th
October,
1932.

—continued

I managed branches; I had charge of our Grain Department; I opened two or three offices; I was Trader.

Q. What time were you a Trader? A. Various times.

Q. Well, give me some idea, please? A. From the Fall of 1926 I started, through 1927, Spring of 1928 I left Toronto to go to Vancouver. I had charge of the trading out there, and was also Assistant Manager. Before that, for a month or two, I had been in Brockville in charge of the office there. I was in Vancouver then until the Fall of 1928, when I took sick, and I did not do much of anything for two or three months. Then I went to New York to open our office in January of 1929. I went back to the West in February of 1929. I was out there in Calgary and Vancouver until about June or July of 1929, and I came back to Toronto—I guess that was around May of 1929 I came back to Toronto—and I spent practically all the summer in the Buffalo office, and I was back in Toronto that Fall. 10

Q. The Fall of 1929? A. Yes.

Q. In what capacity? A. As Trader, in charge of the trading. Then in February, 1930 I went to Winnipeg to take charge of our Grain business.

Q. What time was that? A. The early part of 1930—about February, I think. I was there until June. The trial started in Calgary and I came back to Toronto. 20

Q. You were not a trader after that. There was no trading done after that? A. No, not after the arrest in the early part of 1930. There was grain trading.

Q. But you were stock trading, too, in a way, too. A. It was mostly buying.

Q. What was the necessity to buy it? A. Take profits.

Q. You mean buying for delivery? A. No, buying to cover our short position.

Q. You were buying to cover your short position? A. To take profits, yes. You sold it with the expectation of buying it back cheaper. When you bought it then you were satisfied you were right or wrong, depending on whether you made a profit or loss. 30

Q. That is what the Company was doing in the summer of 1930? A. That was in the early part of 1930.

MR. FERGUSON: I object to this, sir. There is no necessity of going into that.

MR. BREWIN: It shows the system in the Company.

ASST. MASTER: It is before the action.

MR. FERGUSON: Yes, but it is not before the events in connection with this action. 40

ASST. MASTER: It is the very type of thing the Plaintiffs are complaining of.

MR. BREWIN: He uses a very meek phrase that fits in with our scheme—"To take profits".

MR. FERGUSON: He is not interested in what took place after he takes his shares, after the transactions were closed out. I submit he has no right to go into that.

MR. BREWIN: This is all evidence of the system. I am not going into it in detail; it just came out by chance.

Q. Have you heard Mr. Parkes' evidence here this afternoon?

A. Yes, sir.

Q. And while you were a trader were you in the same capacity as—in the same room when you were in Toronto?

A. No. I spent part of my time there. I was not there all the time.

Q. When you were a trader did you use the same trading room?

A. Well, the trading room has nothing to do with the trading I did for the
10 Company. The trading room is where the orders came from of the clients to be filed.

Q. When you were a trader for the Company what room did you occupy?

ASST. MASTER: Q. You were on the floor, weren't you? A. No, sir.

MR. BREWIN: Q. What room did you occupy there? A. I had a separate office down the hall.

Q. And did that lead out to the wire room in the same way? A. Well, you could get to the wire room from it.

Q. Mr. Kimmerly, we might shorten things a bit. Mr. Parkes has described what his duties were. Were yours of a similar nature? A. Generally speaking, they were, yes.
20

Q. Would you describe your duties as a trader?

A. They were the same in so far as he says my duty was to try and sell stocks when I thought they were too high and buy them back when I thought they were low. Or to buy them first when they were low and sell them afterwards when they went up.

Q. Do you agree with what he said about the Buy and Sell slips that were shewn to him, exhibit 23? Do you agree with him that your system was when you were selling for the House to put a dash, and when you were selling or buying, as the case might be, for a client, to put the name in under a heading under
30 the word "Name". A. It was either a dash or "S.M." or something like that.

Q. And Mr. Parkes told us that he got from, I think, the Security Department slips shewing the shares on hand. Did you receive similar slips when you were operating as a trader? A. Yes.

Q. And what was the purpose of receiving those slips? A. So that we would know how much stock we had.

Q. Why did you want to know that? A. We had offices right across the country and sometimes we had to have stock in one office and it would be in another. We had to keep track of where it was.

Q. So that, for instance, if you sold for the House you would be able to
40 make delivery.

MR. FERGUSON: That is objected to.

MR. BREWIN: Q. Well, shall I put it this way. It is a fact, isn't it, if you were selling shares for the House it would be necessary for you to see whether you had shares on hand.

MR. FERGUSON: I object to that. The witness has already answered the question. He was asked what was the purpose of receiving the slip, and his

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 23.
George W.
Kimmerly,
Examination.
12th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 23.
George W.
Kimmerly,
Examination.
12th
October,
1932.

—continued

answer was, to shew the stock on hand. Now my friend wants to put some words in his mouth and change it around.

MR. BREWIN: Q. What did you need a record of the shares on hand for? A. I just answered that question by saying we had offices right across the country and we had to know where the shares were at different times.

Q. Why did you have to know that? A. Why to carry on our business. If a man in Vancouver wanted delivery of stock and it was in Toronto Office we had to know where it was.

Q. If you were selling on account of the House, and you were selling on account of the house, weren't you? A. From time to time.

Q. Would it be necessary for you to have shares to make delivery?

A. Not necessarily, no.

Q. Well, generally speaking. A. Well, if they had them I presume they were used. I had nothing to do with that, but I believe it was possible to leave them off the Clearing Sheet.

Q. The records that were sent to you were records of shares of clients on hand, weren't they?

MR. FERGUSON: I object to that.

MR. BREWIN: Q. What did those slips shewing the shares on hand indicate to you? A. That that was the amount of stock the Company held in all its offices.

Q. For the Company,—shares of the Company?

MR. FERGUSON: Now, now.

MR. BREWIN: Whose shares were they? Whose shares did you think they were that this record showed?

MR. FERGUSON: We are not interested in what this witness thought. We are interested in the fact.

ASST. MASTER: All he is asking the witness is, when he got the slip what information did it contain?

MR. BREWIN: Q. What did the slips indicate to you with regard to these shares? You have told us they showed shares on hand,—whose shares?

A. They were shares of Solloway, Mills & Company until they were paid for.

Q. Do you mean by that, shares in the possession of the Company?

A. Well, if a man came in and bought stock on margin, Solloway, Mills had to pay cash for that stock.

Q. Your idea in connection with these lists of shares was that it included shares they had on hand, which, as you have described as collateral or shares that had not been yet paid for on marginal transactions. A. They would include them.

Q. What governed you in deciding the number of shares you would sell or buy, as the case may be, on account of the House? A. The condition of the market.

Q. Any other consideration? A. Well, it would depend on how sure you were of the action you were taking. If you were positive the shares were too high probably you would sell more than if you thought you were right but were not absolutely certain.

10

40

Q. Would you ever shew as sold more shares than were in the box—than the records shewn to you? A. I could not point out at any time, but I believe there were odd times from time to time.

Q. Generally speaking, would you sell more? A. No.

Q. Would you be governed, at all, in the number of sales you would make by the shares on hand—by the information given you? A. Sometimes we would have millions of shares of stock.

Q. It would be easier if you would just answer the question. Would you be governed, at all, in the sales and the purchases you would make by the number of shares on hand? You told us you received a record shewing that. Would you be governed in the sales you were making irrespective of whether they were going down or up? A. Well, I would not in my trading.

Q. In other words, are you telling us that you would sell . . .

MR. FERGUSON: My friend cannot do that on examining this witness.

MR. BREWIN: This is a former employee of the company.

MR. FERGUSON: The witness is certainly not adverse in giving his evidence—in his manner in giving his evidence—and that is the governing factor, and my friend is continually trying to get out some other explanation than the witness has made. When the witness answers, he turns around and says, “does that mean, so and so”.

ASST. MASTER: I do not know that the witness has said very much, Mr. Ferguson.

MR. BREWIN: I think the witness could answer this very simply. I think the type of answer he makes might decide the Court in deciding whether I am transgressing, but perhaps I can get the information in a different way.

Q. If you received a record of the company shewing, say, a thousand shares of Sudbury Basin on, in, or under control of the Company would that affect your judgment as to whether you would sell 2,000 shares of Sudbury Basin for the House, at all? A. It would depend on whether I thought I could borrow it or not. You could borrow stocks for short sales.

Q. Did you ever borrow stock for making those short sales? A. I cannot point out particular times, but I am sure there were times, yes, sir.

Q. Do you know who you would borrow it from? A. Probably some large stockholder of the Company, or from another broker.

Q. Were you aware that the Company had a very large short position during the time you were trading? A. That depends on what you mean by “very large”. It varied from time to time.

Q. Describe the Short position as you knew it. Was there a short position? A. There was in certain stocks. yes.

Q. Would you call it considerable? A. As I say, it depends upon what you mean by “considerable”. If it had been my personal account I would say it was very large.

Q. Did you know which Company you were employed by? A. Yes, sir.

Q. Which company were you employed by? A. Solloway, Mills & Company Limited, Dominion Company.

Q. You were employed by the Dominion Company. A. Yes.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 23.
George W.
Kimmerly,
Examination.
12th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 23.
George W.
Kimmerly,
Examination.
12th
October,
1932.

Q. Throughout this whole period? A. Well, not at the time I joined, there was no Dominion Company.

Q. You were with the Partnership, were you? A. Yes.

Q. Was the system you have described to us the same at that time?

A. Generally speaking, I suppose it was the same. There was a very great difference in the size of the Company at that time.

Q. It started out the same way in the days you were with the Partnership, as you have described, on a larger scale, when the limited companies were operating.

A. Yes, I would say that was true.

Q. And you were just telling me a minute ago that you were employed, as you think, by the Dominion Company. As we all know, the Ontario Company did not come into existence until December, 1928, and you say you continued to be employed by the Dominion Company after the Ontario Company came into existence. A. Well, I just forget now which was first.

Q. But you were employed by the first Company throughout, were you?

A. I was employed by the partnership and then by whichever company it was, and then later when it became two companies, Ontario and Dominion, I was told I was employed by the Dominion Company and worked for them in the Spring of 1928. Naturally, the Ontario Company had nothing to do with Win-
nipeg and Calgary. 20

Q. Do you know whether there were provincial companies in every province? A. I think there was one in Quebec. I do not think there were any when I was with the firm but I believe they were in the process of formation.

Q. How did you get paid when you were in Toronto in 1929? How was your salary paid to you? A. By cash.

Q. Can you tell me who would pay you that cash? A. The Paymaster or whatever you want to call him.

Q. What was his name? A. I cannot think of it just now.

Q. Were you paid in the same way as all the other employees of the Com-
pany? A. I cannot say. 30

Q. By the same gentleman who was responsible? A. I presume he paid the rest, but I do not know.

Q. And who told you that you were employed by the Dominion Company?

A. Who told me?

Q. Yes. You told us you were told that? A. Mr. Masson, Mr. Shaughnessy, Mr. Mills and Mr. Solloway.

Q. They all told you? A. They were present at the time.

Q. What time was this? A. In about 1928 before I went to Vancouver.

Q. What time? A. Around April.

Q. 1928? A. Yes.

Q. I don't want to confuse you, but I think you must be mistaken there, because the Ontario Company did not come into existence until December, 1928.

MR. FERGUSON: My friend is certainly cross-examining the witness.

MR. BREWIN: Q. He said he was told in April, 1928, that he was employed by the Ontario Company, which was not in existence then? A. I did not say that at all. I did not mention the Ontario Company. 40

—continued

ASST. MASTER: The witness said he was told he was employed by the Dominion Company. That would be the only one he could be employed by, because that was the only one in existence.

WITNESS: What I was going by, it was called Solloway, Mills & Company Limited, Dominion Company.

MR. BREWIN: Q. Subsequent to that time were you told by anybody which Company you were employed by? A. I was never told I was employed by any other Company but the Dominion Company.

Q. That is the reason you say you were employed by the Dominion Company. A. Yes, sir.

Q. Now in carrying on these trading transactions from time to time I suppose you would get instructions from some one what to do? A. General instructions I received when I first went with the firm, and then I was put on my own.

Q. Who did you receive those general instructions from? A. Mr. Solloway.

Q. And Mr. Solloway instructed you to carry on the trading in the way you have described, and Mr. Parkes has described here to-day? A. Yes, that was left to our own judgment.

Q. Did you confer with Mr. Solloway, at all, from time to time, about what you were doing? A. Yes, sir, I told him what I had done.

Q. And he understood the nature of your dealings—

MR. FERGUSON: Objected to.

MR. BREWIN: Q. Did he understand what you were doing? A. I cannot tell you whether he understood or not. I presume he did. We did not discuss it in the way of holding a discussion on it. He would probably ask me what I was doing in a certain thing.

Q. And you told him? A. Yes.

Q. And did you ever discuss the short position? A. Yes, if we were discussing about being short, it would be the short position, or the long position, whichever it happened to be.

Q. That was one of the subjects of your discussion. The short position was the subject of discussion between you and Mr. Solloway? A. Whether I was buying or selling short.

CROSS-EXAMINED BY MR. FERGUSON:

Q. You were in the employ of the Company a long time before Mr. Parkes, Mr. Kimmerly? A. Yes, sir.

Q. And back in 1928, when the Dominion Company was organized, I suppose Mr. Parkes,—did he or did he not—take his instructions from you?

A. When he first came to the Company he worked for me as my Assistant, yes.

Q. And he got the instructions, whatever they were, from you? A. Yes, sir.

Q. Looking at Exhibit 23 again, Mr. Kimmerly,—Exhibit 24, which is four Buy slips with the name, J. P. McLaughlin, on it. Now the slip itself, would not be made out in the Trading Room originally?

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 23.
George W.
Kimmerly,
Examination.
12th
October,
1932.

—continued

Plaintiff's
Evidence.
No. 23.
George W.
Kimmerly,
Cross-
Examination
by Mr.
Ferguson,
12th
October,
1932.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 23.
George W.
Kimmerly,
Cross-
Examination
by Mr.
Ferguson,
12th
October,
1932.

—continued

A. Not at all likely, no. That slip, for instance, would be made out in the Bay Street office.

Q. That is, the one on the top would be made out in the Bay Street office?

A. No, that is incorrect, too. I believe they 'phoned them over.

Q. The two slips on the bottom, I suggest, would be made out in the Bay Street office? A. Yes, sir, it looks to me as if it had been.

Q. They would be 'phoned over to the main office? A. Yes.

Q. And would they come to your Trading Room?

A. This slip would come to the Trading Room.

Q. The order would be 'phoned from the Bay Street office to the Trading Room in the Metropolitan Building, the order to buy 7,000 shares? 10

A. I am not sure whether it was 'phoned to the Trading Room or not, but I believe it was. I believe there was a girl there who checked those orders on the 'phone. It was somewhere in the head office where the Trading Room was.

Q. Then the instructions would go from the Trading Room to the Floor of the Exchange, would they not? A. Yes, sir.

Q. Then after the transaction had been completed on the Exchange you would note on the bottom of the slip how the transaction had been completed?

A. That was the procedure then.

Q. Would you agree with me when I say the top two Buy slips would be 20 made out in the Trading Room?

A. Completed,—that is, the filling of the order would naturally have to be completed from information obtained from the man on the floor as to what they had done.

Q. That is on the bottom of this top Buy slip in Exhibit 24, the 300?

A. "7", which means \$7.00.

Q. 300 at \$7.00 from Crang? That is information that was put on this slip in the Trading Room? A. Yes.

Q. And you in turn got that from the man on the Floor?

A. Yes. Mind you, I was not in the Trading Room at this time. At least 30 not to my knowledge. But that is the procedure if that is what you are asking me.

Q. You had the office over in the Metropolitan Building—the Trading Room there? A. Yes, sir.

Q. That is to say, you had a room where the Public came in and gave orders? A. Well, that was called the Board Room.

Q. Now any order given in the Board Room would be filled out by someone in the Board Room? A. By the man to whom the order was given.

Q. And that order as made out on the Buy slip would be sent to the Trading Room? A. Yes, sir. 40

Q. That is to say, that an order given in the Board Room at the Metropolitan Building would physically be taken upstairs to the Trading Room?

A. Yes, by a man or boy.

Q. And the orders from the Branch Office were 'phoned into the head office? A. Yes, sir.

Q. And the orders from Hamilton came by wire? A. Yes, sir.

Q. In all those Orders where the order was 'phoned in or wired in there had to be a Buy or Sell slip made out in the main office? A. Yes.

Q. But if the Order was given in the Board Room at Main office, the slip, itself, would be taken to the Trading Room? A. Exactly.

Q. Then there were slips made out in the Trading Room which had no name on them at all. You told us you made out a number of those yourself at different times? A. Yes, sir.

Q. For instance, here is a Buy slip on the top of Exhibit 23. From what Mr. Parkes says those were purchases. That would be a purchase that he would make on behalf of the Company? A. Yes, sir.

Q. Now you say that was the practice when you were there also?

A. Yes, sir. In some cases I said "S.M." might have been put in there, or "S.M.&Co." This was the usual procedure because it was short.

Q. For instance, there is a sell slip for Sudbury Basin with a stroke on it?

A. Yes, sir.

Q. Now you were employed by the Dominion Company, is that right?

A. That is my understanding, that I was always employed by the Dominion Company.

Q. Now you were in the Trading Room for a long time? A. Yes, sir.

Q. And you were senior to Mr. Parkes in the Trading Room?

A. Yes, sir, when I was in Toronto.

Q. And you were in Toronto in the Fall of 1929?

A. Yes, I was here at that time.

Q. So these orders were made out in the same form as an order given by a client, that is correct, is it not, except there was a dash, which means, Solloway Mills? A. Yes, sir.

Q. Instead of the client's name? A. Yes, sir.

Q. So that here we have on the top an order from somebody to buy 15 shares of Sudbury Basin at \$7. Now can you tell me, in the Fall of 1929, when you were in the Trading Room, whose orders—which Company's orders it was to buy or sell? A. Solloway, Mills & Company Limited, Dominion Company.

Q. And where did you get the stock to fill the orders, or do you know that?

A. Well, I did not go and get the stock to deliver, but I know—I had an idea in my own mind how it was obtained.

Q. You knew, of course, the Ontario Company was in existence in 1929, did you? A. Yes, sir. This stock, as far as I know, was borrowed from the Ontario Company.

RE-EXAMINED BY MR. BREWIN:

Q. You say you had an idea in your own mind. Is this the idea you had in your own mind, that it was borrowed from the Ontario Company? You said, when my friend asked you where the stock was obtained for delivery on sales for the House, you said that you had an idea in your own mind?

A. I said I did not know—that is, I did not go and get the stock or make any deal or transaction, but in my own mind, that is my idea,—that the stock was borrowed from the Ontario Company for delivery.

Q. Can you explain to the Court where you got that idea from?

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 23.
George W.
Kimmerly,
Cross-
Examination
by Mr.
Ferguson,
12th
October,
1932.

—continued

Plaintiff's
Evidence.
No. 23.
George W.
Kimmerly,
Re-
Examination
by Mr.
Brewin,
12th
October,
1932.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 23.
George W.
Kimmerly,
Re-
Examination
by Mr.
Brewin,
12th
October,
1932.

—continued

A. I don't know that I got it anywhere in particular except the Ontario Company had no Short position that I was aware of. They could not sell the stock.

Q. The Short position was the Short position in the Dominion Company?

A. Yes, sir.

Q. Did you ever see any records showing that shares had been borrowed by the Dominion Company from the Ontario Company?

MR. FERGUSON: This does not arise out of cross-examination. I object to it on the ground that it is not re-examination.

MR. BREWIN: I submit it is re-examination. 10

ASST. MASTER: He said he had an idea in his own mind. Now the witness can explain that.

MR. BREWIN: I want to find out the basis of the idea that was in his mind.

MR. FERGUSON: The question was not quite so bald as that.

MR. BREWIN: Now I am asking him to tell the Court where he got this idea in his own mind that he has referred to. It is the first real indication we have had in this case, in the Pleadings or anywhere else, that it was a loan from the Ontario Company to the Dominion Company of our client's shares, and it is a very important part of the case. 20

Q. When you answered my friend by saying you had an idea in your own mind, what were you referring to? A. Well, it has become so complicated now I do not know what the question is.

Q. We will have to get Mr. Ferguson's former question, and when we have got that we can get what the idea was you were referring to.

(Reporter reads former question as follows:

"Q. And where did you get the stock to fill the orders, or do you know that? A. Well, I did not go and get the stock to deliver, but I know—I "had an idea in my own mind how it was obtained.")

Q. You say you had an idea in your own mind how the stock was obtained. 30
What was that idea? A. Well, it was obtained from Mr. Jacob's Department, who has given evidence here.

Q. And do you know that, or is it just an idea?

A. That is what I say—it was an idea. I am satisfied, myself, but I did not go and see them do it.

Q. That is what you understood to be the source of the shares for delivery on the House Account—shares acquired from Mr. Jacobs' Department?

A. Yes, where he kept the stock.

Q. Then after you told Mr. Ferguson that you went on to say that you understood that the Ontario Company had borrowed shares from the Dominion 40
Company, or perhaps I had it the wrong way around,—the Dominion Company had borrowed shares from the Ontario Company. What is the source of your information there? A. Inference.

Q. From what? A. From the fact that the Dominion Company had no stock. They were not operating in Ontario.

Q. They had no stock of their own at all?

A. Not in Ontario, unless they were Long stock in the stock position. They were not dealing with the clients. That is my understanding.

Q. Have you any other reason for saying that, or is it just from inference? Have you any other reason for believing the Dominion Company borrowed stock from the Ontario Company other than the inference you have told us about?

A. No, they had to get—

Q. You had no other reason? What I say is this. You have given us your reason for the statement—you made a positive statement the Ontario Company were borrowing stock,—that the Dominion Company were borrowing stock from the Ontario Company. The reason you say that is you have made it from inference? A. I do not think I said positively.

Q. You told my friend quite positively. Do you know whether they borrowed it? A. I cannot swear they did. I did not see them borrow it, or any agreements to that effect, but by inference I assumed they must have borrowed it in order to make delivery of it.

Q. That inference you have referred to is the only reason for saying they borrowed the stock,—the fact the Dominion Company had no stock for delivery?

A. No stock in Ontario, yes.

Q. Was there any other reason or inference, or anything else you can give to the Court to back up your statement that they borrowed it?

A. Nothing I can think of at the time.

MR. FERGUSON: There is no rule of law which permits a Plaintiff to discredit his own witness, and that is just what Mr. Brewin is trying to do.

ASST. MASTER: I would not permit Mr. Brewin to discredit his own witness, but he prefaced his remarks by saying it had become so complicated he did not know what it was about, himself.

MR. FERGUSON: Well, I object to this examination, sir.

MR. BREWIN: The witness explained quite clearly what he meant. I just want to find out if he had any other reasons for his statement, at all, and he said there was no other reason. There is nothing leading in that, I do not think.

Q. Now you said this system of sales for the House, or for the Dominion Company, as the case might be, was the same throughout the Partnership days, and the days when no Ontario Company existed? A. Yes.

Q. Well, at that time, when Sales were being made for the House, where would they obtain the shares for delivery? A. From the cage in the same way.

Q. At that time they could not have borrowed them from the Ontario Company because one limited Company could not have borrowed from another limited Company, because they were not in existence at that time, the two Companies. You agree with that?

A. Yes, there was no other Company that I know of in existence.

Q. Now are you familiar with the Dominion Trading Account,—what has been described as the Dominion Trading Account?

A. I don't know until I see it.

Q. I will show it to you? A. I do not think I have ever seen this before.

Q. All right. I show you another Exhibit, which is a prior trading ledger

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 23.
George W.
Kimmerly,
Re-
Examination
by Mr.
Brewin,
12th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 23.
George W.
Kimmerly
Re-
Examination.
by Mr.
Brewin
12th
October,
1932.

—continued

of the Dominion Company, and it is marked Exhibit No. 30. Do you recognize that at all, Mr. Kimmerly?

A. Well, I do not recognize it in the form it now is, but I have seen sheets that look like that. I cannot say whether they are the same sheets or not.

Q. Well let us turn up Sudbury Basin?

MR. FERGUSON: Well, my friend is starting on a new examination, and besides he is trying to cross-examine the witness on his last answer. There ought to be a limit to this sort of thing, sir.

MR. BREWIN: That does not make any difference.

MR. FERGUSON: I submit to you, sir, the cross-examination closed a long time ago, and I do not think this comes up in re-examination. 10

ASST. MASTER: I do not think it does.

MR. BREWIN: All right, sir.

MR. FERGUSON: Just one question arising out of the question you asked.

Q. You did not do any bookkeeping, did you? A. No, sir.

ADJOURNED at 4.30 p.m. to 10.30 a.m. October 13th, 1932.

RESUMED October 13th, 1932, at 10.30 a.m.

MR. BREWIN: I am calling Mr. Kingsmill as the next witness.

PERCY J. KINGSMILL (Sworn).

EXAMINED BY MR. BREWIN:

20

Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Examination.
13th
October,
1932.

Q. Were you an employee of Solloway Mills & Company, Limited, Mr. Kingsmill? A. Yes, sir.

Q. During what period?

A. I commenced in August, 1927, up to the close of the firm.

Q. When was that? A. About September, 1930.

Q. In what capacity were you employed, Mr. Kingsmill?

A. I was a bookkeeper at first, and all my work was in reference to the Bookkeeping Department. I was in charge of the books at one period.

Q. Were you in charge of all the books of the Company?

A. All the active posting books, yes.

Q. Were you in charge of the books during 1929? A. Yes, sir. 30

Q. In the course of your duties would you have seen specimens or samples of Mr. Solloway's signature?

A. I don't believe I did. I think it was always in typewritten form on anything that I handled.

Q. You could not assist the Court in identifying Mr. Solloway's signature?

A. I am afraid not.

ASST. MASTER: Excuse me, Mr. Brewin, I do not think it rests with you to prove Mr. Solloway's signature any further, because Mr. Ferguson has referred to those minutes in each case. 40

MR. BREWIN: It would say me a lot of trouble if Mr. Ferguson would admit them. I think, perhaps, I should have gone through every signature. I picked out certain ones in Mr. Seaborn's evidence that I thought were significant. But I now wish to call evidence that all the signatures purported to be Mr. Solloway's, were his signatures.

ASST. MASTER: It occurred to me, on the question of the agreement transferring the assets to the Dominion Company, that you direct the evidence to show that that was I. W. C. Solloway's signature. Well, later on Mr. Ferguson referred to that agreement as a valid agreement, and said the agreement spoke for itself, and it seems to me, in view of the fact it is Mr. Solloway's signature, in the first place, and that Mr. Ferguson has already referred to the same records, that you have satisfied any onus there is.

10 MR. BREWIN: I would be very much obliged, for the purpose of the records, if my friend would admit that where Mr. Solloway's signature appears in the Minute Books that it his signature. Will you admit that, Mr. Ferguson?

MR. FERGUSON: I am quite prepared to admit the signatures to the agreement and the minutes to which I referred on my examination, because I know about those. As to the others I do not know, and I cannot admit them.

ASST. MASTER: Suppose we leave it this way. Do you admit all the signatures that you referred to, and if any question as to signatures come up in future which you cannot admit, you will challenge?

MR. FERGUSON: I do not want to admit anything more than I have just said. I will admit the signatures on the minutes I have referred to, and the agreement, because I know about those.

20 MR. BREWIN: It seems to me, sir, it will be necessary, in case this goes any further, to prove all these signatures again, because I am not satisfied with just the signatures on the documents Mr. Ferguson has referred to. It may be I have proved them satisfactorily already, but I do not want to leave any possible loophole.

ASST. MASTER: No, I do not want you to, Mr. Brewin. I think the onus is the other way.

MR. BREWIN: I think I had better be on the safe side.

MR. FERGUSON: I do not know how the onus is on me to prove or disapprove the Plaintiff's case.

30 ASST. MASTER: The Minute Books are produced and proved to be the Minute Books of the Company, and that the signatures are those of the officers of the Company.

MR. BREWIN: Q. There has been a book produced, described as a private Ledger, Exhibit 38 in THIS ACTION. Will you look through that and tell me if you know anything about that document?

A. This was handled by a separate Department. I did not have anything to do with that, at all, except the "Control"; it might have had a bearing on it—the active Control, but nothing to do with these figures or entering them.

Q. Do you know what Department had to do with that, then?

40 A. The private Ledger, I know, was handled by Mr. Masson's Department; I do not know by whom.

Q. What Department would you call that?

A. I don't know that it had any particular name that I know of.

Q. But the other books of the Company, generally speaking, were under your control, were they?

A. Anything that was posted by the automatic bookkeeping machine.

Q. There are a number of Exhibits, starting with Exhibit 34, which have

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Examination.
13th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Examination.
18th
October,
1932.

—continued

been described as a General Ledger. Would that book have been kept under your control? A. Yes, sir.

Q. In the course of your duties as an employee of the Company?

A. Yes, sir.

Q. And so far as you know, are the entries in that accurate entries?

A. Yes, we had to balance everything each day. The books were never out of balance.

Q. There are two more ledgers that were shown you described as General Ledgers, Exhibits 35 and 36. Were they books under your control as an employee of the Company?

A. I think, at one time or another, I did post entries into books similar to those. I cannot remember any details of that now.

Q. Have you any reason to suppose those are not the general ledgers of the Company, and are not the ledgers that you posted entries to? A. No.

Q. And there again, as far as you know, they contain an accurate record of what they purport to show? A. I would say so, yes.

Q. Now will you turn to what has been described as the Ontario Company's Dominion Trading Account. I show you a Ledger, marked Exhibit No. 29a. Will you describe to the Court what that book is?

A. This book was not handled by anybody in my Department. Nothing done by hand was done in our Department at all.

Q. Do you know where that book was handled?

A. The Trading Ledger was handled, after it was done by hand, in Mr. Masson's Department.

Q. And did you ever use that Trading Ledger?

A. On the automatic bookkeeping system sheets only: not by hand.

Q. Then I will ask you to refer to Exhibit No. 29. Will you tell us what that book is?

A. It is sheets of what were commonly called the "House Account".

Q. What did you understand by the "House Account"?

A. That was the position that the Company retained on the stocks, Long or Short.

Q. And were the entries in that book made under your direction?

A. Yes, sir.

Q. And that appears to be the book which contained those entries?

A. Up to the period I spoke of. After that it was taken on by hand.

Q. Up to the period this Exhibit 29a that I am showing you, and which has on the front of it "Dominion Trading Accounts, Ontario Company Ledger", and which commences October 12th, 1929. Now the Trading Account up to that time was kept under your control in Exhibit 29. Is that correct?

A. In these sheets.

Q. Now let us turn to Sudbury Basin Mines under the heading "S" here. Now I am asking you to look at a sheet in this ledger on the top of which is printed "Sudbury Basin", and then "Clients Ledger", and there is a column with figures on it—with the date on it—1929—October—and 4, and other figures, indicating the date, I suppose, running down it. Now what does that sheet purport to show? Will you explain the entries in it?

A. It shows the House position on Sudbury Basin day by day.

Q. And if you look at the extreme right you will see a figure in red there, what does that indicate?

A. The amount of shares the Trading Ledger was short in that particular stock.

Q. And the figures in red—does that indicate they are Short?

A. That indicates the Short position.

Q. And if I turn anywhere throughout that Trading Ledger to a similar column with figures printed in the same way, could I infer from that that is the amount the House is Short on that particular day?

A. If the figure is shown in red.

Q. And how would it be shown if it was not Short, but Long, on that day?

A. In black figures.

Q. How did you arrive at that figure as you made those records from day to day? A. The day's business for the House was posted to this Ledger, and the amount of shares, Long or Short, was entered in the right hand column and carried forward. The more Short sales the higher it went in this column.

Q. After October 12th, 1929, you say that the same record was kept in a different hand written book which we have produced as Exhibit 29a, I think. Do you know that? A. I know it was carried by hand after October 12th. I never saw the book from that day on.

Q. In Mr. Masson's Department? A. Yes, sir.

Q. Why was the change made, do you know? A. (No answer).

Q. Did anybody explain to you why the change was made from one system to another, or why was it taken from your Department?

A. No, there was no reason given other than to be more private.

Q. You were told that was the reason? A. I don't know that I was told. I always understood that was the reason.

Q. Who told you of the change? A. Mr. Masson.

Q. What was his position, do you know?

A. At that period I believe he was Secretary-Treasurer.

Q. And where were these records kept, Mr. Kingsmill, the ones—?

A. The ones that I handled?

Q. Well, the last two, first. Well, you only know about Exhibit 29, where was that kept? A. It was kept in the Bookkeeping Department.

Q. With other books of the Company?

A. Well, that was in a separate container, of course, from the other books.

Q. What sort of a container would it be?

A. Just a metal container that we could lock.

Q. And was it kept locked? A. It was when we weren't using it, yes.

Q. Who had access to it? A. Myself, when I posted it. If I was not posting it one of the Ledger Keepers, whoever I assigned to it; and I believe Mr. Masson and Mr. Parkes. Mr. Kimmerly, and Mr. Solloway.

Q. You say Mr. Solloway had access to it. Do you know whether he ever saw it—saw that Exhibit—saw—looked at it?

A. I never saw Mr. Solloway very much, but he would ask the position of certain stocks at times which we would give to him from those records.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Examination.
13th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Examination.
13th
October,
1932.

—continued

Q. Do you remember whether he was asking the position—say the date from October, 1929, to January, 1930? A. I could not remember that, no.

Q. But how frequently did he ask you the position? A. I don't think he asked very many times, because there was a monthly position statement made up anyway.

Q. Who made up the monthly position statement?

A. I made it up for a period.

Q. And that showed how many shares the House was short?

A. Yes, sir.

Q. And who saw that monthly position statement? You prepared that, and 10
who did you give it to? A. Mr. Masson.

Q. Did you ever give that to Mr. Solloway? A. Not directly, no.

Q. Did he see it? A. I do not know as he did, exactly.

Q. But you say that he did, from time to time, discuss the Short position with you and ask you about it? A. He merely came in or out—

MR. FERGUSON: He did not say that.

MR. BREWIN: Well, he did.

WITNESS: He merely asked positions on stocks at various times, rarely.

Q. From your own knowledge of those books can you make a general statement as to what was the position in regard to stocks generally in October, 20
1929? A. It generally was Short.

Q. Short to a large extent? A. Yes, sir.

Q. Now did you have anything to do with what have been called the stock position records—stock position cards? A. No, sir.

Q. I show you Exhibit No. 31, which has on the top of it "Sudbury Basin—Stock Position". Do you know anything about that card?

A. I have seen similar cards, but I had nothing to do with the records on it. They were made up by the Stock Control Department.

Q. And did you supply any information for the purpose of making up that Stock Position Card? 30

A. The people that made that up took their data from the ledger sheets—House sheets—Brokers and Clients,—in fact, all the ledgers.

Q. Then the third heading, here,—the column is headed "House". Did they refer to the Trading Ledger to get that figure? A. They would, yes.

Q. Now on the left hand side of this sheet is a heading "Owed by us", and there are sub-headings,—"Branches", "Brokers", "Brokers Clients", "Correspondents", "Clients" and "Clearing". Would the information in any of those columns,—the figures in any of those columns be obtained from books under your control? A. Yes, sir.

Q. And did the Department that made up these cards come to you for that 40
information?

A. No, they got access to the ledgers for that information themselves.

Q. While you were in charge of these ledgers did they come to you and ask you for production of the ledgers for obtaining that information?

A. Once a month they would, generally,—once a month when they were doing the Stock Position they were given free access to them without any interruption, at all, to take that position.

Q. I suppose you cannot tell us—I do not think I need ask you that anyway. Now can you indicate to us what these things mean—"Owed by us to", and "Branches". What would they indicate to you? A. "Owed by us to" would be the shares we owed to these various columns in this sheet.

Q. And the figures under the word "Branches", what would that indicate?

A. The amount of shares that we owed the various Branches according to our Ledger Sheets.

Q. And under the heading "Brokers"? A. What we would owe brokers.

Q. And under "Brokers Clients"? A. The same.

10 Q. And "Correspondents"? A. What we owed them.

Q. What is the meaning of that word "Correspondents" there?

A. Well, there were certain unlisted Brokers throughout the country we would call correspondents that probably had their own clients dealing, and they bought through us.

Q. And "Clients"? A. What we owed clients.

Q. And "Clearing"? A. That is the amount we owed the Clearing Sheets.

Q. And right here is something headed "Adj" and then a sign which means account. What does that mean? A. It stands for "Adjustment Account".

Q. And what does that signify? A. I forget what that means now.

20 Q. And then on the extreme right is the word "Total". What does that indicate to you? A. That showed the exact position of that particular stock as shown on the card.

Q. Well, on this side does it mean the total number of shares?

A. Long or Short.

Q. Well I don't think it would necessarily mean that, would it, Mr. Kingsmill; wouldn't that mean the total number of shares that you owed?

MR. FERGUSON: Now, the witness stated at the outset it was not done by him or under his direction, or in his Department.

MR. BREWIN: He was in charge of the books, he said.

30 MR. FERGUSON: No, this card is something you asked him to explain. The card was kept by him, and the information on that card was put there by some other Department.

MR. BREWIN: Q. This is a card of the Company, and the witness was bookkeeper for the Company, and he might be able to explain the meaning of it as well as any other person.

ASST. MASTER: In his duties he must understand the records of the Company who employs him.

40 MR. FERGUSON: The best he said was he had seen similar cards, and those cards were not compiled in his Department, and he is only making the best guess he can from his knowledge of bookkeeping how that card was made up, and then my friend asked him for an explanation and meaning of what he said. I don't think it is right for my friend to go on and prove this card by this witness when this witness had nothing to do with it.

MR. BREWIN: The fact he did not make it up, personally, might go to the weight of his evidence, but surely it does not make it irrelevant.

ASST. MASTER: The majority of the information on it came from his Department, and as a Bookkeeper—Head Bookkeeper in an organization as large

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Examination.
13th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Examination.
13th
October,
1932.

as the one we are dealing with, is certainly qualified to explain to Counsel the system of compiling those records.

MR. FERGUSON: I object to it.

MR. BREWIN: Q. In giving information for the making up of these records, would the information given be accurate? A. Yes, sir.

MR. FERGUSON: The witness has already said he never gave the information; that any information had from his Department, the other people came and took it.

MR. BREWIN: Q. As to any information you gave, was it accurate?

MR. FERGUSON: He did not say he gave any.

MR. BREWIN: I think he did.

ASST. MASTER: The part that came from his Department.

MR. BREWIN: Q. Can all the records under your control or care, of the Company, taken to use with the other records, be taken to be accurate?

A. Yes.

Q. Now which Company were you employed by, Mr. Kingsmill,—the Ontario Company or Dominion Company—in the Fall of 1929?

A. I really don't know as I was interested in that.

Q. You don't know which you were employed by? A. No.

Q. In your duties as Bookkeeper were you instructed to keep the books of the Dominion Company separate from the books of the Ontario Company?

A. We did keep them separately, yes.

Q. In separate parts of the room? A. No, separate ledgers.

Q. So you realized there were two Companies, did you? A. Yes, sir.

Q. I am producing to you and showing to you a sheet marked Exhibit 15 in this action. Can you describe what that sheet is? A. Clients Ledger Sheet.

Q. And is that—it has been produced from the records of the Company—would that be one of a number of similar Clients Ledger Sheets? A. Yes, sir.

Q. And what does it purport to show?

A. The dealings this client had with Solloway, Mills & Company,—purchases of stocks, sale of stocks, and the money that changed hands.

Q. And the amount due. What is on the extreme right, here? We see Sudbury Basin and rows of figures. What do those figures indicate?

A. The money that the Company would owe to Mr. McLaughlin.

Q. Were those sheets made up under your direction? A. Yes, sir.

Q. And from those sheets would you send out monthly statements to clients?

A. Yes, sir.

Q. I am showing to you a sheet marked as Exhibit No. 14. Can you describe what that document is?

A. It is a copy of the Trading done by this client for the month of October, 1929, showing the stock that we owed him, and the amount of money that he owed the Company.

Q. And was it the practice of the Company to send out statements of that sort? A. Each month.

Q. To the clients showing the state of the account? A. Yes, sir.

Q. Here are two more similar sheets, Exhibits Nos. 15 and 16. Are those—those are the same as you have been referring to? A. Yes, sir.

Q. Well, how would you get the information to put on these statements?

A. The statement was made up at the same time as the Ledger Sheet, and a carbon placed underneath. The ledger sheet becomes a carbon copy of the statement.

Q. Now let us turn to the ledger sheet and see what it indicates. It has got one figure with the date, and is 1929—October 16th. I suppose that would indicate—this column would indicate the dates of the transactions appearing here? A. Yes.

Q. And then there is a column headed with the words "Bought Stock".
10 What does that stand for? A. Bought.

Q. Opposite October 16th we see the figures 3,500, 1,800, 5,200. What does that indicate? A. That 3,500 was received in by the Company from the client, and the 1,800 was bought for the client. The 5,200 was also bought for the client.

Q. And the price? A. The 1,800 was bought at \$7 per share, and the 5,200 was bought in two amounts—1,250 at \$6.95 per share, and 3,950 shares at \$7.00 per share.

Q. Then we go down to the 22nd,—1,500 is in that figure "Bought". That indicates again that 1,500 shares were received?

20 A. That was received from the client.

Q. Then on the 25th? A. 500 received.

Q. And on the 29th? A. 1,500 received and 2,000 received.

Q. December 3rd? A. 2,500 received.

Q. December 16th? A. 2,500 received.

Q. These sheets do not indicate how or why they were received?

A. We posted those from a Received Slip, and all the stock as it was entered was posted up from this Slip and handed to the Ledger Keeper for posting.

Q. And January 13th we turn to a figure here showing credit. What does
30 the figure opposite January 13th indicate there?

A. That is the interest to date on the Clients Account.

Q. On the 14th. What does the word "Credit" indicate there?

A. That is a cheque received in from the Client.

Q. And written down here—21,000 Sudbury Basin delivered. What does that mean? A. Delivered the balance of the stock we owed him after he had paid for it.

Q. And does this Ledger Sheet indicate whether the account was closed out at that time? A. Yes, sir.

Q. And there was nothing, apparently, owing by the client?

40 A. At the end of January 14th, no.

CROSS-EXAMINED BY MR. FERGUSON:

Q. When did you first enter the employ of Solloway Mills, Mr. Kingsmill?

A. In August, 1927.

Q. There was no limited Company in those days? A. I don't believe so.

Q. You recall when the limited Company—the Dominion Company—was first organized? A. I am hazy on the dates.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Examination.
13th
October,
1932.

—continued

Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Cross-Exam-
ination
by Mr. Ferg-
uson, 13th
October,
1932.

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Cross-
Examination
by Mr.
Ferguson,
13th
October,
1932.

—continued

Q. You remember at one stage in the proceedings the word "Limited" was added to the Company's name? A. Yes.

Q. You recall that? A. Yes.

Q. Now you gave evidence in the case of Rochester v. Solloway Mills, didn't you? A. Yes.

Q. Now do you recollect in December, 1928, that the new Company was organized? A. I believe it was around that time.

Q. And you knew Mr. Holden of Mr. Martin's firm,—the Auditor?

A. Yes.

Q. And I think you told me, or told somebody when you were giving evidence in the Rochester case, about what occurred as between you and Holden at that time. Just tell us again what was done after the Ontario Company was organized? A. We set up a new General Ledger called the Dominion Company, General Ledger, and it was set up from his dictation. 10

Q. Now I will show you in this case, Mr. Kingsmill, an Exhibit which has been filed as Number 37. Do you recognize that book?

A. The General Ledger.

Q. It is a General Ledger? A. Yes.

Q. Now just looking at the accounts, themselves, Mr. Kingsmill, I don't want you to pay any attention in the meantime to what is written on the face of the book. Just looking at the accounts, themselves, can you tell me whose ledger that was? A. (Witness looks through book). 20

Q. Probably there is some particular account you would like to see?

A. Well, I know it is the General Ledger, but I cannot tell at the moment whether it is the Ontario or the Dominion because they were practically alike. I know this is the original General Ledger that we set up when we first put in the automatic bookkeeping system before the Dominion Company was formed. I know that by the dates. There is nothing in there to guide me to say whether that is the Dominion Company's book or the Ontario.

Q. Well suppose you look at the Profit and Loss Account? 30

A. I believe that is the Ledger that we treated as the Dominion Company's Ledger.

Q. Now looking at this account over here that is marked "Stock owing Dominion Trading Account Control"? A. That was the control figure we had to balance the Dominion Trading Account with.

Q. Does that confirm your view after looking at the Profit and Loss Account that that is the Dominion Company's Ledger?

A. Yes, I think it does.

Q. You said "Yes", did you? A. Yes.

Q. Now we are looking at a page in the Dominion Company's General Ledger which has marked at the top "Stocks Owing Dominion Trading Account Control"? Those entries are made, December 31st, January 31st, and so on? 40

A. They appear to be entries I made from day to day.

Q. But made from some other statement? A. Yes, sir.

Q. Now I want you to turn to the Ontario Company's General Ledger, which is marked, in this trial, Exhibit Number 33, and I want you to turn up the Dominion Company's Trading Account. You see that now in Exhibit Num-

ber 33. By the way, I should have asked you,—both these ledgers, Exhibit 33 and Exhibit 37, were entered in your Department? A. Yes, sir.

Q. And you had charge of the entries in these books?

A. In the Dominion Company's General Ledger the entries were posted by me at the dictation of either Mr. Holden or Mr. Leishman.

Q. Mr. Holden being the Auditor? A. Yes.

Q. So that, your own personal entries would be made in the Ontario Ledger? A. The actual figures I handled day by day, yes.

10 Q. Now looking at the account, Solloway, Mills & Company, Limited, Dominion Trading Account, which is in the Ontario Ledger, will you explain to the Court what these entries are? For instance, the first entry here,—we will turn back to October, 1929. Just explain that first entry—October, 1929, Control, \$213,555.86, that is under the debit side, and then an entry in the credit side, \$101,858.46, leaving a balance in red figures of \$4,624,258.80. Now just explain to the Court just what that entry means, and where you got it from?

A. As the Dominion Trading Ledger was posted from the Confirmations that were posted to that Ledger, the debits that were posted for the day were totalled, and the credits that were posted to that Ledger were totalled, and put on a "Recap", and those figures posted to this Dominion Trading Account
20 Control, which gave us a figure to balance our Ledger with each month.

Q. Turn up in the Trading Ledger the source of the information for that entry. You will have to get the Trading Ledger, Exhibit No. 29?

A. The figures that are posted on here are taken from the "recap".

Q. Now will you look at the book I am now producing to you, Mr. Kingsmill, and tell me if you recognize it? A. Yes, sir, that is the "recap".

Q. Now will you turn up under date of October 1st, 1929?

A. Do you want the General Ledger?

Q. I want you to get the figures from the "recap" that you posted in the General Ledger. Are these the figures that you are pointing to now?

30 A. Yes, sir. Yes, those are identically the same.

Q. The figures on the General Ledger, that is the Ontario General Ledger, Exhibit 33, are taken from the book that is now being produced, and called the "recap", and those figures that are shown in the "recap" are the same as shown in the General Ledger. That is correct, Mr. Kingsmill? A. Yes.

Q. We will mark the "recap book" as an Exhibit now.

EXHIBIT NUMBER 43: "Recap" Book.

Q. Now Exhibit No. 43, then, will be this book which shows the recapitulation of the transactions for the day? A. Yes, sir.

40 Q. And it commences on September 3rd, 1929. That is correct, Mr. Kingsmill, is it not? A. Yes, sir.

Q. And it goes forward until December 31st, 1929? A. Yes, sir.

Q. Now this Recap. Book is made up how? A. From the documents that were posted to the various ledgers for the day,—posted in "recap" form at first to get the day's clearing balance, and then posted the details to the various ledgers.

Q. Do I take it from that, that is compiled from all the confirmations,

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 24.

Percy J.
Kingsmill,
Cross-
Examination
by Mr.
Ferguson,
13th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Cross-
Examination
by Mr.
Ferguson,
13th
October,
1932.

—continued

cheques and other documents showing transactions in the House throughout the whole business for that one day? A. Yes, sir.

Q. And then it was from this book that you made your entries to the various ledgers? A. Yes, sir.

Q. Now, then, we have the entry made in the General Ledger on this Dominion Trading Account for October 1st. On the column marked "Debit" we have the figures in black. Now we are referring to Exhibit 33, the Ontario Company's Ledger, and on the credit side the figures are in red, and then the balance is in red. The red figures in the balance show what, Mr. Kingsmill,—what do they mean? A. Well, it is the balance of that account.

Q. Well, is it a debit or credit? A. It is a credit for the Dominion Trading Account for that particular stock. It shows a credit balance in that stock for that much money.

Q. Now let us turn up Exhibit 29 in respect of Sudbury Basin Stock. Now I am showing you, Mr. Kingsmill, a sheet in Exhibit 29, which is the Ontario Company's Ledger. Now there is an entry there for October,—well, take any of those entries on the balance side there, any black figures under the column headed "Balance"?

MR. McRUER: What date are you looking at?

MR. FERGUSON: October 5th, 1929.

Q. That is a debit or credit balance? A. Credit balance.

Q. Who is credited? A. The Sudbury Basin stock.

Q. Whose account is that? Who is credited? A. Dominion Trading Account.

Q. Well, then, on the next column is marked "Proof" in red letters. Now what does that mean?

A. That has no bearing on the actual balance; that is just part of the machine system for proving your balance.

Q. But the entry under the word "Balance", Mr. Kingsmill, you say, is a credit to the Sudbury Basin Account? A. Yes, sir.

Q. The figure that you have under date of October 5th, is that posted from the Recap. Sheets? A. No, that is the balance of the sheet day by day as the various postings are added.

Q. That is the day's balance that is there? A. This is the balance of the account at the end of that day's business.

Q. And does that show that anybody is debited or credited with a certain amount there? A. I do not understand what you mean.

Q. Well, in every client's account there is a debit or credit entry, is there not, Mr. Kingsmill, at the end of the account? A. Yes.

Q. Now is that account set up any different than a client's account?

A. No, sir.

Q. Then what does the balance there show? A. On November 5th a credit balance of \$651,048.20.

Q. On November 5th? A. October 5th, pardon me—1929.

Q. That is to say that account, we will call it for the moment, is made,—is that much to the good? A. Made that much profit, yes.

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Q. And if it were a client's account it would be just entered in exactly the same way? A. Yes, sir.

Q. Looking again, Mr. Kingsmill, at the account in the Ontario Company's General Ledger, Exhibit 33, that is the Account marked "Dominion Trading Account"? A. Yes, sir.

Q. Does that account show that there is anything owing to the Ontario Company? A. No indication.

Q. Well, now, Mr. Kingsmill, assuming that is an ordinary account of a client, or a general account in your General Ledger, doesn't the figure in red show a debit? A. A credit balance.

Q. That is a credit balance owing, if I understand anything about book-keeping, to the firms in whose books it is entered? A. Yes.

Q. That is entered in the Ontario Company? A. That is true.

Q. This is Exhibit 33. I suggest to you, Mr. Kingsmill, that that entry in this Ontario Company General Ledger means a credit balance to the Ontario Company? A. I would not say that because it would have to be—whichever's name appears at the top of the sheet would be entitled to the credit balance. This says "Solloway Mills & Company Limited, Trading Account."

Q. You say that the Dominion Trading Account, which is the name at the head of the account, is entitled to a credit as shown by the red figures in the column marked "Balance". Is that correct? You posted these figures?

A. We never looked at it in that light. I cannot see it the way you put it yet.

Q. You just told me it shows a credit balance? A. A credit balance to that account.

Q. That is the account which belongs, apparently—This is the account of the Dominion Trading Account, Solloway Mills & Company, Limited, it has headed at the top, is entitled to a credit as shown by the figures in red? That would be correct, wouldn't it? A. Yes, sir.

Q. Now then, if you go to the Dominion Company's General Ledger, and turn up under the corresponding date . . . A. What do you want me to turn up?

Q. In the Trading Account? A. Under what date do you want me to look?

Q. Now I want you to look at an account in the Dominion Company's Ledger marked "Solloway Mills & Company Limited, Ontario Current Account", and then look at the account in the Ontario Company's Ledger, Solloway Mills & Company Limited, Dominion Company Current Account. Now do you see entries for Profit and Loss Calgary in the Dominion Current Account?

A. Yes, sir.

Q. Those are entered as debits and credits, which? A. The Profit and Loss, Calgary, is a debit.

Q. Now just what does that mean? Who is debited and who owes it, and who does not owe it? A. That was posted by dictation from Mr. Holden. I really don't remember putting the entries in there, even.

Q. Do you mean to say, Mr. Kingsmill, you do not understand the book-

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Cross-
Examination
by Mr.
Ferguson,
13th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Cross-
Examination
by Mr.
Ferguson,
13th
October,
1932.

—continued

keeping system? A. I mean, that particular entry I have no knowledge of. I suppose I posted it.

Q. What does it mean, as a matter of bookkeeping? A. I would say it shows a loss to the account it is posted to—\$45,879.86.

Q. Would it mean, also, that amount owing by that account it was posted to? A. Yes, sir.

Q. What you say is, that the entry "Profit and Loss, Calgary, \$45,879.86" entered on the debit side of the account marked "Solloway Mills and Company Limited, Ontario Current Account", which we find in the Dominion Company's General Ledger, means that that amount is owing? A. Owing by this Com- 10
pany to the Dominion Ledger.

Q. Now you say "this Company", you mean— A. The Ontario Company.

Q. Now looking at the corresponding account in the Ontario Ledger you will find a great number of entries there. We will take the Calgary item in the Ontario Ledger. It is, also, entered on the debit side. Now what does that mean? Is it owing by, or owing to, somebody?

A. I would say that \$25,000.00 entered on the debit side of the Ontario Company's Ledger means that Solloway Mills & Company, Limited, (Dominion), would be owing that to the Ontario Company.

Q. And in the Ledger for the Dominion Company the entry shows that the 20
amount is owing in turn by the Dominion Company to the Ontario Company. Isn't that what you told us? A. In this case, the Ontario Company to the Dominion Company.

Q. And in the Ontario Company's Ledger— A. The Dominion Company to the Ontario Company.

ASST. MASTER: Are they the same items?

MR. FERGUSON: No, they are not exactly the same items. I could not find the same item in the Ontario Company's book, but it is here somewhere.

Q. Now will you look at Exhibit 29 again, in the Sudbury Basin stock, Mr. Kingsmill. Now as I understand it, the Sudbury Basin Account, as shown 30
in the ledger, dealt primarily with shares of stock? A. Yes, sir.

Q. Does the entry that you find—the entry that you find is an entry of a number of shares under the column headed "Balance"? That is correct?

A. That is the amount of money.

Q. That column shows the money, I suggest, as "owing by" or "owing to", which? A. The credit balance to the Company.

Q. It is a credit of cash owing to the Company? That is correct, is it not, Mr. Kingsmill? A. Yes, sir.

Q. I think that is all.

RE-EXAMINED BY MR. McRUER:

Q. You told my friend, I think, that in either consultation or direction,— 40
in consultation with or under the direction of some gentleman—Mr. Holden—you opened up, I think, the Dominion Account? A. The Dominion General Ledger.

Q. When did you say that was? A. I believe it was around December, 1928. I am not positive.

Plaintiff's
Evidence.
No. 24.

Percy J.
Kingsmill,
Re-Exam-
ination
by Mr.
McRuer,
13th
October,
1932.

Q. That was just after the partnership had been concluded and taken over? A. Well, I did not know anything about that part.

Q. Well, you said something, I think? A. I said we had put the "Limited" on the sheets around that time.

Q. You identified it, in some way, in connection with the partnership. You mentioned partnership in that regard, and I wondered? A. I do not believe I mentioned the word "partnership", sir.

Q. I think you did. Well, at any rate, Mr. Holden was whom? A. The Auditor in connection with N. L. Martin & Company.

10 Q. And you were in charge of this book—the Dominion General Ledger?

A. I set it up at his dictation, but no posting was done, only through his dictation.

Q. And the information for the posting in that book came from where?

A. Mr. Holden.

Q. But you worked with him in collecting that information, did you?

A. No, I did not, sir.

Q. Where would he get his information for it? What record, what book and records did that come from?

20 A. Well, I never worked with him on it, and cannot say, but I think he got it from the Ontario Company's books.

MR. SLAGHT: Well, now, he is your witness. He says he does not know, and he would not say, and he thinks probably. I do not think you should put that sort of answer on the record.

MR. McRUER: Q. Which Company started first? A. Solloway Mills & Company.

Q. Of the incorporated companies,—the Dominion Company or the Ontario Company? A. The Ontario Company, I believe, I don't know.

30 Q. I was wondering whether you were getting confused in reference to the names of the Companies? A. I had nothing to do with that. All my work was on the automatic machine.

MR. SLAGHT: We can help you with that, if you want an admission. It was the Dominion Company.

MR. McRUER: Q. Show me which book you refer to as the book which was set up under Mr. Holden's direction. This is the one, Exhibit No. 33, and then you were the one that made the entries in this under Mr. Holden's direction? A. Yes, sir.

Q. You were doing your physical work where? A. In the Bookkeeping Department.

40 Q. Where? A. I really don't understand. I get it—you mean in which Ledger?

Q. No, just where in the bookkeeping Department of what—what was on the door outside? A. I don't know as I ever bothered to look. I know it was Solloway Mills & Company?

Q. The brokerage office? A. Yes, sir.

Q. In Toronto? A. Yes, sir.

Q. Now you posted then, entries of what nature to this book, Exhibit 33?

A. The entries were posted from the "recap" day by day.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Re-
Examination
by Mr.
McRuer,
13th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Re-
Examination
by Mr.
McRuer,
18th
October,
1932.

—Continued

- Q. And my friend put in Exhibit No. 43. That is the Recap. Book?
A. Yes, sir.
- Q. Now looking at October 16th, 1929, when Mr. McLaughlin had his transaction with the firm, we have a sheet which is headed "Clients Ledgers"?
A. Yes, sir.
- Q. What does that mean? A. It is the "recap" of the entire business we were to post for that date to the various clients accounts.
- Q. And we have an item—"Buys and Sells". "Buys" amounting to \$71,357.75; "Sells" amounting to \$6,127.95. Where would that item come from?
A. It was the total of the confirmations that we were to post. 10
- Q. And where do you get on the "recap" the buys or sells for the account of the Dominion Company?
A. Out of the same date under the heading of "Dominion Trading".
- Q. Now you show it to me under the date of October 16th? A. Here it is this figure here. (Indicating).
Q. \$138,358., and what are the sells? A. \$100,362.25.
- Q. Now where do you get that information? A. That was from the Buy and Sell Confirmations of the Dominion Trading.
- Q. Were those confirmations made out in the name of the Dominion Trading Company? A. No, just the mark of the name and the stock only. 20
- Q. And any that were marked just with the name of the stock, without any client's name on, were put into that total? A. Yes, sir.
- Q. And carried through into the books in that way? A. Yes, sir.
- Q. And I see a man by the name of A. T. Pinard. What does that mean?
A. He was one of the bookkeepers. He made up the "recap" for that date.
- Q. And Hamersley would be another bookkeeper? A. Yes.
- Q. And Wright would be a bookkeeper? A. Yes.
- Q. They were all bookkeepers employed in Solloway, Mills & Company's office. A. Yes.
- Q. Now coming to Sudbury Basin, you might turn that up again, as of 30 October 16th. Have we got it there? You are looking now at Exhibit No. 29. You find October 16th, Sudbury Basin? A. It was transferred off these sheets from that date. 3rd October to the 12th the sheets were transferred to a hand ledger which I had no control of.
- Q. To a hand ledger? A. Yes, sir.
- Q. What took place at that time to bring about this transfer? A. They just same down and took the ledger out with all these sheets in it and that was the end of it.
- Q. Who did? A. Mr. Masson.
- Q. How do you know it went to the hand ledger? A. Well, it was taken 40 away from the bookkeeping Department, and there was no bookkeeping machines in the Bookkeeping Department, and in order to have done it, it would have to be done by hand.
- Q. Now I show you Exhibit 29a. Is this the hand ledger that you refer to?
A. I never saw it in my life.
- Q. You knew that it was being taken away from the General bookkeeping system that you had control over? A. Yes, sir.

Q. And being handled by hand under the direction of Mr. Masson?

A. Yes, sir.

Q. Well if you just go back to a few days before, at October 12th, Sudbury Basin, that shows what kind of a position in regard to that stock?

A. A Short position of 89,105 shares.

Q. And having charge of the books, would that be a position that was brought about by these transactions that you have described as being the Confirmations having no name of any client on them, and being entered in this book, Exhibit 43 in the way you described under the Dominion Trading Account?

10 A. Yes, sir.

Q. That is the way that was brought about?

MR. SLAGHT: When he says "Short", Mr. McRuer, I think you should have the Court understand what he means. You referred him to a book, as I understand it, showing the amount of stock the Dominion Company were indebted to the Ontario Company.

MR. McRUER: No, I think that is an incorrect way of putting it, and I do not think the book shows that. I asked him what the book showed and he said it showed the Short position in that stock. Then I am going one step further and explaining precisely how it was brought about, that is, by these confirmations on which there was no name of any client mentioned, and which were posted to this Recap. Book under the head of "Dominion Trading Account". I took care to go through the detail of it.

MR. SLAGHT: I think you are making that quite clear, that is the position, but when you have him make an answer using the term "Short position", he just previously told you he was keeping the books of the Dominion Company which show a record of the shares they owed, as far as the book entries, are concerned, to the Ontario Company.

ASST. MASTER: Mr. Slaght, before you came in this witness had shown very clearly he was not familiar with the difference between the Dominion Company and the Ontario Company. He said he opened the ledger at the dictation of Mr. Holden. Mr. McRuer has got the witness to show the entry in the recapitulation Book, and found out where he got that information and now he is tracing it back to this book, and I have to decide what the interim is between Exhibit 29 and those entries.

MR. SLAGHT: Quite true, and that is evidence I am just as anxious to have before the Court as my friend, but I just rose because when he puts that question to the witness about Short position, he has been asking him about two sets of books,—about the books of the Dominion Company, which this witness kept under the direction of Mr. Holden, and when he made that answer, Short position, I think, as this is re-examination. it should not be left in doubt as to what the witness means when he makes that statement, because he has already testified the book of the Dominion Company showed they were short that number of shares to the Ontario Company.

MR. McRUER: Q. As you were the bookkeeper, at that time, Mr. Kingsmill, how did you regard these entries in Exhibit 29, for example, under the Sudbury Basin stock, showing 89,000 shares, or something to that effect there, how did you regard that? A. I regarded that as a Short position in that stock.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Re-
Examination
by Mr.
McRuer,
13th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Re-
Examination
by Mr.
McRuer,
13th
October,
1932.

—Continued

Q. And then, Mr. Kingsmill, I want you now to turn up the Dominion—
MR. SLAGHT: “Short position” is so equivocal I would ask leave to clear that up if my friend does not.

ASST. MASTER: Well, I think, Mr. Slaght, before you came in that feature was gone into, to a certain extent, and he said, as far as he could go—he looked at the top of the sheet—and he said that the entries in red would show that the account is headed up Short. He could not make any reference to the Ontario Company and the Dominion Company.

MR. SLAGHT: I think he said he was keeping the record under Mr. Holden of a book which was opened for the Dominion Company to indicate the shares that the Dominion Company were short. That is as I understood his evidence. 10

MR. BREWIN: I think, when I examined him first, showing him the Trading Account, he described it as a book showing the short position of the House, whatever that might mean, but that was his description of it.

ASST. MASTER: I do not know why you should make this observation here. It seems to me the Defendants are trying to prove a very important phase of their defence by cross-examination of a witness called by the Plaintiff. It is a question whether the Dominion Company was trading as a client of the Ontario Company, and I would not make this remark except that it happened at the previous trial, and it is perfectly clear there are former members of this firm who could clear up the situation satisfactorily that should be called. I do not know whether they are available, but it appears to me that Mr. Masson is the logical man to straighten out this situation if it can be straightened out. 20

MR. SLAGHT: Well, Mr. Masson is not in the employ of either Company.

ASST. MASTER: I think, in making my findings, I would have to give effect to that view of it.

MR. SLAGHT: Yes, sir. Well, we are very glad to have that suggestion. I appreciate that and I thank the Court for it. The only thing I do not want to have happen is—that this young man, who is obviously being very careful, and wants to tell the truth, who, when Counsel called for a book that contained a record of Sudbury Basin shares as Short, without it being made clear, either by my friend, or by us, with special leave to ask about it, to show that the entries which are referred to as “Short position” are entries indicating the Dominion Company was short that amount of stock to the Ontario Company, which the book certainly indicates. Whether the book is accurate or not, is another matter. 30

MR. McRUER: I think my friend has misconceived the question I put to the witness. I put the question,—

“Q. As bookkeeper there at the time how did you regard these entries in this account?” and he says, “As showing the Short position of the Sudbury Stock”. He may have been wrong in regarding it that way or treating it that way. 40

MR. SLAGHT: There is no objection to that, but I suggest you make it clear, because his evidence is to that effect, if you take his earlier answers when he says the “Short position”, it is not fair to leave it that way without somebody asking him as to which Company appeared to be Short, and that is a record of the amount of shares the Dominion Company owed to the Ontario

Company, as he has already testified. So if he uses the term "Short position", it should be clarified.

MR. McRUER: Q. I want to deal with the Dominion Company Ledger. Mr. Ferguson put a question to you in which he put some words, probably, in your mouth. I want to know if I can have some explanation of it, that the Dominion Company account was kept the same as any other client's account, or something of that sort. Do you remember that question? A. I understood that to mean that the regular Trading Account was kept the same.

10 Q. Well let us see how that was dealt with. In the Recapitulation Book, Exhibit 43, it was kept separate from ordinary clients' Buys and Sells?

A. On the "recap" each ledger was kept separate.

Q. Then have you the Dominion Company Trading Account there now? Were clients charged brokerage in their accounts,—regular clients? A. They were charged on the Confirmation, as I understand it.

Q. The brokerage fee was charged on the confirmation? A. Yes.

Q. And that was entered up in the account, was it? A. The total of the confirmation was entered to the clients' Ledger Account.

20 Q. For the transactions in the Dominion Trading Account was brokerage added to these transactions that are posted to the Dominion Trading Account, those having no name on the Confirmation? A. There was no brokerage on those.

Q. Then, where a client was carrying a stock on margin, and dividends on that stock were big, how were those dealt with in the regular Clients' Accounts?

A. They were entered by a journal entry. The journal entries came from the party who was looking after the dividends.

Q. How were they treated in the Dominion Trading Account? Were there any dividends credited to the Dominion Trading Account on the stocks they were dealing with, or was that shown in that account rather?

A. I just cannot remember offhand now.

30 Q. Well, would the books assist your memory?

MR. SLAGHT: You had better ascertain, I suggest, whether they carried any shares for the Dominion Account. They never did, as I am instructed. The Dominion Company was always short to the Ontario Company.

MR. McRUER: Well that gets us a certain amount of the distance. That may be taken as an admission that the Dominion Company was always short in their records.

40 MR. SLAGHT: If you want to base a question as to dividends on shares carried by the Ontario Company for the Dominion Company you should show the witness there were any such shares carried, because I suggest to you that there were no shares carried by the Ontario Company for the Dominion Company on which the Ontario Company would receive dividends to be credited to the Dominion Company. Therefore, unless there were some you are confusing the record if you have him deal with non-existent matters.

MR. McRUER: My friend is making a speech and dealing with the shares being carried for the Dominion Company. I am prepared to almost agree that the whole thing was non-existent,—the whole method of dealing with shares.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Re-
Examination
by Mr.
McRuer,
13th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Re-
Examination
by Mr.
McRuer,
13th
October,
1932.

—Continued

MR. SLAGHT: That may be a clever twisting of words, but my friend appreciates when he uses the term "non-existent", he has implied to the witness that there were shares carried on which the Ontario Company would receive dividends but did not credit them to the Dominion Company's account. I suggest to him there were no such shares, and I am sure he would want to be fair and not confuse the Court by having this young man, without checking to ascertain whether or not there ever were those shares, make a statement about dividends on shares which, as I submit, were non-existent.

MR. McRUER: I do not want to suggest there were any shares carried by the Dominion Company for the Ontario Company, or the Ontario Company for the Dominion Company. I did not make any such suggestion, at all; I just suggest that the entries in those accounts—I will take it both ways. Q. If a client was carrying stocks on margin and those stocks were paying dividends, his account would be credited with the dividends in due course, wouldn't it? 10

A. Yes.

Q. And if, on the other hand, a regular client, in a bona fide way was short stocks to the Company and carrying his short position on margin in a regular way he would be charged with dividends on the stock, would he not?

A. It is logical he would be charged.

Q. That is the way you followed it, wasn't it? A. Yes. 20

Q. Now I want to ask you if there were any entries one way or the other in the Dominion Company in respect to dividends? A. I do not see any.

MR. SLAGHT: Of course this is new matter; we did not have a chance to cross-examine him on. The witness is quite wrong when he says he charged dividends if they were short.

MR. McRUER: Mr. Ferguson put in the witness' mouth that this account was kept in the regular way, the same as other clients' accounts, and I am pointing out it was not.

MR. SLAGHT: "A customer, who was short shares to the firm, would be charged dividends on those shares." That, surely, is something new, and is something this witness should not give evidence of. The books are the best evidence of that. I think you should turn up the books. His opinion is not the best evidence when the books on which he is basing his evidence are available. 30

MR. McRUER: Q. You did have short sales for clients, I suppose,—clients who sold short? A. Very rarely.

Q. I suppose that would be a greater expense later on. At any rate, as a matter of the bookkeeping practice of the firm, what I say is correct, is it not, that when a client sold stock on margin, if dividends were paid on that stock his account would be charged with the dividends?

MR. SLAGHT: Let him refer to the books before he answers that, surely, because that is the best evidence, not his guess or recollection of two or three years ago. 40

MR. McRUER: Q. And it may be you never had occasion to make such an entry because there may have been reasons why there were not short sales, but I am just taking it as a matter of your bookkeeping system, on the one hand, a stock that was carried for clients, to begin with, you certainly would credit the client with the dividend, wouldn't you? If the dividend was paid A. Yes.

Q. Then if the stock was sold, wasn't the converse true, that the client would be charged with the dividend?

MR. SLAGHT: I object to the question.

(Discussion).

ASST. MASTER: I think if the witness is asked if he can recall any instance; not a general question. As I said before, we would require definite evidence on it because I would not be inclined to make a finding on the opinion of this witness.

10 MR. McRUER: Q. Now we are dealing, Mr. Kingsmill, with the system that you followed in cases of purchases by clients of stocks on margin and their accounts were credited with the dividends. A. Yes, sir.

Q. And where they were imported to be purchases by the Dominion Company were there any dividends credited to the Dominion Company Account?

MR. SLAGHT: I object to that question until he shews that there were purchases of stock which were covered by the question from the books. This man's memory should not be taken in a transaction of that kind.

ASST. MASTER: Supposing the witness establishes the fact that in the Dominion account there were no dividends charged?

MR. SLAGHT: He has established that fact. He speaks from the book.

20 ASST. MASTER: I doubt very much it has any bearing. Mr. McRuer has to establish it has a bearing.

MR. SLAGHT: He is asking the witness whether that was done when the book is there to shew whether it was or was not done, and I do not want the witnesses' recollection or guess, and I submit his evidence should be based on the books my friend has in his custody. Now the accounts are there. Let us see them. It is quite clear why a person who owned shares would be credited with dividends.

MR. McRUER: Why isn't it just as clear why a person who is short shares would be charged with dividends?

30 MR. SLAGHT: Because it would be nonsense, and because the books do not shew it.

ASST. MASTER: Well, we have an expert witness. He can give his evidence and the evidence will have some force and effect.

MR. McRUER: Well, I will be some little time with this witness.

ASST. MASTER: We will adjourn now and resume at 2.15 p.m.

RESUMED at 2.15 p.m.

MR. McRUER: Mr. Ferguson agrees that in these books where the records purport to be signed by Solloway or purport to be signed by Mills that they have been signed by Solloway and they have been signed by Mills.

40 MR. FERGUSON: That is to say, wherever the Minute Books purport to have Mr. Solloway's signature or Mr. Mills' signature we agree they are the signatures of Mr. Solloway and Mr. Mills respectively.

ASST. MASTER: That includes the agreement in the Minute Book.

MR. McRUER: It includes everything in these books that are called Minute Books of either of the companies.

P. J. KINGSMILL (Recalled).

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Re-
Examination
by Mr.
McRuer,
13th
October,
1932.

—continued

RE-EXAMINATION CONTINUED BY MR. McRUER:

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Re-
Examination
by Mr.
McRuer,
13th
October,
1932.

—Continued

Q. Then, Mr. Kingsmill, in regard to this Dominion Trading Account.

MR. FERGUSON: Excuse me just a moment. Yesterday, Sir, when Mr. McRuer and Mr. Brewin were putting in the trading ledgers of the Dominion Company, that is, the ledgers that correspond to Exhibit 39 or 39a, we noticed there was a period of time for which there was no book for the Dominion Company. I have had that book brought here by a member of the staff of the Trustee and if my friend would like to have that book put in, and I think probably it would be to the advantage of the Court to have that book in, I have it here and it can be marked as an exhibit. 10

EXHIBIT NUMBER 30b: Dominion Trading Account. (Dominion ledger).

MR. McRUER: It appears to start about May 1, 1929. And I would think, from looking through the accounts, it does start on May 1, 1929.

Q. Then was there a record of margin put up for the Dominion Trading Account? A. Margin put up by whom?

Q. By anyone? A. No, I do not think so.

Q. And in dealing with clients your system there was to,—how did you handle the subject of margin?

A. The margin was treated as cash and posted to the client's account.

Q. Then Mr. McLaughlin has given evidence in this case about calls having been made on him for margin, and looking at exhibit 5, you see that document? (Hands document to witness, Exhibit 5). A. Yes, sir. 20

Q. When were those sent out?

A. The margin department took care of the calls.

Q. But when the money was paid in in response to the calls how did you get your information to post it to the client's account?

A. The cashier would make out the receipt for it and the receipt would be given to us which we would treat as a recap. and post to the client's account.

Q. But there was nothing of that sort in regard to the trading account. 30

A. No, sir.

Q. There was one remark you made in the course of your cross-examination I want to get some light on it if I can. My friend showed you the book known as the Dominion Trading Account and then he had you look at the Profit and Loss account in order, as he put it, to confirm your view in reference to it being the Dominion Trading Account. I wonder if you could just turn up for me the reference that you made at that time and explain in what way it has a bearing on it. Now you are looking at the Profit and Loss Account as contained in Exhibit 33.

MR. FERGUSON: My friend is not right when he says I made a cross reference to the Profit and Loss Account from the Dominion Trading Account. What I did was, I took the Profit and Loss Account as shewn in the Dominion Books and the corresponding account in the Ontario books and showed that there were corresponding items,—debited in one book and credited in the other book. I took the Trading Ledger and showed there was a corresponding entry in the Ontario books under the heading of Dominion Trading Account. That is where the corresponding entry is. 40

MR. McRUER: I just want to follow that entry for the moment.

Q. Well, what relationship has this entry that you are dealing with—what has it got to do with the business of the Ontario Company?

A. Well, as I said before, all the transactions in here were made up on the dictation of Mr. Holden. I had nothing to do with how he gleaned his information or made up his record.

Q. Then in connection with the item you took up with Mr. Ferguson, you don't know anything about it, personally, and all you were pointing out was there was an item, "Calgary, \$45,879.86", in the Profit and Loss Account in the Dominion Trading Ledger, but where does that enter into the Ontario ledger, at all? A. Mr. Holden would have that record.

MR. McRUER: I do not think there is any relationship in it, myself. I was not able to find it before. (Counsel looks through books).

Q. Don't let us worry about it now. If there is any importance attached to it Mr. Hill can clear it up, but I could not just understand it, myself. Did you tell my friend that you were with the Partnership,—you were employed as book-keeper at the time of the Partnership? A. I was employed from August, 1927.

Q. And how did you treat these entries that you told us about, the ones that were put in the recap. under the heading of Dominion Trading Account which were the entries from the confirmations that had no broker's name on them, how did you treat them in the days of the Partnership?

A. While I was there they were always treated the same way.

Q. But, of course, there was no Dominion Trading Account at that time.

A. It was just called "House Account".

Q. And then you just carried on the system afterwards. A. Yes, sir.

Q. And you headed it "Dominion Trading Account". A. Yes, sir.

Q. That is all, thank you.

ASST. MASTER: Q. Just a minute. I think it would be of some assistance to me if this witness took Exhibit 29, I think it is, and pointed out any difference in the entries from the Partnership days—after the Partnership days on, because that point was stressed by Mr. Slaght this morning about the Short position.

MR. McRUER: Q. Now, Mr. McRuer, just in regard to the Master's question, can you just by looking at this book, Exhibit No. 29, and from your experience in your bookkeeping capacity tell what change was made in the manner of recording these sales, of this distinction that was made on these confirmations on which no name of a client was mentioned, and whether there was any change made right from the time of the Partnership down to the last day you were there?

A. We always posted right from the confirmations from the first day I was there until the date the ledger was taken away. We never changed our system one iota. We never changed our system. We always posted to the same ledger. The same kind of confirmations.

Q. And the account in the Partnership days was called the House Account.

A. Yes, sir.

Q. And after the Company was incorporated you called it what?

A. Dominion Trading.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 24.

Percy J.
Kingsmill,
Re-
Examination
by Mr.
McRuer,
18th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Re-
Examination
by Mr.
McRuer,
13th
October,
1932.

Q. But it was the same system that was applied throughout, was it?

A. Yes.

MR. FERGUSON: May I just say in that respect, Sir, you would scarcely expect to find any change in the system, because in the agreement

ASST. MASTER: I understand in the agreement the Dominion Company took out the short position, but to straighten out the argument that existed this morning

MR. FERGUSON: Well, with your permission, Sir, and Mr. McRuer wanted to have this matter cleaned up in respect to the entry I took up with Mr. Kingsmill this morning, I would like to bring the Court's attention to another 10 account in the Dominion Company's General Ledger.

Q. Mr. Kingsmill, this morning we were looking at the Profit and Loss Account as shewn in the Dominion Company's General Ledger, and you recognize the sheet headed "Profit and Loss Account" I was shewing you this morning.

A. Yes.

Q. And the item, also, of January 31, 1929, marked "Calgary, \$45,879.86".

A. Yes, sir.

Q. I am only shewing you this as an example. Then here is another account in the General Ledger for the Dominion Company headed "Solloway, Mills & Company, Ontario Current Account". Now that is in the Dominion 20 Company's General Ledger, and you see here an item under date of January 31, 1929, Profit and Loss, Calgary, \$45,879.86, which is the exact figure that was in the Profit and Loss Account. Now you made these entries.

A. On the dictation of Mr. Holden.

Q. As the bookkeeper of Solloway, Mills & Company, Limited, what does the item entered in the account of Solloway, Mills & Company, Limited, Ontario, —what does that mean,—well, it is entered on the debit side. A. Yes.

Q. Now, as a bookkeeper, what does that mean?

A. That means amount owing by this name at the top.

Q. That is, there is \$45,879.86 owing by the Ontario Company to the 30 Dominion Company. A. Yes, sir.

Q. That is right. A. Yes.

Q. And it says Profit and Loss, Calgary". A. Yes.

Q. And that is carried into the Profit and Loss Account of the Dominion Company as a credit. A. Yes.

Q. Now I have not found the corresponding entries in the Ontario Company's book.

MR. McRUER: Q. So that, the effect of that transaction would be, instead of the Ontario Company,—instead of the Calgary company charging the Ontario company directly, they charge it to the Dominion Company and then the 40 Dominion Company charge it to the Ontario Company.

A. I had nothing to do with making up the entries.

Q. The effect of the entry my friend has been pointing out to you, it comes from Calgary to the Dominion Company via one entry in these books, then it is charged to the Ontario Company and

MR. FERGUSON: My friend is now confusing the witness.

MR. McRUER: Q. By another entry. I just want to see if that is not,—

all that happens is it is a bookkeeping entry put through in this way instead of charging it directly to the Calgary Company. What do you say about that?

A. I am a little hazy on it.

Q. All right, we will leave it to Mr. Hill.

MR. FERGUSON: No questions.

MR. BREWIN: I am asking leave to recall Mr. Seaborn to give evidence of what was the subject of some discussion this morning between Mr. McRuer and Mr. Slaght—the custom in regard to charging dividends on a short account.

ASST. MASTER: I suppose Mr. Ferguson has no objection to that. It was, more or less, my suggestion.

MR. FERGUSON: Unless you desire to call him, Sir, I do not want him called, and I understand my friend does not want him called.

ASST. MASTER: I cannot arrive at any decision on the evidence adduced this morning.

MR. BREWIN: I would ask leave to call him, then, Sir.

ASST. MASTER: All right.

P. M. SEABORN (Recalled).

EXAMINED BY MR. BREWIN:

Q. Mr. Seaborn, what are your qualifications to discuss the question of the charging of dividends against clients who were short shares with brokerage companies? What experience have you had which would enable you to speak about the subject? A. Well, I used to handle that particular job with Solloway, Mills & Company.

Q. Have you had experience with any other brokerage concern in the same matter? A. Yes, I handled the same job for another broker.

Q. What other broker was that? A. Ames & Company.

Q. Now when a client was short so many shares with a broker what was the usual custom with regard to the charging of dividends?

A. When a client is short with the broker?

Q. Yes. A. The custom

MR. FERGUSON: Just a moment now. My friend should not put a hypothetical question as to the general practice with brokers in Toronto. I submit he must confine himself to what occurred in connection with this particular company. It is not a question of general practice; it is a question of what was done with the clients of Solloway, Mills & Company, Limited.

ASST. MASTER: It is a question of whether Mr. Seaborn has knowledge.

MR. BREWIN: What was the custom with regard to brokers that were short shares in their accounts with Solloway, Mills & Company, Limited. Would you collect dividends from them. A. Yes, we sent them the claim and they would remit by cheque for whatever amount was owing.

Q. And if the clients were long shares with you, in the course of your duties you would credit them with the dividends

A. With the dividends on the shares, yes.

Q. Generally, in clients' accounts you have told us, I think, that you credited them with dividends, and we have been told that the Dominion Company, or the

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 24.
Percy J.
Kingsmill,
Re-
Examination
by Mr.
McRuer,
13th
October,
1932.

—continued

Plaintiff's
Evidence.
No. 25.
P. M.
Seaborn,
(Re-called),
Examination
Continued.
13th
October,
1932.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.

No. 25

P. M.

Seaborn,
(Re-called)
Examination
Continued
13th
October,
1932.

—continued

House, was short various shares and that you did not charge the Dominion Company, or the House, with those dividends. What other source would you have to get the dividends from which you would credit to the clients? What source would you get that from?

MR. FERGUSON: My friend ought to stick to what was actually done as shewn by the books.

MR. BREWIN: Q. All right. What was actually done, as shewn by the books? Is there anything in the books to shew where the amounts credited to the clients would come from?

A. The cheques as they came in from the different companies representing shares outstanding in the name of the broker to whom the stock—or, in whose possession the stock was, those cheques would be deposited to some account. Now, I believe it is headed "Dividend Account". I have seen the account at a later date. 10

Q. What would happen in the case of where the shares were disposed of through the Dominion Trading Account?

A. At that time I had no knowledge of that account. My particular duties were to credit any client with a dividend who was Long shares, and I was called upon at that time to see that every client got his dividend.

Q. That was irrespective, so far as you knew, of whether they got it from the Dominion Company or not. A. Irrespective of whether they got it, yes. 20

Q. You were concerned with paying out dividends—crediting dividends—but you were not concerned with the obtaining of these dividends.

A. Well, any stocks owing to us by the Clearing, or any place like that, I would claim dividends in the regular course of the business.

Q. Did you claim any dividends from the Dominion Company? A. No.

Q. You did not? A. No.

Q. And supposing you were short so many shares with the broker, would the other brokers claim dividends from you?

MR. FERGUSON: It is not for the witness to suppose anything. 30

MR. BREWIN: Q. Where they were Short—Solloway, Mills & Company, Limited, were Short with other Brokers did they claim dividends from Solloway, Mills & Company, Limited?

A. I would not say the term was "Short",—the term "owing" was used. I presume that is the same thing. Well, if they were owing by us to other Brokers we received a claim which was checked by the Clearing Department and forwarded to me, and I arranged to have a cheque signed for whatever amount of money was represented.

MR. FERGUSON: The only way this evidence could be given is by showing the entry in the book that such a thing took place. 40

MR. BREWIN: Q. What did you do, Mr. Seaborn, with regard to clients that sold Short as to charging them with dividends? Clients other than the Dominion Trading Account?

A. I have been trying to recall since the question has come up. I do not recall any instance where I charged a client with a dividend.

ASST. MASTER: You cannot say whether you recall any instance of a client trading Short.

MR. BREWIN: Q. Do you recall any instance of a client trading Short—?

A. I cannot recall offhand, no.

Q. Would you say that the Dominion Trading Account was the only substantial Short account to your knowledge?

A. Since I have had access to some of the books, I would say, yes. May I point out also, that quite a number of the stocks were non-dividend paying at that time, and there were only very few, but there was such a mass of detail it required the attention of two or three men just to see that those dividends were credited.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 25.

P. M.
Seaborn,
(Re-called)
Examination
Continued
13th October
1932.

—continued

10 CROSS-EXAMINED BY MR. FERGUSON:

Q. Mr. Seaborn, would you have occasion to know of clients who were trading and selling Short?

A. Well, only by,—I had to go through the Clients' Ledgers to obtain the positions as to how much dividend to credit on the number of shares they were Long. That is the only occasion I would have.

Q. You would only look for those stocks that were paying dividends?

A. Yes.

Q. Did Sudbury Basin ever pay a dividend?

A. I have never heard of it yet.

20 Q. But you did credit to the client who owned a dividend paying stock the dividend that had been declared? A. Yes.

Q. And if that stock had been loaned to the Dominion Company you still credited the dividend to the Client who you should have been carrying the stock for? A. Yes. If the Client had a Long position he was credited in the account.

Q. And if you had loaned his collateral stock, as you apparently had the right to do, to another Broker, you gave him credit for the dividend that was declared? A. It was up to us to credit him with the dividend, yes.

30 Q. And the only reason you made a demand on the other Broker who had borrowed the stock would be because the other Broker would be receiving the dividend if the stock was in his name? A. That is right.

Q. But if the other Broker never had the stock he would not get the dividend, would he,—I mean, if he did not actually have the stock at the time the dividend was declared? A. No, he would not get the dividend if he did not have the stock.

Q. And the only person who gets the dividend is the person in whose name the stock is registered? A. Yes.

Q. And you made claims for dividends in the name of the party in whose name the shares were registered? A. If we held stock in our possession, but not in our name,—the name of the party in whose name the stock was registered.

40 Q. You made a claim for him? A. Yes.

Q. And you would do the same thing if you had loaned the stock?

A. If we made a loan we would claim on him as owing to us.

Q. And you would claim on the man in whose name the stocks stood?

A. Well, if it were owing to us we would not have the stock. We would claim on him as owing to us, and it would be up to him to get the dividend for us.

Plaintiff's
Evidence.

P. M.
Seaborn,
Cross-
Examination
by Mr.
Ferguson,
13th
October,
1932.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 25.
P. M.
Seaborn,
Cross-
Examination
by Mr.
Ferguson,
13th
October,
1932.

—continued

Q. When you loaned stock to another Broker for the purpose of trading, you knew very well the other Broker did not have the stock?

A. I would not be concerned with that. We would only have on our records a certain number of shares owing to us, and we would claim a dividend on them.

Q. Now can you turn up any entry in the dividend account, Mr. Seaborn, where you charge a person who was selling Short with the dividend declared?

A. I don't know whether I could turn up any information of that kind.

Q. If the person is selling Short,—in the first place, he has not got the stock? A. That is true.

Q. So how would he ever receive a dividend? 10

A. I don't suppose he ever would receive a dividend.

Q. He would not receive a dividend? A. No.

Q. Take a client that was selling Short, did you ever, in all your experience with Solloway, Mills, ever charge that client with the dividend?

A. Well, I don't recall any client—any Short position, where we ever charged a client with a dividend.

RE-EXAMINED BY MR. McRUER:

Plaintiff's
Evidence.
No. 25.
P. M.
Seaborn,
Re-
Examination
by Mr.
McRuer,
13th
October,
1932.

Q. Now, Mr. Seaborn, my friend was asking you about how you treated 20
stock that had been loaned? I just want to see if we have got it clear. If it had
been loaned to a Broker, I think you said when a dividend came due on the stock
you made a claim against the Broker that was owing the stock to you?

A. Yes.

Q. And if the Broker did not have the stocks it would be up to him to make
a claim on the person who owed the stock to him? A. Yes.

Q. And get the dividend, ultimately, from the person who had the stock?

A. Yes.

Q. That would be the system? A. Yes.

Q. That is what you were trying to explain to Mr. Ferguson, was it? 30

A. Yes.

Q. Then Mr. Ferguson asked you about whether you claimed—whether
you charged any clients who were short stock, dividends. If you did not charge
the Dominion Trading Account with dividends on stock that Mr. Ferguson sug-
gests was loaned to the Dominion Trading, where did you get the dividends to
pay to the clients?

A. Well, that was something that did not concern me. I was instructed
just to credit the clients. I was not asked to go and—I did not know how much.

Q. But if a Broker owed it, the Broker was debited, wasn't he? A. Yes.

Q. So that there would be a balancing entry,—one to the client who was 40
entitled to the dividend, and the other debiting the Broker with the dividend,
who owed the stock? A. Yes.

Q. But if the stock had been loaned, as suggested by Mr. Ferguson, to the
Dominion Trading Account, what became of that balancing entry? The Dominion
Trading Account was not charged with it,—what account was charged with the
dividend? A. Well, I charged all dividends to the Dividend Account.

Q. And then, when the Broker was charged with the dividend it would be

credited to Dividend Account,—if a Broker owed it? A. No, we would claim on him, and he would remit a cheque which would be credited to Dividend Account.

Q. Then for the stock that was loaned to the Dominion Company, as suggested by Mr. Ferguson, if that was the course that was taken, no claim was made on the Dominion Company, and the Dominion Company did not remit to the dividend account? A. I did not make any claim.

Q. So that, who then financed the payment of the dividends on these stocks that were Short through the Dominion Company—Dominion Trading Account?

10 A. The general ledger was naturally kept under lock and key, and the dividend account was a name, only, to me. I did not know what was in it, how much the balance was one way or the other, but since looking at it I presume that we charged the Dividend Account in the Dominion Company's Ledger, and they were the people who financed the dividend. The charge was made in the Dividend Account, that was all.

Q. The Dividend Account of the Ontario Company?

A. Yes, the whole charge,—the dividend was charged to one account, and credited to all the clients, I think.

Q. Charged to the Dividend Account of the Ontario Company?

20 A. That is, as far as I was concerned.

Q. Mr. Hill will probably tell us about the rest.

MR. FERGUSON: Q. And the dividend account to which you say it was debited, was that later debited against the Dominion Company? You say the dividend was charged and debited to the Dividend Account, and each of the clients were credited just in the same way you said the Broker was debited with the dividend and the client was credited. Who bore that debit in the Dividend Account?

A. Well, it eventually, I see by entries in the Account, was wiped out to Profit and Loss. So the Profit and Loss Account would stand it.

30 FREDERICK CHARLES HILL (Sworn);

EXAMINED BY MR. BREWIN:

Q. What is your occupation, Mr. Hill?

A. I am a Chartered Accountant employed by the firm of Clarkson, Gordon, Dilworth, Guilfoyle & Nash.

Q. And without being unduly modest, what are your qualifications with regard to speaking about brokerage books and accounting?

A. I have had some years experience now in investigating brokerage accounts for clients and for the Government.

40 Q. And are you familiar with the significance of entries in ordinary Brokerage books and accounts? A. I am.

Q. Now I show you a sheet marked Exhibit 19. Will you tell me what that document is? A. This document, I take it, is a ledger sheet of a client by name of J. P. McLaughlin. It is prepared on a bookkeeping machine.

Q. And will you just explain the entries appearing on that sheet, and what it indicates? A. Do you wish me to start from each item?

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 25.
P. M.
Seaborn,
Re-
Examination
by Mr.
McRuer.
13th
October,
1932.

—continued

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
13th
October,
1932.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
13th
October,
1932.

—continued

Q. Just run through it?

A. The first item on the sheet is under date of October 16th, and shows a deposit by this client of 3,500 shares of Sudbury Basin. The next entry, under the same date, shows a purchase for the client of 1,800 shares at \$7.00, \$12,735.00. The next entry records the purchase of 5,200 shares of Sudbury Basin at,—1,250 at \$6.95, and 3,950 at \$7.00, a total extension of \$36,727.50. Under date of October 22nd is recorded the deposit of 1,500 shares of Sudbury Basin. Under date of 25th October, a deposit of 500 shares Sudbury Basin. On the 22nd of October, is recorded the charge for interest of \$60.98. Under date of 29th October are two entries, both recording the deposit of Sudbury Basin Shares, one for 1,500 shares, the other for 2,000 shares. Under date of November 22nd, 1929, is recorded a charge of interest of \$315.48. Under date of December 3rd, 1929, is recorded 2,500 shares of Sudbury Basin deposited by the client. December 16th, a further 2,500 shares of Sudbury Basin. Under date of December 20th is recorded a payment of \$8,000.00 by the client. 10

MR. FERGUSON: Q. You mean a payment?

A. A payment by the Client to Solloway Mills. On December 22nd, 1929, is recorded a charge for interest, \$303.96. A further charge of interest of January 13th, 1930, of \$192.00, and on January 14th, 1930, is recorded the payment by the presumably, by the client, of \$42,334.92, which balanced the money section 20 of the account, and the delivery of 21,000 shares of Sudbury Basin by Solloway to McLaughlin, is later recorded under date of January 14th.

MR. BREWIN: Q. I am showing you Exhibits 14, 15 and 16. Just tell the Court, briefly, what they are and whether they correspond to the last Exhibit?

A. Exhibits,—what are the numbers?

Q. 14, 15 and 16 are the numbers. A. Exhibits 14, 15 and 16, are really copies of the Ledger Account as shown in Exhibit 19.

Q. What type of document are they? How were they used?

A. Those are statements that were sent out to advise the client how his account stood with the Broker. 30

Q. Is there anything in those statements to indicate that the shares of stock which you told us were deposited as collateral, had been sold or disposed of in any way? A. No.

Q. In fact, would you say that those documents indicated the contrary or not? A. I would certainly say that these indicate the stock was being held. It reads on the bottom, "Stock position", and this one which has the last date on it reads "Stock position, 21,000 Sudbury Basin", Exhibit 16.

Q. I show you three Exhibits, Nos. 5, 7 and 13, which are letters sent to Mr. McLaughlin asking for margin. If those shares of stock had been sold would there be any necessity for that? A. McLaughlin would not have owed any balance if they had been credited to his account. 40

Q. Are those calls for margin an indication of whether or not Mr. McLaughlin's shares had been sold or disposed of by the Company?

A. I would say they would indicate the stock was being held or borrowed on.

Q. Will you show me from the Exhibits and records that have been filed whether the Company appeared to have taken delivery of shares on account of the purchase you told us was said to have been made for the Plaintiff?

A. On examining Exhibit No. 23, which is a file of Buy and Sell Slips, I find therein only one slip which records a purchase of Sudbury Basin for a client. This is for the Branch marked "H.X." for ten shares of Sudbury Basin at \$7.00. The Broker shown is Solloway. I might mention here that there is a Selling Client selling that day at \$7.00, and the Broker in the Selling Client's case is also shown as Solloway, which would make this item a "put-through". Now I am turning to Exhibit 24, Buy Slips for J. P. McLaughlin. The first slip records the purchase of 1,800 shares Sudbury Basin at \$7.00. The Brokers shown are, —300 at \$7.00, Crang; which item is shown on page 36 of the Clearing Sheet. 10 The next item is 100 at \$7.00, Colling. That item is on the Clearing Sheet, but left off. The next item is 600 at \$7.00, Butler. That item is on page 36 of the Clearing Sheet. The next item is 100, Dobie, at \$7.00. That item is on the Clearing Sheet, and left off.

Q. When you say "left off", what do you mean, Mr. Hill? I think, perhaps, everybody in this Court Room fully understands what you mean, but for the purpose of the record—?

A. "Left off", means that the Company does not,—the Broker that has to deliver to Solloway is not able to make delivery that day, and has requested that it be left off the Clearing Sheet to be cleared at some later period. The only reason I am saying it is left off at that date, or on this Clearing Sheet, is that it 20 affects the number of shares to be received that day, but later on those items will be cleared up.

Q. Perhaps we should have a description of what the Clearing Sheets purport to show?

A. The Clearing Sheet, in this case, purports to show all trades that go through the Standard Stock and Mining Exchange, which trades are cleared on balance through the Standard Stock and Mining Exchange Clearing House, which is kept at the Trusts and Guarantee Company.

MR. FERGUSON: That will be very clear to the Privy Council. What I 30 mean is, Sir, I have read a case where all the Counsel were from Toronto on a case in connection with the Toronto Island, and the Privy Council were quite annoyed because the Island was not fully explained on the record.

MR. BREWIN: Q. We will go on with describing the Clearing Sheet?

A. For the purpose of clearing transactions between Brokers, the Standard Stock and Mining Exchange maintains a Clearing House, to which Clearing House all the members of the Standard Stock and Mining Exchange report each day their transactions, and deliver through any stocks which they are required to make for delivery to other Brokers who are also members of the Standard Stock and Mining Exchange. I do not think I am making this very clear.

MR. FERGUSON: Well, I do not mind if my friend leads a little. 40

WITNESS: If I had started right from the first I would have made it differently. I did not think I would be required to explain that.

MR. BREWIN: Q. I think it would be best to have a full explanation from you.

ASST. MASTER: I think for the purpose of the record the question of balanced clearing might be explained. You can make it fairly brief.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
13th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
13th
October,
1932.

—continued

MR. BREWIN: I think, sir, perhaps you have enough on the record to explain it.

Q. Then you were describing—you were explaining to us what the records show with regard to the purchase of shares of Sudbury Basin Mines on the 16th of October, and explaining the records that you referred to as you went along?

A. There is no necessity of explaining Buy and Sell Slips. I think they are fully understood.

Q. Well, I don't know, if you could give us a brief description of what they are?

MR. FERGUSON: We have had those explained by another witness.

MR. McRUER: I think it is wise, for the purpose of the record, that some explanation should preface the comment on these things, because otherwise it would be very difficult for a Judge reading the record, who was not familiar with it, in knowing what the witness is talking about.

ASST. MASTER: If you call them "Orders to buy" and "Orders to sell", that would explain it?

WITNESS: Yes, sir. Referring to Exhibit No. 23, which is a file of Buy and Sell slips, I might say that these are the Orders to Buy or Sell certain stocks.

MR. McRUER: Q. Who makes them out, Mr. Hill?

A. Well, I cannot say who actually made these out. I know the system.

Q. What is the system?

A. These slips are made out either by the Telegrapher at the receiving end of the line,—that is in cases where a firm has branches outside the City that would use the private wire, and a Receiver makes out in that case the Buy slip or Sell slip. In a case of City branches they telephone the order in, and the telephone operator makes the slips out.

Q. Is there a trading room, or wire room, in which all instructions to buy or sell go? A. Yes, they must sometime reach the trading room.

Q. And when they do reach the trading room the people in that room make out those slips? A. Not necessarily. Most of the firms also have a board room, and the salesmen in the Board room make out these slips and forward the actual slips to the trading room.

MR. FERGUSON: I think we had an explanation of that yesterday from Mr. Kingsmill and Mr. Parkes. In the case of these confirmations, only those slips that were made out in the Board Room in the Metropolitan Life Building were actually forwarded physically. All other orders were either 'phoned or wired to the trading room, and the slip was made out in the trading room from the information received by telephone or wire.

WITNESS: Made out in the wire or trading room, Mr. Ferguson.

Q. Well that is the initial record of the transaction?

A. This is the original record of the transaction.

MR. McRUER: Q. Then you were telling us about the Clearing Sheets, I think. Will you explain how there was a Clearing House for all purchases and sales of shares done through Brokers on the Standard Stock and Mining Exchange? A. Yes.

Q. And how the Clearing Sheets were records from day to day of the shares

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that were required to be delivered or to be received by the various Brokers, and, I suppose, also the money that was owed?

A. The money was on balance the same as the shares.

Q. Now looking at those records will you go on to explain where delivery was taken of shares by reason of Mr. McLaughlin's order to purchase 7,000 shares on the 16th October?

A. Referring again to Exhibit 24, the first sheet, which is for the purchase of 1,800 shares of Sudbury Basin for McLaughlin, previously, I was down to 100 shares at \$7.00 for Dobie, which, I said was left off.

10 Q. You explained, I think, what you meant by "left off". That it was the Broker who was to make delivery who requested it be left off because he had not, at the moment, got the shares for delivery, and it would be adjusted through Clearing on a subsequent date?

A. That is right. The next item on this slip is 500 shares at \$7.00, Scott. That item is shown on the Clearing Sheet, Page No. 36. The next item is 50 at \$7.00, Stobie. That item is shown on the Clearing Sheet, and left off.

MR. FERGUSON: Q. 50, or 100?

A. Pardon me, it is 50 on the buy slip, and 100 entered on the Clearing Sheet.

20 Q. There is another 50 there, too,—the same page, No. 36?

A. I do not think that that is the first one, Mr. Ferguson. However, the 100 which I am referring to is left off.

MR. BREWIN: Q. Can we shorten this, Mr. Hill, by asking you whether the Clearing Sheets show how many shares of Sudbury Basin were required to be delivered by Clearing to Solloway, Mills & Company, Limited, on that day?

A. The net is, according to the Clearing Sheet it should be 5,995.

Q. And does that include the shares that were left off—I suppose it does not? A. No, that is after allowing for the shares left off and put on.

Q. How many shares of Sudbury Basin were left off on that day?

30 A. 450 shares to be received left off.

Q. Therefore, if we were to turn to the Security Register we should find delivered from the Clearing, or from the Brokers, that number of shares to answer the purchases of Sudbury Basin made that day. Is that right?

A. To balance there should be 5,995 shares. Providing there were no more leave offs than are recorded here. The Summary Sheet, which should be attached to this Clearing Sheet, would show the actual number of shares to be received from Clearing,—the actual net number of shares is not here, and I cannot say definitely.

40 Q. Well, could we put it this way. How many shares does it show were being bought by Solloway Mills & Company Limited that day, which they would take delivery of—either that day or subsequently?

A. There were 6,650 shares actually bought on the exchange by Solloway, Mills, that day.

Q. And how many shares would they take delivery of from the Clearing House?

A. Well, the Clearing, being on balance, they would take 5,995,—pardon me, by the way, I do not think the 5,995 is quite correct. I think there is a

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.

Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
13th
October,
1932.

—continued

leave off on the "To deliver" side, or two leave offs that are not struck out here. I believe the amount that was received from Clearing was 6,100 shares.

Q. Now, if Solloway Mills & Company Limited were "filling" the order of Mr. McLaughlin, is it reasonable to suppose that these shares that they obtained from Clearing were obtained to satisfy his order?

A. It was for his account, or, at least, he was the only buying client that day for which shares were purchased on the Exchange.

Q. So that, should the Security Register show the classification of those 10 shares, and the holding of those shares for Mr. McLaughlin?

A. The Security Register will show the receipt of those shares from the Clearing House and the disposition made of those shares.

Q. Now would you then turn to the Security Register, Mr. Hill?

ASST. MASTER: We will adjourn now to 10 A.M. October 19th.

ADJOURNED at 3.45 to October 19th, at 10 A.M.

RESUMED October 19th, 1932, at 10 A.M.

FREDERICK CHARLES HILL: (Recalled).

EXAMINATION-IN-CHIEF CONTINUED BY MR. BREWIN:

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

Q. Mr. Hill, the last day we were here, I think you were explaining to the Court, from the books of the Company—the Exhibits produced here—in what way it appeared that the Order of Mr. McLaughlin to Solloway-Mills was carried out, and I think you were showing us how the Clearing Sheets, and how it would appear that Mr. McLaughlin's order for the purchase was satisfied, would have been satisfied by delivery from the Clearing. Is that right? 20

A. Shown on balance, the order was satisfied.

Q. On that date there were no other purchases, perhaps with the exception of one or two, I think you said, ten shares or 100 shares?

A. There was one other purchaser of ten shares which account was filled by a "put through" with a selling client.

Q. But the majority of the shares purchased by McLaughlin would have been delivered to Solloway, Mills & Company Limited through the Clearing, does that appear from the Clearing Sheet? 30

A. In EXHIBIT 21, which is the Security Register, is recorded the receipt of 6,100 shares of Sudbury Basin from Clearing on October 17th, 1929. As Mr. McLaughlin's shares are practically all cleared that day, and there is only, apparently 100 of a "put on", the 6,000, or 6,100, would be on account of Mr. McLaughlin.

Q. And what does the Security Register purport to show, Mr. Hill?

A. The Security Register purports to show all securities received, showing the number of the certificate, the number of shares, name in whom registered, and from whom received, and also shows to whom delivered.

Q. Now if you will look at Sudbury Basin Mines in that book under date of October 16th, does that show the delivery by Mr. McLaughlin to Solloway, Mills? 40

A. In Exhibit 21, on pages 19 and 20, is recorded the receipt of 3,500 shares of Sudbury Basin from J. P. McLaughlin.

Q. Now does it show there what was done with those shares, or whether they were delivered out and when?

A. Yes, that is also shown.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

Q. Will you describe what is shown there? A. Certificate No. 23,521 for 500 shares, in the name of F. J. Crawford, received from J. P. McLaughlin, was delivered to Lorsch on October 17th, 1929. Certificate No. 1606, 200 shares in the name of A. L. Hudson, was delivered to Eastwood on October 17th.
10 Certificate No. 1,588, for 200 shares in the name of A. L. Hudson, was delivered to Eastwood. Certificate No. 1,587 for 200 shares in the name of A. L. Hudson, delivered to Scott, October 17th. Certificate No. 13,632, for 200 shares in the name of A. L. Hudson, delivered to Scott on October 17th.

Q. You are producing a document, Mr. Hill, what is this document you are producing? A. It is extracts I have made from the books of Solloway, Mills & Company showing the shares—share certificates deposited by J. P. McLaughlin, and the disposal by the Defendants of same.

Q. You got that information from where, Mr. Hill? A. From the records of Solloway Mills & Company, Limited.

20 EXHIBIT NO 44: STATEMENT SHOWING DISPOSITION OF COLLATERAL.

Q. Now in this Exhibit No. 44 that you have produced, Mr. Hill, I notice that you purport to show the number of shares, the date received, certificate number, and in whose name they appear, who they were delivered to, and the date. So far as that information is concerned in Exhibit 44, where does that information come from?

A. That is copied from Exhibit No. 21—the Security Register of Solloway, Mills & Company, Limited.

Q. And so far as all the information that appears in this Exhibit No. 44
30 is it an accurate copy of what appears in Exhibit 21, the Security Register?

A. It was intended to be a correct copy. I have not yet checked it over to see since it has been typed. Any errors in it would be typographical errors.

Q. Perhaps, Mr. Hill, we could have this checked over and verified, but subject to such checking over, it is an accurate record, is it? A. Yes.

Q. Of what appears in the Security Register, Exhibit 21? A. Not as far as the date column is concerned.

Q. In as far as the date of delivery. Is that right? A. Yes.

Q. And the Broker or other person to whom the shares were delivered?

A. That is correct. The information over to the column headed "Date"
40 is copied from the Security Register.

Q. And all those shares shown there as deposited were shares which appear to have been deposited by Mr. McLaughlin, is that right? A. Yes. That is the only certificates that I listed.

Q. Now you told us, Mr. Hill, that some 6,000 shares were received from Clearing on October 7th, which, I believe, you told the Court would be to satisfy Mr. McLaughlin's purchase. Can you turn up the passage in the Security Register where it shows the delivery of those shares, and tell the Court when they

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

were delivered out? A. In Exhibit 21, under date of October 17th there is recorded the receipt of 6,100 shares from Clearing, I have also prepared a list of the Certificates received from Clearing, and the disposal of the same.

Q. This document that you are producing, I ask that it be marked as Exhibit No. 45.

EXHIBIT NO. 45: Shares received from Clearing and the disposal of same.

Q. What does this Exhibit No. 45 show, Mr. Hill? A. The Certificates received by the Defendants from Clearing, on October 17th, 1929, as recorded in Exhibit No. 21, and the disposal of those certificates.

Q. And where does that information come from? A. Entirely from 10 Exhibit 21.

Q. And subject to being checked over later, it is an accurate copy, is it, of what appears in Exhibit 21? A. Yes.

MR. FERGUSON: I am objecting to this statement being proved by the statement of this witness that it is accurate subject to anything.

MR. BREWIN: We can check it over figure by figure.

MR. FERGUSON: I am certainly objecting to it being proved this way, and letting it be marked now subject to checking over.

MR. BREWIN: Q. Then will you turn to the Security Register and verify the entries made in Exhibit 45, and read them out to the Court one by 20 one?

A. Under date of October 17th, 1929, on a sheet headed, in red "20" with a circle around it, is recorded Certificate No. 21,635, for 500 shares, in the name of A. J. Close, received from Clearing, delivered to Scott on October 18th, 1929. Certificate No. 17,583, 400 shares in the name of W. H. Warrington, received from Clearing, delivered to Clearing October 18th, 1929. Certificate No. 1,606, for 200 shares, in the name of A. L. Hudson, received from Clearing, delivered to Scott on October 18th, 1929. On a page headed "October 17th, 1929", but which is not numbered, is recorded Certificate No. 1588 for 200 shares, in the name of A. L. Hudson, received from Clearing, delivered to Lorsch, October 30 18th, 1929.

MR. FERGUSON: It is "1388" down here.

MR. BREWIN: Where is that, Mr. Hill?

A. I got down to Certificate No. 1,606 before, and I am jumping to number 1588 now, and I will go back to the others later. They are on another page. Certificate No. 1588 for 200 shares, in the name of A. L. Hudson, received from Clearing, delivered to Lorsch, October 18th, 1929. Certificate No. 1587, in the name of A. L. Hudson, received from Clearing, delivered to Lorsch October 18th, 1929. Certificate No. 13,632, for 200 shares, in the name of A. L. Hudson, received from Clearing, delivered to Clearing October 18th, 1929. Certificate 40 No. 17,009, for 200 shares in the name of Ross, received from Clearing, delivered to Scott, October 18, 1929. Certificate No. 16,238, for 100 shares, in the name of Watt & Watt, received from Clearing, delivered to Clearing, October 18th, 1929. Certificate No. 23,415, for 100 shares, in the name of B. Johnson & Company, received from Clearing, delivered to Clearing, October 18th, 1929. Certificate No. 21,323, 100 shares, in the name of R. Symes, received from Clearing, delivered to Clearing, October 18th, 1929. Certificate No. 5,878, for 100

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

- continued

shares, in the name of F. S. Leslie, received from Clearing, delivered to Clearing, October 18th, 1929. Certificate No. 13,828, 100 shares, in the name of W. J. Smart, received from Clearing, delivered to Clearing, October 18th, 1929. Certificate No. 23,249, 100 shares, in the name of J. R. Cannon, for 100 shares, received from Clearing, delivered to Clearing, October 18th, 1929. Certificate No. 2,764, 100 shares in the name of M. Phinnemore, received from Clearing, delivered to Scott, October 18th, 1929. Certificate No. 9,102, for 100 shares, in the name of N. C. Wernhart, received from Clearing, delivered to Lorsch, October 18th, 1929. Certificate No. 23,012, 100 shares, in the name of G. M. Black,
10 received from Clearing, and delivered to Butler, Hevenor & Company, October 18th, 1929. Certificate No. 13,415, 100 shares, in the name of A. L. Hudson, received from Clearing, delivered to Butler, Hevenor & Company, October 18th, 1929. Certificate No. 5,272, 100 shares, in the name of Stobie, delivered to Butler, Hevenor & Company, October 18th, 1929. Certificate No. 20,995, 100 shares, in the name of Crawford, received from Clearing, delivered to Butler, Hevenor & Company, October 18th, 1929; Certificate No. 21,965, 100 shares, Stobie, received from Clearing, delivered to Butler, Hevenor & Company, October 18th, 1929. Certificate No. 13,320, 100 shares, in the name of Crawford, received from Clearing, delivered to Scott, October 18th, 1929. Certificate No. 21,318,
20 100 shares, in the name of F. Kramer, received from Clearing, delivered to Scott, October 18th, 1929. Certificate No. 4,011, 100 shares in the name of Watt & Watt, received from Clearing, delivered to Scott, October 18th, 1929.

On the following page,—Certificate No. 4,012, 100 shares, in the name of Watt & Watt, received from Clearing, delivered to Scott, October 18th, 1929. Certificate No. 10,745, 100 shares, in the name of F. J. Crawford, received from Clearing, delivered to Scott, October 18th, 1929. Certificate No. 5,538, 100 shares, in the name of N. Tovell, received from Clearing, delivered to Scott, October 18th, 1929. Certificate No. 5,539, 100 shares, in the name of N. Tovell, received from Clearing, delivered to Scott, October 18th, 1929. Certificate No.
30 5,540, 100 shares, in the name of N. Tovell, received from Clearing, delivered to Scott, October 18th, 1929. Certificate No. 22,934, 100 shares, in the name of J. P. Cannon, received from Clearing, delivered to Clearing, October 18th, 1929. Certificate No. 20,956, 100 shares, J. F. Crawford, received from Clearing, delivered to Scott, October 18th, 1929. Certificate No. 23,433, 100 shares, in the name of F. J. Crawford, received from Clearing, delivered to Scott, October 18th, 1929. Certificate No. 23,534, 100 shares, in the name of F. J. Crawford, received from Clearing, delivered to Crang, October 18th, 1929. Certificate No. 23,535, 100 shares, in the name of F. J. Crawford, received from Clearing, delivered to Crang, October 18th, 1929. Certificate No. 10,692, 100
40 shares, in the name of F. J. Crawford, received from Clearing, delivered to Crang, October 18th, 1929. Certificate No. 23,536, 100 shares, in the name of F. J. Crawford, received from Clearing, delivered to Crang, October 18th, 1929. Certificate No. 17,488, 100 shares, in the name of E. M. Arnold, received from Clearing, delivered to Crang, October 18th, 1929. Certificate No. 13,300, 100 shares, in the name of Mara & McCarthy, received from Clearing, delivered to Lorsch, October 18th, 1929. Certificate No. 22,973, 100 shares, in the name of W. J. Smart, received from Clearing, delivered to Lorsch, October 18th, 1929.

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

Certificate No. 18,473, 100 shares, in the name of H. E. Osler, received from Clearing, delivered to Lorsch, October 18th, 1929. Certificate No. 22,965, 100 shares, in the name of C. V. Kinsey, received from Clearing, delivered to Lorsch, October 18th, 1929. Certificate No. 5,891, 100 shares, in the name of S. R. MacKeller, received from Clearing, delivered to Lorsch, October 18th, 1929. Certificate No. 23,035, 100 shares, in the name of J. P. Cannon, received from Clearing, delivered to Scott, October 21st, 1929. Certificate No. 11,315, 100 shares, in the name of G. Meyer, received from Clearing, delivered to Scott, October 21, 1929.

Then on sheet number 21, is recorded certificate number 19,317, for 100 shares, in the name of E. Neirman, received from Clearing, delivered to Scott, October 21, 1929. Certificate number 19,181, for 100 shares, in the name of Stobie, received from Clearing, delivered to Scott, October 21, 1929. Certificate number 22,316, 100 shares, in the name of H. LePage, or A. LePage. I cannot tell whether it is "H" or "A", received from Clearing, delivered to Scott, October 21, 1929. Certificate number 23,403, for 100 shares, in the name of G. M. Black, received from Clearing, delivered to Scott, October 21, 1929. Certificate number 5,318, for 100 shares, in the name of Stobie, received from Clearing, delivered to Scott, October 21, 1929. Certificate Number 10,733, for 100 shares, in the name of F. J. Crawford, received from Clearing, delivered to Scott, October 21, 1929.

MR. BREWIN: Q. I put in as exhibit number 44, Statement showing disposition of collateral stock. I did not ask Mr. Hill to go through that in detail, and my friend raised no objection.

MR. FERGUSON: I raised objection, Mr. Brewin.

MR. BREWIN: No, you did not, Mr. Ferguson.

MR. FERGUSON: I thought I made that clear before.

MR. BREWIN: Q. Will you look at exhibit 44, Mr. Hill. You have already told us that that is a record from the Security Register shewing the delivery of shares deposited by Mr. McLaughlin. Will you please go through that in detail and read out to the Court what appears in the Security Register, verifying the correctness of exhibit 44. A. On exhibit 44 there is also particulars as to the reason of delivery.

Q. I will ask you about those later. Just at the present time I want the information on exhibit 44 that comes from the Security Register. Will you verify that.

A. In exhibit number 21, under date of October 16th, 1929, on a page headed "19" in red, with a circle around it, and "Sudbury Basin", is recorded the following certificates received from J. P. McLaughlin:— Certificate number 23,521, 500 shares, in the name of F. J. Crawford, delivered to Lorsch, October 17, 1929; Certificate number 1,606, 200 shares, in the name of A. L. Hudson, delivered to Eastwood, October 17, 1929; certificate number 1,588, 200 shares, in the name of A. L. Hudson, delivered to Eastwood, October 17, 1929; certificate number 1,587, 200 shares, in the name of A. L. Hudson, delivered to Scott, October 17, 1929; certificate number 13,632, 200 shares, in the name of A. L. Hudson, delivered to Scott, October 17, 1929; certificate number 1,594, 200 shares, in the name of A. L. Hudson, delivered to Butler, Hevenor, October

17, 1929; certificate number 1,593, 200 shares, in the name of A. L. Hudson, delivered to Butler, Hevenor, October 17, 1929; certificate number 7,768, for 100 shares, in the name of Solloway, Mills & Co., delivered to Butler, Hevenor, October 17, 1929; certificate number 544, 100 shares, in the name of Stobie, delivered to Butler, Hevenor, October 17, 1929; certificate number 4,011, for 100 shares, in the name of Watt & Watt, delivered to Colling, October 17, 1929; certificate number 4,012, for 100 shares, in the name of Watt & Watt, delivered to Colling, October 17, 1929; certificate number 10,745, for 100 shares, in the name of F. J. Crawford, delivered to Colling, October 17, 1929; certificate number 5,538, for 100 shares, in the name of N. Tovell, delivered to Colling, October 17, 1929; certificate number 5,539, 100 shares, in the name of N. Tovell, delivered to Colling, October 17th, 1929.

On the following page,—certificate number 5,540, 100 shares, in the name of N. Tovell, delivered to Eastwood on October 17th, 1929; certificate No. 5,541, 100 shares, in the name of N. Tovell, delivered to N. Scott, October 21st, 1929; certificate No. 4,795, 100 shares, in the name of Stobie, delivered to Scott, October 21st, 1929; certificate No. 4,796, 100 shares, in the name of Stobie, delivered to Scott, October 21st, 1929; certificate No. 5,077, 100 shares, in the name of Stewart, McNair, delivered to Scott, October 21st, 1929; certificate No. 3,985, 100 shares, in the name of G. W. Nicolson, delivered to Winnipeg, October 19th, 1929; certificate No. 5,548, 100 shares, in the name of N. Tovell, delivered to Winnipeg, October 19th, 1929; certificate No. 5,549, 100 shares, in the name of N. Tovell, delivered to Crang, October 21st, 1929; certificate 5,550, 100 shares, in the name of N. Tovell, delivered to Crang, October 21st, 1929; certificate No. 10,690, 100 shares, in the name of F. J. Crawford, delivered to Crang, October 21st, 1929; certificate No. 10,691, 100 shares, in the name of F. J. Crawford, delivered to Crang, October 21st, 1929.

That is the first block that was delivered by McLaughlin, October 16th, 1929.

MR. BREWIN: Q. Will you turn to October 22nd, 1929? A. Under date of October 22nd, 1929, in Exhibit 21, on a page headed "23", certificates from J. P. McLaughlin,—

Certificate No. 23,522, 500 shares, in the name of F. J. Crawford, delivered to Scott, October 25th, 1929; certificate No. 10,693, 100 shares, in the name of F. J. Crawford, delivered to Clearing, October 24th, 1929; certificate No. 1,607, 200 shares, in the name of A. L. Hudson, delivered to Clearing, October 24th, 1929; certificate No. 10,574, 100 shares, in the name of Stobie, delivered to Clearing, October 24th, 1929; certificate No. 543, 100 shares, in the name of Stobie, delivered to Clearing, October 24th, 1929; certificate No. 13, 873, 100 shares, in the name of A. L. Hudson, delivered to Clearing, October 24th, 1929; certificate No. 6,969, 100 shares, in the name of G. Adams, delivered to Scott, October 25th, 1929; certificate No. 305, 100 shares, in the name of Stobie, delivered to Scott, October 25th, 1929; certificate No. 13,710, 100 shares, in the name of A. L. Hudson, delivered to Scott, October 25th, 1929; certificate No. 13,708, 100 shares, in the name of A. L. Hudson, delivered to Scott, October 25th, 1929.

MR. BREWIN: Q. Will you turn to October 25th, Mr. Hill? A. Under

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

date of October 25th, in Exhibit No. 21, on page 25, which has a red pencil circle around it, is recorded Certificate No. 21,635, 500 shares, in the name of A. J. Close, received from J. P. McLaughlin, delivered to Scott, October 29th, 1929.

Q. Will you look under October 29th, 1929?

MR. FERGUSON: Was there just the 500 shares deposited on that date?

MR. BREWIN: I believe so.

WITNESS: Yes, there is only 500.

MR. BREWIN: Q. It appears in the Ledger? A. There is a photostatic copy of it.

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MR. FERGUSON: It appears on the account?

WITNESS: Now, Exhibit 21, under date of October 29th, 1929, on a sheet headed "28", with a red pencil circle around it, is recorded the receipt of the following certificates from J. P. McLaughlin: Certificate No. 12,554; 100 shares, in the name of A. L. Hudson, delivered to J. H. Crang, November 5th, 1929.

MR. FERGUSON: It is not here, that has been missed.

MR. McRUER: Yes, it is on the next page, about seven or eight down.

WITNESS: Certificate No. 13,749, 100 shares, in the name of F. J. Crawford, delivered to J. H. Crang, November 5th, 1929; certificate No. 15,067, 100 shares, in the name of H. Pratt, delivered to J. H. Crang, November 5th, 1929.

MR. McRUER: Q. Is it "H" Pratt, or "A" Pratt? A. Well, it is either an "A" or an "H".

MR. FERGUSON: Well, as long as it is Pratt.

WITNESS: Certificate No. 7,447, 100 shares, in the name of G. W. Blaikie,—I cannot make out the name of who it is delivered to. It is on November 5th, 1929.

MR. McRUER: Q. You have "Eastwood" here? A. That is correct,—Eastwood. It is just scribbled in here. Certificate No. 13,748, 100 shares, in the name of F. J. Crawford, delivered to Eastwood, November 5th, 1929; certificate No. 15,604, 100 shares, in the name of J. P. Cannon, delivered to Eastwood, November 5th, 1929; certificate No. 10,811, 100 shares, in the name of F. J. Crawford, delivered to Eastwood, November 5th, 1929; certificate No. 6,536, 100 shares, in the name of Stobie, delivered to Eastwood on November 5th, 1929; certificate No. 6,535, 100 shares, in the name of Stobie, delivered to Eastwood, November 5th, 1929; certificate No. 10,810, 100 shares, in the name of F. J. Crawford, delivered to Eastwood, November 5th, 1929; certificate No. 6,534, 100 shares, in the name of Stobie, delivered to Eastwood, on November 5th, 1929; certificate No. 5,073, 100 shares, in the name of N. Tovell, delivered to Eastwood, on November 5th, 1929; certificate No. 10,809, 100 shares, in the name of F. J. Crawford, delivered to Eastwood, November 5th, 1929;

Then on the following page, No. 29, is recorded Certificate No. 5,672, 100 shares, in the name of N. Tovell, delivered to Butler, Hevenor, November 5, 1929; certificate No. 5,071, 100 shares, in the name of N. Tovell, delivered to Butler, Hevenor, November 5, 1929.

There were two items recorded in the account as being delivered by Mc-

Laughlin to the Defendant, that day, one item of 100 shares, and one item of 2,000 shares. I have given you the item of 1,500 shares.

Exhibit No. 21, on page 29, is recorded the following certificates received from McLaughlin:

Certificate No. 22,732, 100 shares, in the name of "L.L.M.," delivered to Clearing, October 30th, 1929; certificate No. 22,971, 100 shares, in the name of W. J. Smart, delivered to Clearing, October 30th, 1929; certificate No. 10,750, 100 shares, in the name of F. J. Crawford, delivered to Clearing, October 30th, 1929; certificate No. 22,969, 100 shares, in the name of W. J. Smart, delivered to Clearing, October 30th, 1929; certificate No. 16,290, 100 shares, in the name of Stobie, delivered to Clearing, October 30th, 1929; certificate No. 7,151, 100 shares, in the name of F. J. Crawford, delivered to Clearing, October 30th, 1929; certificate No. 10,330, 100 shares, in the name of L. J. Moore, delivered to Clearing, October 30th, 1929;

MR. McRUER: Q. "10,330"? A. It is 16,330. It could be taken for either. It looks like a "six" though.

Certificate No. 10,812, 100 shares, in the name of F. J. Crawford, delivered to Clearing, October 30th, 1929; certificate No. 18,593, 100 shares, in the name of G. G. Findlay, delivered to Clearing, October 30th, 1929; certificate No. 17,488, 100 shares, in the name of E. M. Arnold, delivered to Clearing, October 30th, 1929; certificate No. 10,813, 100 shares, in the name of F. J. Crawford, delivered to Clearing, October 30th, 1929; certificate No. 12,358, 100 shares, in the name of Stobie, delivered to Clearing, October 30th, 1929; certificate No. 10,814, 100 shares, in the name of F. J. Crawford, delivered to Clearing, October 30th, 1929; certificate No. 12,359,—the following are recorded on page 30.

Certificate No. 12,359, 100 shares, in the name of Stobie, delivered to Clearing, on October 30th, 1929; certificate No. 12,360, 100 shares, in the name of Stobie, delivered to Clearing, October 30th, 1929; certificate No. 10,815, 100 shares, in the name of F. J. Crawford, delivered to London, October 30th, 1929; certificate No. 12,361, 100 shares, in the name of Stobie, delivered to Vancouver on October 30th, 1929; certificate No. 12,362, 100 shares, in the name of Stobie, delivered to Vancouver, on October 30th, 1929; certificate No. 10,816, 100 shares, in the name of F. J. Crawford, delivered to Vancouver, October 30th, 1929; certificate No. 12,363, 100 shares, in the name of Stobie, delivered to Regina, on November 13th, 1929.

MR. FERGUSON: I submit, sir, you should allow that amendment after reading this. These shares did not belong to this man at all. He did not have any interest in them whatever.

MR. BREWIN: Q. Will you turn, then, to December 3rd, 1929? A. In Exhibit 21, Sudbury Basin, under date of December 3rd, 1929, page headed "37"—

MR. FERGUSON: Q. Excuse me a moment, Mr. Hill. The witness has read either 2,500 shares, or was it 2,000 shares?

MR. McRUER: 2,000 shares.

WITNESS: Certificate No. 6,461, 100 shares, in the name of W. R. Poynton, received from J. P. McLaughlin, delivered to Vancouver, December 4th, 1929; Certificate No. 428, 100 shares, in the name of Stobie, delivered to Clear-

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

ing, December 4th, 1929; certificate No. 1,592, 200 shares, in the name of A. L. Hudson, delivered to Hamilton, December 4th, 1929; certificate No. 1,591, 200 shares, in the name of A. L. Hudson, delivered to Clearing, December 10th, 1929; certificate No. 11,326, 200 shares, in the name of C. G. Murphy, delivered to Clearing, December 4th, 1929; certificate No. 20,913, for 200 shares, in the name of A. L. Riordan, delivered to Clearing, December 4th, 1929;

On the following page,—Certificate No. 3,279, for 500 shares, in the name of A. L. Hudson, delivered to Scott, December 12th, 1929; certificate No. 3,256, 1,000 shares, in the name of A. L. Hudson, delivered to Transfer, December 6th, 1929;

MR. BREWIN: Q. Will you turn to December 16th, 1929, and say what was done with the shares deposited by Mr. McLaughlin on that day?

A. In Exhibit 21, under date of December 16th, 1929, Sudbury Basin, on page headed "45", with a red pencil circle around it, is recorded the receipt of the following Certificates:—

Certificate No. 9,191, for 500 shares, in the name of F. J. Bailes, delivered to Royal Loan, December 17th, 1929;

MR. McRUER: Q. "9,191"? A. Yes. The certificates that were delivered on this date, there is no claim. They are all returned.

Q. Well, there is one certificate?

A. Certificate No. 25,195 for 300 shares in the name of Chip, Hogg, was delivered to Clearing on December 17th, 1929. In regard to the other 2,200 shares delivered by McLaughlin on December 16th, 1929, I find that the certificates were deposited—are shown as being deposited in the Royal Loan on the 17th December, 1929, and according to Exhibit No. 21 they remained therein until the 13th January, 1930, when they were withdrawn and returned to J. P. McLaughlin.

MR. BREWIN: Q. Just to clear up what appears on the Security Register. We have evidence that Mr. McLaughlin obtained delivery of 21,000 shares?

A. 21,000 shares.

Q. On the 15th January. You tell us now that 2,200 shares were delivered to him, which were the shares he had deposited on the 16th January, which had been delivered to the Royal Bank Loan. Now with regard to the other shares that were delivered to Mr. McLaughlin, does it appear from the Security Register where they were obtained from? A. Yes, that is shown in the Security Register.

Q. Will you read out what the Security Register shows in that regard, by reference to the Security Register, and then, perhaps, supply the Court with a statement with the information on it at some later time, Mr. Hill?

MR. McRUER: I suggest, sir, that we keep an Exhibit number—46—for these statements, so that they will be all together.

ASST. MASTER: Yes, we will reserve No. 46 for that. What statement is that, Mr. Brewin?

MR. BREWIN: It is going to show what shares were delivered to Mr. McLaughlin, and where they appeared to come from, according to the Security Register, shares delivered on January 13th, when he went in and asked for the delivery of shares held for him, and was given 21,000 shares of Sudbury Basin.

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I think it was either the 13th or 14th January, and I will now have a statement showing where those shares, according to the Security Register, came from. Have you a statement of that, Mr. Hill? Will you answer that question?

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

A. According to Exhibit No. 21, under Sudbury Basin, January 13th, is recorded the following certificate No. 16,302 for 100 shares, in the name of Stobie received from J. R. Gordon, delivered to J. P. McLaughlin, January 14th, 1930. There are a considerable number of certificates listed which are received from J. R. Gordon, and delivered to J. P. McLaughlin, and until I change the information I will just read out the certificate number, and the number of shares,
10 and in whose name they appear.

—continued

Certificate number—21450, 100 shares, Crawford; 4546, 100 shares, Stobie; 21455, 100 shares, Crawford; 21036, 100 shares, Crawford; 21038, 100 shares, Crawford; 21040, 100 shares, Crawford; 21461, 100 shares, Crawford; 11562, 100 shares, Crawford; 21028, 100 shares, Crawford; 8090, 100 shares, H. Storsteed; 21022, 100 shares, Crawford; 14795, 100 shares, G. L. White; 19793, 100 shares, Draper Dobie; 1019, 100 shares, Stobie; 10598, 100 shares, Stobie; 4829, 100 shares, Stobie; 12098, 100 shares, Stobie; 16301, 100 shares, Stobie; 13064, 100 shares, Leslie.

On the previous page,—Certificate number 23860, 100 shares, F. G. Oke;
20 12355, 100 shares, Stobie; 23011, 100 shares, G. M. Black; 10481, 100 shares, Stobie; 2559, 100 shares, Cronyn; 12357, 100 shares, Stobie. Certificate number 22984, 100 shares, Stobie; 22985, 100 shares, Stobie; 6845, 100 shares, H. L. Gibson; 12390, 100 shares, Stobie.

MR. FERGUSON: Q. Do I understand, when you say "Stobie", is that the source of these shares?

A. No, that is in whose name they are registered. All the shares I have read so far, have been received from J. R. Gordon. I believe I have read out certificate No. 12357, 100 Stobie, and number 22984, 100, Stobie, and number 22985, 100 Stobie; and 6845, 100, H. L. Gibson; and 12390, 100, Stobie.

30 Then to continue:—Certificate Number,—23373, 100 shares, Mrs. A. Dunn; 19790, 100 shares, Draper, Dobie; 5965, 100 shares, Crawford; 22528, 100 shares, W. A. Findlay; 12532, 100 shares, Stobie; 12533, 100 shares, Stobie; 12534, 100 shares, Stobie; 14677, 100 shares, Logan & Bryan; 22153, 100 shares, "J. F. M."; 20056, 100 shares, McCaiug.

On the previous page to which I have been reading is recorded Certificate Number,—16394, 100 shares, Osler, Hammond; 6021, 100 shares, C. Peaker; 9454, 100 shares, J. L. Goad; 21448, 100 shares, Crawford; Certificate Number,—21034, 100 shares, Crawford; 21035, 100 shares, Crawford.

40 On the back of two pages prior to the one which I have completed reading, is recorded Certificate Number 22563, 100 shares, in the name of W. A. Finlay, and Certificate Number,—15146, 100 shares, J. Goad; 12086, 100 shares, Stobie; 14895, 100 shares, George Blaikie & Co.; 23423, 100 shares, Bongard & Co.; 23853, 100 shares, F. G. Oke & Co.; 23855, 100 shares, F. G. Oke & Co.; 23856, 100 shares, F. G. Oke & Co.; 23857, 100 shares, F. G. Oke & Co.; 7599, 100 shares, H. Wallis; 23858, 100 shares, F. G. Oke.

That completes the shares that were received from J. R. Gordon and delivered to J. P. McLaughlin.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

MR. McRUER: Q. All received from Gordon on the 13th January?

A. Yes. On the previous page is recorded, under date of January 13th, received from Stobie-Forlong Loan, and delivered to J. P. McLaughlin, the following certificates,—

Certificate Number,—22018, 1000 shares, F. O'Hearn; 7756, 1000 shares, A. Bowman; 25409, 1000 shares, Stobie; 25413, 500 shares, Stobie; 24021, 500 shares, Ames Tudhope; 25414, 500 shares, Stobie; 25411, 500 shares, Stobie. Certificate Number,—25412, 500 shares, Stobie; 24374, 200 shares, J. Lucas; 25375, 100 shares, C. Kinsey; 23364, 100 shares, Stobie; 14615, 100 shares, E. McLean; 13300, 100 shares, Mara, McCarthy; 3613, 100 shares, Child & Co.; 23729, 100 shares, W. J. Smart; 19614, 100 shares, W. A. Findlay; 11911, 100 shares, E. Parker; 18643, 100 shares, N. Samuel. 10

On the previous page is recorded, commencing towards the lower part of the page, Certificate No. 13237, 100 shares, W. J. Smart. These items are also received from Stobie, Forlong Loan, and delivered to J. P. McLaughlin.

Certificate Number 10634, 100 shares, Stobie; 24455, 100 shares, Stobie; 428, 100 shares, Stobie; 22017, 1000 shares F. O'Hearn; 7412, 1000 shares, A. Gentles; 22019, 1000 shares, F. O'Hearn.

That completes the certificates delivered to J. P. McLaughlin on January 14th, 1930, which were received from Stobie, Forlong Loan. 20

MR. McRUER: Q. And those were received from Stobie, Forlong Loan Account on that date?

A. Yes, on January 13th, 1930. There are also a number of certificates which were according to Exhibit 21, received from The Royal Loan and delivered to J. P. McLaughlin. Some of these items are shares which McLaughlin deposited on December 16th, 1929. I have not put those items on this list which I am—which I will tell later to the Court. There are certain items, however, recorded in Exhibit No. 21, which were delivered to McLaughlin on January 14th, and which are shown as being received from the Royal Loan which McLaughlin—which were not deposited by McLaughlin. 30

On a page headed January 13th, the first certificate being number 16289, is recorded certificate No. 25173, for 100 shares, in the name of "J. F. M." which was withdrawn from the Royal Loan and given to J. P. McLaughlin.

Certificate Number 25174, 100 shares, in the name of J. F. M.; 24675, 100 shares, in the name of F. O'Hearn; 24676, 100 shares, in the name of F. O'Hearn; 24677, 100 shares, in the name of F. O'Hearn; 24695, 100 shares, in the name of F. O'Hearn; 25363, 100 shares, in the name of F. O'Hearn; 25184, 100 shares, in the name of Chipman Hogg.

On the previous page, Certificate Number 22457, 500 shares, in the name of A. Forbes. 40

MR. McRUER: Q. It is 12457 here—all right.

A. Certificate Number 6503, 500 shares, in the name of Stobie; 9192, 500 shares, in the name of F. J. Bailes; 20126, 200 shares, in the name of Green-shields; 20007, 100 shares, in the name of Bigger, Crawford; 23413, 100 shares, in the name of Baptiste Johnson.

On the previous page, which is headed number 60, with a red pencil circle around it, is recorded certificate number 25755, 100 shares, in the name of

"J.F.M." received from Transfer, delivered to J. P. McLaughlin, January 14th, 1930. This Certificate being received from transfer is as of January 13, 1930. Likewise certificates numbers 25756, 25757, and 25758, for 100 shares.

Q. Now, Mr. Hill, you will produce for the Court a Statement giving the information that you have just read out from the Security Register. A. Yes.

Q. Now I notice in Exhibit 45 that there is a "X" marked against certain shares there. I would like to clear up what that means.

A. I find, on examining Exhibit 21, that certain certificates—certificate numbers of shares—are shewn as being deposited by the Plaintiff, McLaughlin, on the 16th day of October, 1927, and recorded in this Exhibit 21, and also shewn as being received back from Clearing on the following day—October 17th, 1929.

Q. Are you indicating anything by that?

A. That indicates the stocks were not kept in the box.

MR. FERGUSON: I object to this.

MR. BREWIN: Mr. Ferguson just calls out that he objects, without giving any apparent reason for it.

MR. FERGUSON: The witness is here to give facts as an expert accountant; he is not here to draw conclusions.

ASST. MASTER: He can tell what physically happened to the certificates.

MR. FERGUSON: He has already done that.

ASST. MASTER: He said these certificates were received back from Clearing. Now he can say how they got to the Clearing.

MR. BREWIN: Q. How did they get to the Clearing, Mr. Hill?

A. To answer that it is necessary to go back to the previous Exhibit number 44, which shews the reason why certain collateral deposited by McLaughlin was withdrawn from the box.

Q. On Exhibit number 44 appears certificate number 1606. That is the second item. Certificate number 1606 was received from McLaughlin on October 16, 1929. It is a certificate for 200 shares in the name of Hudson. According to Exhibit 21, the Security Register, that certificate was delivered to Eastwood on October 17, 1929. I find, on examining Exhibit 25, the 4th sheet, that Eastwood is charged up with the purchase from Solloway of 500 shares of Sudbury Basin at \$7 per share. The original "Sold to" slip has not been produced. According to Exhibit 42, the second sheet from the back, there is a confirmation from Eastwood and Company reading—"We have this day sold for you (October 16th, 1929) 500 shares of Sudbury Basin, \$7.00" and charging a commission for so doing. On referring to Exhibit 28a, the Clients Brokers Ledger, Eastwood's account under date of October 16th, 1929, is recorded the sale to Eastwood of 500 shares of Sudbury Basin at \$7.00. Under date of October 17th, 1929, is recorded the delivery to J. T. Eastwood & Company of 500 shares of Sudbury Basin and payment for same being received in cheque for \$8,790.42. On returning to Exhibit 21. . . .

Q. What was this last exhibit you have been referring to? What does it show? What book is it—Exhibit 28a?

A. It was a special ledger which was kept for what is termed "Over the counter transactions."

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

MR. FERGUSON: I object to that. The witness does not know that. He has no right to make such a statement as that.

MR. BREWIN: Well, the witness can explain what he does know to the Court.

Q. You first called it "Clients Brokers Ledger".

A. No, sir, the real label is ripped off. It is now labelled "Butler, Hevenor, Colling & Colling, Eastwood." It is a certain ledger kept for certain type of deals Solloway had with these brokers.

MR. FERGUSON: It is a ledger kept for recording deals with the brokers whose names are listed in it, and that is the best you can say for it, or the worst you can say for it. 10

MR. BREWIN: Q. From the type of entries does it show it was a particular type of ledger.

A. All the entries I examined in that ledger are of the same type.

Q. And does that type differ from the ordinary Client's Ledger?

A. Yes.

Q. And is it different from other Brokers' Ledgers? A. Yes.

Q. Now you were in the middle of explaining this transaction in Exhibit 44, the delivery of 200 shares to Eastwood, and you were explaining. . . .

A. I explained that from Exhibit 28a there is 500 shares sold and delivered—sold on the 16th October, 1929, and delivered on the 17th October, 1929. I find, on referring to Exhibit 21, that the 500 shares delivered to Eastwood were made up of the following certificates. 20

Q. Well, what we are interested in for the moment is this certificate, number 1606. Does that appear to be delivered to Eastwood?

A. That is recorded on Sudbury Basin, page 19, with a red pencil circle around it. No. 1606 for 200 shares in the name of A. L. Hudson, received from McLaughlin, October 16th, 1929, delivered to Eastwood on October 17, 1929.

Q. So that, summarizing it, Mr. Hill, Exhibit number 44 shews that certificate number 1606 was delivered by Mr. McLaughlin on the 16th October as collateral; was delivered to Eastwood on October 17, 1929, and was received again by Solloway, Mills & Company, Limited from the Clearing, or rather, yes, from the Clearing on October 18, 1929. Is that correct? 30

A. No, it was received back from Clearing on the 17th.

Q. It was received back from Clearing on the 17th October, 1929, and it appears that it was again delivered out to Scott on October 18, 1929. Is that correct? A. That is correct.

Q. And the effect of that transaction is that in satisfying Mr. McLaughlin's order for the purchase of stock in this instance at least they were delivering the stock to him that he had deposited as collateral. 40

MR. FERGUSON: I object to this now.

MR. BREWIN: I think we are entitled to know from this witness if this is the effect of the transaction—that they receive the collateral from Mr. McLaughlin; sell it to Eastwood, and then, in placing an order for the purchase of Mr. McLaughlin's—for filling Mr. McLaughlin's order they buy back from Eastwood the collateral he had deposited with them, and the next day they sell

it again to Scott. I think that summarizes it, and as this is an expert witness, I think we are entitled to know it.

ASST. MASTER: He can give a summary of it as long as he does not give the legal effect of it.

MR. BREWIN: If the witness could say what I have stated is a fair summary. Does that appear to be a fair statement, Mr. Hill?

ASST. MASTER: Let the witness summarize it himself.

MR. BREWIN: Q. All right, I will ask the witness to summarize the effect of this dealing with this certificate number 1606 that he has described to
10 the Court as shewn by the books of the Company.

A. I find—I can point it out in the Exhibits.

Q. We want you to summarize it, Mr. Hill.

MR. FERGUSON: The witness cannot summarize this any more than we can. We have the facts before us. The effect of all these facts is for you to decide, Sir.

ASST. MASTER: I know that.

MR. FERGUSON: I think we are doing Mr. Hill a favour in not asking him to summarize it.

MR. BREWIN: It is only a case of putting the record in a . . .

MR. FERGUSON: This witness has not any right to say the effect of
20 those facts were that those shares were not bought or not sold.

MR. BREWIN: We have not asked him that.

MR. FERGUSON: Well, that is the effect of any summary he might make.

ASST. MASTER: My idea is the witness can tell the Court all the functions this one certificate performed.

MR. FERGUSON: There is no objection to that.

MR. BREWIN: Q. Well, can you put it in that way, Mr. Hill? What functions did this one certificate, number 1606, perform? Go through it briefly.

MR. FERGUSON: I presume you mean—probably you did not mean to use
30 the word “functions”—what you mean, Sir, is its history.

MR. BREWIN: Q. Let us have its history in this connection, Mr. Hill.

A. Certificate number 1606 was delivered by McLaughlin to Solloway, Mills on the 16th October, 1929, as collateral to his account. On the 17th October, 1929, this certificate was delivered to Eastwood in settlement of a sale—of an over the counter sale—made to Eastwood on October 16th, 1929. This certificate was then delivered by Eastwood to the Clearing House—was apparently delivered by Eastwood to the Clearing House—on October 17, 1929, in settlement of a sale—in part settlement, I should say—of a sale to Solloway for account of
40 J. P. McLaughlin. The certificate was then received back by Solloway from the Clearing House under date of October 17th, 1929.

Q. When you refer—you referred to a purchase by McLaughlin.

A. A purchase by Solloway on account of McLaughlin.

Q. And you have finished the history of this one stock?

MR. FERGUSON: Now you see, Sir, that is the very point I objected to. The witness states that this certificate was delivered to satisfy a purchase made by Solloway for McLaughlin. Well, under no consideration can this witness say

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

that. There is not any evidence to justify it. He was asked to summarize it, and he stated a conclusion drawn from facts—a conclusion which you might draw, but certainly not for this witness to draw.

ASST. MASTER: I was going to ask the witness one or two questions.

Q. You say, on the 17th October, there was a delivery to Eastwood in settlement of a sale over the counter. Would it just be the same as saying it was in settlement of a sale not through Clearing? The term "Over the Counter" has not been used here. A. Yes, that is a transaction which is not recorded on the floor of the Exchange, nor is it cleared through the Clearing House.

ASST. MASTER: I think you might clear up that point a little that Mr. Ferguson raised. 10

MR. BREWIN: The witness went into that before.

ASST. MASTER: When you say that you are giving a summary of the evidence you gave on Exhibit 42—the different sell slips and the buy slips.

MR. BREWIN: Yes, sir, and the 5,500 shares was the net amount of shares that was received, or could have been received, to the account of Mr. McLaughlin.

WITNESS: 6,100 was the amount.

Q. And did you cover the history of the shares after they had been delivered from the Clearing—on account of the purchase by Solloway, Mills & Company, Limited, for McLaughlin as in the way you have described? That is to say, we are drawing an inference there. 20

A. Yes, I found certificate number 1606, which was received from Clearing, was again delivered out to Scott on October 18th, 1929. I followed that no further.

Q. Now on this Exhibit 45 there are similar marks (X) against certain of the certificates set out there. Is the evidence you have given with regard to certificate 1606 equally applicable to those? A. Exactly the same.

MR. McRUER: They are different brokers names.

MR. BREWIN: But there is no need for us to go into details. The shares, in other words, would have the same history as has been explained. 30

MR. FERGUSON: I do not know that that is so at all.

MR. McRUER: better go into each one then.

A. That is so, with the exception of one item that was delivered. No, pardon me; I have got the wrong exhibit.

Q. This exhibit, number 45, Mr. Hill, shews certificates—purports to shew certificates received by the defendants from Clearing—on October 17th—and, as you have explained, I think those shares would be on account of Mr. McLaughlin's purchase. Now with regard to the certificates marked with an "X" against them, were those certificates deposited by Mr. McLaughlin as collateral? A. Yes. 40

MR. FERGUSON: I presume they were, but where does that get us—the fact the certificates were received back from Clearing? It does not get us anywhere.

ASST. MASTER: It might not. Your objection is you want us to go through that as to all the items marked with an "X". Is that it?

MR. McRUER: All we were attempting to do was to take certificate

number 1606 as an illustration of the other nine, I think there are, that are marked with an "X", and shew that that particular certificate went to Eastwood on October 16th. Then back from Eastwood to Clearing, and then purchased by Solloway, Mills back again on October 17th, and then sold again on October 18th. And these other certificates were all dealt with in precisely the same manner, but the other brokers, in some cases, other than Eastwood—I think there were some others other than Eastwood. So that, it was an illustration of that transaction, and if we have to go through the tedium of going over each one just for the sake of my friend's objection to us putting to the witness—"Does that fairly illustrate the transaction that the books indicate took place in regard to the other nine marked 'X'."

10 MR. FERGUSON: My friend wants to leave it with an inference that does not attach to it.

ASST. MASTER: We have taken up most of the morning in reading a whole lot of detail into the record. The legal rights of the parties will not be definitely decided by this witness, and I think it is a shame to clutter up the record with a lot of repetition. I just want Mr. Ferguson to consider that feature of it.

20 MR. McRUER: Mr. Hill is not deciding anything. We are just trying to get from Mr. Hill in as concise a form as possible what these records shew, and it is for the Court to decide what the legal effect of it is, but I do want to have this witness fairly tell us for the purpose of the record if that is an illustration, as I have put it, of the nine marked "X", on Exhibit 45.

MR. FERGUSON: As you know, Sir, no one can tell the reason for a certificate circling about from broker to broker and back through Clearing a couple of times a week without knowing the transactions that have taken place between the various brokers, and to simply say it casts some aspersion on the defendants because a certificate circled about from Eastwood and back to Solloway again ought not to be left to abide without shewing what took place

30 between Eastwood and Solloway.
ASST. MASTER: Yes, but that is not the point here, Mr. Ferguson. The witness has told us what has happened to that certificate. What the result of that is I am not prepared to say, and I do not think he is casting any reflection on that transaction he is just telling us exactly what happened. After his investigations he says there are nine more that went through the same experience as certificate 1606, and what I am trying to avoid, if I possibly can, is to spend another two hours and clutter up the record with all that evidence.

40 MR. FERGUSON: My point is simply this, Sir. If my friend wants to leave this evidence in its present state, he may do so if he wishes, but it leaves an unfair impression on the record to simply state what has happened to this certificate without shewing what has happened in all of the transactions, or what were all of the transactions between, say, Eastwood and Solloway an these two days, because my friend is trying to allocate this particular certificate to McLaughlin's transaction, and it probably does not belong and never was intended, in the first place, on October 17th, 1929, that that certificate should be a part of this transaction. Eastwood may have sold it for some other person. He may have sold it for any client.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.

Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

ASST. MASTER: Well, isn't that a matter for cross-examination.

MR. FERGUSON: Well, if my friend wants to leave it that way, all right. I am merely pointing that out. My friend cannot say that is an illustration of what happened to the other nine.

MR. McRUER: The records shew the other nine were handled in the same way, and all this witness is doing is saving the Court the trouble of going all through these records and saying what the records show. There may be some explanation forthcoming from the Defendants as to why they were handled that way, and my friend may have some other evidence to offer, but surely we are entitled to put before the Court that they were handled in that way. When my friend says these certificates may not have been Mr. McLaughlin's certificates, at all, he is forgetting the fact we are directing our evidence to shew they are the only certificates that could have been acquired from Mr. McLaughlin, and from the position of the account, if they were the only ones acquired from Mr. McLaughlin we are giving him all the benefit he could get from the position of the books, at any rate. 10

MR. FERGUSON: If my friend would not make those statements—I do not think he fully appreciates the nature of the brokerage business. Those certificates, as you know, Sir, were all treated alike in every broker's office, and in the Clearing House. You might start a certificate on its way for Eastwood and long before it every got there it might have got to some other place. If my friend wants to leave the evidence the way it is I will go into it with your permission. 20

ASST. MASTER: I am not saying that is conclusive. I am just referring to the other nine items. There is just as much weight in shewing one illustration as taking the other nine.

MR. BREWIN: Q. Now, Mr. Hill, does the record produced by the Company shew whether there were any sales on account of the House on October 16th, 1929? A. In Exhibit 23 I find two Sell slips—one for 100 Sudbury Basin at \$7.00, and one for 3,500 Sudbury Basin at \$7.00 per share. I might say, the 100, which is marked as Broker—"Sol X" is apparently a correction of an error. 30

Q. And, therefore, you have a Sell slip there for 3,500 on October 16th indicating it is a sale on account of Solloway, Mills & Company, Limited.

A. Yes.

Q. It is one of these slips, apparently, in which no name appears.

A. That is so.

Q. And can you confirm on your own investigation of the books of the Company and your knowledge of brokerage accounts whether, when a slip of this sort appears without a name in it, whether it is a sale on account of the House, or not? Have you any experience which would qualify you to say that, Mr. Hill? 40

MR. McRUER: I think we have one of the other employees who has stated that as a fact.

WITNESS: I find, however, that on examining Exhibit 29, which is labelled "Dominion Trading Account, Ontario Company Ledger"—I gave you the wrong Exhibit number there—it is Exhibit 29a, Dominion Trading Account in Ontario Company Ledger—under Sudbury Basin, October 16th, 1929, is recorded

the sale of 3,500 shares at \$7.00 and also 100 shares at \$7.00 which is, apparently, offset by a "Buy"—a correction of an error.

Q. Now in Exhibit 44, which is your Statement, you have a heading "Delivered to". On the first line, take, for instance, referring to certificate number 23,521, "Delivered to Lorsch in settlement of sales for House Account, Oct. 16, at \$7.00." Where do you get the information contained there, Mr. Hill?

A. When a sale was made for the House over the counter, a sale slip would be made with a stroke on it, indicating to me it was a transaction for the House, and, at the same time a Buy slip with the word "Buy" crossed out and the words "Sold to" written in. These slips, though we have requested that they
10 be produced, are not in Court, would be made out

MR. FERGUSON: Q. And the probability is there never was such a thing.

A. I have seen many of them, Mr. Ferguson.

Q. We will not argue about it.

A. The "Sold to" slip would indicate the name of the broker to whom the shares were sold, or the name—in reality, the name of the broker through whom the shares were sold. In all items that I have looked up, and I have examined these certificates, or these slips, I found that in each case there is always a "Sold
20 to" slip and a "Sold" slip when the House was selling over the Counter.

MR. BREWIN: Q. Now you were explaining to the Court, Mr. Hill, why you say in Exhibit 44 that those various sales were sales for House Account. Will you continue with your explanation?

A. When Solloway, Mills and Company sold shares they were selling for somebody else or clients. When I found that sales were made to or through brokers whose accounts are kept in Exhibit 28a I went back further to see for whom the sale was being made, and the result is as you see—that the sale was made for the House and is recorded in Exhibit 29a.

Q. As a sale for the House. And, I suppose, your opinion was confirmed
30 by the Sell slip which indicates a sale to the House of a similar amount.

A. As I said, I have not seen the "Sold to" slips in this case, but by referring to the Exhibit 28a, which is a ledger and into which the "Sold to" slips are entered, I get the missing information.

Q. Now what you have said, does that apply to all the cases which, in Exhibit 44, you set out the information that the sales were for House Account?

A. I do not understand that.

Q. I beg your pardon. What I wanted to know is if, what you have said, is applicable to all the cases in which, in Exhibit 44, you have said "Sales for House Account"? A. Yes, exactly the same for every item that is extended on
40 Exhibit 44.

Q. Now, Mr. Hill, throughout the course of this trial we have had references to what is called the "Short Position". What is meant by that phrase? What do you understand by that phrase?

A. Well, a short position is opposite to a long position. In a case of a broker. A broker takes a short position when he sells short on the market or—I do not want to use the word, "buckets" shares.

Q. No, what I mean is this. Various witnesses have said that the short

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

position of the Company, or the House, or of the Dominion Trading Account was so much. What do you understand by referring to the short position of the Company? What does that mean?

A. That the Company did not have sufficient shares—that the broker was not carrying sufficient shares for the clients.

Q. And when you say “carrying”, what do you mean by that?

A. Certain clients are carrying stocks Long. It is more easily explained by technical words. Certain clients buy stocks and carry them on margin. By so doing they are termed to be carrying stocks Long.

Q. Shall I put it this way. That the broker holds those shares for the clients, and that he is under an obligation to retain so many shares. 10

MR. FERGUSON: Now, Mr. Brewin, that is hardly proper, when you start talking about obligations and asking the witness to assent to it.

MR. BREWIN: Q. You had better start again with this explanation of saying “the Company has a short position.” What do you mean by that—in a certain stock at a certain date. A. When it has not sufficient stocks under its control to meet—that it should be carrying for its clients.

Q. Either on marginal transactions or in some other way?

A. All ways—marginal, collateral, safekeeping—all different methods.

Q. “Under its control.” What do you understand by the phrase “Under its control”? A. That would be—including stock in the box, deposited as collateral to loans of the broker deposited in their safekeeping vaults, owed to the broker for uncompleted transactions in the hands of the Transfer companies. I think those would be the main items. 20

Q. Is there any record of the Company which has been produced as an Exhibit which shews how many shares of Sudbury Basin mines, Limited, were on hand or under their control during the period with which Mr. McLaughlin dealt? A. There is a record which shews the number of shares in the box at the close of each day.

Q. Can you produce that record and indicate to the Court what it shews? 30

A. Exhibit number 22 is a record shewing the total number of shares of each stock received each day, the total number of shares delivered each day, and the number of shares in the box at the close of business each day. It is a summary of the Security Register, Exhibit 21.

Q. And will you indicate to the Court what that shews with regard to Sudbury Basin Mines, Limited, from October 16th onward?

A. Under date of October 16, 1929, Sudbury Basin Mines, at the close of business, October 16th, 15,810, 17th, 11,255, and the 18th, 5,830 shares, 19th, 5,585, 21st, 4,545 shares. It goes up and down—31st October, 4,970 shares.

Q. What is the highest figure in October? A. On the 16th October. 40

Q. How many shares were there then? A. 15,810.

ASST. MASTER: Are these Long or Short?

MR. BREWIN: These are just the shares in the box or cage.

MR. McRUER: Q. What is the last figure in October?

A. October 21st, 4,545 shares. In November it varied between 2,475 and 5,438, which appears to be the maximum amount.

Q. How many shares were there in the box on November 30th, 1929?

A. 2,468 shares.

Q. Will you go on with December?

A. In December it apparently runs from 928 shares to, on the 9th December, 7,733 shares. In January 1st there were 7,208 shares; on the 13th, 27,253 shares, and on the 14th, 7,783.

Q. Now you told me they might have under their control shares in the Safety Deposit Box. Is there any record of the number of Shares of Sudbury Basin in Safety Deposit Boxes during this period?

A. Exhibit 40. I find in Exhibit 40 that there is a card which is labelled
10 "Sudbury Basin Mines, Limited, Safety Deposit Box". I find that 5,000 shares were deposited on December 18th, 1929, and that the balance is carried therein until January 13th, 1930, when 5,000 shares were withdrawn, leaving nil in the box. Apparently, there were none in the Safety Deposit Box from the 11th March, 1929, until the 18th December, 1929. Pardon me. The information which I have just given I notice is headed "The Royal", which would mean the Royal Bank Collateral instead of the Safety Deposit Box.

ASST. MASTER: That is Exhibit 40?

A. It is all attached to Exhibit 40, in the same type of card. For "Safe Keeping Account" there are, apparently, 10,000 shares on hand. On the 30th
20 November, 1929, withdrawn on the 13th January, 1930. The records did not show when the 10,000 was deposited.

MR. BREWIN: Q. Now in the books of the Company have you found any other record showing what you describe as the Short position of the Company?

A. Yes, that is recorded in Exhibits 29 and 29a, Dominion Trading Accounts in Dominion Company Ledgers.

Q. Now will you explain to the Court how that shows what you call a Short position of the Company in Sudbury Basin Mines during this period?

A. Exhibit 29a. Sudbury Basin Mines, records the Short position under date of October 15th, 1929, of 88,880 shares. At the close of business on the 16th,
30 92,365 shares Short. It continued to increase—October 28th, it was 101,532; on November 7th, 1929, 107,012 shares. It then commenced to decrease, until January 10th the position was 99,357 shares Short. On the 13th January, 1930, the position was 90,837 shares Short.

Q. Just for the purpose of the record, I don't know whether you have told the Court what the position was as shown on the 16th October, 1929?

MR. FERGUSON: Yes.

MR. BREWIN: Then the 22nd October, 1929?

A. At the close of business on October 22nd, 97,597 shares Short.

Q. 25th October, 1929?

A. At the close of business October 25th, 1929, 99,102 shares Short.

Q. And the 29th October?

A. At the close of business on October 29th, 99,217 shares Short.

Q. And the 3rd December, 1929?

A. At the close of business, December 3rd, 101,817 shares Short.

Q. And the 16th December, 1929? A. 102,297 shares Short.

Q. Now, Mr. Hill, will you explain what you mean when you say that that account shows that Short position?

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

A. That is explained best by using Exhibit No. 31.

Q. What is Exhibit 31? A. It shows the stock position. That is to say the stock position in Sudbury Basin—that is to say the shares which the brokers purported to be carrying for clients, and others, and the shares that were actually carried by them, and the balancing item, the House Account. I can read off the figures. According to Exhibit 31, Solloway was carrying, on the 30th November, 1929, 67,117 shares for Branches; 1,550 shares for Clearing Brokers. That is, for uncompleted Clearing House deals. 250 shares for Client Brokers. That would be either the Brokers that Solloway dealt with on an over the counter basis, or brokers on some other Exchange. 11,995 shares for Correspondents, which are really Brokers who are not listed on Toronto—with Toronto, Standard, or other recognized Exchanges, and 33,095 for Clients. 10

Q. Making a total of how many?

A. That makes a total of 114,007. Then there is an account called "Adjustment Account", of 3,653. That is a balancing figure. That brings the total of stocks which Solloway purported to be carrying of 117,660 shares. The record further shows that on November 30th, 1929, there was on hand in the box 2,468 shares; that there was on deposit in the Safety Deposit Vault, 10,000; that there was 575 shares to be received from Branches; that 220 shares to be received from Brokers for uncompleted Clearing. 20

Q. Is that 575, or 595? A. 595.

Q. You gave us 575? A. It is 595, clearly. I am sorry. 1,000 shares to be received from Client Brokers, and 40 shares to be received from the Clearing House. Those total 14,323 shares. Then there is another column headed "House", which shows a Short position of 103,337 shares. As it is on the left hand side of the stocks which should be on hand, it is a Short to the House.

Q. Now will you give us the record you have referred to, showing what you call the Short Position on November 30th—the "Dominion Trading Account", as it has been described? A. 103,337 shares Short.

Q. And that corresponds with the figure here under the heading "House" in Exhibit No. 31? A. Yes. 30

Q. Will you look at December 21st, 1929, and tell me the amount there?

A. 96,137 shares Short.

Q. 96,137? A. Yes.

Q. There is a difference of 100 shares there, is there, Mr. Hill?

MR. FERGUSON: How do you mean a difference?

MR. BREWIN: Q. The Stock Position Card, Exhibit 31, shows the House Account 96,037 shares, and the witness has just read out that the Trading Account shows a position of 96,137, so there is a difference of 100 shares. Is that correct, Mr. Hill? A. That is so. It is also out on December 23rd by 100 shares. 40

Q. When you say "it is out", you mean the figures, shown in the House Account opposite December 23rd in Exhibit 31, differs by 100 from the figures shown in the Trading Account on December 23rd as being the Short Position. Is that right? A. That is correct.

Q. Do you see anything to explain that difference?

MR. FERGUSON: That is neither here nor there.

MR. McRUER: I suppose not.

MR. BREWIN: Q. Well, if you cannot answer at once, Mr. Hill, I do not suppose we need bother you about it? A. There is, apparently, a correction of 100 shares here. I do not know whether that corrects the amount or not.

Q. Then you were explaining why you call that Short Position Record, and you were referring to the figures shown here in the House Account in your explanation. Will you go on with that explanation, Mr. Hill?

A. I examined this record, and found that when the House was selling that the sale was recorded in this exhibit; when the House was buying, the sale
10 was recorded as a purchase in this exhibit; and that the balance moved up or down according to whether they were buying or selling.

Q. And would their buying or selling,—what shares were they using for selling, for instance? Do you know that from your examination of the books? What shares were they using for delivery when they were selling? A. Well as I can find no record of Solloway, Mills & Company Limited ever having any shares of Sudbury Basin of their own, and on examining the Security Register, I find that certificates were delivered belonging to clients on account of sales for the House.

Q. So that, according to whether they were selling or buying for the House
20 they would put themselves in what you have called a Short or Long position?

A. No, every case in regard to Sudbury Basin has been a Short position.

Q. But my generalization is correct. If they were buying for the House they would have more shares on hand than they took delivery of, and if they sold shares and took their Clients' certificates they would have less shares to deliver? A. Yes.

MR. FERGUSON: If nothing else happened.

ADJOURNED at 1 p.m. to 3 p.m.

RESUMED at 3 p.m.

FREDERICK CHARLES HILL: (Recalled)

30 EXAMINATION-IN-CHIEF CONTINUED BY MR. BREWIN:

Q. Mr. Hill, this morning you told us you would produce for the convenience of the Court a record showing information obtained from the Security Register as to where the shares delivered to McLaughlin on the 13th or 14th January, came from. Have you that statement now? A. Yes, I have.

Q. Will you produce it, and have it marked as Exhibit 46.

EXHIBIT No. 46: Statement showing where shares delivered to Plaintiff came from.

Q. Now when we adjourned, Mr. Hill, you were describing to the Court the reasons why you say the Dominion Trading Account showed the Short position of the Company. Is there anything further you can tell the Court about
40 that? A. I do not remember whether I mentioned it tied up with the other records,—the Stock Position Card, and also, that it has been described as such by former employees of the Company—of Solloway Mills and Company, Limited.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

Q. Now you have said this Trading Account—Dominion Trading Account—how it showed a Short position in Sudbury Basin Mines Limited at the time of these transactions with McLaughlin, and we had certain dates pointed out. Will you take that Trading Account and go back and see how—when that short position started,—when the Company first appeared Short in Sudbury Basin as far as the Records show?

A. According to Exhibit 29, at the 11th April, 1929, the House was Short 68,364 shares of Sudbury Basin Mines. I do not think the Ledger prior to this—

Q. However, just dealing with that, Mr. Hill. That is the same type of entry showing the same Short position in Sudbury Basin as you have described to the Court during the period with which Mr. McLaughlin dealt with Solloway, Mills & Company. Is that correct? 10

A. Different number of shares Short, but it is the same account. In Exhibit 19, under date of August 15th, 1927, the first entry under Sudbury Basin, a sale of 300 shares is recorded.

Q. What is written at the head of that sheet? A. Solloway, Mills & Company, Limited.

Q. What does that indicate to you? A. That is a House Account.

Q. That was in August, 1927. Will you follow down through those Sheets, and tell me whether there is any apparent break in the account? 20

MR. FERGUSON: Probably Mr. Brewin is not aware that the Dominion Company was not incorporated.

ASST. MASTER: Neither was the Ontario Company.

MR. BREWIN: This was during the Partnership days.

Q. I want you to go through there and see whether the same balances in the same apparent account follow right through in Sudbury Basin Mines from that date? A. It is apparently—

ASST. MASTER: Q. Excuse me, before you go any further. You have referred to that as Exhibit 19, Mr. Hill. I think that is the Exhibit Number in the other trial. 30

A. That is right, sir. It is Exhibit 30. This account is carried forward from sheet to sheet here.

MR. BREWIN: Q. And is a continuous account, is it? A. Yes.

Q. Shall we take some time—showing, we say, in January, 1929?

MR. FERGUSON: Well, it cannot be Exhibit 30, can it? Isn't it Exhibit No. 29?

WITNESS: This is Exhibit No. 30. I was speaking from Exhibit No. 29 before.

MR. BREWIN: Q. Will you read out to the Court what is on the label on this account? A. "Solloway, Mills & Company, Limited, Trading Account, 1927-1928 and up to April 30th, 1929, Ontario Company Ledger". 40

Q. And it is marked as Exhibit 30 in this case? A. Yes.

Q. Now, will you look—all this information you have been giving comes from Exhibit 30? A. Yes.

Q. This information about 1927, and the Short position shown at that time, and the continuous account. Now will you look in the period, say, of June,

1928, and tell me the position then? A. Under date of March 22nd, 1928, the name of Solloway, Mills & Company, Limited has been crossed out, and the name of G. W. Staats has been put in.

Q. How long has that same account been carried on continuously in the name of G. W. Staats?

A. It is "G. W. Staats", sub-headed "Sudbury Basin". It apparently runs until the 19th January, and then it carries on under the name of Sudbury Basin. There is no other heading. Just Sudbury Basin.

10 Q. And then does that same account continue on in any other record of the Company that has been produced?

A. The account in this Exhibit 30, continues to the 10th of April, 1929.

Q. Then do you find that account continued somewhere else? A. I find it starting again on the 11th April, 1929, in Exhibit No. 29.

Q. What was the Short position shown in this Exhibit 30 on April 10th—the last entry in this book—at the close on April 10th? A. 68,364 shares Short. The commencing figure in Exhibit 29 is 68,364 shares Short.

20 Q. Then if you follow through that, is it a continuous account with continuing balances shown right up to any particular date? A. I have run through that to see if there is a continuity, and this book, Exhibit No. 29, runs until the 12th October, 1929.

Q. And what is the Short Position shown at the last date in that Exhibit 29? A. 89,105 shares Short.

Q. Have you found that account continued in any other record of the Company that is produced? A. I find it is continued in Exhibit 29a, which commences on October 12th, 1929, with 89,105 shares Short. There is in an account headed "Sudbury Basin", October 12th, 1929, 89,105 shares, forward—\$691,610.70 credit. The same balance, \$691,610.70, and the position, 89,105 shares Short.

30 Q. Can you say, as a result of looking through and following these various books you have produced, whether there was one continuous account in Sudbury Basin Mines in the various books that you have produced?

A. The account is continuous all the way through.

Q. And it was in August, 1927, and continued right through until the period in which the Plaintiff dealt. Is that correct? A. Yes.

Q. Although, at one time, it appears under the heading of "G. W. Staats"?

A. Through one period later it does.

Q. And other times it appears under the heading of Solloway, Mills & Company, Limited? A. Yes, and other times without any name other than the name of the stock.

40 Q. Do you know from the record who G. W. Staats was? A. Not from the records I don't.

Q. Well, can you tell us who he was from your own knowledge? A. I can only tell you what he told me.

Q. Do the records show, to your knowledge, his position, or whether he was connected with the Company? A. That he was connected with the Company.

Q. In what capacity? Well, I do not think we need go on with that, Mr.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.

No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

Hill. Well, throughout that period does this account show a Short or Long position? A. A Short position.

Q. And did that Short position progressively increase or decrease throughout these years? I just want a generalization on that? A. It varied, at times it was down,—it went up and down.

Q. Is there any difference in the manner of recording that position from the start of the Short position right through this continuous account?

A. Any difference in what?

Q. That is to say, is the method of recording the Short position,—the method of showing the account and the balances, the same throughout the whole period in which the account runs? A. It is exactly the same except it is kept in different books. 10

Q. Now, Mr. Hill, I believe it has been suggested, or will be suggested that these shares—some shares were loaned to the Dominion Company, and sold by the Ontario Company on account of the Dominion Company, and that this Trading Ledger shows those shares—the account of the shares sold by the Ontario Company for the Dominion Company. Now you have, I believe, gone through the book, have you not? A. Yes.

Q. And can you tell me what evidence there is that you have seen of a loan by the Ontario Company to the Dominion Company? A. I have seen no record of any loan of shares by the Ontario Company to the Dominion Company. 20

Q. Now if there was a loan by the Ontario Company to the Dominion Company would you expect certain entries or records which do not appear in the Dominion Trading Account? A. I do not quite understand that question.

Q. Well, perhaps I had better put it a different way then. Following out this suggestion that has been made that these shares were sold by the Ontario Company on account of the Dominion Company, and the loan to the Ontario Company by the Dominion Company have you seen any records of brokerage charges being made against the Dominion Company by the Ontario Company? 30

A. No; I have looked for that and I find no record of any brokerage being charged by the Ontario Company to the Dominion Company.

Q. And if the Dominion Company had borrowed shares from the Ontario Company, they would, I presume be owed by the Dominion Company to the Ontario Company, and taking Exhibit 31, does it show on there whether these shares—what is shown on House Account there? Does it appear whether they are indicated as shares to the Ontario Company?

A. No, they are not shown that way. They are in a column which is just headed "House".

Q. And is there a part of the card devoted to setting out the shares owed by us—"owed to us by" rather? A. Yes, there is a special section right there. 40

Q. And it does not indicate it anywhere in this section these shares which, it is suggested, have been loaned to the Dominion Company? A. No.

Q. Now, Mr. Hill, Exhibit No. 32, is a number of cards, similar apparently, to Exhibit 31. Have you looked through those cards? A. Generally, yes.

Q. And can you say whether, in those cards the shares set down as "House

Account" and corresponding to the Dominion Trading Account, whether they are shown as shares "Owed to us by"?

A. No, they are not shown that way.

Q. How are they shown? A. In a special column headed "House".

Q. And that is true, generally, of all these cards making up Exhibit 32. Is that right? A. Yes, any I have examined there, and I have examined a considerable number.

10 Q. Now is there any evidence in the Dominion Trading Account, throughout this whole period in Sudbury Basin Mines, or in any other trading account in the Ledgers described as a Dominion Trading Account, of margin having been put up by the Dominion Company? A. I see no evidence in any of the Exhibits that I have examined.

Q. If the Dominion Company had been a client who was selling Short, would you have expected to see such an entry? A. Yes.

Q. And where would it appear? Would it appear in the account?

A. It would appear in the Dominion Company Account if it had been a client.

20 Q. Is there any record throughout the books of these companies of interest. You have looked through these records. Is there any record of any interest having been charged against the account of the Ontario Company by reason of these loans? Perhaps I have not put that properly?

A. There would not be a charge in the case of a Short Account. If there had been margin put up there would be a credit to that account for interest. It would be the other way around. Interest is charged on a Long Account, and credited on Short Accounts.

Q. Is there any record of interest being credited on those accounts?

A. I have not seen them.

30 Q. And in other cases where clients were short, would you expect to see interest credited? A. I am under the impression that Solloway, Mills and Company Limited did not have clients selling Short, but in the case of Brokers that allowed clients to sell Short, interest is credited on credit balances of margin.

Q. Now we had some discussion with Mr. Seaborn and other witnesses about dividends. Now what would be the usual procedure as to the charging or crediting of dividends on Short sales by Brokers?

40 A. Dividends on Short sales are always charged to the Client that is short, and credited to the Client that is long. That is to say, the owner of the shares always receives his dividend. If he does not receive it from the Company,—that is, if he does not receive it from the Company whose shares he has invested in, then he must receive it from the person who has received it on shares sold Short.

Q. In the case of a Short sale would you expect the client to be charged with dividends? A. Oh, yes. They certainly should be.

Q. And is it the practice, generally speaking, amongst Brokers, to charge clients who sell Short stocks with dividends? A. Yes.

Q. And have you looked through the books of this Company to see whether, in the Dominion Trading Account, which is represented as an account of a

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

client with the Ontario Company, whether any dividends have been charged in that account? A. I have never seen any. I looked through the records.

Q. And having looked through the records—the records, I suppose, of stocks that would bear dividends? A. Yes.

Q. I presume Sudbury Basin Mines has not paid any dividends? A. It has never paid any dividend.

Q. Now if a Broker would be Long shares—holding shares for clients, would he be crediting the client with dividends? A. Yes.

Q. And was it the practice of Solloway, Mills & Company to credit clients with dividends? A. As far as I am aware, yes.

Q. Now you have told us there were no dividends charged against the Ontario Company for whom it is represented—against the Dominion Company which, it is represented, the Dominion Company was selling Short, and yet you told us, on the other hand, dividends would be credited to the clients for whom they were holding these shares. Where would the dividends come from with which they credited the client?

A. It would be charged to an account in the General Ledger, a Dividend Account, which would show a loss.

Q. And have you examined any account which does show a loss in that way? A. In Exhibit 33 there is an Account headed "Dividend Account", which, under date of February 19th, 1930, shows a debit balance of \$149,974.77, which apparently would be a loss.

Q. You are referring now, Mr. Hill, to Exhibit No. 33. What is that described as? A. That is the General Ledger of the Ontario Company.

Q. And you have turned to a sheet headed "Dividend Account", and the date at the top is February, 1930, balance forward. Will you describe what is on that Ledger, and show how it balances?

A. There are two items. The first is headed—three items—the first is headed "Debit", the second, "Credit", and the third "Balance". The first column—the Debit column—would show all dividends allowed to clients, or dividends paid out to people who have made claims on the Defendants for dividends. The second column, the Credit column—shows all dividends received from the Companies, or from claims that Solloway has made on other Brokers. The Balance shows the net difference between what was allowed and what was received. The amount allowed and the amount received.

Q. So if these shares of clients were being loaned to the Dominion Company—on account of the Dominion Company—would you expect to see that the dividends were charged against the Dominion Company, to whom they were being loaned?

A. They should be charged right to the Dominion Company at the time they are Short. At the time the dividend was paid they are Short shares. Therefore, they should be charged up with the amount of the dividend.

Q. And as they were not charged up—

MR. FERGUSON: Who says they were not charged up?

MR. BREWIN: Q. As there is no evidence of them being charged up in that way, is there any evidence of how these dividends were obtained?

A. They may have been charged up with the Dominion Company since I have examined the books, I don't know.

Q. You have given evidence you have seen no charging up as dividends in your examination of the books?

A. The other day when I was examining the Ledger here, I noticed a sheet in the front which I think is a Journal entry, which might be charging the total of this account against the Dominion Company some time in 1931.

Q. That is after this action was brought. Mr. Hill, we were asking you about any record of these Companies that you have seen showing dividends, and the amount paid out under the dividend column charged to the Dominion Company, and I think you were about to make some explanation with regard to that question?

A. In the Dividend Account in Exhibit 34, which is the continuation of Exhibit 33, an account headed "Dividend Account", I find that there is an entry under date of May 14th, 1931, which apparently transfers the balance of \$, to the Dominion Company, and I find further down, under date of December 31st, 1931, the same item is brought back from the Dominion Company, and the next entry is under date of 31st January, 1930, transferring it to number 1-a, re: Trading Account, \$139,798.01, and under date of 31st December, 1931, there is \$139,798.01 transferred to the Dominion Company. Apparently, that item of \$139,000 was transferred to Dominion Trading Account.

Q. When was that account transferred to Dominion Trading Account?

A. Well, whenever the entries were put in the Books. It is as of January 31st, 1930.

Q. When, apparently, were the entries in the books made? A. Some time in 1932.

Q. How does it appear they were made in 1932?

A. They were entered after entries of December 31st, 1931.

Q. So that, the transfer to the Dominion Company in the Dominion Trading Account of this Dividend Account and the loss of dividends was not made, apparently, on the books of the Company until 1932. Is that correct?

A. Apparently not.

Q. Now you referred to some general entries from the same Ledger?

A. This is the list of Journal entries that is kept in front of the Ontario Company's General Ledger, Exhibit 34.

Q. And what does that show about this Dividend Account? In this record you have here how is that Dividend Account charged? A. It is in an entry on page 11, Dominion Trading Account, debit \$889,798.01, credit on dividends trading, \$139,798.01, and dividends, shareholders \$750,000.00.

Q. When were those entries made, do you know, Mr. Hill? A. Some time in 1932.

Q. How do you know that? A. Well, I saw a number of these sheets being made up.

Q. Where? A. In the office of Solloway Mills & Company.

Q. Just to try and clear that up. Apart from that entry, made, apparently in 1932, charging the dividends against the Dominion Company in the Dominion Trading Account, have you, in looking through the Dominion Trading Account, seen any entry charging dividends against it?

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
19th
October,
1932.

—continued

A. Other than the entry I have just pointed out?

Q. Yes? A. No, that is the only one I have seen.

Q. Now, Mr. Hill, you showed us the records—books—called “The Dominion Trading Account”, and you showed that that was a continuation of other accounts at a previous time. Now you told us in Sudbury Basin Mines that Account showed a considerable Short position at the time our client was dealing of approximately, I think it ran from 90,000 shares to 100,000 shares. Now can you tell me from looking through the Dominion Trading Account,—
Let us take, first of all, a period in October, 1929, to the end, in what other stocks did the Dominion Trading Account show a Long or Short position? A. I examined the Exhibits— 10

MR. FERGUSON: I object to this. My friend cannot go on over our full history. He must stick to the item in question.

MR. McRUER: We can show a general course of conduct. That this was not an isolated transaction, but that that was the manner in which the business was run. I think, Sir, in your previous judgment in the Rochester case, Your Lordship gave some consideration to the general conduct of business, and rightly, I think, especially in support of our claim for conspiracy that this was just an incident to the general way they ran their business, and if we can produce evidence to show they were running it for this purpose in this manner. 20

ASST. MASTER: I think it is relevant, if for nothing more than to show that this isolated case was not a mistake or error.

MR. BREWIN: Q. Generally, during this period from October, 1929, to January, 1930, does the Dominion Trading Account show a Short or Long position, speaking generally, and then, perhaps, you can refer to some entries in the books to justify what you say?

A. Generally speaking, there is a Short position.

Q. And was it a Short position of some considerable extent, or was it merely a Short position? A. Well, a considerable amount.

Q. Will you just take at random a few stocks there and say what the Short position was on, say, the 1st November, 1929? A. Amulet shares, 136,588 shares Short; Noranda, 1st November, 1929, 22,441 shares Short; Teck Hughes, November 1st, 1929, 52,423 shares Short; Wright Hargreaves, 1st November, 1929, 856,117 shares Short. 30

Q. I think that, probably, will be enough for the purposes of the Court, and you say, then, generally speaking, Short positions of that sort are shown generally by reference to the Dominion Trading Account? A. That is so.

Q. And in ascertaining those figures are the entries made up in exactly the same way as you have described to us in the case of Sudbury Basin Mines Limited stock? A. That is, by selling clients' shares? 40

Q. Well, yes. What I am really asking here is, is the record from which you obtained that information about it being Short, the same as the record that you have explained in the case of Sudbury Basin Mines Limited stock? A. I do not understand which record you mean.

Q. I refer to the Dominion Trading Account. Is there any apparent difference between the accounts in Sudbury Basin Mines Limited, or Noranda, or Teck Hughes? A. No, the accounts are kept in exactly the same way.

Q. Now will you refer at random to the stock position cards, Exhibit 32, and tell me, generally, whether they show a Short or Long position?

A. Well, I examined those a few moments ago, and they showed a Short position, generally speaking. There are a few Long, but the majority are Short.

Q. And about what period do those Stock Position Record Cards cover?

A. Apparently, most of them start on the 30th November, 1929, and run until about the 14th December, 1929—23rd December, some of them.

Q. And when you tell us that they show a Short position, generally speaking, you are referring to figures under the head of "House Account"?

10 A. Yes, that is the only figure I am referring to.

Q. And do those figures run into substantial amounts of shares, or just a few shares,—the Short position shown in those Stock Position Cards?

A. Very substantial amounts of shares, and also cash.

Q. Now from your knowledge of these books, and your general knowledge of brokerage transactions, can you tell us whether, generally speaking, during the period, of say from October, 1929, and down to June, 1930, there was a falling price in shares of stock-mining securities? A. Quite so.

20 Q. Now if that is the case would the sales on account of the Dominion Company, or on account of the House, as the case may be, of their clients' securities be profitable? A. It would be profitable to the House providing the House could buy them in cheaper than what they had sold them.

Q. Well, if the prices were falling, generally speaking, I suppose they would be able to buy them in at cheaper prices? A. Yes, I would expect so.

MR. FERGUSON: Now, I do not want the examination to develop into a discussion.

30 MR. BREWIN: Q. Now you have described to us, generally speaking, the Stock Position Records and the Trading Accounts shewing that the Dominion Company, or the House, as the case may be, was substantially short shares, and that there was a falling market. Is there any record which you have discovered which shews profits made on these short sales by the Ontario Company or by the House,—by the Dominion Company or by the House?

A. There was an account in the Ontario Company's ledger which showed—which was operated under the name of Stock Revenue Account.

Q. Will you refer to that and tell us what it shews, Mr. Hill?

40 MR. FERGUSON: Q. Did the witness say there was an account, or, there is an account? A. There was an account. I don't know whether it has been transferred to the Dominion Company or not. I cannot locate that account at the time being, but in the Dominion Company's General Ledger, which is exhibit 35, under an account headed "Deficit or Surplus" I find this account is credited under date of December 31, 1931, with \$6,404,345.58, stocks sold short. Presumably, that is the profit on the short sales.

ASST. MASTER: Q. How did you describe that book? A. This is the General Ledger of the Dominion Company.

MR. BREWIN: Q. That is stock sold short, and profit, does it say?

A. It does not say "Profit", but it is a deficit or surplus.

Q. What date is that entry shewn, Mr. Hill?

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.

Frederick
Charles Hill,
Examination.
19th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination.
19th
October,
1932.

A. It is dated here, December 31, 1931. That is the date of the preceding entry on the same journal folio.

Q. Now, Mr. Hill, you were telling us that in some Ontario Company ledger you thought there was a Stock Revenue Account which would shew profits made on the sale of shares short. Will you try and find that, and if you cannot do so now perhaps you will produce it for the Court tomorrow. A. Yes, there is an account headed "Stock Revenue Account" in the Ontario General Ledger, exhibit 33. It presumably starts in January, 1929,—Pardon me, in December, 1928.

Q. And will you explain the entries on there, Mr. Hill. A. This account 10 represents,—I should say, any items I have gone into in this account represent profits made on short sales—which have been transferred from the short account to Stock Revenue Account.

Q. And doesn't it shew substantial profits made, or what does it shew?

A. The account in this book runs only until the 2nd January, 1930, and records a profit of \$866,467.16.

Q. You say that appears to be part of the profit on short sales of stocks.

A. Yes.

Q. And you shew us an item to illustrate what you mean. A. Here 20 is one item included in this account,—Stock Revenue Account—under date of 31st July, 1929, Manitoba Basin, a credit of \$79,302.69. Now I find, on referring to exhibit 29, under Manitoba Basin, under date of 31st July, 1929, that the account is charged with \$79,302.69. This account—Manitoba Basin—apparently started some time in May of 1928. A short position was accumulated so that in February—March, 1929, there is a shortage of from 225,000 to 226,000 shares. It went considerably higher than that. In March 22, 1929, the shares short were 328,000 shares. The account runs on to May and into June of 1929. The short position is reduced so that at the 31st July, 1929 the position of Solloway, Mills was 4,080 shares short with a credit balance of \$79,302.69. All 30 but 396 of that credit was taken into Profit Account. Which means that on the transaction—the short sales in Manitoba Basin—Solloway, Mills & Com-

pany profited to the extent of \$79,302.69 on the transactions of that date.

Q. Up to July, 1929. Is that it? A. Yes.

Q. And on that date a considerable sum by way of Profit was carried over into what you call the Stock Revenue Account. A. Yes.

Q. And does the figure in the Dominion Trading Account correspond with the figure in the Stock Revenue Account? A. It does.

Q. And the Stock Revenue Account, I think you told us, was an account of the Ontario Company. A. It is in the Ontario General Ledger as a Stock Revenue Account. 40

Q. And that figure there represents—corresponds exactly with the profit shewn through sales on account of the Dominion Trading Account. A. In that one stock.

Q. In that one stock. A. Yes. The other stocks that I have looked up have produced the same result,—are the same.

Q. Now, Mr. Hill, it has been suggested that these shares were loaned by the Dominion Company to the Ontario Company.

MR. FERGUSON: You mean the reverse.

MR. BREWIN: Q. Yes. I get confused like everybody else between these two companies. I just want the witness to go into the evidence of the confusion between the two companies.

MR. FERGUSON: Well, my friend is not trying to make it worse?

MR. BREWIN: No, it was quite a general mistake, Mr. Ferguson. No ulterior purpose.

Q. Now it has been suggested,—at least, I think it appears in the Minute Books, that the Dominion Company took over the assets in Ontario of the Ontario Company operating a brokerage business after December, 1928, and it is further suggested, I believe, that after that period the Dominion Company was borrowing shares and selling shares short through the Ontario Company. Now I just want to get from you, Mr. Hill, what you know with regard to salaries paid to the employees of either of these companies in Ontario during 1929, when the two companies were in operation. Have you looked through the ledgers with the object of finding out which company paid salaries during that period?

Q. Some time ago I looked through the ledgers to find out which company was paying the salaries and I could not locate any salaries paid by the Dominion Company. It might be that some salaries have since been charged.

Q. When did you look through the ledgers, Mr. Hill? A. Last Spring.

Q. In the course of preparation for the trial of this or other actions?

A. Yes.

Q. And at that time you looked through the books for the purpose of finding any salaries that were charged to the Dominion Company during 1929.

A. Yes.

Q. And did you find any evidence of such salaries being charged?

A. No, I did not.

Q. On the other hand, did you find where salaries appear to be charged against the Ontario Company?

A. There was a considerable sum in salaries paid out by the Ontario Company.

Q. Now evidence has been given that the sales on account of the House, or of Solloway, Mills & Company, Limited, were made under the direction of Mr. Parkes and Mr. Kimmerley at one time in Toronto, at, I think it was said, in the Metropolitan Building—some office in the Metropolitan Building in the City of Toronto. Have you looked through the books and ledgers of the Company to see whether the rent on that building, and other buildings in Ontario during 1929 was paid by the Ontario or the Dominion Company? A. The period after the Ontario Company commenced business.

Q. Which was in December, 1928. A. I believe so. I could not find any rent paid after that date by the Dominion Company.

Q. Did you look through the books for that purpose, Mr. Hill? A. Yes.

Q. And did you find rent paid by the Ontario Company for that period?

A. Yes.

Q. Did you find rent apparently paid on account of the rent of the Metropolitan—some rooms or premises in the Metropolitan Building in Toronto?

A. I do not remember. I can look it up. In exhibit 33, under account

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination.
19th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill.
Examination.
19th
October,
1932.

—continued

headed "Rent Account, Head Office" there is, apparently, rent paid to the Chartered Trust. It does not say for what premises other than Head Office.

Q. And you have told us, I think, that in looking through the various ledgers you have not found any rent charged to the Dominion Company.

A. No, I have never seen any rent charged to the Dominion Company.

Q. By the Ontario Company. A. By the Ontario Company.

Q. Or paid by the Dominion Company to anybody else. A. No.

Q. Have you since found any record of rent paid by anybody else to the Dominion Company? A. There is an account in the Dominion Company Ledger, exhibit 35, which apparently commences in May, 1931, where rent is being—it is headed "Rents on Buildings Outside of Toronto, Dominion Company Rent Account, Special". 10

Q. Is there anything in the account to indicate rent paid by the Dominion Company for buildings in Toronto?

A. I cannot say, other than the heading, "Rents on Buildings outside of Toronto." There is an account here "Dominion Company—Rent—Head Office," which, apparently, commenced May 4, 1931. Brought forward from the Ontario Company, \$9,600.

Q. That is after this action commenced, is it? A. I am not aware of the exact date the action commenced. 20

Q. This account you have referred to as "Rent—Head Office" shews a debit to the Dominion Company and a credit to the Ontario Company, and which is made up, apparently, May, 1931, is the only record you have of rent—you have found of rent being charged against the Dominion Company by the Ontario Company. Is that right, Mr. Hill?

A. It is the only record I have seen. This is the first time I have seen this one.

MR. McRUER: Q. That is, the beginning of the account is in May, 1931. It is the first entry on the account,—is May, 1931.

ADJOURNED at 4.45 p.m. to 10.30 a.m. October 19th, 1932. 30

RESUMED OCTOBER 20, 1932.

FREDERICK CHARLES HILL: (Recalled).

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill.
Examination.
20th
October,
1932.

MR. McRUER: There is a slight error in the Statement of Claim that I just discovered yesterday in going over it in trying to make up the total amount of shares. I find in one paragraph we have it stated to be 3,500 shares, —We have it stated to be 1,500 shares instead of 3,500. Those are the shares delivered on October 28th,—shares deposited on October 28th. We have stated —I think it is in paragraph 11. I am not sure. I have not my brief at hand at the moment, but I think it is paragraph 11, it is alleged that "On the 28th October, 1929, pursuant to a notification received from the defendant Company, the plaintiff deposited with the defendant Company a further 1,500 shares of stock in Sudbury Basin Mines Limited, to be held by it as collateral security for his account." The evidence shews there were 1,500 and 2,000 in two different 40

blocks deposited on that date, and that should be 3,500. Now with your permission, Sir, I would like to complete the examination of Mr. Hill.

Q. Now, Mr. Hill, in reference to the disposal of the shares. First, we will deal with the shares that were ordered to be purchased by Mr. McLaughlin. How much did the defendants charge Mr. McLaughlin's account with in reference to his order to purchase 7,000 shares of Sudbury Basin Mines Limited on the 16th October, 1929?

A. According to Exhibit 15,—no, pardon me, Exhibit 19, J. T. McLaughlin's account was charged with \$49,462.50. That is for the purchase of 7,000 shares of Sudbury Basin.

Q. And have you worked out a Statement, Mr. Hill, to shew the price at which the shares that were delivered to Mr. McLaughlin in January, 1930, were acquired? A. I have arrived at what I would say was a fair price for Sudbury Basin shares on the 14th January, 1930.

Q. How did you arrive at that price?

A. I took the purchases for House Account on the 14th January, 1930, and arrived at an average which was slightly more than \$3.70.

Q. Slightly more than \$3.70 per share. A. Per share.

Q. Then have you got your Statement for it? We will have this put in the form of a typewritten statement. Then what figure do you arrive at in reference to that, Mr. Hill? A. 7,000 shares at \$3.70 is \$25,900.00, to which should be added brokerage.

Q. Why do you add brokerage on those?

A. Because I am reversing the brokerage on the previous transaction—on the transaction which was charged to J. P. McLaughlin's account.

Q. That is, in making up your Statement, the amount of \$49,462.50 included a charge for brokerage.

A. Yes, sir. I will tell you the exact amount.

Q. How much brokerage is included? A. \$525.00.

Q. Well, then, probably you could give us the highest price paid for Sudbury Basin stock on the 14th January, and the lowest price paid, so that we just have on the record how fair your figure of \$3.70 is.

A. The highest price paid, is apparently, \$3.75 per share, according to Exhibit 29a. The highest price paid—the lowest price paid is \$3.45.

Q. Why did you take \$3.70 as the fair price? I take it that that is generous towards the Defendants, at any rate? A. That is a fair average.

Q. Judging from the volume of purchases made. Is that it? A. Yes.

Q. Then adopting \$3.70 as the price—a fair price on that day, what do you figure the cost of the shares acquired for delivery to Mr. McLaughlin was?

A. \$25,900, plus brokerage of \$280.00.

Q. Then about the collateral, Mr. Hill. Have you been able to prepare a Statement from the records in reference to it? A. Yes.

Q. What do you shew in regard to the collateral?

A. For the collateral which was deposited by the Plaintiff on the 16th October, 1929, I set the fair value for 2,500 shares at \$7. per share; a balance of 1,000 shares at \$6.60 per share. Or, for the 3,500, \$24,100.

Q. That was the 3,500 shares that were disposed of on what date—on the

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination.
20th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination.
20th
October,
1932.

—continued

16th? A. Those are the shares which were deposited by McLaughlin, October 16th, and were used, according to Exhibit 44, on October 17th, 19th and 21st.

Q. Well, in arriving at these prices you arrive at them by taking what figures? A. The figures according to the House Account for sales. I find that on October 16th, the House sold—I am now speaking from Exhibit 29a—the House sold 3,600 shares at \$7. per share. That was the total sales. On the 17th the House sold 4,000 shares at \$6.60, or slightly better. On the 18th the House sold 2,220 at in the neighbourhood of \$6.75.

Q. Then for that 3,500 shares you gave us the figure? A. \$24,100.00.

Q. Then for the remainder of the collateral.

A. For the shares deposited on the 22nd October, 1929—1,500 Sudbury Basin—I give the price of \$6.35.

Q. And how many shares disposed of at that price?

A. I have taken a price from Exhibit 29a—from those figures. On October 22nd the House sold 100 shares at \$6.05. On the 23rd the House sold 50 at \$6.75. On the 24th the House sold 1,560 for an average of \$6.35. As there is one item of 1,500 shares on that day I set the price at \$6.35.

Q. Then how many shares did you say were disposed of at that price?

A. 1,500. That is a total of \$9,525.00.

Q. And then that disposes of the collateral for October 22nd. What about the collateral of October 25th? 10

A. On October 25th the Plaintiff deposited 500 shares, I figure a fair price for those shares of \$6.10. Sales around the 24th and 25th run from \$6.15 to \$6.25.

Q. The sales ran from \$6.15 to \$6.25, but for the purpose of compiling your Statement you took the figure of \$6.10. A. A fairer average would be \$6.25. I have always used the high priced stock on that date.

Q. We will take the \$6.10. How much is that? A. \$3,050.00.

Q. Then the collateral deposited on October 29th.

A. 3,500 shares. I find that the sales on the 28th by the House were from \$6.05 to \$6.20 per share. I set a price for that block of \$6.00 per share. 30

Q. There does not seem to be any good reason for going below \$6.05, at any rate. However, we will take your figure. What is it?

A. \$21,000. There is a further item of 2,500 shares on the 3rd December, 1929. On examining some of the items I found that one certificate for 500 shares was delivered in settlement for a sale of the House Account at \$3.70 and \$3.71. So I adopted the price of \$3.70 even though the House was selling shares on December 3rd at \$4. and \$3.95—up to \$4.25.

Q. Then using that price of \$3.70, how much does that come to?

A. \$9,250. for that transaction.

Q. That cleans up the collateral.

A. There was a further deposit on December 16th, 1929, of 2,500 shares, but apparently the Plaintiff received back 2,300 of the same certificates which he had deposited and I am not including anything for them in the claim.

Q. Well, of course, on our theory, at any rate, of computation he would be entitled to have 300 shares of that taken into consideration. A. Yes.

Q. Well, probably you could tell me on that A. 200 shares. 40

Q. 200 shares. What the price was on December 16th.

A. There is a price on December 14th of \$3.70, and a price on the 17th December of \$3.50. On the 18th, of \$3.65.

Q. 200 shares at \$3.50. That would be \$700.

A. Yes, but in the net difference it does not make hardly any difference.

Q. Why? A. You have to allow the defendants approximately that rate or \$3.70 for the shares.

Q. Which had been the price that they ultimately paid for the shares to buy them in again. A. Yes.

10 Q. So that, it really would be neither here nor there on the question of accounting whether we take those shares into consideration or not.

A. No, it arrives at the same result, because the price I was giving for those shares would be \$3.70.

Q. You have not included those in your statement. A. No.

Q. Then is there any other item that you have added to your statement?

A. I have added \$872.42, which is the amount of interest charged to the account of J. P. McLaughlin on Exhibit 19. It is made up of interest charged on the 22nd October, 1929, \$60.98; interest charged on the 22nd November, 1929, \$315.48; interest charged on the 22nd December, 1929, \$303.96; 20 interest charged on the 13th January, 1930, \$192.00. Total, \$872.42.

Q. Now is there any other item? A. I have also added—put a note on the bottom of the sheet—“Plus interest on the above amount.”

Q. Before we come to that. In the absence of interest on the amount we claim that includes all the items you have on your Statement, which will be filed.

A. Yes.

Q. Then, Mr. Hill, what is the net result, taking into consideration the stock ordered to be purchased and the collateral deposited which we allege was disposed of? What is the difference between the price at which it was acquired, or disposed of, as the case may be, and the price at which it was said to be 30 acquired in charging McLaughlin's account and what profit, if any, was made on the transaction with the collateral and with the stock ordered to be purchased.

A. The total amount, including interest, is \$48,529.92.

MR. FERGUSON: Q. Now the witness is giving us the total figure?

A. Yes.

Q. But that is not what Mr. McRuer asked. A. That is what you asked?

MR. McRUER: Q. Yes. No, I think you are not following me, Mr. Hill —oh, yes, quite right, you have done it a different way. Now of the \$48,529.92, or, rather, that figure is made up of, first, the difference between the price at which the stock was said to have been purchased and the price that the records 40 shew it to be acquired at having regard to your averaging of prices or taking a minimum price as you have explained you have done. That is the first item.

A. Yes.

Q. Which amounts to \$23,282.50. A. Yes.

Q. And the next item is the amount—profit made in the way you have explained, taking the figures you have used for your Statement on the collateral transaction—transactions in collateral. A. That is so.

Q. And that amount is \$24,375.00.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination.
20th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
20th
October,
1932.

—continued

Q. Then you add to that, \$872.42 for interest charged to McLaughlin.

A. Yes.

Q. And that gives you a total of \$48,529.92. A. Yes.

Q. Have you figured what the interest is on that amount at 5% from the 14th January, 1930? A. Approximately, \$6,500.

Q. That is up to what date? A. 15th October, 1932.

Q. Then may I keep an Exhibit number for that when it is typed, Sir?

ASST. MASTER: Yes, that will be Exhibit number 47.

EXHIBIT NUMBER 47: Statement prepared by F. C. Hill shewing the price at which the shares delivered to McLaughlin were acquired, etc. 10

Q. Well, then, Mr. Hill, just one other item in regard to this Statement of Account. You took your figures as of the shares having been acquired on the 14th January, I think? A. Yes.

Q. But if we take it,—Mr. McLaughlin, according to his evidence, gave his order to close out the account on the 13th January. What was the price condition on the 13th January as compared with the 14th?

A. The price was around from \$3.05 to \$3.40.

Q. And then on the 14th it was running from \$3.60, is it, up to \$3.75?

A. Yes. It averages at \$3.70.

Q. Now one other question, Mr. Hill. Can you give me,—in case it comes up for discussion,—the prices that the stock that was shown on Exhibit 5 as delivered on October 18th—? A. Exhibit 45? 20

Q. Exhibit 45, rather,—the prices at which this stock would be sold—I think, delivered, October 18th—the sales would be October 17th, probably. I just want to have this on the record in case discussion arises?

A. The House was selling stock on the 17th October, 1929, from \$6.60 up to \$6.66.

Q. Running from \$6.60 to \$6.66? A. Yes.

Q. And then for this stock shown to be delivered on October 21st, what were the prices at that time? 30

A. The price on the 18th was in the neighbourhood of \$6.75—from \$6.53 to \$6.60. On the 19th it was around \$6.50 a share.

Q. Well the minimum, at any rate was \$6.50? A. Yes, sir.

Q. And this statement, Exhibit 45 shows 5,300 shares disposed of on the 18th, and 800, I think, on the 21st? A. Yes.

Q. Now one other matter. Can you tell from a reference to the books what profit was made on the Short selling on Sudbury Basin stock?

A. I am referring to Exhibit 29a. I find under date of January 21st, 1930, that the Short position had been reduced to 45,377 shares, and apparently the price at which the firm was paying that day was \$4.40,—we will say, \$4.50. It would cost roughly \$205,000 to purchase the Short position. 40

Q. That is to buy in the Stock they were Short?

A. Yes, approximately \$205,000. In the account is a credit balance of \$553,000, so roughly the profit at that date was \$345,000 to \$350,000 on trading in Sudbury Basin Shares.

Q. I think that is all, Mr. Hill, thank you. I beg your pardon, there is

another matter I thought had been covered. Now have you a record which shows how the profits that we have been discussing were disposed of?

MR. FERGUSON: Objected to.

ASST. MASTER: I do not think I can change my form of ruling, Mr. Ferguson.

WITNESS: There is an Exhibit, No. 38, which shows certain dividends being paid to certain persons.

MR. McRUER: Q. Exhibit 48—

MR. FERGUSON: Now I just want to re-state my objection, Sir. The 10 dividends paid were paid and declared prior to the closing out of this account. There was a second dividend paid a long time after this action was commenced or probably, I am wrong there, it was certainly not declared until September, 1931 or 1930.

WITNESS: 1930, it is labelled.

MR. FERGUSON: Now I just want to re-state my objection, Sir. The payment of those dividends has nothing to do with this claim at all.

ASST. MASTER: The dividends were accruing during the time of this action, and there is an allegation of conspiracy.

MR. McRUER: Of course, that very much emphasizes exactly what 20 we say, and that is, instead of accounting to Mr. McLaughlin for the profits they had made on his transaction, they took the money themselves.

MR. FERGUSON: We did account. . . .

MR. McRUER: Well, that is what we are trying now. At any rate, Mr. Hill is here to tell us what is in the books. The books are in.

Q. Will you tell us, please, Mr. Hill, what you find in the books referring to that matter?

A. From Exhibit 38, an account headed "Dividend Account", I see the following entries—December 16th, 1929, cheque, L. L. Masson, No. 15957, \$30.00; 30 chèque, H. Mills, No. 15958, \$30.00; a cheque, H. Hendricksen, No. 15959, \$30.00; cheque, L. Eckhardt, No. 15960, \$30.00; cheque, I. W. C. Solloway, No. 15961, \$749,880.00. December 31st, balance, \$750,000.00 debit.

Q. Now what about these numbers that are after the cheques? Is that the cheque number?

A. Yes, that would be the cheque number. It is just used in this account.

Q. It indicates the cheque that has been issued for the item charged in the account? A. Yes.

Q. Well, now, have we got that cheque? A. I have not seen it.

Q. You have not seen the cheque, itself? A. No, sir.

Q. Is there a bank account in which the cheque is charged up?

A. It was withdrawn from Royal Bank, Dominion Account. 40

Q. And that shows by an entry—cheque—under date of what?

A. December 16, 1929.

Q. That is not so far away from the time of our transaction, December 16th, 1929—and the cheque number is given there as 15961?

A. Yes, for \$749,880.00. There were also four entries for the same four cheques of \$30.00 each, which I read from the Dividend Account.

Q. Now are there any other entries of a similar nature in the books?

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Examination,
20th
October,
1932.

—continued

Supreme
Court of
Ontario.

—
Plaintiff's
Evidence.
No. 26.

Frederick
Charles Hill,
Examination,
20th
October,
1932.

—continued

A. Reading again from dividend account I find, September 2nd, 1930, I. W. C. Solloway, \$874,860.00; H. D. Porter, \$35.00; R. S. Leishman, \$35.00; H. Hendricksen, \$35.00; and L. L. Masson, \$35.00. The \$750,000 from the previous dividend is brought down and the total of the two dividends, \$1,625,000.00, is transferred.

Q. November, 1930? A. I don't know whether it is 1930 or 1931.

Q. Well can you find where it is transferred to, to see if that will help us?

A. In Exhibit 35, near the front of the ledger, is an account headed "Dividend Account, Dominion Company" which records under date of December 12th, 1930, a transfer from private ledger of \$1,625,000.00. 10

Q. Well, then, this item of \$874,860.00 that you have told us about, was then dealt with in what manner? A. It was placed to the credit of I. W. C. Solloway, personal account, in Exhibit No. 38.

Q. That is what is referred to as the "Private Ledger", is it not?

A. Yes. It was then disbursed to the following—for certain expenses—legal expenses, etc. on account of I. W. C. Solloway, and a cheque to I. W. C. Solloway on October 27th, 1930 of \$250,000.00, and on November 4th, a cheque issued to I. W. C. Solloway, \$146,964.31; on November 30th, the balance remaining in the account, of \$290,895.69, was apparently transferred to some other account. It is credited to the account of I. W. C. Solloway in Exhibit 35, the General Ledger of the Company. 20

CROSS-EXAMINED BY MR. FERGUSON:

Plaintiff's
Evidence.
No. 26.

Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

Q. Now, Mr. Hill, while the matter is fresh in our minds, I want you to make one or two explanations about the statements you have presented, and which will be marked Exhibit 47. I understand you to say that the cost of the purchase of 7,000 shares of Sudbury Basin on October 16th, 1929, as shown by the account, was \$49,462.50? A. \$49,462.50.

Q. Now do I understand from you that you say that the cost or the value of the same 7,000 shares—I mean, the same number of shares, on January 14th, or the 13th, 1930, is \$26,180.00? I do not understand how you arrive at your result. That is why I am asking you about those figures? 30

A. The value of the shares was \$25,900.00, plus brokerage of \$280.00.

Q. Have you subtracted the difference—subtracted those two figures so as to ascertain the difference? A. The difference is \$23,282.50.

Q. You did that, did you, in your computation of the net result?

A. Yes.

Q. You have done that, have you? A. Yes.

Q. Now we come to the collateral. Do you say that the value of all collateral at the date it was deposited—I suppose, you used the date on which the actual certificates left the office. That is the date you are using? 40

A. For the disposal of the collateral?

Q. Yes. A. Approximate date.

Q. Are you taking the value of the collateral at the actual date the certificates left the office?

MR. McRUER: Q. No, I think we took the date the sales were made?

A. I endeavoured to give a fair price for it using either, or the actual sale that the certificates were delivered against, or—

MR. FERGUSON: I do not want to get into a discussion of that point now, but roughly speaking you have taken the dates on which the sales were made against which this collateral was delivered to ascertain the price? A. Yes.

Q. And do you say, having that in mind, and taking those dates to ascertain the value, that the value of the collateral on the day it left the office was \$67,790.42. Is that the total? A. No, \$66,925.00 I have.

10 Q. Well, then, what figure do you add on to that? Did you add the interest on to that? A. No, the items are \$24,100. for the 16th October; \$9,525 for the 22nd October; \$3,050 for the 25th October; \$21,000 for the 29th October; and \$9,250 for the 3rd December. I did not see any prices for the 16th December.

Q. That makes a total of how much? A. \$66,925.00.

Q. Then you add on to that interest of \$872.42?

A. No, I added the three items together—the amount claimed re the 7,000 shares purported to be purchased, the claim re the collateral, and the interest.

Q. Mr. Hill, haven't you figured this way? Haven't you taken the difference in the value of the stock on the day we were ordered to purchase it and the day we delivered it—14th January, 1930? That is, as regards the 7,000 shares?

20 A. That is the same way as you said before, yes.

Q. That is the first thing you did. Then you take the difference between the value of the collateral on the day it was delivered out of the office, and the value of the same stock on the day McLaughlin took delivery of it on the 14th January? A. Yes. That is, generally speaking. There might be a day either way, but the delivery date is as of 14th January, 1930.

Q. The figure I do not understand is how you arrived at it as the value of the collateral on the 14th January, 1930?

30 A. According to Exhibit 29a, on the 14th January, 1930, the House purchased 9,000 shares Sudbury Basin for the sum of \$33,021.00, which gives a price of \$3.67 a share average. I allowed the Defendants \$3.70 a share.

Q. That is to say you have said that Sudbury Basin Stock was worth \$3.70 a share on January 14th, 1930? A. Yes.

Q. And then you take the total collateral which had been deposited by McLaughlin, less 2,300 shares?

A. Yes,—less 2,500 shares. I disregarded the 200 shares.

MR. McRUER: Q. 14,000 shares deposited as collateral? A. Yes.

MR. FERGUSON: Q. That is 2,500 shares,—that leaves a difference of—

A. 11,500 shares.

Q. You have taken 11,500 shares at \$3.70 a share? A. Yes.

40 Q. Now what was your figure for that? A. \$42,550.00.

Q. Well, I need not go into that any further. I do not know whether you had that figure before or not, sir. So that, Exhibit 47 would show your calculation of the difference in value of the 7,000 shares purchased,—that is to say, the difference in its value on October 16th, 1929, and January 30th, 1930. That is the first thing it would show? A. Yes.

Q. Then it would show the value of 11,500 shares of Sudbury Basin on the 14th January, 1930, and the value of the same number of shares at these vary-

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick Hill,
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

ing dates, and in varying amounts, from October 16th until December 3rd, 1929? A. Yes.

Q. Now, then, Mr. Hill, you say we purchased 9,000 shares on January 14th, 1930? A. Yes, that is according to Exhibit 29a.

Q. Did you notice whether or not we had made any large purchases on January 12th, or 10th, or 14th?

A. On January 10th the House sold 620 shares; on the 11th it apparently purchased 25 shares net and on the 13th it purchased 8,500 shares, and sold 5.

MR. McRUER: Q. What was the price?

A. The price on the 13th,—it ran from \$3.05 to \$3.40 per share. 10

MR. FERGUSON: Q. Now will you look at Exhibit 46—your Statement. I am referring you to the Statement where you told us all about the shares that McLaughlin received on January 14th, and told us from where Solloway, Mills & Company, Limited, acquired those shares? A. Yes.

Q. Well, now, we received how many shares, in all, from J. R. Gordon? Did you calculate that?

A. Yes. 5,700 shares.

Q. And how many, in all, did we get from the Forlong Loan?

A. 10,000 shares from Stobie-Forlong Loan.

Q. And how many from the Royal Loan? 20

A. 3,100. Pardon me, 2,700 from the Royal Loan; 400 from Transfer.

Q. So we take the Royal Loan at 2,700. Now does 2,700 include the 2,300 original certificates? A. No.

Q. Then in addition to the 2,700 there were 2,300 of the original certificates deposited by Mr. McLaughlin returned to Mr. McLaughlin on January 14th. That is correct, isn't it? A. I believe it is 2,300, I am not quite sure now whether it is 2,200 or 2,300. It is 2, 200.

Q. Now, then, Mr. Hill, 5,700 shares from J. R. Gordon; 10,000 shares from Forlong; 2,700 from Royal Loan and 2,200 from our Safety Deposit Box, and the 400 shares from Transfer, makes a total of 21, 000 shares, doesn't it? 30

A. Yes.

Q. And those are the shares that Mr. McLaughlin got? A. Yes.

Q. What did we pay J. R. Gordon for the shares?

A. I don't know whether there is any thing paid for them.

Q. What did we pay Stobie-Forlong for them? A. I have no idea.

Q. And what did we pay for the shares we got from the Royal Bank?

A. They were deposited as collateral.

Q. Now you don't know what they cost us, do you? A. No.

Q. There is no question about the 2,200 because you got those back again?

ASST. MASTER: Q. When you say "The Royal Loan", that is the Loan 40 from the Royal Bank?

A. It was apparently deposited as collateral to the loan.

MR. McRUER: We are giving the prices at which they were acquired for this purpose or converted to this purpose.

MR. FERGUSON: You are giving the value or what you think is the value, of Sudbury Basin stock on January 14th, and you are charging us with the profit we made on it. Now it is up to the plaintiff to show what that profit was.

MR. McRUER: I submit not. He is an agent. It is up to him to account. What Mr. Hill is doing is showing that if these stocks were converted from Gordon—if they were Gordon's stocks, they were laying themselves liable at the date of the conversion. That is all it was costing them—the price at the date of conversion.

MR. FERGUSON: It does not lie in my friend's mouth to complain about anything we did to Mr. Gordon.

MR. McRUER: I am not complaining, I am asking you to account.

MR. FERGUSON: In the first place this is not an action for an accounting.
10 My friend is talking about an accounting.

Q. Now, Mr. Hill, you do not know what the shares that were received from J. R. Gordon cost us, do you? A. No.

Q. And you do not know what the shares that were received from Forlong cost us, do you? A. No.

Q. Nor what the shares we got out of the Royal Bank cost us originally?
A. No.

Q. And you would have a very difficult time finding out?

A. I certainly would.

ASST. MASTER: Do you know, Mr. Ferguson?

MR. FERGUSON: No, I do not. But we might be able to find out what
20 the actual certificates cost us, and I would have thought this witness, if he had really wanted to get at the exact profit, if any, which the firm made, would have run these certificates to earth and found out where they came from.

MR. McRUER: I am afraid that shoe is on the other foot.

MR. FERGUSON: Q. Well, did you look at the Forlong Loan Account?
A. I did at one time.

Q. I would like to know whether you found out whether the 10,000 shares borrowed from Forlong were returned, or whether they were paid for in cash?

A. In Exhibit 28, under an account headed "Stobie-Forlong & Company",
30 in January, 1930, I do not see any loans recorded here. There is a loan of Sudbury Basin on February 20th, 1930, and other loans of stock, but I see nothing under January, 1930, or in December. It may be that there are other accounts.

Q. Well, you do not find it? A. I do not see it here.

Q. Did you tell Mr. Brewin you had something like fifteen years experience in brokerage accounting? A. No, not in brokerage accounting: in public accounting.

Q. I remember Mr. Brewin asking you not to be too modest about it, and I just want to get the facts for the record? A. For brokerage accounting?

Q. Yes? A. It was in January or February, 1930, that I commenced
40 going into this type of work. I had slight experience in brokerage prior to that.

Q. But you have learned a lot about brokerage matters since January, 1930? A. All about the way things could be done.

Q. Are you familiar with the Clearing House practice?

A. Yes, I inquired into that a number of times in 1930 and 1931 with certain officials in the Clearing House.

Q. I just want to ask you one or two questions about that, Mr. Hill, preliminary to going into the account itself. I think you told Mr. Brewin that the

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

—continued

Clearing House—that the Clearing was on balance, and I am not sure that it is clear on the record just what that means.

A. Do you wish me to explain it?

Q. Probably I can assist you some. Take the simple case of Sudbury Basin stock, where a broker sells on the Exchange 10,000 shares. On the same day he purchased on the Exchange 5,000 shares. That would mean without a Clearing House that he would have to deliver 10,000 shares to the person to whom he sold? A. That is correct.

Q. And he should receive from persons from whom he bought, 5,000 shares? A. Yes.

Q. Now I understand the Clearing House was an institution designed to do away with the necessity of delivering and receiving all the shares bought and all the shares sold? A. That is so.

Q. And it was designed so that it was only the difference between the buys and the sells that actually passed between Brokers?

A. That is generally so.

Q. Taking it in the simple case we have, there would be a difference of 5,000 shares, and as the excess is in the sales, there would be 5,000 shares to be delivered? A. Yes, there would be 5,000 shares to be delivered. That is, of course, disregarding any leave-offs or put-ons.

Q. And just in that connection, leave-offs and put-ons are things that are well recognized on the Standard Stock and Mining Exchange? A. Yes.

Q. As being a regular practice? A. Yes.

Q. Now just look again at Exhibit 27, which is a copy of a clearing sheet. The clearing sheet shows stock to be received and stock to be delivered?

A. Yes.

Q. It shows the stock to be received on which side?

A. On the left hand side.

Q. And the stock to be delivered on the right hand side? A. Yes.

Q. Now it contains, as I understand it, a complete list of the sales made on the Exchange for the day?

A. Sales and purchases. It does not record "put-throughs".

Q. It does not record put-throughs? A. No.

Q. And the total sales in any one stock are totalled up at the end of the day from the Clearing Sheet? A. Yes.

Q. For the purpose of clearing? A. Yes.

Q. And the total purchases are totalled up from the Clearing sheet for the purpose of clearing? A. Yes.

Q. And then there is a summary made, which you probably heard one of the witnesses who used to work in the cage say he received each day, showing the difference between the purchases and sales of that stock? A. Yes.

Q. And then that amount of stock which is the difference between the purchases and sales, as the case may be, if it shows more stock sold than purchased, the difference is sent to the Clearing House along with the original Clearing Sheet? A. Yes. If there is a small amount of stock—broken lots—they are handled slightly different to the general clearing.

Q. Now every Broker on the Exchange does that every day?

A. Yes, if he has any transactions.

Q. I suppose you mean in this year there would probably be some days when there would be probably no Clearing Sheet? A. Yes.

Q. And every Broker sends this Clearing Sheet with the stock that he has to deliver, or a statement of the stock that he is to receive, to the Clearing House on the day following the transaction?

A. On the day following, except in the case of Saturdays and Mondays.

10 Q. Now we have the Clearing Sheet in the Clearing House, and it is checked there, as I understand it?

A. Yes, it is checked with the other Brokers' sheets.

Q. And referring again to the simple case I have put, the Broker who had sold 10,000 shares, and had only bought 5,000 would send with his Clearing Sheet 5,000 shares? A. Yes.

Q. And the Clearing House would take the 5,000 shares, would it not?

A. Yes.

Q. And put it with the other Sudbury Basin stock that had come in?

A. All the shares would be put in one pile.

20 Q. And after they had all the Clearing Sheets checked for stock to be delivered, they would then distribute the stock which was to go out of the office to the various Brokers? A. Yes, quite so.

Q. And they would send that stock to the various Brokers some time that day or the next? A. That same day.

Q. And they would take the stock from this one box?

A. From the one pile of share certificates, yes.

Q. And if on that day Solloway Mills & Company were to receive 1,000 shares they would take 1,000 out of that box and put in with Solloway Mills' Clearing Sheet? A. Yes.

30 Q. And if Stobie-Forlong were to receive 5,000 that day they would take 5,000 out of that box and put it along with their Clearing Sheet? A. Yes.

Q. And so on until they had disposed of each Broker. So, with your experience and knowledge of the Clearing House, am I safe in saying, subject to Leave-offs and Put-ons that all stocks recorded on the Clearing Sheets would be received—delivered? In other words, it would be cleared, and if the stock appears as having been bought or sold on the Exchange,—that is, appears from the Clearing Sheet, we are safe in assuming that the stock was actually cleared on balance? A. Yes, the stock would be cleared on balance.

40 Q. And although a Broker might have an order to buy 10,000 shares for one client, and although he may have bought the 10,000 shares on the Exchange he might have sufficient sales from other clients, or in the net result he does not receive through Clearing a single share of stock? A. That could happen.

Q. And the reverse could happen,—that he would be delivering stock out of his office instead of receiving it during the day?

A. Yes, that is also probable.

Q. Now looking at the account, itself, which is Exhibit 19, Mr. Hill, and then will you get before you Exhibit 23, the Buy and Sell slips?

A. Exhibit 24 is McLaughlin's Buy and Sell Slips.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

—continued

- Q. Yes. Well, get Exhibit 24 as well. Now looking at Exhibit 24, first, Mr. Hill? A. Yes.
- Q. The first item you find listed at the bottom of Exhibit 24 is 300 Sudbury Basin at \$7.00 from Crang? A. Yes.
- Q. Now can you tell me if that is on the Clearing Sheet at page 36? A. Yes, I have looked that up.
- Q. The next item is 100 Sudbury Basin at \$7.00 from Colling? A. Yes, that is on the Clearing Sheet, and marked "Left-off".
- Q. I am told it is put on at the bottom of the Clearing Sheet again in pencil? A. There is one here. I was assuming it was a put-on. 10
- Q. It is not marked "put-on"; it is a left item. But there is such an item at the bottom of the Clearing Sheet? A. Yes.
- Q. Then there is 600 from Butler at \$7.00, also recorded at page 36? A. Yes.
- Q. And one hundred from Dobie, at \$7.00, which is left off? A. Yes.
- Q. It would be page 36 also. That is right, Mr. Hill,—left off? A. Yes.
- Q. Can you tell me, or have you looked at Dobie's account to see when it was actually cleared? A. No. I would say it was cleared at some later date.
- Q. Now there are only one or two of them. So I wish you would look up 20 Dobie in the Clearing Brokers Ledger for October 17th. It is Exhibit 39b. October 17th? A. Under date of October 17th, Exhibit 39—.
- Q. Is it Exhibit 39b? A. Exhibit 39, I am looking at. There is recorded a put-on of 100 shares at \$695.00, and 100 shares totalling \$700.00, Sudbury Basin. Both items were left off on the 17th October.
- Q. And you are looking at Draper Dobie's account? A. Yes.
- Q. Now we go to the next item, which was 500 from Scott at \$7.00, also at page 36 of the Clearing Sheet? A. Yes.
- Q. The next item is 50 at \$7.00. Stobie, also on page 36 of the Clearing Sheet? A. Yes. 30
- Q. And 100 from Stobie at \$7.00, left off, page 36? A. Yes.
- Q. Now will you just turn to Stobie's account in the Clearing Brokers Ledger on October 24th, 1929—this is Exhibit 39b you are looking at? A. Exhibit 39b, yes, under date of October 24th, 1929, there is 100 Sudbury Basin put on at \$7.00, and 100 put on at \$6.05, the total amounts respectively being \$700.00 and \$605.00.
- Q. Now the next item is 400 purchased from Eastwood at \$6.95 at page 36? A. Yes.
- Q. The next item is 400 purchased from Gibson at \$6.95, also page 36 of the Clearing Sheet? A. Yes. 40
- Q. And 400 purchased from Dobie at \$6.95? A. Yes.
- Q. Also on page 36, but it is left off? A. Yes, I read that out before.
- Q. As having been put on October 17th? You found that in Exhibit 39? A. Yes.
- Q. The next item is 300 purchased from Moysey at \$6.95, also on page 36 of the Clearing Sheet? A. Yes.
- Q. 500 purchased from Crawford at \$7.00, which you will also find on page 36? A. Yes.

Q. And 800 purchased from Stobie at \$7.00, also, on page 36? A. Yes.

Q. And 200 purchased from Moysey, at \$7.00 on page 36? A. Yes.

Q. And this 50 purchased from McDonald at \$7.00, page 36, left off?

A. Yes.

Q. Now will you turn to McDonald's account on November 15th, 1929. That will be in Exhibit 39a? A. What date?

Q. November 15th, 1929? A. In Exhibit 39a, in McDonald's account, under date of November 15th, there is an entry, 50 shares of Sudbury Basin put-on—\$350.00. I assume that is the Clearing of the item we are speaking
10 about. It is a long time after, that is all.

Q. 50 shares at \$7.00 of Sudbury Basin? A. Yes.

Q. Sudbury Basin was not at that price on November 15th?

A. No. I don't know what items are cleared. I will look up the stock positions.

Q. Well, without wasting any more time on it, Mr. Hill?

A. I would say it was all right.

Q. Your experience is that those items that were left off and put on were eventually straightened up between the Brokers? A. Yes.

Q. This is an example of 50 shares being held by McDonald on October 16th
20 and November 15th, almost a whole month. Now the Broker who was dealing with his client, and who had purchased those 50 shares for a client would, in that case, have to go to some other source for his stock if the client wanted delivery in the meantime? A. Yes, if the client wanted delivery.

Q. And that frequently happens?—

A. Well not generally that length of time.

Q. No, but it frequently happened that delivery had to be made before the stock was received from the other Broker. There wasn't anything unusual about that? A. No, delivery is generally effected, as you will see by the Clearing Sheet, the large percentage on the first day, and practically cleaned up by four to
30 five days afterwards.

Q. The next item I see is 50 shares purchased at \$7.00 from Stobie, also on page 36. It is included, probably, Mr. Hill, in—there is 150 all together on the same page? A. Yes, there is 150 there. I think that is tied up with an error I mentioned in the House Account.

Q. We will come to that later. Then there is 500 from Eastwood at \$7.00, on the same page? A. Yes.

Q. 600 from Butler at \$7.00 on the same page? A. Yes.

Q. 300 from Scott at \$7.00 on the same page? A. Yes.

Q. 600 from Lorsch at \$7.00 on the same page? A. Yes.

Q. Now will you turn to Exhibit 23—the Buy and Sell Slips? A. Yes.
40 There is another 100 at the bottom of that Buy Slip for Stobie at \$7.00.

Q. Yes, on the same page of the Clearing Sheet. That is the 50 we were mentioning just a moment ago? A. Yes, I think that makes the balance.

Q. Makes the 150? A. Yes.

Q. Then there are another 200,—another 350 shares to be dealt with which were not purchased,—that were put-throughs, Mr. Hill? A. Yes, 350 shares.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.

No. 26.

Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

Q. Looking at Exhibit 23, do you see a Vancouver slip there for 50 at \$7.00 among the Sells?

A. There is a Vancouver slip marked "BX", for 50 at \$7.00, Solloway.

Q. And one for 50 at \$6.95, Winnipeg Branch? A. Yes.

Q. And then there is another 50, Vancouver. There were two Vancouver slips for 50? A. There is another 50 at \$7.00 from Vancouver also.

Q. And 100 from Vancouver,—that is, there should be three Vancouver Slips there? A. Yes.

Q. And that leaves 100 shares? A. There are others, but there are the three that you mentioned.

Q. At \$7.00 and \$6.95? A. That is so.

Q. And that leaves 100. Is there another slip to cover the 100 shares missing?

A. There is a Sell Slip for 50 shares—"BO", I don't know what Branch that is, at \$7.00, Solloway, which would indicate a put-through, and also a Sell Slip for 75 shares at \$7.00, Solloway, marked Branch "JO" which would indicate a put-through.

Q. Now, then, there isn't anything the matter with put-throughs?

A. Providing there is a client.

Q. I mean providing there is a client, of course? A. Providing there is 20 one client buying and one client selling, and the House is not Short.

Q. Well just leave the House out of it for a moment. There is nothing the matter with Put-throughs if you have one client buying and one client selling? A. The stock must be on hand.

MR. McRUER: You cannot forget about the House.

MR. FERGUSON: Mr. Hill can. Mr. McRuer.

Q. Supposing the Broker has not been doing any trading on his own behalf, at all, he is a very straight-laced, upright Broker, and he has a client buying and a client selling, and he puts it through. There is nothing the matter with that?

A. Providing it is put through under the Rules and Regulations of the Exchange.

Q. Yes, we will assume that. And it has been the practice on the Standard Stock and Mining Exchange to put transactions through in that way?

A. Yes, for some years.

Q. So standing by itself, there is nothing the matter with a put-through?

A. No, not if carried out according to the Rules of the Exchange.

Q. You have no reason to doubt, other than this Short position that you complain about, that these put-throughs were carried out in the regular way? You have not investigated? A. No, I assume they are registered on the Floor 40 of the Exchange.

Q. Now I have read to you all of the items appearing at the bottom of Exhibit No. 24, with all the names of the Brokers, and that takes care of 7,000 shares. That is correct, isn't it? A. Yes.

Q. Now outside of the 350 shares which were put through, the rest were all purchased from Brokers. That is correct? A. Yes.

—continued

Q. On the Exchange. Well, probably you have not searched the Exchange records? A. No.

Q. But on the Clearing Sheets at any rate? A. Yes.

Q. And no doubt would be cleared on a balanced clearing? A. Yes.

Q. Now up to that stage, Mr. Hill, can you suggest to me any one thing that Solloway Mills might have done to make a more effective purchase for those 7,000 shares? Isn't that just what they should have done,—what they did do?

A. To make it more effective they should not have been selling for the House and selling the same shares back—the Client's own shares.

10 Q. Now just keep to the point. The shares were bought and cleared according to the Clearing Sheet, weren't they? A. According to part of the record, yes.

Q. According to the Clearing Sheet they had done every act that they could—that any Broker could do, to purchase those shares? A. I cannot go that far with you, Mr. Ferguson, because you cannot take the transaction by examining only a part of the records.

20 Q. Is there any more effective way of buying than to order the stock bought on the Exchange? That is all they could do so far as the 7,000 shares were concerned,—they ordered it bought on the Exchange. Now there is nothing the matter with that, is there? A. Not that part of it.

Q. There is nothing wrong with buying from the Brokers on the Exchange and recording it on the Exchange. That is the next step. There is nothing the matter with that, is there?

A. From buying from Brokers on the Exchange.

Q. That is a thing that is done, and that is a thing they ought to have done?

A. Assuming that the Broker is acting independently.

30 Q. I am not trying to trip you, but I want to get down to the real basis of your complaint, and as I understand it, your complaint rests with the Short position, and does not rest with anything that we did so far as purchasing it on the Exchange and Clearing it through the Clearing House. Your complaint rests elsewhere?

A. Well, that is up to the Solicitor for the Plaintiff.

MR. McRUER: I think Mr. Hill should give the facts in connection with what the books show, and not what his complaints are. I do not think he has any complaints. At least, I hope he hasn't.

ASST. MASTER: It all comes back to the balanced Clearing, I suppose.

40 MR. McRUER: And, to a certain extent, how the Clearing is arrived at. What I suggest is, it is not a proper question to put to Mr. Hill. He is here to give us what is in the books.

MR. FERGUSON: Q. Now let us go back to this, Mr. Hill. You are here as an expert witness, and a man who understands the Brokerage business. We have gone through this book, and we have shown, and you have agreed with me, that each one of these transactions is recorded on the Clearing Sheet?

A. Yes.

Q. And we are agreed that when a Clearing Sheet goes to the Clearing House we are bound to receive the number of shares that the Clearing Sheet calls for? A. I would say so.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

—continued

Q. And in the put-throughs, you, as an expert Accountant in Brokerage matters, agree with me that a cross (X) in itself is a legitimate and proper method of trading, if carried out according to the Rules? A. Yes.

Q. Now, then, I was leaving all other considerations aside and just taking those facts, and I assume that those are the things that a Broker does to purchase shares. I am right, in assuming that, Mr. Hill,—that is a thing that a Broker does to purchase his shares?

A. That is what he should do, yes.

Q. And nothing else. There is not anything else he is required to do except take delivery and pay for them with a cheque? 10

A. He is supposed to do that, and that only.

Q. And if he does that, and that only, there is not any question, at all, Mr. Hill, if he purchases the stock for the client? A. No.

ADJOURNED at 12.55 to 2.30.

RESUMED at 2.45.

FREDERICK CHARLES HILL: (Recalled).

CROSS-EXAMINATION CONTINUED BY MR. FERGUSON:

Q. Mr. Hill, what was the total number of shares we received from Clearing on the 17th October, 1929?

A. According to Exhibit No. 27, 5,995 shares were to be received. 20

Q. And that is the total sales for that day? A. That is net.

Q. Total sales amounting to what? A. 305 shares.

Q. And the total purchases would be 7,000, would they not? A. No, the total purchases were 6,650. There were leave offs of 350.

Q. Then there were put-throughs of 350 on McLaughlin's trades?

A. Yes, and also 10 for another client. The total purchases for clients on October 16th were 7,010 shares, of which 6,650 are shown on the Clearing Sheets before considering leave offs, and 360 shares were put through.

Q. Then we heard quite a little in your evidence, Mr. Hill—

MR. McRUER: Excuse me, was that on October 17th? 30

MR. FERGUSON: That was for the transactions which took place on October 16th.

Q. Now, as I understand your evidence, you say that if we had done nothing else than buy the stock over the Exchange, and cleared it through Clearing, that that is all we could have been expected to do to properly complete the purchase, but you say we did something else, apparently, in addition to that?

A. Yes.

Q. What were those things that we did in addition to that, which spoils the picture?

A. The House sold certain shares through certain of the Exchange Brokers, and the same shares were sold back to Solloway for the account of McLaughlin. 40

Q. Now, let us see if we got the same shares back. That, of course, refers to October 16, 1929? A. Yes.

Q. Now, in your statement, Exhibit 44, you say that on October 17th we delivered to Lorsch, in settlement of sales for House Account on October 16th—that is, the House sales, you mean, were made on October 16th? A. Yes.

Q. The first certificate which we received, that is a certificate for 23,521 shares in the name of F. J. Crawford & Company? A. Yes.

Q. Now that went to Lorsch & Company? A. That is correct.

Q. I understand you to mean by that, that Lorsch & Company sold that stock for Solloway, Mills. A. That is so, according to the record.

10 Q. Now Lorsch & Company sold to us over the Exchange on October 16th, 600 shares at \$7. That is correct, isn't it? You will find that on exhibit 24, A. Yes, that is so.

Q. Lorsch & Company sold us 600 shares at \$7. A. Yes.

Q. And Lorsch & Company sold for Solloway, Mills & Company, Limited on October 16th a certificate for 500 shares, and they sold it for \$700, didn't they?

A. They sold it for \$7 a share.

Q. Did you look up and see how many 600 share certificates were received from Clearing on the 17th? A. 600 share certificates?

20 Q. Did we receive a certificate for 600 shares from Clearing? A. No, there were no certificates for 600 shares even.

Q. Now do you wish to tell the Court that the 500 share certificate which was in the name of Crawford & Company delivered to Lorsch and sold to us was part of the 600 shares which we bought from Lorsch? A. It is part of the 600 shares, yes.

Q. You say it was part? A. Yes.

Q. Why do you say it was part? A. Exhibit 42. Confirmations from client brokers.

30 Q. Well, now, just point out to the Court, Mr. Hill, anything on that, that says that the certificate for 500 shares constitutes part of the 600 shares we bought from Lorsch? A. The actual certificate?

Q. Yes. You say the actual certificate.

A. According to the confirmation attached to exhibit 42, or forming part of exhibit 42, from Lorsch & Company, I find this—"To,—Solloway, Mills & Company. "We have this day SOLD for you: as undernoted: 600 Sudbury Basin." The broker's name to whom they have sold is shewn as "Solloway", \$7.00, and the number of shares is 4,200. Brokerage \$9.00, Tax, \$13.26. Net amount—\$4,177.74.

Q. Now that is a certificate for 600 shares.

A. Not necessarily a certificate for 600 shares. It might be twelve 50's.

40 Q. It is a block of 600, at any rate. A. Yes.

Q. And it is not 500 shares. A. In settlement of that 600 a certificate for 500 was given as part settlement.

Q. All right, go on. A. Now, on going to the Security Register, exhibit 21, I find that certificate on page 18—certificate number 23,861—for 100 shares in the name of F. G. Oke, which was received from Clearing, was delivered to Lorsch on October 17th, 1929, and, also, on page 19, a certificate—number 23,521, for 500 shares in the name of F. J. Crawford, received from McLaughlin was delivered to Lorsch on October 17th, 1929. On referring to the

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

--continued

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

—continued

Client Brokers Ledger, exhibit 28B, Lorsch's account, under date of October 17th, 1929, I find this entry—"600 Sudbury Basin, \$4,177.74, delivered." Settlement for same being received in a cheque for \$7,650.38.

Q. Now, then, it is perfectly evident from what you have told me that the 100 share certificate had no connection with McLaughlin, at all. A. That 100 had no connection with McLaughlin.

Q. And it is also evident from the Clients Brokers ledger, Lorsch's account, that Lorsch paid Solloway in full for this stock when Solloway delivered it to Lorsch. A. That is so.

Q. The whole lot,—the 500 share certificate and the 100 share certificate. 10

A. Yes.

Q. Will you take a look at the next certificate, Mr. Hill,—certificate number 1,606—200 shares of Sudbury Basin in the name of Hudson & Company was delivered to Eastwood on October 17, 1929, and your Statement in Exhibit 44 says that that certificate was delivered to Eastwood in settlement of sales for House Account, October 17th, for \$7.

A. Yes, that is so.

Q. Now, altogether, for that day we bought from Eastwood two blocks, as shewn by exhibit 24. One for 400 at \$6.95. A. Yes.

Q. Now your Statement says we delivered the 200 shares to Eastwood at 20 \$7. A. That was one of the certificates. There were other certificates delivered to Eastwood on the same day.

Q. We bought another block from Eastwood of 500, and we paid \$7 for that. A. Yes.

Q. And your Statement shews that we delivered certificate number 1,588, from Hudson & Company to Eastwood, for 200 shares, and also certificate number 5,540 for 100 shares. That makes 500 shares in all. A. Yes.

Q. We bought from Eastwood on that day 900 shares and paid \$7 for 500, and at the rate of \$6.95 for the other 400. A. That is so.

Q. Will you agree with me that the 400 shares purchased at least had nothing whatever to do with McLaughlin? You do not try to connect up with the 400 share purchase with any of the certificates deposited by Mr. McLaughlin do you? 30

A. No, not the 400; just the one item of 500 at \$7.

Q. Now take the delivery to Scott. Your statement in exhibit 44 says that certificate 1,587 for 200 shares in the name of Hudson & Company was delivered to Scott on October 17th against a sale to Scott at \$7.00.

A. Yes.

Q. So then that is the certificate for 200. A. That is so.

Q. And then there is a further certificate—13,623—for 200 shares.

A. 13,632. 40

Q. And then down below you have certificate number 5,541, for 100 shares.

A. They were delivered against the sale on October 18th.

Q. So that, we have there 400 shares delivered to Scott on October 16th. Is that correct, Mr. Hill?

A. Yes, there is 400 on that list. It is part of a block of 600 delivered to Scott.

Q. All right now. Then we purchased from Scott on that day for Mc-

Laughlin, 800 shares at \$7. Is that right, Mr. Hill? A. Yes, two blocks, one of 500, and one of 300.

Q. Now do you say in spite of the fact that what we sold to Scott was a block of 600 and that we bought through the Exchange from Scott two blocks, one of 300, and the other of 500, that the 600 has any connection with the 800, or that it was done on McLaughlin's account? A. I would say that 300 shares,—the item of 300 at \$7. for Scott was part of the sales by the House, according to exhibit 42.

10 Q. Now you notice that the certificates that went to Scott were two certificates for 200 shares each, 400 in all.

A. Yes.

Q. And in spite of that fact you say the 300 and the 600 are inter-laced so as to relate to McLaughlin's transaction. A. The 400 shares are part of the item of 600 shares sold by Scott for Solloway.

Q. There is no doubt about that, probably. But what I am trying to get at is no part of the 800 sold by Scott to Solloway over the counter composed of the 600 shares so as to be a cross sale against McLaughlin's trade.

20 A. You are a little bit in error there, Mr. Ferguson. Scott never sold anything over the counter in this deal; they purchased over the counter from Solloway.

Q. That is what I mean. If I said something different, I meant that.

A. Well, will you put the question correctly, please?

Q. What I am saying is, you are probably right in saying that the block of 400 shares which McLaughlin deposited with Solloway are part of the 600 sold to Scott over the counter.—Probably you are right,—without admitting it for the minute,—but what I would like to know is how do you connect up that block of 400 which was delivered to Scott over the counter with the 800 shares sold by Scott to Solloway through the Exchange particularly when they are sold in two blocks,—one for 300, and the other for 500.

30 A. By taking each block separately,—the 500 block at \$7., I would say, was purchased from Scott and had no connection with other Solloway transactions that day. In reference to the 300 share block, I would say that that is part of the 600 shares which Scott sold for Solloway. That is, according to exhibit 42, which reads—"Solloway, Mills & Co. We have this day sold for your account and risk, 300 Sudbury, \$7. Commission, \$4.50. Tax, \$6.63. "Net amount, \$2,088.87. Broker.," which means, broker to whom sold, "Solloway."

40 Q. I think we have that part clear. But, Mr. Hill, Scott made delivery, and his shares were cleared through Clearing on the 17th. That is shewn by the Clearing Sheet. The block of 500 was cleared, and the block of 300 was cleared. Now, then, what Scott got from us was two certificates of 200 shares each. To break them up and make it 3, how could it have been done, and cleared on the 17th? A. You must go back to the fact that Scott sold for Solloway on the Exchange, 600 shares of stock, of which he sold 300 shares back to Solloway, and 300 shares to Patterson. On the 17th, according to the Security Register, exhibit 21, page 19, certificate number 1,587, for 200 shares, in the name of H. L. Hudson, and certificate number 13,632, for 200 shares in the name of Hudson were delivered to Scott on October 17th.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
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October,
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—continued

Q. You are saying certificates 13,632 and 1,594. . . .

A. 1,587. Also certificate number 17,009, for 200 shares, in the name of Ross, which was received from Crang on October 16th, was delivered to Scott. That makes the 600 shares.

Q. There were 3 certificates for 200 shares each. Now, then, in order to make them available for the delivery of 300 shares you have to have at least one certificate changed into a certificate for 100 shares. That is, one certificate changed into two certificates for 100 shares each. A. That is the purpose of the Clearing House, Mr. Ferguson, to adjust those items.

Q. Now it comes down to this, Mr. Hill, that because there were two 10 transactions between Scott and Solloway on this day,—one where Scott sold for Solloway, and the other where Solloway bought from Scott—and the number of shares happens to be the same. That is, the 300 shares were sold back to Solloway. You say that was against McLaughlin's trade.

A. I do not only say that; the records shew that it was against Solloway's trade—or, McLaughlin's trade, and for no other purpose.

Q. Is that the basis on which you say this sale by Scott for Solloway, 300 shares, is a sale against McLaughlin's trade? Have you got some other reason for saying that except just those facts? A. No, there are absolutely none—the facts shew that that is the case. 20

Q. Well, those are the facts that shew that. A. Yes.

Q. And that is your evidence. A. Yes.

Q. Well, now, there is no particular significance in the fact, Mr. Hill, is there, that we happened to have received from Clearing on the 17th October some certificates that were delivered to Lorsch and Scott on the 16th?

A. No, they are delivered to Lorsch and Scott on the 17th. Q. And they were delivered and received from Clearing on the same day. That might happen as between any pair of brokers. A. I do not see how it could, Mr. Ferguson.

Q. Well, it could happen that loaned shares very easily—if Solloway 30 loaned Stobie Forlong 500 shares of a stock and Stobie Forlong was selling it to Solloway through the Exchange on the same day Solloway might easily get his own shares back. Is that right? A. That is so.

Q. I mean, from the system. . . . A. Anything could happen in the way the business was carried out, but I am referring to, what shall we say,—the honest, upright brokers. I do not see, in their case, how it could happen.

Q. Isn't it right it could happen in the case of shares loaned? A. I do not see where they would have the right to. . . .

Q. Now don't argue with me about the question of whether they had a right to loan or not, because, as I understand it, it was the custom to loan shares 40 from one clearing broker to another for the purpose of making delivery sometimes when they did not have the shares to deliver. Solloway loaned to Stobie Forlong 1,000 shares on one day with which to make the delivery, and if Solloway were buying from Stobie, on the same day, shares for a client it might easily happen that Solloway would get his same shares back through the Exchange and through the Clearing. A. Disregarding the question, or right, of doing that, yes, that might be so.

Q. It might easily happen. A. Yes.

Q. The fact that some of these shares came back, all of the shares might just as well have come back that we delivered to Lorsch and Scott that day.

A. No, some of the shares were sold to other people.

Q. And they might easily come back to Solloway through the Clearing.

A. You have that as long as you have balanced clearing.

Q. So that, there is not any particular significance in the fact that some of these shares which were delivered on the 17th to these client brokers came back through the Clearing House on the following day.

10 Q. Well, it shews that the stock was in circulation where it was supposed to be deposited as collateral.

Q. It shews it was in circulation. Now that is all it does shew. A. It shews that McLaughlin was getting back some of his own collateral.

Q. Of course; it was the same stock. But that is as far as it goes. It is simply a thing that might happen any time with stock that is in circulation, it might easily come right back to you.

A. I think the answer I gave you a few minutes ago in relation to that, covers it.

20 Q. And, Mr. Hill, supposing we concede, for the purpose of argument, and I say this to you because you are an expert witness, supposing we concede, for the purpose of argument, that the firm was not short, at all, in any way, or any sense; that at the time McLaughlin deposited his certificates as collateral with Solloway, Mills and Company, Limited, let us suppose there was no question of any short position, whatever, now couldn't those certificates have come back to us and have been used on the Exchange and through Clearing and you, as an accountant, would have no complaint about it, whatever?

A. No. On the Clearing Sheets of that day they would have been,—they would not have to deliver them: they would have to receive. Therefore, the shares would remain in the box.

30 Q. It might if it was delivered and came back a few days later. A. Yes.

Q. And there is no particular significance. A. In that case, no, as long as there is sufficient shares in the box and that Mr. McLaughlin's shares were not earmarked.

Q. And if there is no question of a short position, I think you did concede that that would be so. A. Yes, that could happen. As long as there was not a short position I would say it was quite in order.

40 Q. Now, let us look at these shares that went to Colling. I notice that you have a note here that certificate number 4,011 for 100 shares was delivered to Colling on October 17th. And then there is also certificate number 4,012 for 100 shares; certificate number 10,745, for 100 shares; certificate number 5,538, for 100 shares; and certificate number 5,539 for 100 shares. That makes a total of 500 shares of McLaughlin's. A. Yes.

Q. Now if you look in Colling's account, Mr. Hill. Have you done that?

A. I believe so. I will look it up again.

Q. Just look up and see if you do not find that Colling sold for us on that day 600 shares in all.

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Court of
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Plaintiff's
Evidence.
No. 26.
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Charles Hill,
Cross-
Examination
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Ferguson.
20th
October,
1932.

—continued

A. Yes, that is so,—600 shares. Yes, 600 shares, according to exhibit 28a and exhibit 42.

Q. Now look at exhibit 24. You will note that we purchased from Colling a mere 100 shares at \$7. A. That is so. Q. Now is it likely that the 600 share block which Colling sold for us had anything to do with the mere 100 shares bought by Solloway from Colling? A. I cannot say as to that, Mr. Ferguson. The brokers' note from Colling and Colling does not shew to whom the shares—600 shares—were sold.

Q. And without going into that all over again about these certificates coming back again, they are, of course, in the same position as the other certificates,—certificate 4,011, 4,012, and 10,745. There would be no more significance in them coming back than there was, of course, in connection with the shares which Scott sold for us. It would be just the same situation, wouldn't it? A. The shares went to the Clearing House and were put in one block.

Q. And those came back to Solloway. A. (No answer).

Q. Now looking at Mr. Butler's trades on this day. We bought from Butler 1,200 shares for Mr. McLaughlin. That is shewn by exhibit 24. That is correct? A. Two blocks of 600 each at \$7 per share.

Q. And did we deliver any to Butler? A. Yes, 600 shares at \$7.

Q. So we bought 1,200 from Butler, and all Butler sold for us was 600. 20

A. That is so.

Q. Now take Mr. Crang's transaction with us. Crang sold us across the Exchange 300 shares at \$7. per share. What do you say about that? Was any of that McLaughlin's stock? A. You did not ask me that question in relation to Butler Hevenor.

Q. No, but I am asking you this one now, Mr. Hill.

A. All right. I thought you probably intended to ask it.

MR. McRUER: Which is the one you are dealing with now, Mr. Ferguson?

MR. FERGUSON: The 300 shares bought from Crang. 30

MR. McRUER: Exhibit 44.

MR. FERGUSON: It is shewn on exhibit 24, and I am asking the witness if that was not Mr. McLaughlin's stock. And it is evident from exhibit 44, Mr. Hill, it comprised no part of the stock deposited by McLaughlin as collateral.

A. No, the shares delivered to Crang in settlement of the sale by him for the House of 600 shares was not shares deposited by McLaughlin.

Q. Now we have that situation. Now are the shares amounting to 300 bought from Crang anything to do with McLaughlin's transaction, at all?

A. The 300 shares that are charged up to J. P. McLaughlin are a part of the 600 shares that Crang sold for Solloway, according to exhibit 42. 40

Q. Now is it likely we were delivering a block of 600 shares to Crang for sale and then only buying back 300 from him? A. Yes; Paterson bought the other 300. Q. So we had 600 to go to Crang for sale for us, and sold 300 to Paterson, and then Solloway, Mills & Company, Limited bought the 300 back.

A. Yes; that is according to the exhibits.

Q. Now you say that. . . A. Is shewn in exhibit 42. Q. Well, now, is there anything on exhibit 42, or any other place, that justifies you in saying

that the 600 or the 300 shares were sold by Crang in order to sell it to us for McLaughlin's trade? That is what I am getting at. What is there to justify you in telling the Court as an expert witness that we delivered the 600 shares to Crang in order to sell against a trade of 300 by McLaughlin?

A. I am not saying that the shares were delivered to Crang for that purpose; I say the records shew that on this date Crang sold for Solloway to Paterson 300, and to Solloway, 300 shares of Sudbury Basin. Now on going to the other records I find that the actual reason that Solloway is recorded as buying 300 shares for Crang is for the account of McLaughlin.

10 Q. That is in the Buy slip. A. Yes.

Q. But there is nothing to suggest to you, and I put it to you, that you would not say that the delivery of the 600 by Solloway to Crang was for the purpose of obviating the necessity of Solloway taking delivery or carrying 300 for McLaughlin? A. The 600 were delivered to Scott as well as the other items which were delivered to these special brokers for the purpose of completing a transaction which was made on the previous day—the 16th October.

Q. There is not a thing but inference that would suggest to you that it had anything to do with a sale against McLaughlin's trade. You could not tie it up in any way. A. Yes, the records shew what actually happened.

20 Q. I know. I think you told us what actually happened. I think we all know. A. Well, I have stated what actually happened.

Q. But what I want to find out is the ground on which you give the Court the impression that a delivery of 600 to Crang had anything to do with the sale of 300 by us for McLaughlin?

A. According to the records, that was part of the transaction.

Q. Well, now, to bring it down to an analysis at the end, Mr. Hill, you would have no criticism, at all, of the sale to Dobie which includes—a purchase from Dobie. That is, 100 shares from Dobie. A. No.

30 Q. And the 50 from Stobie, and the 150 from Stobie. A. Yes, I believe those were in order.

Q. And Gibson, 400? A. That is in order.

Q. Dobie, 100? A. Yes.

Q. And the 300 from Moysey? A. I think that was all right.

Q. And the 500 from Crawford? A. That is all right.

40 Q. 800 from Stobie, and another 200 from Moysey? A. That was all right.

Q. And the 50 from McDonald? A. Yes.

Q. And another 150 from Stobie? A. No, the next item is only 50.

Q. Yes; there is 50, and then 100? A. Yes.

40 Q. And then all together there are 350 put throughs? A. I certainly—

Q. You frown on those, do you? A. Yes, very strenuously.

Q. Now that makes a total, as I figure it, of 2,400 shares which were bought through Brokers, and you have no criticism to offer of those transactions? No, I am wrong there, 4,250?

A. I do not make that,—100 from Dobie; 100 from Stobie; 400 from Gibson; 100 from Dobie; 300 from Moysey; 500 from Crawford; 800 from Stobie; 200 from Moysey; 50 from McDonald, is 2,550; 50 to Stobie, is 2,600, and another 100 from Stobie is 2,700.

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Supreme
Court of
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Evidence.
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Charles Hill,
Cross-
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October,
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—continued

*In the
Supreme
Court of
Ontario.*
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

--continued

Q. And then in addition to that there were the put throughs which you say are as bad as the others. And, as I figure it, from your evidence, Mr. Hill, there is 1,500 shares from,—that are known as from client brokers—which are in just as good a position as those trades we have just enumerated?

A. I just forget how many, but there were some shares.

Q. Well, I made it 1,500, that makes a total of 4,200? A. Yes, it is in that neighbourhood. I would have to look over the evidence in each one to find out.

Q. Well, now, I think I can shorten what I want to ask you now. If there were no House Account, the books of Solloway, Mills & Company,—if there were no House Account,—would you concede that those shares were properly, and regularly, and completely purchased,—if there were no House Account? 10

MR. McRUER: I cannot see, sir, how a cross-examination along that line is a physical possibility. It is going into the realm of theory. There is a House Account there, and to say, if it was not there would they be regularly purchased. That might involve a lot of other circumstances.

MR. FERGUSON: It does not involve any other circumstances at all. (DISCUSSION).

ASST. MASTER: Well, I suppose Mr. Hill can venture into the theory. It is not a question before the Court. The question before the Court is, "what constitutes a contract to carry and buy stocks for clients". I do not suppose there is any harm in putting the question. 20

MR. FERGUSON: Well, I think I asked him the same question before lunch. Then have I your permission to ask him the question, sir?

ASST. MASTER: Yes. Make it very definite—the number of shares. I think you were referring to the 4,200 shares.

MR. FERGUSON: Q. You told me before lunch, Mr. Hill, I think, that the books and records indicated that we had done everything that we ought to have done as Brokers to buy these shares,—but I think you told us before lunch we had done something more. That is correct? A. Yes. 30

Q. Now the "more" part you referred to was, I took it, the sales by Scott, Eastwood, Lorsch and Butler for us of stock that was delivered by us to them?

A. What the Defendant, Solloway, had done, was to sell certain shares to certain other Brokers on account of the House.

Q. Well, now, do I understand you this way. That as an Accountant, even that would not, in your opinion, have affected your statement that we had done everything we should have done if it was not that you find what is known as a House Account which shows a Short position?

A. And also, that the firm was Short.

Q. Well, you mean the same thing? A. Yes. The Short position of the firm is recorded in the House Account. 40

Q. So it comes down to this, that as an Accountant you would say that there was nothing the matter with this transaction if there were no Short position. A. (No Answer).

Q. I think that is fair, Mr. Hill, now. Isn't that what it all comes back to, Mr. Hill?

A. There would be nothing wrong with the transaction the way it was car-

ried through providing the Defendants had on hand or under their control all shares which they were called upon to carry for clients.

Q. That is to say, if they were not Short. That is the same thing, isn't it? A. You would have to go further than that.

Q. Now it all comes back to this, that if there were no Short position, you, as an Accountant, would say there was not a thing the matter with this transaction?

ASST. MASTER: It is nothing more or less than if you said the Treasurer of a Company had not defaulted if he had not the moneys the books show. That is what it comes to.

MR. McRUER: I think that is precisely the case here. Here, we contend, is a scheme laid out to carry through this particular transaction in this particular way, to give a definite result which was, not having to carry these shares for Mr. McLaughlin and make a profit on his account.

ASST. MASTER: The practical result of getting this admission from this witness is a stated case—that would be separate—a stated case.

MR. FERGUSON: That is all there is in it, sir. That is the only point in the case. Well, I will leave your answer as it stands, Mr. Hill.

Q. Now, then, I don't know whether you told my friend, Mr. Brewin, what you took into consideration in calculating the amount of stock a Broker should have on hand for his client.

ASST. MASTER: I do not think there is any use starting a new subject now, Mr. Ferguson. I have to adjourn at four o'clock.

ADJOURNED at 4 p.m.

ASST. MASTER: How long will you be, Mr. Ferguson?

MR. FERGUSON: About half an hour.

MR. McRUER: Our case depends entirely on my friend's attitude toward Mr. Solloway. Mr. Solloway was here on the last two days. He was not here to-day. I took care, in his presence last day, when we adjourned, to say that we were only adjourning, and that all witnesses would have to re-attend. Now he has not, apparently, attended to-day, and whether my friend can tell me it is his intention—

MR. FERGUSON: I have nothing to do with my friend's witness. I am quite sure, if he was properly subpoenaed he would be here. If my friend has properly subpoenaed his witness, I have no doubt he would be here.

ASST. MASTER: Well, was he subpoenaed?

MR. McRUER: He was subpoenaed. Mr. McLaughlin subpoenaed him.

ASST. MASTER: Well, a witness is supposed to attend when he is called if he is given his conduct money. He cannot be in and out of the Court. He has to be here with a certain amount of regularity.

MR. FERGUSON: I do not wish to argue the point, sir, at all. All I can say, is, it is up to Mr. McRuer. If he has properly subpoenaed his witness I have no doubt he will be here.

ASST. MASTER: The only suggestion I make is, it might have been difficult in the last two or three days for Mr. McRuer to keep on tendering conduct money to Mr. Solloway, because I have not seen him for the last couple of days, and on the last occasion I saw him he was only in and out.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.

Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
20th
October,
1932.

—continued

MR. McRUER: I am quite prepared to tender to my friend enough conduct money now to cover the days—

MR. FERGUSON: He is not my client.

MR. McRUER: However, I have heard what my friend has to say about it. He is not giving us any assistance. Of course, we did not expect any.

ADJOURNED to 26th October, 1932 at 10.30 a.m.

RESUMED October 26th, 1932, at 10.30 a.m.

10

FREDERICK CHARLES HILL: (Previously Sworn) (Recalled).

CROSS-EXAMINATION CONTINUED BY MR. FERGUSON:

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
26th
October,
1932.

Q. Did you file a copy of Exhibit 47, Mr. Hill? A. No, I am just looking it over now, Mr. Ferguson.

Q. Now, Mr. Hill, you have just filed Exhibit 47, are the figures that are on Exhibit 47 the same as the figures that you gave in your evidence in chief?

A. Yes.

Q. And the value of the stock at the date delivered to the Plaintiff, \$3.70 per share, is fixed by you by the value of stock that we were selling or disposing of on the 14th day of January?

A. No, that the Defendants were purchasing on the 14th January, 1930.

Q. And it is not fixed by any moneys that we paid for the actual stock? When I say "the actual stock" I mean the actual certificates that were delivered to McLaughlin on the 14th January? A. No.

Q. Now can you tell us, as an accountant who is familiar with the brokerage business, Mr. Hill, if it is customary for Brokers on the Standard Stock and Mining Exchange to loan shares of stock from one to the other on occasions?

A. On certain occasions I understand certain stocks were loaned by one Broker to another on the Standard Stock and Mining Exchange. By so saying, I do not wish to go on record as saying that I countenance that.

Q. But nevertheless that was done between Brokers on the Standard Stock and Mining Exchange, and it is done as between Brokers on other Exchanges. Do you know if that is so, or do you not?

A. I would not like to say as to other Exchanges.

Q. Do you know that there is even a Loaning Post in New York for the Brokers? A. Yes.

Q. And do you know that there is such a thing on the London Stock Exchange as a Loaning Post?

A. I don't know anything about that.

Q. But do you know, Mr. Hill, that it is a custom for one Broker to loan stock to another? A. It has been done.

Q. Now then, in making a calculation, Mr. Hill, of the shares of stock which a Broker has on hand or available for delivery, is it proper to include

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in that calculation, as being on hand or available for delivery, shares which the Broker has loaned to the other Broker?

A. It depends on for what purpose the loan was made.

Q. Aren't shares owing by other Brokers always calculated as being available for delivery? A. No.

Q. Aren't they calculated as being part of the stock on hand?

A. It depends again on the reason they are owing. If they are owing for Clearing and only for a few days, then they are available.

Q. If they were loaned for some legal purpose they are not available for
10 delivery? A. If they were deposited with another Broker as collateral to an account, then they would be available. That is done considerably between Toronto and New York.

Q. Just say that over again, Mr. Hill, I was not listening?

A. If stocks are deposited as collateral with another Broker, then those stocks would be considered as available. That is done considerably between Toronto and New York.

Q. Are you trying to make some distinction in the purpose for which the stock is loaned? That is to say if 10,000 shares of stock are delivered to Stobie Forlong on a loan. Now does it make any difference to the Accountant why
20 the loan was made at all?

A. It certainly does.

Q. Now we will suppose that Stobie Forlong were going to convert the stock after they had borrowed it for some illegal purpose,—we will say to buy some bootleg whisky, as an extreme case, and it is recorded on the books of the Company as a loan between the two Companies, and you find in your investigation that Stobie Forlong used that stock for some illegal purpose?

A. We would not find that out unless Stobie Forlong told us.

Q. As an Accountant you are not seriously telling us the purpose for which Stobie Forlong may have used the stock would affect the loan?

30 A. Yes, it would affect it. We would inquire into the reason the stock was not on hand, and if it was reported to us the stock was loaned to Stobie, we would inquire as to why it was loaned to Stobie. It would depend on what answer we got, and whether we went to Stobie to see if they were carrying those shares or not.

Q. But you say if the shares were borrowed for the purpose of making delivery on behalf of the client they would be calculated as being available for delivery?

40 A. As long as they were not for Short sales. In other words, our Firm, and the leading Accounting Firms of the City, will not allow their clients to use clients' Long stocks for Short sales.

Q. That was not so in 1928? A. It was so with the firms I represented, —the clients of the firms which I represented, but the clients,—at least the firms on the Standard Stock and Mining Exchange most of them were not among the audits that we were looking after at that time.

Q. And outside of the view you have given me,—loans for the purpose of making Short sales, and so on, which you say your firm never countenanced, it is so, as a general proposition, that shares loaned by one Broker to another are always calculated as being available for delivery.

*In the
Supreme
Court of
Ontario.*

—
Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
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Ferguson.
26th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Cross-
Examination
by Mr.
Ferguson.
26th
October,
1932.

—continued

A. No, I cannot say that, Mr. Ferguson. You have to inquire into the reason of the loan.

Q. That is your answer,—it depends on the purpose of the loan as to whether or not it is a loan?

A. It depends on the purpose of the loan whether those shares are to be taken as available.

Q. Now did you see a Control Account in the back of the General Trading Account with the Dominion Account there? A. There is one.

Q. There is a control account there? A. Yes.

Q. And did you look into the General Ledger of either one of the Companies to see how that is entered in the Ledger? 10

A. I understand it is the same in both Ledgers.

Q. Did you notice that the total amount shown in the Control Account,—it was Exhibit 29, wasn't it?

(Counsel look over books).

MR. FERGUSON: That is all, sir.

RE-EXAMINED BY MR. BREWIN:

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Re-
Examination
by Mr.
Brewin,
26th
October,
1936.

Q. Mr. Hill, did you tell my friend, Mr. Ferguson, that in some cases you found that Brokers loaned shares to other Brokers? I think you told him that, but did they loan shares to individuals in that practice at all,—individuals who were not Brokers? 20

A. For purposes of Short sale?

Q. No, any purpose at all. You told Mr. Ferguson that there were cases in which Brokers loaned shares to other Brokers. I just want to know whether you found cases where they loaned shares to persons other than Brokers?

A. The way some of the Brokers were conducting their business, they were using clients Long shares to make delivery for sales for Short clients. But there was no large amount of that at any time.

Q. Well, then, you have looked through the books. Can you show us any evidence that the Dominion Company was operating as a broker during 1929 and 1930? 30

A. I cannot say how—

Q. Well, you are familiar with the agreement by which the Ontario Company took over the assets of the Dominion Company. I would like you to say whether the books indicate that the Dominion Company was carrying on as a Broker in Ontario during 1929?

A. No, they were not carrying on as a Broker in the latter part of 1929.

Q. And 1930? A. Not from what I see from the books—in Ontario,—no.

Q. Now I am sorry I lost my notes of exactly what you said, but Mr. Ferguson asked you a number of questions, and I think you eventually stated that what was done in McLaughlin's case by way of purchasing shares of collateral, if you were merely to look at the transactions of the day, appeared to be correct. That is to say, he took a number of instances in which shares were—delivery of shares was obtained from the Clearing and the records show that shares had been purchased, and he asked you whether that indicated to you, looking 40

at it, that the shares had been purchased in a regular and proper manner, and I think you said that looking at one side of it, that was so. Now can you explain that answer further? Can you complete it? Is there any further explanation of that answer you want to make?

*In the
Supreme
Court of
Ontario.*

10 A. The system of recording transactions, as used by Solloway Mills and Company, would always show the client's side of the transaction as being an order. It is only on going behind that side of the transaction, and finding out everything that happened on that stock on the day in which the transaction took place, or was purported to have taken place, and finding everything that was done for all other clients and for the House. It was also necessary to go into the Short position to see whether the transaction was in order.

Plaintiff's
Evidence.
No. 26.
Frederick
Charles Hill,
Re-
Examination
by Mr.
Brewin,
26th
October,
1936.

Q. Would any demands or statements that did not take into account all the transactions on a particular day, and the Short account, be valueless in determining whether shares were purchased, or whether the Broker had carried out his obligation to purchase shares or not? A. All points have to be considered before you could say whether the transaction was in order or not.

—continued

20 Q. And, therefore, any answers you may have given my friend with regard to taking particular items and following through a purchase is not a complete answer to the question of whether the shares were properly purchased? That is to say, going through the actual purchase,—what appears to be a purchase on the Exchange of any particular shares, and the delivery of those shares on a certain day is not a complete answer to the question of whether they were actually purchased or not?

MR. FERGUSON: Oh, I object to that.

MR. BREWIN: I think the witness has explained his answers. I will not press that question. That will be all, thank you, Mr. Hill.

MR. FERGUSON: Q. You are an employee of Clarkson & Company, Mr. Hill? A. Clarkson, Gordon, Dilworth, Guilfoyle & Nash.

30 Q. And Mr. Clarkson is a Trustee of the Ontario Company, one of the Defendants?

A. I do not know whether it is Mr. Clarkson that is the Liquidator of that Company,—whether Mr. G. T. Clarkson is or not. The Liquidators of the Company are E. R. C. Clarkson & Sons, and there is only one of the Clarksons who is in the firm that I work for.

Q. One of the members of that firm is a Trustee of the Ontario Company, a Defendant in this action?

A. I believe they are co-trustees, I am not sure. Yes, they are co-trustees.

40 MR. BREWIN: Q. And Mr. Turcott and Mr. G. T. Clarkson are the co-trustees of the Ontario Company in bankruptcy, is that right?

A. To the best of my knowledge it is. I have nothing to do, whatsoever, with that end of the business. I can only tell you what I see in the papers and what I have heard.

MR. BREWIN: I am calling Mr. Solloway as my next witness. I have not seen him about at all, and I do not know whether he is going to be here or not. I think, perhaps, I should prove he was served with a Subpoena, and the facts in connection with the service. I will call Mr. McLaughlin.

*In the
Supreme
Court of
Ontario.*

J. P. McLAUGHLIN: (Previously Sworn) (Recalled).

EXAMINED BY MR. BREWIN:

Plaintiff's
Evidence.
No. 27.
J. P.
McLaughlin,
(Recalled).
Examination
Continued.
26th
October,
1932.

MR. BREWIN: Mr. McLaughlin is sworn already, I think?

ASST. MASTER: Yes.

MR. BREWIN: Q. Mr. McLaughlin, did you serve Mr. I. W. C. Solloway with a Subpoena?

A. Yes, sir, I did.

Q. In this action? A. Yes, sir.

Q. On what day did you serve him? A. Monday,—Thanksgiving Day, —the day before this action commenced. 10

Q. It was October 11th, I think? A. Yes. Thanksgiving Day.

Q. What time of the day did you serve him? A. Approximately 12 o'clock.

Q. Where did you serve him? A. Waiting at the entrance beside the elevator on the Eighth Floor of the King Edward Hotel.

Q. I show you an original Subpoena in this action. Will you look over that and tell me whether what you served on Mr. Solloway was a copy of that, or are there any differences in it that you know of?

A. This matter that is typewritten was the same as on the one I served. There was no seal on it. It was a white paper. Yes, this is a copy, without any seal on it. 20

Q. Did it have all those names in there?

A. No, it had Isaac W. Solloway's name in place of these names.

Q. Now at that time did you pay Mr. Solloway any conduct money?

A. I paid him \$1.50.

Q. Is that all you paid him? A. That is all.

Q. And I suppose after serving Mr. Solloway,—did he admit that he was Mr. Solloway? A. Oh, no, I knew it was Mr. Solloway.

Q. How did you know? A. I have known Mr. Solloway for several years. 30

Q. You could recognize Mr. Solloway if you saw him then? A. Yes.

Q. And did you see Mr. Solloway in the course of this trial? A. Yes, he talked to me out there in the hall, and I saw him in Court three days.

Q. Did he talk to you about serving the Subpoena on him? A. No, he talked about sending me to gaol.

Q. Did he indicate to you whether he knew he received a Subpoena or not?

A. Well, he said I was in his apartment. He did not particularly mention the summons, but he was going to do all kinds of things to me.

Q. And what reason did he give for saying that? A. He accused me of breaking into his apartment. 40

Q. Was Mr. Solloway in attendance throughout this trial. Did you see him here throughout the trial? A. Yes, the three days of the first meeting, but not the two days of the last week, I did not see him.

Q. Did you see whether he was here continuously? A. No, he was here, in and out. He came several times. I think, possibly, two or three times each day.

CROSS-EXAMINED BY MR. FERGUSON:

Q. You know that Mr. Solloway resides at Westmount, Montreal?

A. South of France, I thought.

Q. Now do you, or do you not know, that Mr. Solloway resides at Westmount, Mr. McLaughlin? A. I never saw his home.

Q. You don't know where he lives? A. No more than from reports.

MR. BREWIN: This witness has been subpoenaed to attend before the Court, and the subpoena requires him to attend continually. He is a Defendant in this action, and I think it will appear upon the record that at the time
 10 the Court adjourned Mr. McRuer, mentioned to you, sir, the fact that the witnesses who were subpoenaed would be required to re-attend. I do not know whether my friend intends to make some point out of the fact that he only received \$1.50 conduct money. There is no evidence, one way or the other, whether he was paid further witness fees from day to day, but my submission is he is in contempt of court, and under the Rules of Practice judgment should be given against him. It does not appear that he, at any time, requested the payment of witness fees when he was not here continuously so that it was possible to pay him witness fees from day to day. He was summonsed to appear here,
 20 not by the Plaintiff, but by the Court. We heard on the last day,—perhaps I should have given evidence that he was here on the last day before the adjournment when the statement was made about the re-attendance of witnesses, but I do not think that matters very much. The Rules permit the Court, in a case of this sort to either commit for contempt of court, or to give judgment against the Defendant, and my submission is that this witness is in direct contempt of this Court, being fully aware that he was required to attend from day to day as a witness, and, therefore, I would ask for judgment on that ground.

In case this should go to Appeal I will still ask you, Sir, to continue,—if there is any doubt about getting judgment upon this ground, I would ask you to continue with the trial against him on the other point, so that we may have a
 30 finding of fact and law in regard to his liability apart from this contempt of Court.

It is my submission we are entitled to judgment by reason of the contempt of this Court that the Defendant has shown.

ASST. MASTER: Well, I do not know, Mr. Brewin, whether or not I can give judgment by reason of contempt, but I am sure I cannot commit. Although this action has been referred to me for trial, the question of discipline cannot be addressed to me. It can only be carried out by a Judge.

MR. BREWIN: I will refer you, sir, to the Rule which permits you to give judgment against a party who fails to attend after he has been subpoenaed. I
 40 have not got it here, but I can turn it up and give it to you later. If this witness had attended and complained he did not receive the proper amount of witness fees he might be in a different position. He might be entitled to refuse to give evidence, but that is not the case here. The witness absents himself from the Court without the consent of the Court after having received a subpoena.

MR. FERGUSON: To say Mr. Solloway is in contempt of this Court is utter nonsense. He was served on Monday, October 10th, at the King Edward Hotel, when everybody in this Courtroom, including the Plaintiff, knows he re-

*In the
Supreme
Court of
Ontario*

—
Plaintiff's
Evidence.
No. 27.
J. P.
McLaughlin,
Cross-
Examination
by Mr.
Ferguson.
26th
October,
1932.

*In the
Supreme
Court of
Ontario.*

Plaintiff's
Evidence.
No. 27.
J. P.
McLaughlin,
Cross-
Examination
by Mr.
Ferguson.
26th
October,
1932.

—continued

sides at Westmount, Montreal, and he was paid \$1.50. This trial commenced on October 11th at 10.30 a.m. Mr. Solloway was present. It continued to 12.45 and went on that afternoon, and continued on the 12th and 13th, and Mr. Solloway was present on all three days, and he was not living at home but staying at the King Edward Hotel, and my friends are generous enough to give him \$1.50. The trial was then adjourned until the 19th of October, and in the meantime my friend expects him to stay at the Hotel, and then go back to his home in Montreal, come back again from Montreal, all on \$1.50.

Mr. Solloway was present each night, and was present in Court all day. He was here and might have been paid his railway fare from Montreal here. 10
My friend did not choose to do so. They chose to serve him in Toronto, and handed him \$1.50, and expected him to remain here on October 11th, 12th, and 13th, 19th, 20th and 21st, and then return from Montreal to attend here to-day, all on that service. The law does not say that a man, residing in Montreal, has got to stay in Toronto for two or three weeks at \$1.50. It is utter nonsense. If he had been properly subpoenaed he would have been here.

(DISCUSSION)

MR. BREWIN: That is the Plaintiffs case, sir.

MR. FERGUSON: I will call Mr. Ketchen.

DEFENCE

20

WILLIAM MANSEL KETCHEN: (Sworn)

EXAMINED BY MR. FERGUSON:

Evidence for
Defence.
No. 28.
William
Mansel
Ketchen.
Examination,
26th
October,
1932.

Q. Mr. Ketchen, what is your position with the Standard Stock and Mining Exchange?

A. I am Assistant Secretary of the Standard Stock and Mining Exchange.

Q. Are you in charge of and have custody of the records of the Exchange?

A. Yes.

Q. Have you with you the Register for October 16th, 1929? A. I have the Register sheets for that day,—sheets taken from the Register.

Q. You got those sheets from the Register yourself? A. Yes, I did. 30

Q. Now will you look at the sheets, Mr. Ketchen, and tell me if, on page 16 of that sheet you find a trade between Solloway—Solloway bought 300 Sudbury Basin from Crang? A. Yes, on page 16, Solloway did buy 300 shares of Sudbury Basin from Crang.

Q. And on the same page did you find 100 shares of Sudbury Basin from Colling at \$7.00? A. Yes. I find a purchase of 100 shares of Sudbury Basin from Colling at \$7.00.

Q. And then on page 10, will you see if there is a purchase of 600 Sudbury Basin from Butler at \$7.00? A. Yes, it is entered on the Register at page 14.

Q. Page 14, 100 Sudbury Basin from Dobie, at \$7.00? A. Yes. 40

Q. And 500 from Scott, page 14, at \$7.00? A. Yes.

Q. And 50 from Stobie, on page 16, at \$7.00? Do you find that?

A. 50, did you say?

Q. Page 16. A. There was a purchase of 150 from Stobie on page 16.

Q. And then a purchase of 100 from Stobie on page 17, at \$7.00? A. Yes.

Q. And 400 from Eastwood on page 14, at \$6.95? A. Yes.

Q. And 400 from Gibson on page 14, at \$6.95? A. Correct.

Q. And 100 from Dobie on page 14, at \$6.95? A. Yes.

Q. And 300 from Moysey at page 14, at \$6.95? A. Yes.

Q. 500 from Crawford, on page 16, at \$7.00? A. Yes.

Q. 800 from Stobie on page 14 at \$7.00? A. Yes, I have that.

10 Q. And 200 from Moysey on page 16 at \$7.00? A. What page is that, Mr. Ferguson?

Q. Page 16. A. Yes, 200 from Moysey at \$7.00 on page 16.

Q. And 50 from McDonald on page 14 at \$7.00? A. Yes, I have that.

Q. And 50 from Stobie on page 14 at \$7.00? A. Yes.

Q. And 500 from Eastwood at \$7.00 on page 16? A. Yes.

Q. And 600 from Butler at \$7.00 on page 16? A. Yes, I have that.

Q. 300 from Scott, page 16, at \$7.00? A. Yes.

Q. And 600 from Lorsch at \$7.00 on page 16? A. Yes, I have that.

Q. And 100 from Stobie, at page 16,—that is the balance of the 150.

20 There is 150 on page 16, Stobie, at \$7.00? A. Yes, there is 150 that Stobie sold to Solloway at \$7.00.

Q. And that appears on page 16. I wonder if you would look down the page—Solloway's Crosses (x's) on Sudbury Basin? A. Do you want me to give you what stock they crossed on that day?

Q. Just Solloway's crosses on Sudbury Basin? A. They bought and sold 50 shares at \$6.95, on page 14. They bought and sold 50 shares at \$7.00, page 14. They bought and sold 50 shares at \$7.00, at page 17. And they bought and sold 200 shares at \$7.00 on page 18.

30 Q. That completes them all. Your Register is compiled from what information? A. At that time these Register sheets were entered up from the original Floor Slips the Selling Broker gives to the Buying Broker when the transaction takes place on the Floor of the Exchange.

Q. The Selling Broker makes out the slip? A. Yes.

Q. And hands that to the Buying Broker? A. Who initials the slip.

Q. And the Buying Broker does what with the slip? A. He turns it into the Exchange employee and it is entered up in this Register by an Exchange clerk.

Q. And the Slip that passes between the Selling Broker and the Buying Broker defines the terms? A. It shows the buying and selling Broker, the number of shares, the stock, and the price.

40 Q. And each one of the shares that are referred to in that Slip constitutes the information recorded on one of those Sell Slips? A. That is correct.

Q. Mr. Ketchen, will you look at that sheet. I understand it is October 16th? A. Yes.

Q. Will you tell me if you can find there any record of a sale on that day from Solloway to Scott of 600 shares at \$7.00? A. At what price?

Q. \$7.00. 600 from Solloway to Scott? A. On a rather hurried check up of the receipts I have made which constitutes about 2,500 separate items, I do not—

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 28.
William
Mansel
Ketchen.
Examination,
26th
October,
1932.

—continued

Q. There are about six sales which, according to the evidence that has been given, were made by Solloway on this date, and perhaps if I gave you a list and asked you to check it up more carefully, perhaps you could come back in about five minutes and give evidence about that, because I do not want to waste the time of the Court in having you look through the list again. I can give you a list of the shares, and I want you to find out, Mr. Ketchen—600 sold by Solloway to Scott; 500, Solloway to Eastwood; 600, Solloway to Lorsch; 600, Solloway to Colling; 600, Solloway to Butler; 600, Solloway to Crang?

A. All at \$7.00?

Q. All, I think, at \$7.00,—yes. Would you look through those records and see if you can find whether those shares were recorded for that day in those sheets that you have produced? 10

(Ten minute interval)

EXAMINATION RESUMED:

WITNESS: I have now checked the Register quite carefully, and I find Solloway sold 100 shares of Sudbury Basin to Butler, on page 5, at \$6.95, and 50 shares at \$6.85, to Butler, on page 18. Those are the only sales that Solloway made to the Brokers you mentioned on this day.

MR. FERGUSON: I will call Mr. Reading.

HAROLD SIDNEY READING (SWORN)

20

EXAMINED BY MR. FERGUSON:

Evidence for
Defence.
No. 29.
Harold
Sidney
Reading.
Examination,
26th
October,
1932.

Q. Mr. Reading, I understand you are an employee of the Clearing House of the Standard Stock and Mining Exchange. A. Of the Trusts and Guarantee Company who act as managers of the Clearing House.

Q. The Clearing House of the Standard Stock and Mining Exchange is in the offices of the Trusts and Guarantee Company, is it? A. Yes.

Q. And you are an employee of the Trusts and Guarantee Company, Limited. A. Yes.

Q. Although you are manager of the Clearing House for the Standard Stock and Mining Exchange. A. Yes, sir.

Q. Now have you with you the Clearing Sheet of Solloway, Mills & Company, Limited for their transactions made on the 16th day of October, 1929? 30

A. Yes.

Q. Now is that the original sheet? A. That is the original sheet.

Q. Where did you obtain that sheet? A. From Solloway, Mills Clearing Department.

Q. That is, at one time. A. Yes.

Q. But I mean to-day. Where did you get it to-day? A. From our own vaults.

Q. And it was originally brought to you by Solloway, Mills & Company, Limited. A. Yes. 40

Q. On what date would it be brought in? A. The sheet would be brought in on the night of October 16th.

Q. Now what does the sheet shew? A. It shews all the transactions which Solloway, Mills cleared on that day.

Q. That is, cleared on October 17th. A. Yes.

Q. You mean the transactions they had on October 16th . . . A. Would be cleared the next day. The transactions which they intended to clear the following day.

Q. Now the sheet is made up, as I understand it, shewing what, on the left side? A. On the left side it shews their buys.

Q. That is, the shares bought by Solloway, Mills. A. Yes.

Q. And on the right hand side it shews what? A. The sales made by Solloway, Mills.

10 Q. Now the top sheet you are looking at records what? A. That is the summary sheet shewing the stock which Solloway, Mills had to deliver and the stock which they are entitled to receive.

Q. Now the remaining sheets record what? A. The transactions which are cleared.

Q. The transactions which are cleared. That is, they record each of the transactions in detail. Is that right? A. Yes.

Q. Now there has been produced at this trial, Mr. Reading, what purports to be the duplicate of the sheet which you are now producing, and it is marked exhibit 27 in this trial. I have no doubt that it is. This exhibit 27 looks like a
20 copy of the Clearing Sheet that you are producing. A. Yes.

Q. I do not want to ask Mr. Reading to leave the original Clearing Sheet because it is in the interests of the public that they keep those original sheets there.

MR. BREWIN: I will admit it is a copy.

MR. FERGUSON: Q. Now the thing I want to draw the Court's special attention to is the original summary sheet. You say the Summary Sheet shews the shares that Solloway, Mills were entitled to receive and those shares which they had to deliver. A. Yes.

Q. What does it shew in regard to Sudbury Basin? A. They were to re-
30 ceive 6,100 shares.

Q. That would be the result of all the detailed transactions which are shewn on the other sheet. A. Yes.

Q. Now how would that number be arrived at? A. Well, if they sold 4,000 shares and bought 10,000 they would receive 6,000. In this case, just taking the figures, it happens to be 6,100.

Q. Now you say if they bought 10,000 and sold 4,000 they would receive 6,000. Now tell us what you know about leave-offs, in that connection?

A. Well, there is a rule on the Exchange that a selling broker has until 4.30 to phone the buying broker that he is not delivering the stock, and if it
40 happens to be on the sheet, the broker's clerk will cross out the time, or if the sheet, as it sometimes happens, has already arrived at the Clearing House, it is taken off by our night staff when they are balancing the sheets.

Q. Then does that enter into the calculation say, in the case that you give? If we buy 10,000 and sell 4,000 we are entitled to receive 6,000. Then what is the result if there are some leave-offs? A. Well, supposing 2,000 was left-off by a selling broker he would only receive 4,000 shares.

Q. Now, then, can you say whether or not the stock, as shewn by the

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 29.
Harold
Sidney
Reading,
Examination.
26th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 29.

Harold
Sidney
Reading,
Examination.
26th
October,
1932.

—continued

Clearing Sheet, subject to leave-offs and put-ons, was always delivered or received, as the case may be? A. Always delivered and always received.

Q. That sheet shews that Solloway received 6,100 shares. A. Yes.

Q. Now is there anything else on the sheet that shews you he did receive them? A. Well, there is the signature of Solloway's clerk who came for the stock shewing that he had received the stock.

Q. That is, on the summary sheet there is a receipt.

A. Yes. The stamp is not very clear.

Q. There is a receipt endorsed on the summary sheet, but is there a receipt for the stock shewn by the summary sheet? A. Yes, Mr. Ferguson. 10

Q. And that would be signed by the Clerk who came to receive the stock.

A. Yes.

Q. And, of course, you would have received a cheque from the firm that was to receive the stock or before the stock would be delivered. A. Well, providing the stock they were receiving amounted to more than the value of the stock they were delivering. The cheque is delivered to the Clearing House before 12.30, and the stock,—they are not allowed to receive the stock until after 2.00. 2.30 is the hour they are supposed to receive it. Not later than 2.30.

Q. Now on this particular day Solloway was to receive 6,100 shares of stock, and you say that you did send 6,100 shares back to Solloway's office, as shewn by the receipt given by his clerk. 20

A. Yes, sir.

Q. Where did you get the 6,100 shares? A. Well, they would be delivered by the different members of the Exchange whose Summary sheet showed they were to deliver Sudbury Basin.

Q. When those other brokers brought the share certificates in with their clearing sheets. A. Yes.

Q. They would bring in the shares they were to deliver along with their clearing sheets. A. No, the clearing sheets were brought in the previous night. The stock is brought in at 12 o'clock the following day. 30

Q. What did you do with their stock when you received it? A. The stock is examined to see that it is all negotiable, and then it is checked off according to the broker's summary of his deliveries, and it is then sorted according to the different stocks,—they are all sorted altogether, and the five brokers bringing in Sudbury Basin are put in one rack.

Q. That is, all Sudbury Basin brought in is all put in one box or rack.

A. Yes.

Q. That is, after it is sorted. A. Yes.

Q. And after it is examined. A. Yes.

Q. And do you do that with all stocks? A. Yes. 40

Q. And after you have sorted all the stocks brought in, and after you have put them in their respective places, what is the next step? A. We take the summary sheets and we, more or less, fill the order for the broker who is to receive. There is a long rack, and we go along the rack and just take so many shares of each stock as the broker's receiving side of his summary calls for.

Q. And do you make any distinction between the certificates that you pull down to send over to the broker who is to receive it? A. None, at all.

Q. On this particular day, Mr. Reading, we bought 400 shares of Sudbury Basin from Gibson. Now Gibson properly delivers 400 shares to the Clearing House. I do not know whether you can tell from that sheet whether he did it or not. A. 400 shares of Sudbury Basin from Gibson at \$6.95.

Q. Then supposing, for the purpose of this illustration, Gibson sold another 400 shares to Stobie Forlong, that 400 would also come through the Clearing House.

A. Yes.

Q. And Gibson would deliver to the Clearing House 800 shares. A. Yes.

10 Q. And if he had the 400 share certificates he would likely deliver it in certificates of 400 shares each. A. Yes.

Q. Would there be anything on the certificates to shew it was a sale to Solloway, or a sale to Stobie Forlong? A. Nothing, at all, Sir.

Q. Would you try to distinguish between them? A. No, sir.

Q. You would, I take it, send one certificate to Solloway and the other certificate to Stobie regardless of how they came in. A. Yes.

Q. And it might be that Gibson's certificates would never reach either Stobie or Solloway. A. Yes.

Q. They might go to another broker entirely. A. Yes.

20 Q. And the certificates actually sent to Stobie or Solloway might come from an entirely different broker. A. An entirely different source.

Q. That is all.

MR. BREWIN: No questions.

HAROLD D. HOLDEN (Sworn)

EXAMINED BY MR. FERGUSON:

Q. Mr. Holden, you are a chartered accountant. A. Yes.

Q. And, I understand, you are with N. L. Martin & Company. A. That is right.

30 Q. And you have been employed by Mr. Martin for how long? A. About 13 years.

Q. Have you had some experience in auditing brokers' accounts? A. I have had considerable experience along those lines.

Q. For how many years have you had any experience in that line of work?

A. Oh, off and on, for about four years.

Q. But you have been engaged in accountancy work for how long?

A. Fourteen years.

Q. Now what position did your firm have with the firm of Solloway, Mills & Company, Limited? A. We acted as their accountants from the 1st December, 1928.

40 Q. Now when was the first that you had to do with Solloway, Mills & Company, Limited? You told us you acted as their accountants from the 1st December, 1928. A. Shortly after that date I was in their office, a few days, I would say.

Q. For what purpose? A. Mr. Martin had told me he was going to have considerable accountancy work for a certain broker and asked me what I would

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 29.
Harold
Sidney
Reading,
Examination.
26th
October,
1932.

—continued

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Examination.
26th
October,
1932.

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Examination.
26th
October,
1932.

—continued

do on going into a broker's office, and I explained to him I would ask for their last Trial Balance and go over each item with the accountant and get his explanation on any item that was not self-explanatory.

Q. And did that take place, or what did you do?

A. We actually made an appointment and saw the accountant for Solloway, Mills & Company, and had him produce his latest Trial Balance, which was November 30th, 1928, and we went over all the items in that Trial Balance.

Q. Then what occurred next in regard to that?

A. I was told that there was another company to be formed to take over the operations in Ontario.

Q. Yes. A. And I was asked to work out the accounting details necessary to set up a general ledger for the new company.

Q. And what steps did you take, if any, to do that? A. I had the November 30th Trial Balance before me and spent some little time on it and then obtained the agreement between the two companies for the sale of assets by one company to the other.

Q. Now I am shewing you the Minute Book of Solloway, Mills & Company, Limited, incorporated under The Ontario Companies Act, which has been filed in this trial as exhibit number 18. I am turning up by-law number 6, passed on the 20th day of December, 1928. You say you saw an agreement. Is the agreement which is marked "Schedule 'A'" to that by-law the agreement to which you refer? 20

A. That would be it.

Q. That agreement is signed by whom, Mr. Holden?

A. For one company,—for the Dominion Company, it is signed by I. W. C. Solloway and Harvey Mills, and for the Ontario Company, it is signed by Gordon N. Shaver, and I would take this other signature to be Paulin's.

Q. Can you tell us in passing who was Mr. Shaver and Mr. Paulin?

A. Mr. Shaver and Mr. Paulin were of the firm of solicitors acting for the Company.

Q. Of Shaver, Paulin and Branscombe. A. That is the name of the firm. 30

Q. Well, we might as well complete it while we are at it. In a copy of the Charter which appears in the front of the Minute Book is the following:—"These Letters Patent Constitute the Persons hereinafter named, that is to say: "Gordon Nicholas Shaver, George Grant Paulin and Harry Boyd Branscombe, Solicitors; Lawrence Smith Eckhardt, Student-at-law; and Erma Freeman Silverthorn, Stenographer; all of the City of Toronto, in the County of York and Province of Ontario; and any others who have become subscribers to the memorandum of agreement of the Company, and persons who hereafter become shareholders therein, a corporation under the name of Solloway, Mills & Co., Limited." 40
Now are Gordon Nicholas Shaver and George Grant Paulin, therein mentioned, the same people who signed the Agreement? A. They would be the same.

Q. And the Agreement they have signed is dated 20th December, 1928. That is correct. A. Yes.

Q. Now that is the Agreement you had before you, and what else did you have before you, Mr. Holden, besides the agreement? A. I had this Minute

Book and I would have the November 30th Trial Balance, and Dominion Company Ledger.

Q. And what about the other books? A. Well, they would all tie in with the Dominion Company General Ledger.

Q. Then what did you do, having these books before you, Mr. Holden?

A. I read the agreement and set up the accounts of the Ontario Company in accordance with this agreement.

Q. Did you work with anybody? A. Yes, sir, the actual bookkeeping work was done with the assistance of the firm's accountant, Mr. Oram, and the machine bookkeeping operator, Mr. Kingsmill.

Q. Then what books did you open? A. A new General Ledger was opened for the Ontario Company and new accounts were set up in the Dominion Company General Ledger.

Q. Did you do that as of any day? A. That was done as of December 26th, I believe. It is dated back to the 1st of the month in accordance with the agreement.

Q. That is, you opened up a new Ontario Company General Ledger.

A. Yes.

Q. And did you do anything towards a new Dominion Company ledger?

A. New accounts had to be set up in the Dominion Company General Ledger, and entries from the 1st of the month to the 26th December had to be transferred and suitable entries were made in that ledger.

Q. Did you do anything towards making a Trial Balance on the new situation? A. After the new General Ledgers were split and new accounts opened, a trial balance was taken off each ledger and they were in balance.

Q. What date would that be? A. That would be as of December 26, 1928.

Q. Then how many general ledgers would you have at the end of your work in setting up the new accounts?

A. There would be two Toronto General ledgers,— one for each company.

Q. Then was there an old general ledger of the Dominion Company in addition to that? A. The Dominion Company General Ledger was just carried on as before. New accounts were opened in it. Some of the old accounts were left as they were. The old Dominion Company carried on. Q. Now we have had filed in this trial, Mr. Holden, what has been described as the General Ledger of the Ontario Company, and it was marked in this trial as exhibit number 33, and we have filed here, also, what has been described as the General Ledger of the Dominion Company, which has been marked as exhibit number 37. I want you to shew the Court the special accounts set up in the Dominion Company's ledger, December, 1928. A. There would be a number of new accounts set up? I would have to go through each one of these accounts to see which are new and which are carried on.

Q. Before we go into that. What was the reason for setting up these special series of accounts? A. To carry out the agreement which was made between the two companies.

Q. What was done as regards the Trading Account which has sometimes been referred to as the House Account?

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Examination.
26th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Evidence for
Defence.
No. 30.
Harold D.
Holden,
Examination.
26th
October,
1932.

—continued

Q. The Controlling Account figure was transferred as of the 1st December to the Ontario Company General Ledger. Q. Yes. A. And the Controlling Account for branches outside of Ontario was transferred to the Ontario Company General Ledger, and the Correspondents Controlling Account outside of Ontario was transferred to the Ontario Company General Ledger under the heading in each of these cases "Dominion Company".

Q. Well, now, will you turn up in the Ontario Company's General Ledger the account shewing the balance in the Trading Account transferred to the Ontario General Ledger. A. You could not turn that up in the Dominion Company's General ledger because the balance still remained there. Q. I mean, 10
turn it up in the Ontario General Ledger. You have the account now headed, what?

A. Solloway, Mills & Company, Limited, Dominion Company's Trading Account.

Q. And the first entry appears, as I read it, to be November 30th, 1928.

A. Yes.

Q. Then the next entry is "December items transferred". What is the reason for that second entry?

A. All the transactions with the Dominion Company since the 1st December were summarized and posted in this Controlling Account from the first of the 20
month to December, 1926. Q. And the entry is made as of December 26th as appears from this sheet. A. Yes.

Q. Now the figures are—the balances in red, Mr. Holden. Give the Court the explanation of that item. What does it mean? Here is a balance of \$9,368,-227.92. What is the explanation of that? A. That would be the amount of the credit balances in the individual trading accounts as of that date.

Q. The amount of the credit balances. Now this is entered in the Ontario Company's General Ledger under the heading of Solloway, Mills & Company Limited, Dominion Company's Trading Account. What does it tell you? That is a credit, as you have told us, of money—a credit to whom? 30

A. It is a credit to the Dominion Company. It is the amount of the liability to the Dominion Company on that particular group of accounts.

Q. Now turn up in the Dominion Company's General Ledger and see if there is a corresponding account.

ASST. MASTER: A credit balance in the Dominion Company of all the various companies. . . .

MR. FERGUSON: No, sir, all the various accounts in the Dominion Trading account.

Q. Mr. Holden, you said all the various accounts. The accounts run for each stock. That is what you mean.

A. Yes, there was one account for each stock. 40

Q. And the sum total of the account that is shewn in the Ontario Company's General Ledger as having been brought forward was the sum total of each of the individual accounts run for each stock. A. That was one of the accounts brought forward.

Q. Now I ask you to turn up the corresponding account in the Dominion Company's General Ledger for the account marked Solloway, Mills & Company

Limited, Dominion Company's Trading account in the Ontario Ledger. Have you got such an account in the Dominion Company's book?

A. The corresponding account is headed "Solloway, Mills and Company, Limited, Ontario, re Trading Account re Dominion Correspondents re Dominion Branches."

Q. And in that first item is what? A. Dated December 1st, 1928. "To S. M. & Co. Ltd. a debit of \$9,368,227.92."

Q. "S. M. & Co.," is what? A. The Ontario Company, in this case.

10 Q. A debit of \$9,368,227.92. That means,—we are not accountants, Mr. Holden,—tell the Court what you mean when you say "a debit". A. That is one of the amounts which the Dominion Company had coming to them from the Ontario Company on that day.

Q. And the entry in the Ontario Company's ledger which, you note, is the same exact figure from the first entry in their ledger. What does that mean?

A. That is the Ontario Company's liability on that particular account to the Dominion Company.

Q. That was on the same day. A. Yes.

Q. And they are both opening entries. A. Yes.

20 Q. Now, then, before I ask you to explain the meaning of the Dominion Correspondents, Dominion Branches, and why they are included in the Dominion Company's account, will you turn up for me the Dominion Company's account which deals entirely with the Dominion Trading Account. A. This is it I have before me.

Q. And it is headed what? A. "Stocks Owing. Trading Control Account" and "Dominion" in brackets.

30 Q. That first entry there, I see, is November 30th, 1928, and there is a balance forward of \$9,368,227.92. Now that is the same amount as appears in the Dominion Company's ledger, "Solloway, Mills & Company, Limited, re Trading Account, Dominion Correspondents, Dominion Branches," that is right, Mr. Holden, isn't it? A. The figures agree.

Q. And this is the same amount that is brought forward into the Ontario Company's ledger and constitutes its first entry as of November 30th, 1928, under the account, Solloway, Mills & Company, Limited, Dominion Company's Trading Account. That is correct. A. That is correct.

Q. Now, then, come back again to this "Stocks Owing" account and explain to the Court the meaning of that first item which I see entered in red.

A. Those are the credit balances,—a summary of the credit balances in the various trading accounts of the Dominion Company for stocks it has sold short.

40 Q. Explain that again. A. For stocks they sold short.

ASST. MASTER: Q. Who do you mean by "they"? A. The Dominion Company.

MR. FERGUSON: Q. Now, then, was the Trading Account taken over by the Ontario Company as shewn by those accounts, and in what way was it taken over? A. According to these accounts, the bookkeeping was done by the Ontario Company on all trading, and the Dominion Company recorded transactions made by it, or for it, by the Ontario Company in their own General ledger accounts.

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Examination.
26th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Examination.
26th
October,
1932.

—continued

Q. As an accountant, Mr. Holden, I want you to tell us who owned the profits made on the Trading Account.

A. The Dominion Company.

Q. Now will you turn up,—now I shew you what has been marked in this trial as exhibit 29. Just take a look at that and tell me if you have seen that before. A. I recognize this as the various Trading Accounts of the Dominion Company. Q. Now you have to get Sudbury Basin. I want you to turn up Sudbury Basin, Mr. Holden. Looking up the Trading Account in exhibit 29, headed "Sudbury Basin", Mr. Holden, I notice at the right side there are a list of figures marked in red. A. Yes.

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Q. What does that mean? A. Shares short.

Q. And what do "shares short" mean? A. The first figure on June 26th, 1929, shews 56,697 shares short by the Dominion Company.

Q. And to whom did they owe those shares? A. The Dominion Company owed them to the Ontario Company.

Q. Then over under the balance column there is a figure under date of June 26, 1929, \$431,057.87. That is in black. Is that a debit or credit balance?

A. It is a credit balance. This is a duplicate sheet. Therefore, it would not have red carbon under it so it is printed in black.

Q. That is a credit to whom? A. That is a liability of the Ontario Company to the Dominion on that particular stock.

Q. Of \$431,057.87 on that particular stock on that day. A. Yes.

Q. And a liability of the Dominion Company to the Ontario Company of the stock shown in red on the column to the right. That is correct. A. That is correct.

Q. That is shewn in the General Ledger,—just let me see now, if I am stating it right,—by the total credits in money shown in exhibit 29 being entered in the General Ledger to the credit of the Dominion Company in the Ontario Company's General Ledger. A. Yes.

Q. And is that what that actually shews in the Ontario Company's General Ledger? A. The Ontario Company's General Ledger is a controlling account for all the balances in the Trading Ledger.

Q. And it opens with a credit of \$9,368,227.92 on November 30th, 1928.

A. Yes.

Q. Then in the Dominion Company's General Ledger there is an account—"Stocks Owing Dominion Trading Account control" and you told us that that account shews the value, in money, of the stocks owing by the Dominion Company to the Ontario Company. That is correct.

A. It is not exactly the value of money.

Q. I mean the value in money.

A. The value of those shares may be higher or lower.

Q. I want you to tell it to the Court, correctly, what it does shew.

A. The amount shewn as a credit balance in the "Stock Owing" account of the Dominion Company General Ledger on November 29, 1928, is a credit balance shewing the Dominion Company has a liability on stocks sold short on that day.

Q. That entry was made at the time you opened up the new books.

A. Yes.

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Q. The entry made in the other account was made at the same time.

A. Yes.

ADJOURNED at 1 p.m. to 2.30 p.m.

RESUMED 2.30 p.m.

HAROLD D. HOLDEN (Previously sworn) (Recalled).

EXAMINATION-IN-CHIEF CONTINUED BY MR. FERGUSON:

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Examination.
26th
October,
1932.

—continued

Q. Well, then, will you tell us what special accounts were set up in the Ontario Company's General Ledger? You shew the amount owing by the Dominion Company to the Ontario Company, or by the Ontario Company to the
10 Dominion Company, as the case might be. Will you just detail the accounts that are shewn? A. In the Ontario Company's General Ledger the accounts that were opened with the Dominion Company were Solloway, Mills & Company, Limited, Dominion Trading Account.

Q. Now while we are at that just tell the Court the purpose of that account and what it shews. A. This account shews the liability of the Ontario Company to the Dominion Company on transactions for the Dominion Company's trading.

Q. And did you have any account for the Dominion Company's Correspondents? A. An account was also opened under the heading, "Solloway, Mills &
20 Company, Limited" and "Dominion Company Correspondents".

Q. What is the first entry in that account? Under what date? A. The date of the first entry is November 30th, 1928, a debit of \$581,785.97.

Q. And what was the purpose of that account, and what does it shew?

A. This account shews the amount owing by the Ontario Company,—no, the amount owing to the Ontario Company by the Dominion Company for Correspondents only.

Q. Where were those Correspondents?

A. Outside of Ontario. They would be in the East,—in Nova Scotia and New Brunswick, Quebec, and some others. I do not recall what they are.

30 Q. And the first item that is entered in there,—is it a debit or credit entry?

A. It is a debit.

Q. Debiting the Dominion Company. Is that right? A. That is right.

Q. Now, then, I think you told us before something about the Branches. What about the branches? What was done about the Dominion Company's branches? A. Another account was opened under the heading of Solloway, Mills & Company, Limited, Dominion Company Branches. The first entry is November 30th, 1928, a debit of \$3,365,362.87.

Q. What is that amount? A. That is the amount owing by the Dominion Company branches to the Ontario Company.

40 Q. And why was the Dominion Branch account entered into the Ontario Company under the Dominion Company Correspondents entered in the Dominion Company's General Account?

A. Transactions for these branches were put through the Exchange,—which was owned by the Ontario Company,—and the Ontario Company, of

*In the
Supreme
Court of
Ontario.*
—
Evidence for
Defence.
No. 30.
Harold D.
Holden,
Examination.
26th
October,
1932.

—continued

course, had to debit or credit, as the case may be, all the transactions for those branches or correspondents.

Q. Now was there any other account shewing transactions between the Ontario and the Dominion Company?

A. There was another account opened under the heading of Solloway, Mills & Company, Limited, Dominion Current Account.

Q. Now what items were entered in that account?

A. The items entered in this account were transactions between the two companies which did not fall under the heading of the other controlling accounts set up.

Q. Now would you mind reading for me some of the entries that are shewn in that Dominion Company Current Account. That includes debit entries—Willis Securities; Regina Building Account, another debit entry; Exchange Fees, a debit entry; in fact, all of these entries I am looking at in this account are debit entries. A. All those you have read are debit entries.

Q. Is it the Dominion Company that is debited with the items entered there? A. Yes.

Q. Just tell the Court why it became necessary in the Ontario Company's books to debit the Dominion Company with those items.

A. Payment would be made by the Ontario Company on behalf of the Dominion Company out of the Ontario Company's bank account. As these payments were for the Dominion Company all that could be done would be to debit them against the Dominion Company in a special account for that purpose.

Q. Now you have told us in the Ontario Company's General Ledger it refers to Solloway, Mills & Company, Limited, Trading Account. Will you turn up in the Dominion Company ledger the corresponding account.

A. The corresponding account in the Dominion Company's General Ledger is headed "Solloway, Mills & Company, Limited (Ontario) re Trading Account, Dominion Correspondents, Dominion Branches."

Q. And do the items correspond with the items in the Ontario Company General Ledger? A. They do.

Q. Now, then, you told us you had the Dominion Company Correspondents Account of which the first entry was a debit balance of \$581,785.97. Have you a corresponding account in the Dominion Company's General Ledger?

A. Yes, there is a credit in that account I just spoke of, of \$581,785.97.

Q. That is the same figure that was in the Ontario Company's account.

A. Yes.

Q. Now what do you say the Dominion Company's account shews in that respect?

A. It shews there is a liability to the Ontario Company of that amount.

Q. On that account. A. On that account.

Q. Now, then, did you have an account,—a branch account in the Ontario Company's books,—did you have a Branch Account in the Dominion Company's books? That is the one we were just speaking about, isn't it? Did you have a corresponding Dominion Correspondents account? A. Yes.

Q. Prior to the incorporation of the Ontario Company how would that account have been operated?

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A. There would be a controlling account in the Dominion Company General ledger that would contain the details that have been transferred to this new account.

Q. And then you told us that in the Ontario Company's General Ledger there was a Dominion Company Current account. A. Yes.

Q. Now what had you in the Dominion Company's General Ledger corresponding? A. In the Dominion Company General Ledger there was an account headed "Solloway, Mills & Company, Limited, Ontario Current Account."

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Examination.
26th
October,
1932.

10 Q. And what items did it contain? A. The items in this account would be transactions between the two companies which could not be classified under the headings of the other controls.

Q. That is, could not be classified under the heading of the "Stocks Owing" account, "Branch Account" or "Correspondents Account". Is that right?

A. No, not exactly. Transactions that would not fall under the heading of "Solloway, Mills & Company, Limited, Ontario Account re Dominion Trading, Dominion Correspondents and Dominion Branches."

Q. Well, then, did you have an account which shortly set forth the financial position as between the Dominion and Ontario Companies' account in the Dominion Company's ledger,—which brought all those accounts together?

20 A. There is one account that contains the result of transactions between the two companies having to do with trading—the Dominion Correspondents and the Dominion Branches. There was, also, a Current Account between the two companies.

Q. Now taking this account we are interested in as regards trading, and which is headed "Solloway, Mills & Company, Limited (Ontario) re Trading Account, Dominion Correspondents and Dominion Branches." The first entry is a debit entry to Solloway, Mills & Company, Limited, \$9,368,227.92, and then the next entry is "By Solloway, Mills & Company, Limited, \$3,365,362.87." That is a credit entry. Where does that entry come from,—the credit entry?

30 A. That is a transfer of the balance of the Dominion branches from the old controlling Account to this account.

Q. The first entry, as I understood your evidence before, refers to the balance in the General Trading Account. A. Yes.

Q. That is the nine million dollar item. A. Yes.

Q. The three million dollars item, which is a credit item, refers to the balance in the Dominion Branch account.

A. An offsetting entry for the Dominion Branch account.

40 Q. And the third item here—"By Solloway, Mills & Company \$581,785.97." That is the 4th entry. A. That is an offsetting entry for the balance in the Dominion Correspondents controlling account.

Q. Was the first balance, \$5,421,079.08,—that item is a debit or credit balance? A. It is a debit balance.

Q. And it shews what?

A. The amount owing by the Dominion Company to the Ontario Company.

Q. Owing by the Dominion Company to the Ontario Company?

A. The net amount, on December 1st, 1928.

—continued

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Examination.
26th
October,
1932.

—continued

Q. Arising out of what? A. The combining of the Trade Accounts and the Dominion Correspondents Account, and the Dominion Branches.

Q. Arising out of the Trading Account, the Dominion Correspondents and the Dominion Branches, leaving a balance owing by the Dominion Company to the Ontario Company? A. Yes.

Q. On account of trading of \$5,421,079.08? A. Yes.

Q. So that, that account shewed the position, the net position as regards trading between the two companies on that date. Now, then, there are various balances carried right through down to August, 1929—the last entry on that page—and do those show the position on their respective dates of trading between the two companies? 10

A. Of trading between the two Companies. Those balances are the amounts owing by one Company to the other on the dates given here.

Q. Now, then, whose account was the Dominion Trading Account?

A. The Dominion Trading Account. The Ontario Company kept an account for Dominion Company Trading.

Q. Where did the stock come from that was delivered against the sales made by the Dominion Trading account? A. From the Ontario Company.

Q. Did the Ontario Company make any sales, Mr. Holden, on its own account? A. Not to my knowledge. 20

Q. Now you have been the Accountant of Solloway, Mills & Company, Limited, throughout until they went into bankruptcy? A. I was there almost continuously, in one office or another, since December 1st, 1928.

Q. Were the Ontario Company at all times, that you have been there, in a position to deliver the stock if called upon to do so by all its clients? In other words, was the stock which the Ontario Company owed to its clients available at all times for delivery, speaking as a proper brokers account,—was it available for delivery? A. I would say all the stock was available.

Q. Mr. Hill, an expert accountant, who gave evidence for the Plaintiff, testified this morning that Brokers loaned stock to one another, and as I understand Mr. Hill's evidence to be, that a loan made by one broker to another broker for the purpose of making a Short sale would not be classified by Mr. Hill as a loan, and would not be passed by him as a loan, and that the stock loaned in that way for the purpose of making a short sale was not available for the purpose of delivery by the loaning broker. What do you say about that? 30

A. If the Broker to whom the stock was loaned was financially responsible,—if his account was properly margined the stock would most certainly be available.

Q. Would the purpose for which the loan was made enter into the consideration, at all, as to whether or not the stock was available, provided, of course, that he was a reputable Broker, financially responsible that you loaned the stock to? A. I would say no. 40

Q. Of course, you would not pass, or would you pass, a loan to a disreputable Broker who had neither money or position to return borrowed stock?

A. It depends on what equity there was in their account.

Q. Or would you pass a bankers loan as being a good loan if there was no security behind it? A. Absolutely not.

Q. In the case of a member of the Standard Stock and Mining Exchange, who was, while a member in good financial position,—would you enquire behind the Broker's standing on the Standard Stock Exchange?

A. I would have no occasion to.

Q. And if you did enquire, you would ask him for what?

A. A financial statement.

Q. And is there any doubt in your mind that a financial statement of the Dominion Company—Solloway, Mills & Company, Limited—would have satisfied you as being a good Company to loan stock to?

10 A. Any statement I saw would satisfy me.

Q. Do you know of anything that was ever done by the Dominion, or the Ontario Company, whereby they conspired with Mr. Solloway, or Mr. Mills, to defraud Mr. McLaughlin, or any other person?

MR. McRUER: Surely that is a leading question.

MR. FERGUSON: Of course it is a leading question, but this is the leading issue in this case. That question, Sir, is the very issue we are charged with in this case.

MR. McRUER: I am withdrawing the objection.

ASST. MASTER: That is the issue I have to decide.

20 MR. FERGUSON: That is the very thing I am called upon to answer in this case, and the witness for the Defendant comes in and the question is put to him, and if there is any one question in the whole case I could ask, that is the very question I could ask.

MR. BREWIN: Sir, I have no objection to this question. I think it would be interesting to hear what the witness says about it.

ASST. MASTER: All right, Mr. Ferguson, you have full scope.

MR. BREWIN: Get him to answer the question, Mr. Ferguson.

30 MR. FERGUSON: Q. Do you know of anything that was done, Mr. Holden, either by the Dominion, or the Ontario Company, or by Mr. Solloway, or Mr. Mills, whereby they ever agreed to defraud Mr. McLaughlin, or any other person, or the public? A. I know of no such instance.

Q. Do you know of any occasion in which the Dominion Company or Mr. Solloway ever conspired to defraud Mr. McLaughlin? A. I do not.

CROSS-EXAMINED BY MR. BREWIN:

Q. Just dealing with the last question of my friend, I may come back to it before we finish, Mr. Holden, but were you closely associated with Mr. Solloway, or Mr. Mills, did you discuss these brokerage matters with them at all?

A. No.

40 Q. And if they had agreed at some time to defraud the Plaintiff, is it likely that you would know anything about it? A. I certainly would not.

Q. Is it not likely that they would have been telling you about what they were doing, and the purpose of what they were doing?

A. They never told me anything.

Q. Now, Mr. Holden, when did you first do any work for Solloway, Mills & Company, Limited? A. Which Company are you speaking of?

Q. Either Company? A. Sometime after the 1st December, 1928.

*In the
Supreme
Court of
Ontario.*

—
Evidence for
Defence.
No. 30.
Harold D.
Holden,
Examination.
26th
October,
1932.

—continued

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

—continued

Q. First December, 1928. And I think you told my friend that right up to the present time you have been connected with the Company in the sense that you have worked for them, and have become familiar with their books?

A. Up to four months ago I was in and out of their office nearly every day.

Q. And, also you are familiar with brokerage accounts, are you?

A. I am.

Q. And, therefore, your evidence may be—when you speak, you speak as an expert on brokerage accounts? A. I think I can.

Q. Now, first of all, I just want to find out how far you will go as an expert accountant. Would you say that it was proper practice for Brokers to sell the clients securities that were pledged with them as collateral on their own account? 10

A. I would not.

Q. And I think you told the Court that it was, in your opinion, the proper practice, and shares were available, that were loaned to other Brokers?

A. Yes.

Q. Would they have to be Brokers?

A. They would have to be financially responsible people.

Q. In other words, they could loan shares of their clients, pledged as collateral, and also shares they had bought for their clients, and were holding. They are both in the same class? A. Yes. 20

Q. They could loan those to anybody who was financially responsible?

A. Yes.

Q. Without any special contract with them, of would they have to make a special arrangement before they could do that? A. They would have to receive the value in money at that date for the number of shares they loaned.

Q. In order to loan these shares there would be no necessity, at all, for them to make any special contract or agreement with their clients. If their client came in and delivered shares as collateral, it would not be necessary for the Broker to justify his loaning these shares, to make any agreement with his client that he could loan them,—any special arrangement in your opinion? 30

A. That would be understood, according to the confirmation that is given to the client.

Q. So that by reason of what appears on the confirmation he would be entitled to do that? A. I would say it is the custom or practice.

Q. Either it was by reason of something that appeared on the confirmations, or it was by reason of custom and practice? Which was it? A. Both.

Q. And was there some form of wording,—what were you referring to when you talked about the confirmations? Is that the confirmation sent to clients?

A. Yes, the confirmations I have read usually give the Broker authority to loan stocks without their permission. 40

Q. And you are interpreting that, are you, when you say they were entitled to loan shares to anybody who was financially responsible? A. Yes.

Q. Now is your opinion on that based upon what appears,—is your opinion that they can loan shares based on what appears in the confirmations?

A. Not entirely.

Q. Supposing there was not anything written on the confirmations at all. Would you still say they were entitled to loan shares of their clients to any one who was financially responsible?

MR. FERGUSON: I object to that.

MR. BREWIN: I want to find out to what extent this witness can give evidence. He has been offered by my friend as an expert.

MR. FERGUSON: An expert gives evidence as to what occurred in his own field. He does not give evidence as to what is right and what is wrong.

MR. BREWIN: He has given evidence to this effect by my friend, and I am surely entitled to go into the reason on which he bases his evidence.

ASST. MASTER: He has given evidence in chief that it is perfectly proper for those loans to be made. This is a question of what he bases his opinion on.

10 MR. FERGUSON: Well, that is quite all right, but my friend is getting him to say, as a lawyer, whether it was right or wrong. He is not entitled to have the witness give a legal opinion on it.

MR. BREWIN: As a matter of fact, he told you that it was proper for Brokers to loan shares to anybody who was financially responsible,—loan their clients' shares. Q. Who told you that, Mr. Holden?

A. I cannot remember exactly who told me, but I know it is the custom in practice.

Q. And why was it a proper custom in practice?

20 A. Because, on demand, the person to whom the shares were loaned would be able to make re-delivery.

Q. In other words, it is the financial responsibility of the person to whom you are loaning the shares that counts. And you say that the clients of Brokers are bound to rely on the financial responsibility of anyone to whom the Broker chooses to loan the shares. That is your opinion, is it?

A. I would not give that as exactly my opinion.

Q. Well, who is the judge of whether these people to whom they are to loan these shares, are financially responsible or not?

A. I think their membership on some recognized stock exchange, would indicate whether or not they were financially responsible.

30 Q. And that would satisfy you absolutely. If they were members of some recognized Stock Exchange, that the clients are bound—the clients' security is the financial responsibility of any Broker on the Standard, or any other stock exchange? A. Providing the account is kept properly margined.

Q. Now have you any evidence, at all, in looking through these Dominion Trading Accounts, that these shares were margined. These shares which the Dominion Company was Short?

A. I know that that was worked out each month. At the end of each month.

Q. Now show me any entry in the books that indicates that?

40 A. There were never any entries to indicate how the account was margined. The debit and credit balances, and the stock position, taken together with the market value of those shares would give you the equity in the account.

Q. Are you seriously saying that when margin is put up by a client it does not appear in the account?

A. I do not say that. I said, in order to work out the equity in the client's account, or in any account, you would have to combine the stock position with the money balance.

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

—continued

Q. Let us get back to this question of margin. What do you understand by "margin"? What is your understanding of margin?

A. Margin is equivalent to a deposit.

Q. A deposit of what? A. Stocks, money or its equivalent.

Q. Now, can you show me anywhere in the books of either of these Companies, evidence of money or stocks put up as a deposit on this trading account—this Dominion Trading Account?

A. I could work that out from the books.

Q. When this account started how was the Dominion Trading Account margined? You have told us already, I think, that the Dominion Company owed the Ontario Company nine million dollars worth of shares,—that they were short those many shares when the account opened. How were those margined? 10

A. The market value of those shares appeared with the credit balance.

Q. But there wasn't any margin to protect the Ontario Company in case the value of the shares went down?

A. The difference between the two figures was the margin.

Q. Will you try and explain that to me?

A. Well, the market value of the shares that were short, taken from the credit balance would give the amount of margin protecting that account.

Q. Did you investigate that? A. I have seen statements prepared from time to time showing that it was properly margined. 20

Q. At the time in December, 1928?

A. I do not recall whether I prepared those or not. Not by myself anyway.

Q. Well, then, you cannot say, if you did not make any enquiries, whether this short position of the Dominion Company, to the extent of nine million dollars worth of shares at that time was properly margined, can you?

A. I was told so.

Q. Who by? A. My employer.

Q. Who was your employer? A. N. L. Martin.

Q. You did not investigate it yourself? A. I had no occasion to. 30

Q. Your sole authority for that statement is what you were told by Mr. Martin? A. I have not made a statement, except that I have seen the margin in the account worked out from time to time.

Q. Now will you turn up the Dominion Trading Account in the Ontario Company Ledger starting in December, 1928? A. In the General Ledger.

Q. Yes? A. Would you repeat the question please.

Q. I want you to turn up the Dominion Trading account in the Ontario Company Ledger starting in 1928? A. I have the account.

Q. What was the balance that the Dominion Company are shown there to be short in November 30th,—as of November 30th, 1928? 40

A. This does not show the Dominion Company as short; it shows the liability to the Dominion Company.

Q. The liability to the Dominion, of the Ontario Company? A. Yes.

Q. And would that be on account of short sales? A. Yes.

Q. And you have explained already how that figure corresponds with the amount in the Dominion Trading Account, haven't you? I will go through that with you again. Now will you tell me whether that figure increased,—let us take for instance, January 13th, 1929. What is the figure shown there?

A. There should be a "1" in front of that. The bookkeeping machine does not provide for the double million figure—10s of millions.

Q. What is the balance at that time?

A. The balance at that time would be \$15,297,401.25 credit.

Q. Now will you look on the next sheet, and take, for instance,—will you look at the figure of March 1st, 1929? A. The credit balance on March 1st, 1929, as shown by this account, is \$16,832,803.19,—with the "10" million left out, because it is understood.

10 Q. During that period the amount of that balance due was increasing, was it not? In fact, we have the figure here, sixteen million, in March 1st, 1929, but when the Dominion Company—when the Ontario Company took over,—when, in other words, started operations in 1929, the figure was nine million, approximately?

A. I correct the date there. You mean 1928, but the balance has increased.

Q. The balance has increased from nine million to sixteen million in those few months? A. Yes.

Q. Now that represents the balance of what? What does that balance represent? A. Stocks sold for the Dominion Company.

Q. Whose stocks were they? A. Ontario Company's stocks.

20 Q. Ontario Company's stocks? A. Yes.

Q. How were they the Ontario Company's stocks?

A. In their possession.

Q. I suppose you mean by that, clients' stock, do you?

A. Some of it was clients'. Stocks purchased for clients.

Q. They were, most of them, stocks that were being held for clients. Is that right?—These shares that were sold Short. There is no question about that, is there? A. The shares that were sold Short were loaned.

30 Q. Well, call it "loaned" if you like, but the shares that were actually sold, used for delivery—were shares in the possession of Solloway, Mills & Company, Limited, either as collateral or what they had purchased from their clients. There is no question about that, is there?

A. There may be the odd instance where shares were owned by the Dominion Company in the possession of the Ontario Company.

Q. But they would be negligible in amount?

A. They would be negligible.

Q. As a matter of fact do you know whether the Ontario Company ever had any shares that they could sell Short,—whether they ever owned any shares? I do not mean, in their possession, but whether they owned any shares that they could sell?

40 A. I do not think the Ontario Company ever owned any shares themselves.

Q. Therefore, if they were selling these shares in the possession of the Ontario Company it follows they must have been shares either bought for their clients or shares deposited as collateral by their clients?

A. The Ontario Company may be holding stocks purchased by the Dominion Company for the Dominion Company's own account.

Q. But that would not be a short sale, would it?

A. No. You were making a statement,—I do not care to give evidence.

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
193 .

—continued

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

—continued

Q. However, there is no question about it, that on these Short sales for the Dominion Company the shares that were used for making delivery were shares that were deposited as collateral, or that were purchased for clients of the Ontario Company?

A. The stocks that were sold Short for the Dominion Company, was undoubtedly, in many instances, shares which had been purchased at one time for clients on margin.

Q. Wasn't that true in every case in which delivery could be made? Where else would they get shares from?

A. That would be practically their only source for getting shares. 10

Q. Can you suggest any other source?

A. Just what I mentioned, that the Dominion Company did own shares themselves.

Q. That would not be a short sale? Wouldn't that be a direct sale of Dominion Company shares? A. Yes, it would.

Q. Which would not be recorded in the books as a short sale?

A. It would be recorded as a sale.

Q. There would not be anything owing by the Ontario Company—

MR. FERGUSON: Can you show me anywhere in the books where it is recorded in the books as a short sale in that sense? There isn't any place. 20

MR. BREWIN: Q. If they were selling their own shares there would not be any such record as appears in the Dominion Trading Account, would there?

A. Yes, there would be. If it was shown in the Dominion Company that they were Long in giving stock, then that stock would be in the possession of the Ontario Company, and when a stock was sold the same entry would be made for that as made for all other sales.

Q. Now we were going through that account, and it showed an increase from nine million to sixteen million from December to March, 1929, in the balance owing in that account. Now can you tell me if, at that time, there was any evidence of any further margin having been deposited by reason of that increase in the balance in any of the books of either the Ontario or the Dominion Company? A. There is no evidence in this particular account of any cash being put up as margin. 30

Q. Is there any evidence of shares being put up as margin?

A. I would not be able to answer that question without examining each individual account.

Q. How much margin would be required for an increase of seven or six million dollars in the Short account? A. I am not prepared to say, offhand.

Q. Well, could you give us a guess at it, approximately?

MR. FERGUSON: What good would a guess be to the Court. 40

MR. BREWIN: We want this witness' opinion, then, approximately.

WITNESS: I would have to know the selling prices of the stocks, and the different kinds of shares that were being dealt with. Different stocks require different amounts of margin.

Q. About how much margin did they have in the first nine million?

A. I do not know.

Q. You were told, I think, by Mr. Martin, that there was some margin, but you were not told how much? A. I was not told how much.

Q. Were you told any details?

A. I would not remember any details about it now.

Q. Tell us all you can remember of what he told you?

A. My recollection is he told me this account was fully margined.

Q. That is the best you can remember about it? A. Yes.

10 Q. Well, then, on this sixteen million short can you give any idea how much margin would be required? A. I would have to know the names of the stocks and the selling prices in order to answer that.

Q. Is it not a fact to your knowledge that the margin required would vary between a third and a half in accordance with the stocks?

A. Approximately, yes.

Q. Is that the usual practice,—between one third and one half? A. Yes.

Q. So, roughly speaking, there should have been margin of approximately five of six millions on this account?

A. Roughly speaking, it would be that.

Q. Do you happen to know whether the Dominion Company was financially responsible to the extent of five or six million dollars at this time?

20 A. I cannot say how much they were worth at that time.

Q. Still, I suppose you would still say if they were on the Standard Stock and Mining Exchange that, nevertheless, it was proper for the Ontario Company to loan them shares, even if the marginal requirements were six million dollars, and they had no actual cash deposited?

A. The Dominion Company at this time was not a member of the Standard Stock and Mining Exchange.

Q. Oh, you know that do you? A. Yes.

30 Q. So, therefore, I suppose it would not be proper to loan shares to the Dominion Company? You define financially responsible by reason of being a member of the Standard Stock or some other Exchange?

A. They were members of other Exchanges.

Q. And that is the reason why they were entitled to loan shares to them?

A. That is one reason.

Q. What other exchanges were they members of, do you know?

A. I think they had two different memberships. I cannot name them all now.

Q. And are you still sticking to your former answer that the membership on some Exchange is sufficient evidence of financial responsibility to justify loans of shares to any amount? A. Backed up by a financial statement.

40 Q. What should the financial statement show, in your opinion?

A. A flourishing condition of affairs.

Q. And if it did not show a flourishing condition of affairs I suppose they should not have loaned them to the Dominion Company?

A. If they hadn't a substantial surplus account it would be unwise.

Q. Unwise, but not improper?

A. I do not think it would be improper.

Q. I am just trying to get from you what restrictions you would suggest

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

—continued

should be placed on the loaning of shares, whether to brokers or to anybody else. Were there any restrictions upon their right to loan their clients' shares, in your opinion? A. I was not aware of any restrictions.

Q. You do not know of any restrictions? A. No.

Q. Therefore you are now prepared to say that without any restrictions, at all, they could loan shares to other Brokers. Is that right? That is what you have said, isn't it? A. (No answer).

Q. Can you answer that last question?

A. Safety in the loans would be an indication as to whether or not it was proper.

Q. But subject to that restriction that some one, presumably the Broker, loaning, is to see whether it is safe or not, but subject to that restriction you say clients' shares may properly and legitimately be loaned to any broker? 10

A. I think so.

Q. But you are making that qualification, that the Broker should take some steps to see that the other Broker is financially sound?

A. That the other Broker would be able to put up additional securities in case the stock should go up in value.

ASST. MASTER: Q. Prepared to put up additional margin. You add that qualification now, do you? A. Yes. 20

MR. BREWIN: Q. I am trying to find out, in this cross-examination, what this witness' idea as to the loaning of stock is. Now he changes every time he speaks as to the restrictions upon them.

MR. FERGUSON: Now, that is not true.

MR. BREWIN: Q. Could we get your final judgment on the restrictions when you say that a loan to another Broker, or a loan to anybody—

ASST. MASTER: Isn't the proper question, what he would do if he went in to audit a Broker's account, and found these loans. How would he pass on them? That is the class of evidence I would say Mr. Hill gave. Now this evidence has been given, and there are two opinions. 30

MR. BREWIN: In dealing with these actual accounts how far this witness will go in dealing with brokerage accounts; what his judgment is.

ASST. MASTER: Well, he is an expert auditor from an auditing house in the City of Toronto, and we want to know what he expects to find. Mr. Hill stated what he would expect,—when he saw loans, what he would do. Now ask Mr. Holden what he would do, then we have the two opinions on the same classification. It would be a help to me.

MR. BREWIN: Q. If you saw loans,—if you were investigating the accounts of a Broker and you saw large loans of shares held for clients, what would you do? 40

A. I would ascertain if the market value of those shares was greater or less than the money balance against the loan.

Q. What else would you do when you had done that?

A. If there was not sufficient margin in the account I would investigate the financial standing of that Broker, and make inquiries as to what was being done to put that account in proper shape.

Q. Did you ever do that for Solloway, Mills and Company, Limited?

A. I did not do that personally.

Q. Now perhaps we can clear up this question of margin. In looking through these books and these accounts of these two companies, did you ever find any evidence of any other margin having been put up or deposited by the Dominion Trading Account than what existed in the profits that were made through the trade? That is to say, you have explained if the shares were to go down the profit made on the Short Account would stand as a margin to protect the Broker who had loaned the shares. Now did you ever find any evidence of shares or money deposited apart from this profit as a margin?

10 A. I did not make the statement you referred to, but it is true, nevertheless. But as far as putting up additional margin, the money sent in by Dominion Branches to the Ontario Company might be regarded as such.

ASST. MASTER: I did not hear that.

WITNESS: The money sent in by Dominion Branches to the Ontario Company might be regarded as additional margin.

MR. BREWIN: Q. Why were these moneys sent in? Were they not sent in, in fact, to margin these Branch Accounts?

A. The reason the money was sent to the Ontario Company was to prevent branches from having bank balances when the signing authority was in that particular branch.

20 Q. Were the branches making profits or losses, Mr. Holden?

A. Some Branches were making profits on operations, and some losses, on operations.

Q. Was it not a fact that on the whole they were losing heavily on the branches? A. No, on the whole I think the Branches were making money.

Q. Were the profits that were taken on the Short position the only margin which was put up or which existed for this Dominion Trading Account?

A. No.

Q. What else was there. What other margin was there evidence of?

30 A. Monies sent in by branches.

Q. Is that the only thing that you can suggest there was margin put up by the Dominion Company. Monies sent in by branches?

A. That is all I know of at the moment.

Q. And what account were those monies credited to?

A. The Dominion Company.

Q. You have told us that money was credited to the Dominion Company when it was received from branches. Can you show us the account where that credit entry was made?

A. In which Company's books—the Dominion or Ontario Company?

40 Q. In the Ontario Company's books?

A. Those monies were credited in an account controlled by this account named "Solloway, Mills and Company, Limited, Dominion Company Branches".

Q. What does the balance in that account represent?

A. That is a controlling account showing amounts due from the Dominion Company for those branches controlled by that account.

Q. Is that not made up almost entirely from clients' debit balances to that branch? A. Not necessarily.

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

—continued

- Q. Were the branches doing any trading? A. Yes.
- Q. Do you know which branches were trading?
- A. I believe Vancouver and Calgary were trading.
- Q. Did you go into the question to see whether that Dominion Company Branches Account was fully margined?
- A. I never went into that personally.
- Q. Did you ever enquire into any of these accounts personally?
- A. I saw statements prepared from time to time by employees of the Company.
- Q. You never checked them up, at all. You cannot say whether they were right or wrong, can you? A. On some occasions I did check them. 10
- Q. I do not understand you there. You said a minute ago you had not gone into that yourself, personally. What did you do in this regard?
- A. The employees of the Company would make up a statement of the equity in the Dominion Company's Trading Account, and I would have occasion to check off the position of shares with the ledger accounts, and I would have occasion to check up the market values of those shares on that particular day.
- Q. Speaking only of the Trading Account, now. When you checked it up, as you told us you did, was there a margin in the trading account of five or six million dollars at the time you checked it? 20
- A. I do not remember what the figures were now.
- Q. When did you check it? A. I do not remember the dates.
- Q. Give us your best recollection on this? A. Sometime during 1929.
- Q. You first checked it in 1929? A. Yes.
- Q. And how many times did you check it in 1929? A. At least twice.
- Q. Can you say whether it was early in 1929, or late?
- A. I think it would be early in January, and later on in the year.
- Q. Have you the records of those statements that were made either in your possession or in your office? A. No, we have not those records.
- Q. Do you know where they are? 30
- A. The last I saw of them they were in the Company's possession.
- Q. Which Company's possession? A. The Dominion Company.
- Q. But you have not got any records in your own office of any such statement? A. I know of no such records.
- Q. Is it not your custom to keep copies in your own office of records of this sort? A. We keep working papers.
- Q. You have no working papers in this case?
- A. In this case we may have working papers of the stock position on this date.
- Q. Early in January, for instance? A. Yes. 40
- Q. You would have them? A. I think we would.
- Q. Will you produce them then? See if you can find them and produce them? A. Yes.
- Q. Now will you turn to what has been called the Ontario Company Ledger, starting December,—Ontario Company Ledger of the Dominion Trading Account at the beginning of December, 1928? What does this sheet you are looking at show?

A. This is a sheet in the Ontario Company General Ledger headed "Solloway Mills & Company Limited, Dominion Trading Account".

Q. What is the Exhibit Number of the paper you are looking at now? Can you say what Exhibit Number that is, Mr. Holden?

A. Perhaps you can identify it better than I can.

Q. It is Exhibit No. 33 you have been looking at, and which you went over with Mr. Ferguson, and I just want to run over, for the purpose of reference, a sheet headed "Solloway Mills and Company Limited, Dominion Trading Account", November, 1928—November 30th, 1928—and which shows a balance of
10 \$9,368,227.92? A. Credit.

Q. Credit balance to whom? What is that credit balance?

A. A credit balance in favour of the Dominion Company.

Q. Now will you look at Exhibit No. 30 and tell me what that book appears to be?

A. The label says "Trading Accounts, 1927 and 1928, and up to April 30, 1929, Ontario Company Ledger".

Q. Now there is some sheets in this at the end that are called "Stock Ledger Control". Would those sheets purport to be a control account of what appears in this control ledger under Trading Account?

20 A. That would appear to be the control account for this particular ledger.

Q. Well, perhaps, you, as an accountant, can explain some of these figures to me. Take, for instance, under date of January 10th, 1928, following across the page we see the word "control", and opposite January 10th, under that date, under the heading "Balance" in red, \$4,036,731.30,—that is dollars, isn't it?

A. Yes.

Q. Now what does that represent to you as an Accountant? A. I think that is a controlling account for this Ledger showing that there are credit balances amounting to that figure.

30 Q. Credit balances to who? A. You have given the date, January, 1928, so that would be the credit balance in the Trading Accounts of the Dominion Company, or the Partnership, at that time, I think.

Q. And that Trading Balance would represent the sale of shares by the Company— A. By the Company, yes.

Q. Or by the Partnership, as the case may be? A. By the Partnership.

Q. And that would indicate, would it, that the Company was short shares of that value, or that had been of that value at the date they were sold?

A. It would indicate that.

Q. We would say the same is true of what appears under the figure "balance" throughout this Control Account? A. That is true.

40 Q. Now will you turn up and look at the date of November 30th. Let us take December 1st, 1928, and see what the balance at that time was. Will you look under that date, December 1st and 3rd April, and under the figure "balance" appears what? I had better go back to November 30th. What appears under November 30th?

A. A credit balance of \$9,368,227.92.

Q. The balance, at that time, November 30th—let us go back to November 29th,—what appears there?

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

- continued

*In the
Supreme
Court of
Ontario.*
—
Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

A. A credit balance of \$9,101,587.53.

Q. And does that represent to you money to be credited to the Company—the amount to be credited to the Company for the sale of shares on account of the Company? A. Yes.

Q. It is Short Sales of shares? A. Yes.

Q. And sales of shares put up by clients in the way you have described before? A. No doubt.

Q. And that figure corresponds, exactly, does it, to a figure appearing in Exhibit 33, in the Trading Account, as being the balance when this account was opened on November 30th, 1928? A. The two figures agree. 10

Q. They are both \$9,—\$19,368,227.92. And if you follow on this account after the 30th November, 1928, does this account correspond with that one—the balance part? A. They seem to correspond in each instance that was compared.

Q. So that, the figure which is shown represents the amount that is to be credited to the Dominion Company after that agreement was entered into, is the same as the amount shown before that date as the amount to be credited to the Dominion Company for sales on House Account?

A. The two figures are identically the same.

Q. And looking through this Exhibit No. 30 is the balance sheet here the continuing balance from January 1st, 1928, right along. Is that correct? 20

A. It continues right along.

Q. And do you say that purports to be a record of the amount owed on account of Short Sales—the amount to be credited to the House, or to the Company—Dominion Company—on account of Short Sales of their clients' securities? A. You are speaking of three different situations there. There are the days of the Partnership, and the days of the Ontario Company, and the days of the Dominion Company.

Q. Just explain the situation, then, in those three different periods?

MR. FERGUSON: We are not interested in any period except one.

MR. BREWIN: We are interested in proving the nature of this account 30 at any rate.

ASST. MASTER: Following the account through. I suppose it is relevant.

WITNESS: The first I had to do with this account was as of December 1st, 1928.

MR. BREWIN: Q. Yes, but you say you are an accountant, an expert in brokerage matters, you can tell us what this account shows before that date, can't you? A. I could, if I had the supporting figures to go into.

Q. Let us put it this way, then. Is there any difference in the nature of this account throughout that period from what appears in the account? 40

A. There appears to be a change, yes.

Q. What change? A. The change is as of opening of business, December 1st, 1928.

Q. What was the change there? A. This book, the bookkeeping in this book was done by the Ontario Company from that date on.

Q. Was done by the Ontario Company. Who do you mean when you say "done by the Ontario Company"?

A. The Ontario Company were responsible for all the transactions for the Dominion Company from that date on.

Q. Does that appear in this book, for instance? A. It appears in the controlling account. That book is headed up by some person on the staff.

Q. What do you mean by that—"this book is headed up by some person on the staff"? Where does any change appear in this account as of November 30th, 1928? A. This is a subsidiary controlling record and it would have no particular bearing on the General Ledger because that account was kept in the General Ledger.

10 Q. I am asking you to look at this account and tell me if there was any change at all?

A. I do not see any change in that account at all.

Q. And is the account exactly the same after November 30th, 1928, as it was before that time?

A. There isn't any change in the manner of writing up this account after that date.

Q. And it is a continuing balance throughout that time, is it not? A. It is.

20 Q. It is one account, in other words. Although it starts in January, 1928, and apparently continues to 1929—February, 1929—it is a continuing account without any change?

A. It is one account that was kept for the purpose of balancing that Ledger.

Q. Please answer my questions. Was there any change in this account in the method in which it was carried out, and is it a continuing account throughout that period?

A. It is a continuing account throughout that period and there is no change in the method of entering up that particular account.

30 Q. And you are ready to admit, are you, that account has been called,—perhaps I had better get your opinion on this. What did you say was meant by "House Account"?

A. I have heard it used in many ways.

Q. What do you think it is? A. It is sometimes used by—

Q. In connection with brokerage accounts and the books of brokers what does it mean?

A. In connection with Brokers that would mean trading of the House.

Q. Trading of the Company—of the Broker?

MR. FERGUSON: He said "of the House".

40 MR. BREWIN: Q. Do you mean, by "the House", the Broker? Whose books they are—trading by the House, you say. Do you mean trading by the Broker?

A. If the Broker were a Company, it would be the Company.

Q. The same Broker—the same Company as was the Broker though?

A. Yes.

Q. If it was a Partnership it would mean, trading by that Partnership that was carrying on the business of broker? A. Yes.

*In the
Supreme
Court of
Ontario.*

—
Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*
—
Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

Q. And if that was a Company it would mean by the Company that was carrying on the business of Broker? A. Yes.

Q. And if something was described to you as "a House Account" it would indicate in your mind, would it, the account of the Broker who was carrying on that account—whose account that purported to be?

A. I would not be sure of the description of the House Account until I saw the particular circumstances in which it was used.

Q. But you have told us already when it was for a Partnership—if a Partnership were carrying on a Brokerage business—were carrying on an account for themselves, that would be called a House Account, and if the Company was carrying on business, and buying and selling securities, would that be a House Account? A. Yes. 10

Q. Now this trading account that we have here purports to show, does it not, trading on account of the Company, of Solloway Mills & Company?

A. You are referring to the General Ledger Account, or is this control account in this ledger.

Q. Yes? A. As I understand it this ledger account is kept solely for the purpose of balancing this particular book.

Q. Oh, that won't get us anywhere, at all. Look through that book, anywhere through it you like,—it has been described by other witnesses to be a Trading Account, or purported to be an account of Solloway Mills & Company Limited trading in securities? 20

A. The individual accounts are trade accounts and securities.

Q. And who for? Who was the client shown there? A. It depends on what date you are referring to.

Q. Well, who is the client shown—you have opened this sheet at random—who is the client shown in December, 1927? A. I would not know who the client was on that particular date.

Q. Then would it be Solloway Mills & Company, Limited, Dominion Company, or would it be the Partnership,—the Dominion Company or the Ontario Company? A. I think it would be the partnership. 30

Q. It would be one of those three? A. Yes.

Q. And throughout this whole book it shows the accounts of one of those three entities,—either the partnership, the Ontario Company or the Dominion Company? A. Yes.

Q. It shows their trading accounts? A. Yes.

Q. And up to November, 1928, it cannot show trading on account of the Ontario Company, which was not in existence, but will show trading on account of the Dominion Company or the Partnership, as the case may be? A. Yes.

Q. Now does it indicate to you whether the Dominion Company was short up to November 30th, 1928. Does that account indicate whether they were Short at that time? A. The accounts in this ledger indicate the Dominion Company was Short at that time. 40

Q. And how much would they be Short on November 30th, 1928? Have you any way of saying how much they would be Short?

A. Not without working out the market value of the securities on that day.

Q. But the securities—the amount shown there on November 30th, 1928,

that nine million, indicates does it not, the value of the shares when sold, and indicates they would be short the shares represented by that balance? A. That is correct.

Q. On November 30th, 1928? A. Yes.

Q. Nine million dollars is the right figure? A. Nine million dollars odd.

Q. And that would be sales at that time in this trading account?

A. Sales up to that time in the various trading accounts.

Q. Of either the Partnership or the Dominion Company? A. Yes.

10 Q. I do not want to be repeating myself too often, but those would be sales, you have said, of the clients' securities. They would be clients, at that time, of the Dominion Company, would they not, if the Dominion Company was operating on the Exchange? A. Yes.

Q. And that figure represents the short position in the way you have told us, taken by selling on account of the Dominion Company their clients' securities? A. Yes.

Q. Now you have already told me, I think, you do not think it is proper for a Broker to sell his clients' securities himself,—clients' securities either pledged as collateral or held as margin. You told me that, I think? A. I do not know whether I told you, but I agree with you.

20 Q. Now if this short position was taken up to November, 1930, by sale of clients' securities, do you say that was a proper practice or not? A. If the sales are, as you have stated, I would say that was not a proper practice.

Q. Well, the evidence indicates—the books indicate—you have told us, in fact, these sales were sales by the Dominion Company?

A. I told you I believed they were.

Q. The books indicate that, don't they? A. Yes.

30 Q. And, therefore, you would say, up to November, 1928, Solloway, Mills & Company Limited, Dominion Company, were improperly selling their clients' securities. Will you admit that? A. I would not know what Solloway Mills were doing prior to November 30th, 1928.

Q. But you know what the books show? A. Yes.

Q. Do the books show they were selling them improperly?

A. The books show they were selling them, and if that was their practice, they were selling them improperly.

Q. If what was the practice? A. Selling clients' securities.

Q. Then you tell me they were selling clients' securities? A. You made the statement, and I have agreed with that, and the books indicate that.

Q. And you have no reason to believe they were not selling clients' securities? A. No.

40 Q. And up to November 30th, 1928, Solloway Mills & Company, Limited were, if you take what those books indicate, improperly selling their clients' securities,—1928? A. Yes.

Q. Now in December 1st, 1928, that situation was changed altogether?

A. Yes.

Q. And at that time you say they were not selling their clients' shares improperly after that date, according to the books? A. I do say that.

Q. On the night of November 30th you would say it was all wrong, this

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

- continued

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
6th
October,
1932.

—continued

sale of shares, this short position as indicated by the books was wrong, do you? That is your opinion? A. Yes.

Q. But on the morning of December 1st,—it became perfectly all right in your opinion? A. According to that agreement, yes.

Q. And yet the amount of shares that they were short, that the two companies together that came into existence, or when this account came into existence, was not varied at all. They did not have any more shares actually under their control? A. No.

Q. No more shares under their control on December 1st or November 30th. The two companies did not have any more shares than the Dominion Company did at that date? A. That is right. 10

Q. But this bookkeeping entry justified the whole previous situation which had been wrong? A. No, the agreement justified that.

Q. The agreement operated to justify the sale of their clients' securities which had taken place up to that time? A. Yes.

MR. FERGUSON: Now, let us get it right.

MR. BREWIN: Q. Now who are the Ontario Company? Do you know, as a matter of fact, that the Dominion Company owned all, except the very few qualifying shares, of the stock of the Ontario Company?

A. I believe that to be a fact. 20

Q. And do you know, as a matter of fact, that Mr. Solloway and Mr. Mills were the substantial shareholders of the Dominion Company?

A. Yes, I believe that to be true.

Q. Now, it is admitted, is it not, Mr. Holden, that taking the two Companies together—the Dominion and the Ontario Company—they were short a great many shares throughout 1929 in securities. Is that your experience?

A. The Dominion Company was short in 1929—throughout 1929?

Q. Yes. And if we were to take the Dominion Company and the Ontario Company together, and add the number of shares they had on hand—actually held on hand—the two together would be short during this period of 1929, would they not? A. If you combine the two Companies. 30

Q. Yes. I mean, for instance, let us put it this way. If there had not been two companies,—if they had continued with the one Company, that Company would have been short—would have continued to increase its short position throughout 1929? A. Yes.

MR. FERGUSON: Oh, well, that is a poor hypothesis.

MR. BREWIN: Well, it is an interesting hypothesis.

Q. Can you tell me whether a profit would be made on a short account if the market were falling? A. Not unless the stocks were covered.

Q. Do you happen to know if the Dominion Company made a profit on these short sales? A. Eventually, they did. 40

Q. On the short sales of the securities of the clients of the Ontario Company,—eventually they did? A. (No answer).

Q. I do not want to confuse you, but we have a statement that they made a profit of six million dollars. To whom would that profit go? You know something about Company Accounts. I suppose some of it would go into the operating expenses of the Companies? A. No doubt.

Q. But if there were any net profit made by the Companies when all expenses were paid, where would that go to, do you expect?

A. The cash would go into the Bank.

Q. Who would eventually be entitled to that profit of the Company?

A. The shareholders.

Q. And the shareholders of the Dominion Company would be entitled, I suppose, to any profit made through trading by the Dominion Company?

A. If a dividend was declared, they would.

10 Q. You said if they eventually made a profit? Was there any time in which the books show they were not making a profit on this Short account?

A. They always had a potential profit in that short account.

Q. What do you mean by a "potential" profit? A. An unearned profit.

Q. What do you mean by "unearned profit"? A. A profit that has accrued but not realized because of an incomplete transaction.

Q. They had not, I suppose, bought in all the shares they might owe to their clients?

A. They had not bought in all the shares they were short.

Q. Until they had bought in all the shares they were short the account, or their profit was what you call— A. It was not earned until the stock was
20 bought in.

Q. Now if the Ontario Company, through its brokerage business, were to make any profit, what would that profit,—where would it go to?

A. In their surplus account. It would be shown there.

Q. Wouldn't it eventually find its way in the form of dividends into the hands of the shareholders? A. Yes, if dividends were declared.

Q. And the shareholders of the Ontario Company were the Dominion Company? A. Chiefly.

Q. And so, therefore, the profits on the joint operations of the Ontario Company and the Dominion Company would all go to the shareholders of the
30 Dominion Company; Is that right? A. Eventually the shareholders of the Dominion Company would benefit by any profit.

Q. In the same way, exactly, as though they were just one Company having a trading account and carrying on a brokerage business?

MR. FERGUSON: I object to that kind of cross-examination.

MR. BREWIN: I do not know why my friend should object.

MR. FERGUSON: Well, the same way as though there were one Company.

MR. BREWIN: I suggest they were to all intents and purposes one company, and the only reason they were not one Company was for the purpose of
40 carrying a Short Account.

(DISCUSSION)

ASST. MASTER: Well, it is very close to argument, Mr. Brewin.

MR. BREWIN: My submission is, I can trace from this witness, who is an expert accountant, the destination of the profits, and show that exactly the same result so far as the profits that were made, as if there had been two companies as one company, because it is my contention the result is exactly the same, and if the result is the same, that is evidence—

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

—continued

MR. FERGUSON: Well, how about doing it, Mr. Brewin.

MR. BREWIN: All right. I forget where we left off.

Q. If clients' securities were being sold by a broker, short, on a falling market, the broker would be making a profit, would he not?

A. If he eventually repurchased the stocks at that lower price.

Q. And, as a matter of fact, from your knowledge of the books of this Company, did Solloway, Mills & Company, Limited, taking the Ontario and Dominion Companies limited make a profit? Either the one, or other, or both, by selling their clients' securities short?

A. I believe the Dominion Company made substantial profits on its short sales, and the Ontario Company did not sell short. 10

Q. Did the Ontario Company make a profit out of its brokerage business?

A. I think they did one year, and then made further losses the following year.

Q. Now, apart from the bookkeeping entries that were made—changes in the bookkeeping that were made by you, or under your instruction, in November, 1928, or December, 1928, can you point out to me any difference in the system under which Solloway, Mills & Company, Limited, was operated after that date?

A. Are you referring to the Dominion or Ontario Company?

Q. I am referring to the two companies together. Would there be any difference,—would there be any difference in the destination of profits made by the Companies? The whole transactions made by the Companies would be for the benefit of the same people, would they not, both before and after November, 1928? A. The shareholders of the Dominion Company benefit from transactions of that company and from any subsidiaries they own. 20

Q. And they owned the Ontario Company as a subsidiary? A. Yes.

Q. And as far as the client was concerned did it make any difference to him whether the shares were being loaned to the Dominion Company and being sold short through them, or whether they were being sold directly by the Ontario Company? Can you suggest any difference it would make to him? 30

MR. FERGUSON: I do not know what kind of an answer my friend expects from that question.

MR. BREWIN: Q. It would not make any difference, would it?

A. There might be some difference, I would have to have a lot of time to think that out.

Q. Well I would think it was a very obvious question, and one that you could answer right away. But supposing I were to put up 7,000 shares of stock as collateral, and they were sold at once by the broker on his own account, and subsequently, I went in and asked for those 7,000 shares, and paid up whatever I owed to that Broker, the result, as far as the client is concerned, would be exactly the same whether those shares would be loaned to some one else, or sold, or whether the Broker had sold them directly on his own account. It is obvious, isn't it? A. No, I do not think it is obvious. The owners of the company sell in one case— 40

Q. And who sells in the other? A. Another legal entity.

Q. As far as the client is concerned, what does he care whether it is another legal entity? He does not know the difference, does he?

A. He has no knowledge of the difference.

Q. And it does not make any difference to him, so far as he knows. The result is exactly the same in both cases, is it not, to the client? There might, as you say, be a different legal entity, but so far as the client is concerned the result is the same. Don't you admit that?

A. It depends on the individual circumstances that you are speaking about. I would not be prepared to answer that question unless I had all the information before me on the particular circumstances.

Q. I give you this example. 1,000 shares put up as collateral by a client to be held on a marginal account. Subsequently, three months later, supposing it was worth \$7.00 at that time, supposing three months later the price has fallen to \$1.50, and the client then went in and paid up his margin, and received the shares, As far as he is concerned would it make any difference to him whether those shares had been sold by the Company he dealt with, or had been sold,—let us say, a different legal entity, and sold to that legal entity?

MR. FERGUSON: Any answer to that question would not have any significance.

ASST. MASTER: I think it is a legal proposition, Mr. Brewin.

MR. FERGUSON: It does not assist us any that I can see.

MR. BREWIN: Q. Do you know who got the dividends of the Company?

A. The shareholders.

Q. You know who the shareholders were?

A. I saw a dividend account at one time, and as I recall it the dividends went chiefly to Mr. Solloway.

MR. FERGUSON: That is all in evidence, Mr. Brewin, we are not denying that.

MR. BREWIN: Q. You referred to a custom which you say justified the loaning of clients' securities in the way that you described. Amongst what brokers was that custom carried on? I mean, what Brokers do you know about that had a custom of loaning clients' securities?

A. The custom I was referring to was obtained chiefly from books—books on accountancy.

Q. Can you name the authors? A. Not offhand.

Q. Can you produce the books?

A. I may be able to dig up some information on that.

Q. It is not based upon your actual knowledge of what other brokers do?

A. I have some knowledge of what other brokers do.

Q. What other brokers have you some knowledge of?

A. Do you wish me to name some of the other brokers?

Q. Yes. A. (No answer).

Q. Other brokers who loaned their clients' securities for short sales, for instance. Where did you get your information that this was a custom with brokers?

MR. FERGUSON: Now we had Mr. Hill. Mr. Hill said there were loans of shares to Brokers on the Standard Stock and Mining Exchange. My friend does not expect this witness to disclose information he has received in a confidential way from the books of firms he has audited.

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

continued

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

- continued

MR. BREWIN: I do not want the names, but if you have, in looking through the books of brokers found a custom of making short sales, or rather, of loaning their shares to other brokers for short sales.

WITNESS: I have found other brokers in Toronto who have done that.

Q. And is it not true that a great many of those brokers who did that, to your knowledge, have landed in the penitentiary at Kingston?

A. Any who have landed in the penitentiary at Kingston I have no knowledge of.

Q. Well what about the penitentiary out West. Have you any knowledge of that? I just want you to try and tell me, whether you, as a result—

ASST. MASTER: I think a lot of this evidence on both sides is at cross-purposes, because a witness say he knows of loans called courtesy loans. Mr. Ferguson is talking in millions, and if the witness said he knew of loans of substantial amounts as a consistent practice—

MR. BREWIN: Q. Do you know of loans of substantial amounts by brokers to other brokers for the purposes of short sales?

A. I do know of such cases.

Q. At the present time? A. Not at the present time.

Q. At what period did these cases occur?

A. As near as I can recall in the years 1929 and 1930.

Q. Would it be up to the extent of millions of dollars?

A. It would not run into the millions.

Q. And would there be a cheque put up to cover the loan? A cheque passed from the borrowing broker to the loaning broker?

A. There would be funds between two companies, in the case I had in mind, that would pass from one company to the other.

ASST. MASTER: Actual funds?

WITNESS: Cash,—a cheque.

MR. BREWIN: Q. Were the actual certificates ever loaned in those cases you have in mind? A. Certificates, of course, were loaned.

Q. They would be delivered? A. They would be delivered.

ASST. MASTER: Q. Those books you have mentioned you have read, are they English, Canadian or American?

A. I think they were chiefly American.

MR. BREWIN: Q. I think it would be very nice if you could produce one of these books and have it marked as an Exhibit. Have you ever considered this question of the propriety of loans,—whether the loans should be made to a subsidiary company? Has that question ever come to your mind?

A. I have met nothing of that sort in my reading.

Q. Have you met much of that sort in your practice apart from those cases? Have you met anything of that sort in your practice?

A. These two companies. I do know of one other example.

Q. Can you tell me of that other example without disclosing something confidential? A. It would disclose something confidential.

Q. Can you tell me, without mentioning this other one whether that was one of the companies that got into trouble recently or not?

A. The Company I have in mind was not one of those that got into trouble.

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Q. Was it their client's shares that they were loaning to a subsidiary company? A. Yes.

Q. If sales were made as you have explained the theory, by the Ontario company for the Dominion Company, would you expect to find evidence of brokerage charged in the books?

A. In the absence of any special arrangement, yes.

Q. And have you found any brokerage charged? A. No.

Q. And do you know anything about any special arrangements?

A. I have heard it discussed.

10 Q. Where? A. In the office of Solloway, Mills & Company.

Q. Who by? A. By the Manager.

Q. Who was the Manager? A. Mr. Shaughnessy.

Q. Anybody else? A. Mr. Masson.

Q. Anyone else? A. Mr. Martin.

Q. And who else? A. That is all I can recall.

Q. And what was the effect of their discussion?

A. I think there were items which offset the brokerage.

Q. What items did they suggest as offsetting the brokerage?

A. Interest on the loan by the Dominion Company to the Ontario Company.

20 Q. What was the loan by the Dominion Company to the Ontario Company?

A. Credit balance as shown in the books.

Q. Did they allow interest on Short sales?

A. I don't know of any specific instances.

Q. Now you say there was a discussion between these officers and the Company by which they were to balance off the interest on loans with the brokerage charges? A. They discussed what the Dominion Company should pay to, or give, to the Ontario Company in lieu of the brokerage that would ordinarily be charged on Short sales,

Q. What time was this discussion,—what date? A. I do not remember.

30 Q. Approximately, then? In 1929?

A. It was early in the formation of the Ontario Company.

Q. 1928 or 1929? A. Yes.

Q. You say there was a verbal arrangement made then that they would not charge any brokerage?

A. I don't know of any arrangement. I know it was discussed.

Q. Which man represented which Company? Did they all represent both companies? A. You could tell by examining the Minutes of the Companies at the time at which they were representing them.

40 Q. Well, you say Mr. Shaughnessy was there. Which Company did he represent? A. I would not know without looking at the minutes.

Q. What minutes? A. Minutes of either Company.

Q. Which Company was Mr. Martin representing?

A. He was the Accountant for both Companies.

Q. And, by the way, which Company did you act as Accountant for?

A. Both Companies.

Q. Did you get separate instructions from both Companies?

A. I received my instructions from Mr. Martin.

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

- continued

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

—continued

- Q. Do you know if Mr. Martin got separate instructions?
A. I don't know.
Q. You don't know about the instructions he got at all? A. No.
Q. Did you ever see any of these arrangements in writing at all? A. No.
Q. And you say, as far as you know, you don't know which were representing the Dominion Company and which the Ontario Company in making these arrangements? A. No.
Q. You think it might appear in the minute books, do you?
A. The Companies of which they were officers might appear in the Minute Books. 10
Q. Was it just an informal discussion, or did some people seem to be representing one Company and some another?
A. I can't say as to that.
Q. Well, can you try and say. Do you remember whether there were two parties represented, or was it just a discussion?
A. It was just a discussion.
Q. Who carried on the expenses? Let us take the salaries, for instance, in 1929 and 1930 in Ontario? A. The Ontario Company paid them and charged them to their salary account.
Q. To their salary account? A. Yes. 20
Q. Did they charge them to the Dominion Company at all?
A. They might have at a later date.
Q. They did not charge them at this time—when you were making up the books you did not leave instructions that they should charge any salaries to the Dominion Company? A. I did not give them any instructions.
Q. Was there any proposal by which they should charge any salaries to the Dominion Company? A. I think that was discussed.
Q. You were not there? A. No.
Q. Take rent. Was there any account of the Dominion Company for rent on buildings? A. I cannot say without going through the books and records of 30 the Company.
Q. Wasn't it the system that you were setting up in December, 1928, of the operating expenses all being borne by the Ontario Company?
A. Those expenses in Toronto were to be borne by the Ontario Company.
Q. And that would include all the expense of renting buildings, and salaries, to your knowledge?
A. Yes, subject to allocating them to the proper Company at a later date.
Q. Where did you get that "subject to"? Where does that appear?
A. When I was setting up the accounts I had that in mind.
Q. Did you do anything about it? A. Not personally. 40
Q. Was anything done about it? A. I think there was.
Q. Can you show us any evidence of that? I think I might help you. It was done quite recently through the office of N. L. Martin. Do you know that?
A. Statements were required for the Income Tax Department, and that was given consideration when those statements were prepared.
Q. When was that? A. In 1931, I think.
Q. The question of to whom these rents and salaries should be charged was then given consideration? A. Yes.

Q. And some were charged at that time to the Dominion Company, were they? A. I believe so.

Q. But before that where were they charged?

A. They were charged in the General Salaries Account in the Ontario Company.

Q. There was no indication anywhere, no matter what you had in your mind, of any charging of salaries, or rent, or operating expenses to the Dominion Company before that? A. As far as I know, the bookkeeper was given no special instructions as to what to charge these to.

10 Q. Was he given any general instructions?

A. Well, the result he obtained would indicate that he had been told to charge these expenses to the individual expense account in the Ontario Company's General Ledger.

Q. Have you ever seen any evidence of stocks being loaned to the Dominion Company by the Ontario Company?

A. Just what appears in the Dominion Trading Account.

Q. Nothing more than what appears in the Dominion Trading Account?

A. I do not recall any other instance.

20 Q. You have not seen any other evidence of any loan except what appears in the Dominion Trading Account?

A. I do not recall any at the moment.

Q. You are familiar with the books, are you not? A. Fairly familiar.

Q. Three of the former employees of the Company,—Parkes, Kingsmill and Kimmerley—all gave evidence that there was no change in the system of the Company from the Partnership days to 1930, when the Company used to operate. Would you confirm that evidence?

A. No, I would say there was a change made as a result of an agreement between the two Companies, and the books were set up from this agreement.

30 Q. Apart from this bookkeeping entry was there any change made in their system, to your knowledge? A. Well, I think there were changes, but I just cannot recall individual instances at the moment.

Q. Are you prepared to dispute what Mr. Parkes, Mr. Kingsmill, and Mr. Kimmerley have said,—two of them were traders, and one was a Ledger keeper, who kept these ledgers, and they said there was no change in the system?

MR. FERGUSON: This question has been asked repeatedly, and it is an unfair question.

MR. BREWIN: The answer might not be of any importance.

40 Q. Can you answer that? Would you dispute what you have said in that regard? A. I would say that these individuals you have spoken of were not aware of the agreement made between the two Companies.

Q. Let us take the two traders who said they were selling for the House. They said the system was the same throughout. Will you agree with them that the books show that that is an accurate statement as far as the traders were concerned? A. As far as the traders are concerned, if they say their system was the same, I would be inclined to agree with them. As far as the bookkeeper was concerned, he must have known that there were new accounts opened.

Q. What difference did this change by which the Ontario Company was created and the Dominion Company took the Short position, what change,

*In the
Supreme
Court of
Ontario.*

—
Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

continued

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Cross-
Examination
by Mr.
Brewin.
26th
October,
1932.

-- continued

financially, did that make to anybody there after November 30th, 1928? Can you point out any financial change to anybody as a result of that?

A. The nominal shareholders of the Ontario Company would be interested in that change, and they would be contributing towards the capital stock of that Company.

Q. Do you know that those shares were subsequently all assigned to Mr. Solloway? A. I was told that the individual cheque—you are referring to the Ontario Company, are you not?

Q. Yes? A. No, I did not know that.

MR. FERGUSON: Well, that does not make it so, Mr. Brewin, either.

MR. BREWIN: Q. What financial difference did the change make? Now I understand your answer is that some dividends would, perhaps, be paid to shareholders of the Ontario Company? A. No, that is not the answer.

Q. What is your answer? A. The shareholders of the Ontario Company would have subscribed for capital stock in that Company.

MR. FERGUSON: The difference was there were two companies, and not one. Under the Ontario Companies Act the power of the Crown to create new entities becomes increased. There is no use you talking about that. There were two charters and two companies, so what difference does it make.

MR. BREWIN: I want to know if it made any financial difference to anybody, except as to the internal management of those two Companies. What financial difference did it make apart from the internal arrangements of these two companies, to anybody,—this change?

A. The Dominion Company parted with certain assets and disposed of certain liabilities, and they were assumed by another Company, namely the Ontario Company.

Q. But that would not affect anybody but the Dominion and the Ontario Company. Their relations, as between themselves, would be affected, but apart from that no one would be affected, would they?

A. None others, except the individuals of the Ontario Company.

Q. The individual shareholders who subscribed capital,—that is the only change? A. Yes.

Q. As a matter of fact, did the Dominion Company not pay for all the shares of the Ontario Company?

MR. FERGUSON: There is nothing unusual in that, surely.

WITNESS: I do not know without looking up the Company's records.

MR. BREWIN: Q. There were only one or two small shares outstanding that were not held by the Dominion Company, weren't there? A. I believe the bulk of the shares, practically all, were held by the Dominion Company.

RE-EXAMINED BY MR. FERGUSON:

Q. You said to my friend, Mr. Brewin, Mr. Holden, that the salaries and the profits from the Trading Account were all, eventually, charged up or credited, as the case may be, to the Dominion Company, but that that was not done until some time in 1931. Why was it left to 1931? A. Well, one reason was, the books of the Company were not in the Company's possession.

Q. They left the Company's possession when? A. I think it was—

Q. January, 1930? A. January, 1930.

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Re-
Examination
by Mr.
Ferguson,
26th
October,
1932.

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Q. That is the first time they were seized? A. Yes.

Q. And they were not available to be entered until when?

A. Until a later date.

Q. Now the revenue, or any profits from the Trading Account, was eventually charged up to the Dominion Company?

A. Credited to the Dominion Company.

Q. And that amount, was it or was it not always sufficient to margin the Trading Account in the Company' opinion? A. Apparently so.

10 Q. Now when the Ontario Company was organized, and you set up the books, in December, 1928, the Ontario Company had not a Short position at that time? A. No.

Q. And did the Ontario Company ever take over that position—the Short position of the Dominion Company?

A. They took over certain liabilities in respect to the Short position.

Q. That was the liability to account for the profits of the Dominion Company? A. The liability to pay the Dominion Company for shares which the Dominion Company had sold Short when those shares were re-delivered to the Ontario Company.

20 Q. Then they were liable to pay the Dominion Company whatever profits had been made on them?

A. Were required to pay the Dominion Company the original Selling price.

Q. But outside of that did the Ontario Company take over that Short position in any way? A. No.

Q. Which remained the property of which Company?

A. The Dominion Company showed it in their General Ledger as their Short position.

Q. Now your House Account had been originated and used before the incorporation of the Ontario Company? A. I was not there before the incorporation of the Ontario Company, so I would not know.

30 Q. All I understand it is a term that is used but which has not any real meaning at all? A. Those who are accustomed to using it in the firm had no idea of its significance.

ASST. MASTER: You are discrediting some of your former witnesses, Mr. Ferguson.

MR. FERGUSON: I hope not, sir.

Q. I think my friend tried to put words into your mouth, that the House Account means the Account of the Broker that was dealing. Who was the broker, in this case, that was dealing with the Public?

40 A. If you are speaking of the Ontario Company, the Ontario Company was the Broker who was dealing with the Public.

Q. And I understand you to say the House Account was not the House Account of the Ontario Company?

A. It was the Dominion Company's account.

Q. At the date the Dominion Company went into liquidation, and at about which time the Ontario Company also went into bankruptcy, did the Ontario Company still owe the Dominion Company anything? A. Yes, in money.

Q. They owed them in money about how much, do you recall that?

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Re-
Examination
by Mr.
Ferguson,
26th
October,
1932.

—continued

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 30.
Harold D.
Holden,
Re-
Examination
by Mr.
Ferguson,
26th
October,
1932.

—continued

A. I think it was around \$800,000. I am not just sure of the figure.

Q. As a matter of fact it was \$700,000. The Ontario Company owed the Dominion Company \$700,000, and that arose, how, Mr. Holden? What is that figure the result of?

A. A record of all transactions between the Companies up to that date, and chiefly the buying in of shares and delivering them to the Ontario Company.

MR. BREWIN: I would like to ask this witness if he will produce this American text book he has referred to as a basis for giving his opinion. I think it might be interesting to see, and perhaps cross-examine him on. It would be interesting to see whether this text book justifies what the witness has said, and it is, apparently, the basis for an opinion which has been offered as an expert opinion. I would like him to try and get the book, at any rate. 10

ASST. MASTER: I will give directions that the witness release the book to Mr. Brewin.

WITNESS: I will be glad to search and see if I can find it.

MR. BREWIN: Q. And if you find it would you just mark the passages in it on which you give your opinion as an expert witness.

MR. FERGUSON: I submit my friend cannot bring us back and cross-examine on this book. My friend has no right to bring us back to produce that book. 20

MR. BREWIN: I am merely trying to help my friend by letting him show there is some substance in his expert evidence.

MR. FERGUSON: I am quite content to let it stand if you feel there is no weight to that evidence.

ASST. MASTER: I am not prepared to say there is no weight to the evidence. But I think the witness should give the source of his information. It is the same as a lawyer saying he remembers a case but cannot remember the name of it.

EVIDENCE CLOSED

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(Written Argument)

CERTIFIED:

C. GORDON SPANNER.

Reporter,
The Master's Office.

REPORT OF O. E. LENNOX, ASSISTANT MASTER
IN THE SUPREME COURT OF ONTARIO

*In the
Supreme
Court of
Ontario.*

Between:

J. P. McLAUGHLIN,

Plaintiff,

—and—

SOLLOWAY MILLS & CO. LIMITED, AND ISAAC W. C.
SOLLOWAY AND HARVEY MILLS, SOLLOWAY MILLS
& CO. LIMITED (A Company incorporated under the laws of
the Dominion of Canada)

No. 31.
Report of
O. E.
Lennox,
Assistant
Master,
30th
January,
1933.

Defendants.

MONDAY, the 30th day of January, 1933.

PURSUANT to the Order of the Honourable Mr. Justice Kelly dated the 24th day of February, 1932, referring the trial of this action to the Master and having been directed by the Master, as appears by the endorsement made on the record, I PROCEEDED WITH THE TRIAL OF THIS ACTION and this action coming on for trial before me on the 11th, 12th, 13th, 14th, 19th, 20th and 26th days of October, 1932, in the presence of counsel for the plaintiff and of counsel for Solloway, Mills & Co., Limited, and of counsel for Isaac W. C. Solloway and Harvey Mills, and upon hearing read the pleadings and proceedings in this action, the Order of the Honourable Mr. Justice Boyer dated the 23rd day of March, 1932, ordering Solloway, Mills & Co., Limited, (A Company incorporated under the laws of the Dominion of Canada) to be wound up, and no order having been taken out under the Winding Up Act. R.S.C. 1927, Ch. 213 granting leave to proceed with this action against the said last named defendant Company, and the Order of W. J. Reilley, Esquire, Registrar in Bankruptcy dated the 12th day of May, 1932, ordering that the Plaintiff be at liberty to proceed with his action against Solloway, Mills & Co., Limited, (A Company incorporated under the laws of the Province of Ontario) notwithstanding the authorized assignment of the said corporation, and upon hearing the evidence adduced and what was alleged by counsel aforesaid and having reserved my Report unto this day

I DO FIND AND REPORT that the amount due from the defendants Solloway, Mills & Co., Limited, (A Company incorporated under the laws of the Province of Ontario) and Isaac W. C. Solloway and Harvey Mills is the sum of \$65,129.92 together with the costs of this action to be taxed.

Report signed this 25th day of February, A.D. 1933.

“O. E. LENNOX”,
Assistant Master.

*In the
Supreme
Court of
Ontario.*

REASONS FOR REPORT OF O. E. LENNOX, ASSISTANT MASTER
IN THE SUPREME COURT OF ONTARIO

No. 32.
Reasons for
Report of
O. E.
Lennox,
Assistant
Master,
30th
January,
1933.

J. P. McLAUGHLIN

—v—

SOLLOWAY, MILLS & CO. LTD.
and others,

J. C. McRUER, K.C., and F. A.
BREWIN, for Plaintiff,

A. G. SLAGHT, K.C., and R. I.
FERGUSON, for Defendants,
I. W. C. Solloway and Harvey
Mills,

W. J. P. JENNER, for Trustee 10
in Bankruptcy of Defendant
Company.

This action, referred to the Master for trial, arises out of dealings between a broker and his customers. The defendant company formerly conducted a brokerage business, dealing extensively in mining and other shares. The individual defendants were officers of the company. There was also a fourth defendant, Solloway, Mills & Co., Ltd., (Dominion Company) but proceedings against this defendant were abandoned as it went into voluntary liquidation, and leave to continue proceedings against it was not obtained. The existence of these two companies, as it will appear throughout, is the basis of the defence. 20

On the 16th of October, 1929, the plaintiff instructed the defendant company, which, for the purpose of brevity, I will refer to as the Ontario Company, to purchase 7,000 shares of Sudbury Basin Mines. It was agreed that the transaction should be on margin, and 3,500 shares of the same stock were deposited as collateral to meet the marginal requirements. In due course a confirmation in writing was received by the plaintiff advising him the purchase was completed. Later, in response to calls for further margin, occasioned by a steadily falling market, further shares of Sudbury Basin were deposited on the 22nd, 25th and 29th of October, and on the 3rd and 16th of December; and on the 20th of December, \$8,000.00 in cash as additional margin was handed over. 30

The contention of the plaintiff is that the defendant company did not purchase the 7,000 shares in question and hold them for his account; and that 11,500 out of the 14,000 shares deposited as collateral were converted by the defendants for their own use. The defendants, it is alleged, thereby made a secret profit for the benefit of the defendants, Solloway and Mills, who conspired together to dispose of customers' shares and repurchase such shares later at a lower price and not to account for the difference in price at which the stock was sold and the price at which it was repurchased. The plaintiff now claims such difference in price, and damage for conspiracy. That is, he claims that on the 16th of October his account was debited with \$49,462.50 for the purchase of 7,000 shares 40 of Sudbury Basin; and when he closed his account on the 13th of January, 1930, these shares were actually acquired on the open market for him for \$26,180.00; further, that the collateral was disposed of for \$66,925.00 and bought in for

delivery to him for \$42,550.00, according to statement prepared—Exhibit 47.

It is necessary to examine the records of the defendant company most minutely to prove or disprove the foregoing allegations. The plaintiff was the only buying client in Sudbury Basin on the 16th of October. The records show, in fact, it is conceded, that his order was purchased regularly on the Standard Stock and Mining Exchange, and cleared in the approved fashion. A further examination, however, reveals the defendant company or its sister company, the Dominion Company, which one, incidentally, is the most pertinent issue here, sold on their own account 3,500 shares. Presuming, for the moment, all transactions were executed on the Exchange on the balanced system of clearing, any irregular purchase or sale must necessarily affect other transactions on the same day. It alters the number of shares for which delivery is accepted. Balanced clearing is just what the name implies and can most readily be explained by an illustration. If a broker buys 200 shares of "A" on the Exchange and sells 100 shares of the same stock, instead of receiving 200 shares and delivering 100, he gets delivery through the clearing house of the difference between his purchases and sales, namely, 100 shares.

On this particular day, we find a 'House Sale' of 3,500. The transactions known as "over the counter" transactions appear here. That is, a broker selling through another broker on his own account, the details are not important, the result is selling against the customer, so that at the end of the day's business the broker has not accepted delivery of the requisite number of shares to satisfy his customer's orders. This result is obtained, in spite of the records of the transactions on the Exchange indicating that all transactions were properly executed.

On this day's transactions, even in view of the evidence that the shares were purchased on the Exchange, it cannot be said that such shares were purchased and carried for the plaintiff's account, without first determining the effect of trading executed outside of the Exchange. Did the defendant company have any shares to sell? If not, whose shares were they selling? The defendant not only did not have any shares to sell, but were short on this issue, approximately, 88,000 shares. Under such circumstances what has McLaughlin gained? What has he got to show? Peculiarly enough, a substantial amount of his own collateral, delivered against over the counter sales, came through Clearing pursuant to his purchase, which, though interesting, has very little legal significance, if any. The true situation is that he is merely speculating on the defendant's ability, in the event of a rise in the market, to later acquire the shares for him, or otherwise account to him. A broker is required to do more than purchase or go through the form of purchasing shares for his customer. He must carry them for his customer's account. The remarks of Duff, J., in *Conmee v. The Securities Holding Company*, 38 S.C.R. 601, go right to the root of this case. At page 609 the learned Judge says:—

"The purchaser does not rely upon nor does his right depend upon an engagement with the broker to procure and furnish the shares when required but upon the latter's duty and obligation to purchase and hold for the customer the number of shares ordered by the latter subject only to the payment of the purchase price or such part of it as may be unpaid."

*In the
Supreme
Court of
Ontario.*

No. 32.
Reasons for
Report of
O. E.
Lennox,
Assistant
Master,
30th
January,
1933.

—continued

*In the
Supreme
Court of
Ontario.*

No. 32.

Reasons for
Report of
O. E.

Lennox,
Assistant
Master,
30th
January,
1933.

—continued

When the first demand for margin was made, namely, on the 21st of October, the defendant company had on hand or in the Box, 4585, and the Short position had increased to 97,717. At this time they were accountable to the plaintiff along for 10,500 shares. I will later deal in detail with the rights governing the collateral, but at this point it seems reasonably clear, the defendants having failed to carry for the plaintiff's account the shares they purported to carry, it necessarily follows they could not possibly have any right to dispose of the collateral. Mr. Ferguson, in his argument on this, stated as follows:

"On the reverse side of the confirmation there is a statement which makes it clear that the company could not have raised more than half the market value of Sudbury Basin stock by way of loan. The position of Solloway, Mills & Co. Limited would, therefore, be that for one-half the value of 3,500 shares of Sudbury Basin, they were purchasing 7,000 shares. The figures are roughly as follows:

3,500 shares on the 16th of October, 1929, were worth approximately \$24,500.00. One-half of that amount would be \$12,250.00. 7,000 shares were worth \$49,000.00.

That is, Solloway, Mills & Co. Limited would have to use out of their own funds the sum of \$36,750.00. Any reasonable man could not have expected Solloway, Mills & Company Limited to have entered into a transaction on such a basis. Such a purchase would be under-margined by 50%."

Mr. Ferguson apparently finds it difficult, even as a matter of supposition, to argue his clients were carrying the 7,000 shares they purported to carry. According to their agreement, confirmed in writing, they should have been carrying together with the collateral 10,500 shares worth \$75,500. on which, according to his own figures, they could have borrowed \$36,750.00.

Evidence was submitted in detail to show how the collateral was disposed of and at what prices, and also when the account was closed out; how the shares were acquired for delivery to the plaintiff and the price at which these shares were so acquired. Statements containing this information were prepared by an expert accountant and put in as exhibits 45 and 46. Exhibit 45 clearly indicates that the collateral was disposed of, in most instances, immediately it was deposited. I do not propose to review this evidence in detail as its accuracy was not even seriously challenged. The computation is not really disputed. On the other hand, the principle is strenuously attacked, Counsel for the defence maintaining these figures have not any bearing; that the entire obligation has been met by the latter acquisition of sufficient shares for delivery.

A formidable short position in existence at the outset, and continuing throughout, renders it seemingly impossible to justify the method or system of trading adopted. At least, it cannot be justified by any grounds I have so far considered. There remains, however, the questions of the two incorporated companies of the same name, and the main defence is built around the relationship between these companies. The defendants seek to rid the Ontario Company (the broker) of this damaging short position by shifting it to the Dominion Company. The Dominion Company is represented as a customer of the Ontario Company; and that all these large blocks of shares, erroneously described as shares short, are, in reality, loans to the Dominion Company. I am strongly of

the opinion that such wholesale loaning of securities would not be permissible; that it could not meet the test of a strict application of the accepted rules and usages regulating the conduct of brokers. I cannot, however, come to a decision as to the propriety of such loans on the evidence before me. Fortunately, a decision on the question is unnecessary. It is first necessary for the defendants to show, as is plainly their duty, that the relationship of broker and customer existed between these two companies; and that loans of shares in these large amounts were actually made.

*In the
Supreme
Court of
Ontario.*

No. 32.
Reasons for
Report of
O. E.
Lennox,
Assistant
Master,
30th
January,
1933.

—continued

A brief history of the formation of these two companies is necessary. The
10 business was first operated as a partnership with the two individual defendants
as partners. In May, 1928, a company was incorporated, with a Dominion
Charter, I. W. C. Solloway and Harvey Mills holding all the shares excepting a
few qualifying shares. Then in December, 1928, the Ontario Company was in-
corporated. The minutes of the Dominion Company provide that the assets and
undertaking within Ontario are taken over by the Ontario Company. At this
stage there is very little, if any, indication of any material change in the ar-
rangements or internal management. There is a total lack of evidence of any
physical division; that is as to the offices occupied, in fact, there is evidence to
20 the effect that no change was made. The employees were carried on the same pay-
roll, no allocation of new duties appears to have been made. In many instances
the employees were totally ignorant of any change, and when confronted with
the question as to which company they worked for, were obliged to say they
did not know. Even the banking arrangement continued as before. A very con-
siderable time elapsed before a new account was opened. All of these circum-
stances in themselves are significant.

But to return to the question which has the most direct bearing and with
which I am chiefly concerned, namely, the short position, or House account. How
was it affected, if at all, by the alleged change? This account, originated in
the Partnership days, was carried on by the Dominion Company and so is car-
30 ried on after the new Company came into being. The account is carried on "bal-
ance upon balance" to use the apt words of the Plaintiff's counsel. Briefly, it is
the same account throughout.

What evidence, in fact, is there to substantiate the defendants' contention?
A new general ledger was opened which was described as the Dominion ledger.
Some months later an attempt was made to open other books of account, but the
idea was evidently abandoned. I am still inclined in favour of the view I took
in *Rochester v. Solloway, Mills & Co., Ltd.*, now being appealed, namely, what-
ever the intention was, it could not be said that the Ontario Company actually
commenced operations as brokers. In the present case, the question was not
40 dealt with from this standpoint.

There is a striking lack of evidence to even indicate trading between these
companies or loans made by the Ontario Company. Counsel, not content to
rely on the failure of the defendants to prove the existence of loans, examined
Mr. Hill, the expert witness, as to what entries or records should be found;
what entries would be essential, if such transactions were, in fact, made, having
regard to standard methods of business and the manner in which the defendant
company treated other customers' accounts. An examination of the books re-

*In the
Supreme
Court of
Ontario.*

No. 32.

Reasons for
Report of
O. F.
Lennox,
Assistant
Master,
30th
January,
1933.

--continued

vealed that no brokerage was charged; the Dominion Company was not charged up with dividends on dividend paying stocks. All of which is most important in my opinion to show that no such transactions took place between the companies. Incidentally, these amounts would be of considerable magnitude considering the supposed loan, which I find is, in reality, the Short position of the defendant company, at one stage amounted to approximately, \$9,000,000. A further examination reveals that in its dealings with customers' accounts, the defendant company was exact in recording the items of account I have enumerated. A long time after this action was instituted entries were made adjusting some of these matters, they do not appear in the proper chronological order, and, apparently, are little more than an attempt to bolster up the defence. 10

I have already indicated if the first part of the claim succeeds, it necessarily follows that the further claim for the conversion of collateral must succeed. This claim, however, should be considered independently. Mr. Ferguson argued at some length that the printed conditions appearing in the confirmation slips conferred the right of sale. The complaint is not that the identical certificates deposited were not retained. The governing factor here, as in the first instance, is the Short position; that when the certificates were disposed of there were no other certificates which could be said to replace them. According to the printed terms—the right to sell collateral security does not arise until margins are unsatisfactory, a condition which cannot apply here. In every instance further margin was deposited on the day the demand was received. The conditions further strongly imply the client is entitled to notice. The purpose of these conditions is obviously to protect the broker in case a client fails to meet his obligation. The same reasoning explains why the securities are deposited in negotiable form. 20

Having found that the defendant company is liable, there remains the question of the claims against the individual defendants as officers of both companies, who held substantially all the shares. It is alleged that they conspired to make a profit by dealing with the plaintiff's shares in this way, and as owners of the two companies received these profits by way of dividends. The underlying complaint throughout is that the broker sold against his buying clients, thus creating a short position which reached large proportions. It is not reasonable to suppose that a short position of such proportion is a matter of chance or indifference. A broker in creating an obligation of this sort has a fixed idea. He is backing his opinion against his customer's. He is acting in the belief that before the customer demands delivery of his purchase, the stock in question will have dropped in price; that he can acquire them at this lower price, resulting in a profit to him. Without reasonable doubt, the short position in this instance is the result of a concerted plan. That this type of dealing is fraudulent surely requires very little discussion. With all their ramifications the defendant Company went through the manoeuvres leading the plaintiff to believe they had carried out his instructions. At the end of it all, what, at any time, did he have to show for his risk except the defendant's financial responsibility, which is not sufficient, as laid down in the Conmee case, *supra*. There seems very little difference between this type of transaction and any other plain case of an agent taking money to invest and retaining it for his own use. Solloway and Mills 30 40

started this practice, which was carried on with few variations. Solloway at least knew of the short position. The evidence shows that he was from time to time supplied with this definite information. Two of the witnesses who were actively engaged in the routine creating this condition, gave evidence that they had on occasions received instructions from Solloway. *Johnson v. Solloway, Mills & Co. Ltd.*, 13 C.B.R. 360, lately confirmed by the British Columbia County Appeal applies, making the individual defendants liable.

A final analysis goes to show that the instructions of the customer were not followed. If, indeed, it can be successfully argued that the shares in question
 10 were purchased, they were not carried for the customer's account, which is essential in view of the decision of the Supreme Court of Canada in the *Conmee* case. In any event, considering the failure of the broker to fulfill his duty to his customer, the disposal of the collateral is without justification. Moreover, there was never, at any time, any default or failure on the part of the customer to give the broker the right to dispose of the collateral.

The shares purported to be purchased were charged to the plaintiff at the price of approximately \$7.00. They were acquired three months later when delivery was requested at an average price of \$3.70 per share. Similarly, the
 20 11,500 shares of collateral were acquired for much less than the defendants received for them. The difference between these amounts represents the secret profit of the defendants, and the plaintiff is entitled to recover these amounts, particulars of which are contained in Exhibit 47. This amount is subject to certain adjustments for brokerage and interest amounting in all to \$48,529.92, together with interest at 5 per cent. making a total of \$65,129.92.

There is also a further or alternative claim of \$100,000, for damages for conspiracy. The measure of damage for conspiracy is precisely the same as the amount outlined above. In order to succeed in a claim for any further amount, it would be necessary to prove that the actions complained of depressed the market, or otherwise were prejudicial to the plaintiff's interests.

30 Costs will follow the event.

January 30th, 1933.

"O. E. Lennox"
 Assistant Master.

*In the
 Supreme
 Court of
 Ontario.*

 No. 32.
 Reasons for
 Report of
 O. E.
 Lennox,
 Assistant
 Master,
 30th
 January,
 1933.

continued

No. 33

NOTICE OF FILING REPORT OF O. E. LENNOX, ASSISTANT MASTER

TAKE NOTICE that we have this day filed the Report of the Assistant Master, O. E. Lennox, Esquire, dated the 30th day of January, 1933.

DATED at Toronto this 27th day of February, 1933.

McRUER, EVAN GRAY, MASON & CAMERON
 372 Bay Street, Toronto,
 Solicitors for the Plaintiff.

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No. 33
 Notice
 Filing of
 Report of
 O. E.
 Lennox,
 Assistant
 Master,
 27th
 February,
 1933.

*In the
Supreme
Court of
Ontario.*

No. 34
Notice of
Appeal to
Single Judge
from
Report of
Assistant
Master,
10th
February,
1933.

NOTICE OF APPEAL TO SINGLE JUDGE FROM REPORT OF ASSISTANT
MASTER.

BY DEFENDANTS ISAAC W. C. SOLLOWAY AND HARVEY MILLS.

TAKE NOTICE that the Court will be moved at Osgoode Hall in the City of Toronto on Wednesday the 1st day of March, 1933, at the hour of eleven o'clock in the forenoon or so soon thereafter as the Motion can be heard on behalf of the Defendants I. W. C. Solloway and Harvey Mills by way of appeal from the Report, herein, of O. E. Lennox, Esquire, Assistant Master, dated the 30th day of January, 1933, and for an order setting aside the said report, or for an Order for a new trial, or for such other Order as may seem just, on the following amongst other grounds: 10

1. The learned Assistant Master had no jurisdiction to hear this case, the order of reference having been made on consent and the consent of the Defendant being that the case be tried by the master not the Assistant Master. The jurisdiction of the learned trial Judge to direct that this case be tried by an official Referee under Section 67 of the Judicature Act could not have been exercised without the consent of both parties. Both parties having agreed upon *the Master* of this Court as the Official Referee, the learned Judge could direct that the case be tried by that Official Referee only. Mr. O. E. Lennox is not the Master of this Court and is not the Official Referee agreed upon. The trial Judge could only refer the case to the Official Referee agreed upon. That Official Referee was the Master, I. Hilliard, Esquire, K.C. 20

2. If the learned Assistant Master has any jurisdiction he ought to have dismissed the action.

3. The Report is against the evidence and the weight of evidence.

4. The Plaintiff sued in contract and affirmed all transactions. He could not at the same time repudiate the transactions and sue in tort.

5. The Assistant Master erred in giving judgment on the contract against the Defendant, the incorporated Company, and at the same time giving a judgment in tort against the individual Defendants in connection with the same contracts. 30

6. The entries in the corporate books were not proved.

7. The Assistant Master improperly admitted entries made in corporate books, as evidence against the Defendants, I. W. C. Solloway and Harvey Mills, notwithstanding that such entries were not made by the said Defendants with their knowledge, by their direction or with their consent.

8. The entries in the corporate books were improperly received by the Assistant Master as evidence of the fact that such transactions took place. 40

9. Evidence of transactions on other occasions and for other customers was improperly received in evidence.

10. The Master erred in finding the Defendants short stock to clients.

11. The learned Assistant Master erred in finding that the 7,000 shares of Sudbury Basin, although purchased on the Exchange and cleared through clearing, was not in fact purchased and was not in fact held.

12. The learned Assistant Master having found that the shares were purchased erred in finding that, because at the date of the purchase the broker is short generally to customers, the broker could not be said to be holding for the customers the shares purchased.

13. The learned Assistant Master ought to have found that the broker having delivered the shares on demand the law assumes that the broker carried the shares and set them apart and earmarked them for the customer.

14. There was no contract between the Plaintiff and the Defendant Company which required the Defendant Company to keep all the Plaintiff's stock.

10 15. The Defendant, the Ontario Company, was the broker for the Plaintiff and was never short a share to the Plaintiff, or any other customer.

16. The Defendant had the right by contract to dispose of the shares whether margined or collateral in the manner in which the said shares were disposed of.

17. It was conceded by the Plaintiff that he did deal with the Defendant, The Ontario Company. The short position, if any, was the property of the Dominion Company as found by the said Assistant Master.

20 18. The learned Master ought to have found that the Ontario Company was never short, never bucketed shares, never sold shares against clients and had a right to dispose of the collateral.

19. The action having been abandoned against the Dominion Company and the Ontario Company not having a short position and only doing that which it was entitled to do, the learned Master was bound to dismiss the action against the Ontario Company and the Defendants I. W. C. Solloway and Harvey Mills.

20. The Plaintiff did not suffer any damage.

21. The Defendants did not make a secret profit to which the Plaintiff was entitled.

30 22. The Plaintiff had no interest in the account. He was an agent and had no right to sue.

23. The learned Assistant Master wrongfully prevented cross-examination of the Plaintiff to show that the monies and securities deposited with the Defendant, the Ontario Company, did not belong to the Plaintiff and he suffered no damage.

24. The Plaintiff did not prove that the Defendants, or any of them, made a secret profit, having failed to prove that the Defendants paid less for the shares represented by the certificate delivered to the Plaintiff to close his account than it received for the collateral or charged the Plaintiff for margined stock purchased.

40 25. Even if the Defendant, the Ontario Company, made a secret profit—such secret profit could not be damages flowing from a conspiracy, the claim for secret profits being a waiver for a Tort and hence the personal Defendants could not be liable in damages.

26. There was no evidence of a conspiracy.

27. The existence of a short position in the days of the partnership was not admissible in evidence.

28. Such short position was not proved.

*In the
Supreme
Court of
Ontario.*

No. 34.
Notice of
Appeal to
Single Judge
from
Report of
Assistant
Master,
10th
February,
1933.

—continued

*In the
Supreme
Court of
Ontario.*

No. 34.
Notice of
Appeal to
Single Judge
from
Report of
Assistant
Master,
10th
February,
1933.

—continued

29. Such short position was not exclusively referable to a conspiracy.
30. The learned Master erred in holding that the short position in the days of the partnership was the same short position as in the days of the Ontario Company or vice versa.

31. Mere existence of a short position controlled by the personal Defendants in 1926 or 1927 does not render a short position in 1929 and 1930, owned by an assignee, evidence of a conspiracy.

32. The incorporation of a limited company to take over the business of the incorporators and thus relieve the incorporators from personal liability is not a conspiracy.

33. The acts complained of do not shew a conspiracy.

34. A limited company cannot be guilty of conspiracy.

35. There was no evidence of conspiracy, nor any evidence of knowledge on the part of Harvey Mills.

36. A Director cannot be guilty of conspiracy with his Company, a Company being capable of acting only by agents. Such a conspiracy would be tantamount to a director conspiring with himself.

37. The onus was on the Plaintiff to prove conspiracy and such evidence as merely leads the Court to assume or suppose that a conspiracy existed is not sufficient.

38. The fact that a broker has not sufficient shares on hand to satisfy all his clients if they should all demand delivery at the same time, or the fact that such a position is taken deliberately by the broker is not evidence of conspiracy by that broker to commit a fraud or civil wrong on his customer.

39. The taking of a secret profit is not damages or loss such as is essential to support a judgment for conspiracy.

40. Mere knowledge of the short position does not indicate a conspiracy.

41. The learned Master having failed to find that the Defendants, I. W. C. Solloway and Harvey Mills, conspired, and the said Defendants having been sued only as conspirators, the action against them ought to have been dismissed.

42. The Plaintiff is not entitled to interest.

43. Such other grounds as Counsel may advise.

AND FURTHER TAKE NOTICE that in support of this appeal will be read the evidence adduced before the said Assistant Master and such further and other material as Counsel may advise.

DATED at Toronto this tenth day of February, 1933.

SLAGHT & COWAN,
320 Bay Street, Toronto.
Solicitors for the Defendants,
I. W. C. Solloway and Harvey Mills.

TO: McRUER, EVAN GRAY, MASON & CAMERON,
372 Bay Street, Toronto.
Solicitors for the Plaintiff.

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JUDGMENT OF THE HONOURABLE MR. JUSTICE KERWIN
IN THE SUPREME COURT OF ONTARIO

*In the
Supreme
Court of
Ontario.*

The Honourable Mr. Justice Kerwin

}

Tuesday, the thirteenth day
of June, 1933.

No. 35.
Judgment
of the
Honourable
Mr. Justice
Kerwin,
13th
June,
1933.

Between:

J. P. McLAUGHLIN,

Plaintiff,

—and—

10

SOLLOWAY, MILLS & Co. LIMITED, and ISAAC W. C.
SOLLOWAY AND HARVEY MILLS, SOLLOWAY, MILLS
& CO. LIMITED (A Company incorporated under the laws of
the Dominion of Canada)

Defendants.

20

UPON the motion of the defendants I. W. C. Solloway and Harvey Mills
unto this Court by way of appeal from the Report herein of O. E. Lennox,
Esq., Assistant Master dated the 30th day of January, 1933, in the presence of
counsel for the plaintiff, upon hearing read the said Report, the reasons for the
said Report, the pleadings and proceedings herein, and the evidence taken be-
fore the said Assistant Master, and what was alleged by counsel aforesaid.

2. THIS COURT DOTH ORDER that the said Report be and it is hereby
varied by amendment and the substituting for the figure \$65,129.92, the amount
due from the defendant Solloway Mills & Co. Limited (A Company incorporated
under the laws of the Province of Ontario) and Isaac W. C. Solloway and Har-
vey Mills, the figure \$55,922.98 together with the costs of this action to be tried.

3. AND THIS COURT DOTH FURTHER ORDER that save as herein-
above provided the appeal be and it is hereby dismissed.

4. AND THIS COURT DOTH FURTHER ORDER that the costs of this
appeal be paid to the plaintiff forthwith after taxation thereof.

30

“D’Arcy Hinds”
Registrar, S.C.O.

*In the
Supreme
Court of
Ontario.*

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE
KERWIN

No. 36.
Reasons for
Judgment
of the
Honourable
Mr. Justice
Kerwin,
13th
June, 1933.

S.C.O.

McLAUGHLIN

v.

SOLLOWAY MILLS

Copy of Reasons for judgment of
Kerwin, J., delivered 13th June,
1933.

R. I. Ferguson, for Isaac W. C.
Solloway and Harvey Mills, two of
the defendants, appellants.

F. A. Brewin, for plaintiff, respon- 10
dent.

The plaintiff brought an action against the two appellants and against Solloway-Mills & Co. Limited (a company incorporated under the laws of the Dominion of Canada and hereafter called the Dominion Company) and Solloway-Mills & Co. Limited (a company incorporated under the laws of the Province of Ontario and hereafter called the Ontario Company). The action was by consent referred for trial to the Master by an order under Sec. 67 of The Judicature Act and at the Master's direction the case was tried before Mr. Lennox, an Assistant Master. On the opening of the appeal preliminary objection was taken to the jurisdiction of Mr. Lennox but I disposed of that at the time on the same 20 grounds and for the same reasons as are set forth in the reasons for judgment of Mr. Justice Garrow in *Rochester v. Solloway*, 1933 O.R. 230. In fact upon an examination of the record and the proceedings at the trial of this matter it appears that no objection was raised to the jurisdictions of the Assistant Master at any time.

This case differs from the *Rochester* one in that the first dealings of the plaintiff with any of the defendants were on October 16th, 1929, by which time the Ontario Company had been incorporated and had agreed to take over the undertaking of the Dominion Company in connection with its general brokerage and financial business in Ontario. That circumstance and the fact that the 30 plaintiff at no time had any communication with either of the appellants are relied on to distinguish the *Rochester* case and for the argument that the individual defendants cannot here be held liable. As the evidence against Solloway and Mills is mostly documentary and objection was raised as to its admissibility against these individuals I therefore examined the evidence and exhibits in detail and from that perusal the following facts emerged.

By an agreement dated in May, 1928, I. W. C. Solloway and Harvey Mills "carrying on business under the name style and firm of Solloway, Mills & Company" agreed to sell their brokerage business to the Dominion Company. The same books and records that had been in use by the partnership were to a large extent continued by that company and also by the Ontario Company which by 40 an agreement of December 20, 1928, agreed, as indicated above, to take over the Dominion Company's business in Ontario. All of the books and records filed as

exhibits are from the possession of the Ontario Company where they had been seized by Crown officers in connection with certain charges laid by the Crown. Under these circumstances it seems to me to be clear that they are evidence not merely as against the Ontario Company, but also against the individual defendants whose books and records were continued by the two companies. *Rex vs. Smart*, 1931, O.R. 176.

*In the
Supreme
Court of
Ontario.*

No. 36.
Reasons for
Judgment
of the
Honourable
Mr. Justice
Kerwin,
13th June,
1933.

—continued

At the date of the transfer of the partnership business to the Dominion Company the partnership was “short” to its customers on the very stock in which the plaintiff subsequently dealt. That “short” position was assumed by the
10 Dominion Company as a liability at the very same figure at which it stood in the books of the partnership. It subsequently increased and when the sale occurred by the Dominion Company to the Ontario Company of the Ontario business, the Ontario Company assumed as an obligation the “short” business of the Dominion Company and at exactly the same figure at which it stood in the Dominion Company’s books.

It is evidence then that the interest of the partnership and of each company at any particular time was distinctly in conflict with the duty which was owing its customers who might place orders to buy. Much was made of the existence of the two companies and although I cannot find any evidence that the Ontario
20 Company “never acquired the right to act as a broker in Ontario” as was found to be the fact in the Rochester case, 1933 O.R. at page 233, it does appear from the evidence that the Ontario Company never did actually act as such. In fact Holden, one of the witnesses called for the defendants, testified that the Ontario Company made no sales on its own account and never owned any shares. And again while it is urged in the present appeal, as it was in the earlier one, that one company had in the possession of the other enough “loaned” shares to fulfil its obligations to all its customers, the evidence here justifies the remark of the Assistant Master that there is nothing to indicate that loans on shares in large amounts were actually made. And even if they had been loaned I am satis-
30 fied that such a position would not avail these defendants as it was the result of a conspiracy on the part of the appellants to defraud such persons as might become customers of the partnership or of either company.

That brings me to a consideration of the argument that there is no evidence of such conspiracy. It is not to be expected that witnesses would be forthcoming to testify to any conversation between these defendants, but the following reference to the documentary evidence and circumstances fully warrants a finding against them on that point. The appellants were partners in a brokerage business and were directors and principal shareholders of each company. While there was some change in the holdings from time to time as between themselves
40 they were always the principal beneficiaries of the profits that were enabled to be declared by reason of the “short” position on the market taken by the partnership and continued by the companies. Once the “short” position is admitted no more cogent evidence of the conspiracy to injure prospective customers could be found than a record of a scheme continued throughout the history of the three concerns by which these profits mounted considerably. As showing the fictitious character of the two companies it appears that no brokerage was char-

*In the
Supreme
Court of
Ontario.*

No. 36.
Reasons for
Judgment
of the
Honourable
Mr. Justice
Kerwin,
13th
June, 1933.

—continued

ged by one company to another; no dividends on dividend paying stocks were charged; and no interest.

Mr. Ferguson argued that even if there were any legal foundation for a civil action for conspiracy, malice on the part of the appellants against the plaintiff must be found and that was impossible because the plaintiff had no direct dealings with either of them. Without referring to all the citations furnished by him I cannot agree with that contention. Malice is not necessary and it is sufficient if two or more parties conspire to do an unlawful act, and it must be considered that being "short" on shares, which it was a broker's duty to purchase as cheaply as possible for a customer, would be in that category. Even if only one of the appellants set out to do what has been ascertained in this case he would be liable without the necessity of considering the law of conspiracy on the civil side. I refrain from discussing the cases referred to in the judgment of Mr. Justice Garrow because I entirely agree with what he states in the Rochester case. I might add, however, that the judgment in *Solloway v. Blumberger* now appears in 1933 S.C.R. 163, and that having read it I cannot see that it has any application to the matters under discussion. 10

A further point was made that the plaintiff having by the judgment appealed from, secured judgment against the Ontario Company must be taken to have so secured it on a claim for money had and received and that he cannot sue in tort. *Trusts & Guarantee v. Brenner*, 13 C.B.R. 518 at 522. However a claim for damages for conspiracy is made in the pleadings against all the defendants and is justified by the evidence. I cannot see therefore that the point need be further considered. 20

It was also argued that interest should not be allowed from January 14th, 1930, which is the date the plaintiff paid the amount that was demanded to close his account, but I think an allowance for interest from that date is justified. It is agreed that the formal judgment does not show the correct amount for which judgment should be entered as an error was made in calculating the interest. Subject to that correction the appeal is dismissed with costs. 30

No. 37

NOTICE OF APPEAL BY DEFENDANTS ISAAC W. C. SOLLOWAY AND HARVEY MILLS TO THE COURT OF APPEAL

No. 37.
Notice of
Appeal to
the Court of
Appeal,
23rd June,
1933.

TAKE NOTICE that the Defendants, Isaac W. C. Solloway and Harvey Mills, hereby appeal to the Court of Appeal from the Judgment herein of the Honourable Mr. Justice Kerwin, dated the 13th day of June, 1933, dismissing the said Defendants' appeal from the report of O. E. Lennox, Esquire, Assistant Master, dated the 30th day of January, 1933, on the following, amongst other grounds:

1. The said Assistant Master had no jurisdiction to try this action.
2. Entries in the books of the Defendant Corporation and from other corporate books were improperly received in evidence against the Defendants, Isaac W. C. Solloway and Harvey Mills.

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3. Such entries were not properly proved.

4. The Plaintiff has taken a Judgment against the Defendant Company for moneys had and received and has thereby waived any cause of action in tort he might have had against the Defendants, Isaac W. C. Solloway and Harvey Mills.

5. The Plaintiff failed to prove any fact pleaded which would entitle the Plaintiff to Judgment against the said Defendants.

6. The learned Assistant Master improperly admitted evidence that the Defendants did not retain on hand sufficient stock to satisfy all their customers.
10 The Plaintiff did not plead that the Defendants did not have sufficient stock on hand to satisfy all their customers.

7. There was no evidence that the Defendants did not have on hand sufficient stock to satisfy all of their customers.

8. The Defendant Company was entitled to sell stocks deposited by a customer with the Defendant Company as margin to finance a purchase of other stock.

9. Conspiracy is not a civil wrong.

10. The learned Judge erred in finding that the Defendants conspired.

11. If a conspiracy existed it was not a conspiracy to injure the Plaintiff.

20 12. There was no evidence that the appellants or either of them were parties to any agreement to commit a wrong or to injure the Plaintiff.

13. The Plaintiff is not entitled to interest.

14. The Assistant Master improperly rejected evidence that the Plaintiff had no beneficial interest in the transaction complained of.

15. Such further and other grounds as counsel for the Appellants may advise.

DATED at Toronto this 23rd day of June, 1933.

30 SLAGHT & COWAN,
320 Bay Street, Toronto,
Solicitors for the Defendants,
Isaac W. C. Solloway and
Harvey Mills.

TO: MESSRS. McRUER, EVAN GRAY, MASON & CAMERON,
372 Bay Street, Toronto,
Solicitors for the above
named Plaintiff.

*In the
Supreme
Court of
Ontario.*

No. 37.
Notice of
Appeal to
the Court of
Appeal,
23rd June,
1933.

—continued

REASONS FOR JUDGMENT OF THE COURT OF APPEAL

COPY OF REASONS FOR JUDGMENT OF COURT OF APPEAL,
DELIVERED JUNE 5TH, 1934.

*In the
Supreme
Court of
Ontario.*
No. 38.
Reasons for
Judgment of
the Court of
Appeal,
(Davis J. A.),
5th June,
1934.

Mulock, C.J.O., Riddell, Middleton, Davis and Macdonnell, JJ.A.

McLAUGHLIN

vs.

SOLLOWAY MILLS.

A. G. Slaght, K.C., and R. I. Ferguson,
for appellants Solloway.
J. C. McRuer, K.C., and F. A. Brewin,
for plaintiff, respondent.
J. Sedgwick, K.C., for Attorney-General 10
for Ontario.
The Attorney-General for Canada was
not represented.

Argued November 14th and 15th, 1933, March 1st, 2nd and 19th, 1934.

Davis, J.A: It is necessary in the first place to have a clear apprehension of the facts in this case.

The defendant Solloway, Mills & Co. Ltd. (Ontario Company) was carrying on a stock brokerage business in Toronto and elsewhere on October 16th, 1929, and thereafter during all material times. The plaintiff on the said day instructed and employed the company as his agent and broker to purchase on margin 20 7,000 shares of stock in Sudbury Basin Mines Limited at the market price. The shares were purchased at a total price of \$48,937.50 plus brokerage fees. The learned Assistant Master of this Court who tried the action upon a consent judgment of the Court referring the action for trial under Section 67 of The Judicature Act, found as a fact that "the plaintiff was the only buying client in Sudbury Basin on the 16th of October. The records show, in fact it is conceded, that his order was purchased regularly on the Standard Stock and Mining Exchange and cleared in the approved fashion".

It had been arranged that the shares so purchased would be carried on margin and the plaintiff from time to time delivered to the company share certificates of the same stock as collateral security to the margin account, in all 30 14,000 of such shares were so deposited by the plaintiff with the company as collateral. Besides securing the account with these additional shares of the same stock, the plaintiff made a cash payment on account of \$8,000. The market on this stock continually fell and on January 13th, 1930, the plaintiff paid to the company the balance then owing on the account \$42,143 and the company delivered to him without any delay and in apparently the ordinary course of business, share certificates representing the 7,000 original shares purchased by him and the 14,000 additional shares which he had pledged with the company as col- 40 lateral to the account. Everything appeared to be regular and proper and the plaintiff got exactly what he purchased and at the price he purchased and received back all the collateral which he had pledged.

Subsequently the severe break in the stock markets led to Government investigation of brokerage houses, many of them in this country went into bankruptcy and criminal proceedings on a large scale were instituted throughout Canada against many brokers. It then became apparent that many brokers had maintained a short position in the stocks they were assumed to be carrying for customers and the plaintiff having investigated the state of his account with the defendant (Ontario) company instituted this action on January 27th, 1931, to recover certain secret profits which he alleged the company had made through improper and unlawful use of not only the 7,000 shares originally purchased but of a large part of the 14,000 shares pledged as security.

The facts are that the company almost immediately after their purchase for the plaintiff sold the 7,000 shares and from time to time as and when received sold 11,500 of the 14,000 shares put up by way of margin. The evidence disclosed that the company repurchased sufficient shares to meet the requirements of the plaintiff when on January 13th, 1930, he took up his shares and closed his account.

It was established in evidence that due to a falling market the company made \$23,282.50 on the sale and repurchase of the 7,000 shares and \$24,375 on the sale and repurchase of the 11,500 shares. Exhibit 47 is a detailed statement prepared at the trial and put in for convenience. The total of these two sums together with certain items of interest taken into the calculation made a total of \$55,922.98 for which the plaintiff took judgment against the defendant (Ontario) company in the judgment appealed from. There was an admitted error in the amount fixed by the learned Assistant Master which was corrected in the judgment on appeal.

In commencing his action the plaintiff not only sued the Ontario Company with whom he had the transaction above set forth, but also a Dominion Company of the same name and Solloway and Mills in their individual capacity, setting up as against all the defendants a conspiracy to defraud and claiming damages against all defendants. It is to be observed that the individuals Solloway and Mills had been in partnership in the brokerage business up to May 31st, 1928, and at that time had turned their business over to the Dominion Company which company carried on business in Ontario until December 1st, 1928, at which time there was incorporated and organized, the Ontario Company, which took over from the Dominion Company the business in Ontario, and carried on the same at all material times thereafter. On October 16th, 1929, when the plaintiff purchased the shares in question it was the Ontario Company that was carrying on the business. All the issued shares of the Ontario Company (other than the qualifying shares of directors) were owned by the Dominion Company, and all the issued shares of the Dominion Company were in turn held in the joint names of the defendants Solloway and Mills up to November 12th, 1929, when they were transferred to the defendant Solloway alone. On the 23rd of March, 1932, the Dominion Company was ordered to be wound up and under the provisions of the (Dominion) Winding up Act, and the plaintiff did not obtain any order in the winding up proceedings to permit him to proceed with this action against the Dominion Company and the action against that company was abandoned.

*In the
Supreme
Court of
Ontario.*

No. 38.
Reasons for
Judgment of
the Court of
Appeal,
(Davis, J.A.),
5th June,
1934.

continued

*In the
Supreme
Court of
Ontario.*

No. 38.
Reasons for
Judgment of
the Court of
Appeal,
(Davis, J. A.),
5th June,
1934.

—continued

Judgment was given in the above mentioned sum of \$55,922.98, being the amount of the profit made on the unlawful sales and repurchases of the shares in question, against not only the Ontario Company but against Solloway and Mills individually. Neither the Company nor Mills appealed so the result is that the plaintiff holds the judgment he sought and obtained against the Ontario Company.

The defendant Solloway contends that on the pleadings and the evidence there is no case made against him personally for payment of the amount of the judgment against the Ontario Company. It was shown in evidence that the defendant Solloway received very large sums of money from the operations of the Ontario Company, but he could only receive these indirectly as the holder of the shares of the Dominion Company, because all the shares of the Ontario Company were owned by the Dominion Company and the earnings or profits of the Ontario Company belonged to the Dominion Company and only through the latter company could the earnings or profits of the Ontario Company be properly paid over to Solloway as the holder of the shares of that company. It is significant that the plaintiff abandoned his action as against the Dominion Company, and the question might well be raised as to the right, in any event, of the plaintiff to obtain a personal judgment against Solloway in the absence of the Dominion Company. However the appeal turns to be disposed of, it seems to me, upon a broader ground. 10

The plaintiff in applying for and obtaining judgment against the Ontario Company for the money made by it in the unlawful sale and repurchase of the original shares and most of the pledged shares, affirmed the transactions of the company treating it as his agent and demanding the fruits of the company's dealings with the shares. The plaintiff on that footing was entitled no doubt to an account and to judgment against the company for the profit which the company made. The claim and recovery of the profits of the sales and repurchases was substantially equivalent to recovering the same by an action for money had and received, but even if the judgment against the company cannot be correctly regarded as equivalent to an action for money had and received it was as a matter of fact a clear affirmance of the wrongful dealing by the company with the shares. 30

The appellant Solloway contends that the plaintiff having treated the company as his agent and taken judgment against it on the basis of an adoption of the wrongful acts of the company, has waived his right, if any, to sue Solloway individually for damages arising out of the tortious acts of the company. It is contended that the taking of the judgment for money had and received is a conclusive election to affirm the same inasmuch as it necessarily involves a recognition of the defendant company as the plaintiff's agent in committing the tortious acts. 40

It was said by Stephen, J., in *ex parte Vaughan*, 14 Q.B.D. 25 at pages 29 and 30:

“You may treat him as your agent and then, no doubt, you would have a remedy against him for any misconduct in that character, or you can treat him as a trespasser and recover damages from him. But you cannot have it both ways. . . The principle on which the account is to be taken must de-

pend on the way in which you elect to treat the appellant. If you choose to accept him as your agent, you will be entitled to an account of the carrying on of the business, and the profit which he has made, or ought to have made. If, on the other hand, you treat him as a trespasser and claim reparation for the wrong which he has done you, I think you can only have compensation for that of which he took wrongful possession”.

In *Smith v. Baker*, L.R. 8 C.P. 350, it is said at page 355:

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“The law is clear that a person who is entitled to complain of a conversion of his property, but who prefers to waive the tort, may do so and bring his action for money had and received for the proceeds of goods wrongfully sold. The law implies, under such circumstances, a promise on the part of the tortfeasor that he will pay over the proceeds of the sale to the rightful owner. But if an action for money had and received is so brought, that is in point of law a conclusive election to waive the tort; and so the commencement of an action of trespass or trover is a conclusive election the other way.”

And at page 357:

20

“As to the general rule of law there is no dispute. A man cannot at the same time blow hot and cold. He cannot say at one time that the transaction is valid, and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and at another time say it is void for the purpose of securing some further advantage”.

This principle of law was recently considered in *re Simms* (1934) 1 Ch. 1.

Counsel for the plaintiff sought to support the judgment against *Solloway* individually on the basis of proof of an alleged antecedent scheme of *Solloway* and *Mills* to defraud the public and he put the plaintiff's cause of action as against the individuals in conspiracy.

30

Mr. Justice Kerwin in affirming the judgment of the Assistant Master as against the individual defendants put it upon the ground of conspiracy for he said:—

“A claim for damages for conspiracy is made in his pleadings against all the defendants and is justified by the evidence”.

40

The Assistant Master having found the company liable dealt with the claim against the individual defendants on the basis that the short position of the company was the result of a concerted plan on the part of the individual defendants: “*Solloway* at least knew of the short position. The evidence shows that he was from time to time supplied with this definite information. Two of the witnesses who were actively engaged in the routine creating this condition gave evidence that they had on occasions received instructions from *Solloway*, *Johnson vs. Solloway Mills*, 13 C.B.R. 360, lately affirmed by the British Columbia Court of Appeal implies, making the individual defendants liable”.

The British Columbia case relied upon, *Johnson vs. Solloway Mills*, 13 C.B.R. 360, went to the Privy Council and we enlarged the hearing of the appeal to await the judgment of the Board, and argument of the appeal was continued after the delivery of the judgment, January 15th, 1934 (1934 A.C. 193) which reversed the British Columbia judgments and dismissed the action against *Solloway* individually.

*In the
Supreme
Court of
Ontario.*

No. 38.
Reasons for
Judgment of
the Court of
Appeal,
(Davis J. A.),
5th June,
1934.

*In the
Supreme
Court of
Ontario.*

No. 38.
Reasons for
Judgment of
the Court of
Appeal,
(Davis, J.A.),
5th June,
1934.

-continued

It is difficult for me to understand how the case against the defendant Solloway can be put as a cause of action in conspiracy. But it is in any event an action in tort and the gist of such action is the damages sustained. There were in fact no damages suffered by the plaintiff. He got the shares that he purchased at the price at which he agreed to purchase them and while it is plain that the company was liable to account to him for the benefit it made and received by its improper use of the shares while in its possession, it is a different matter to show any damages sustained by the plaintiff as a result of the tortious acts of the company or on any fraudulent scheme of the individual defendants. By those acts the plaintiff lost nothing. He was not even deprived of an opportunity to sell and repurchase the shares on the falling market. Had he thought immediately after purchasing the shares that the market was about to fall and continue to fall he had a right himself to sell and repurchase. It is not the case of a person converting goods to his own use which otherwise might have been used by the lawful owner himself to make a profit in their use. Apart from the question whether the recovery of judgment against the company constituted a waiver of the tort it seems plain to me there was not any loss as such to the plaintiff in the transaction complained of. I cannot see any foundation in law for supporting the judgment against the appellant and would allow his appeal and dismiss the action against him with costs throughout. 10

In this view of the matter it becomes unnecessary to discuss and consider the objections raised by the appellant to the jurisdiction of the Assistant Master to try the action pursuant to the consent judgment of the Court. 20

Mulock, C.J.O., and Middleton, J.A., agreed with Davis, J.A.

Riddell, J.A., agreed in the result reached by Davis, J.A.

No. 38.
Reasons for
Judgment of
the Court of
Appeal,
(Macdonnell
J.A.)

MACDONNELL, J.A.: This is an appeal by two of the defendants herein, namely Solloway and Mills, from the judgment of the Honourable Mr. Justice Kerwin, delivered June 13th, 1933, dismissing the appeal of the said defendants from the report of O. E. Lennox, Esquire, Assistant Master, dated January 30th, 1933. 30

The action was brought by the plaintiff against all the defendants, who carried on a brokerage business, for the return of certain moneys paid by him to them, and for the payment by them of profits made by them through the use of the said moneys and through the sale of shares of stock deposited by him with them. Coming on for trial before Mr. Justice Kelly on February 24th and 25th, 1932, and involving an inquiry into complicated accounts covering a multitude of transactions, it was by consent of all parties through their counsel, under Section 67 of The Judicature Act, R.S.O. 1927, ch. 88, referred for trial to the Master. The latter following the practice in his office, directed one of the Assistant Masters, O. E. Lennox, Esquire, to take charge of the matter. To this last procedure, objection was made on behalf of the defendants; it was claimed that only the Master in person was qualified to try the action; but the learned Assistant Master refused the objection and proceeded with the trial; and counsel for the defendants attended and took part, subject to their objection. 40
After evidence had been taken for many days, the learned Assistant Master made his report and gave judgment for the plaintiff against Solloway and Mills personally and Solloway, Mills & Company for \$65,129.92. This figure

was subsequently found to be incorrect and judgment was ultimately taken for \$55,922.98.

Upon the hearing of the appeal the constitutional validity of Section 67 of The Ontario Judicature Act was brought in question and it was contended on behalf of the defendants that that section, in so far as it empowers a Judge to refer a whole action to an Official Referee or to a Special Referee agreed upon by the parties, is ultra vires of the Ontario Legislature.

*In the
Supreme
Court of
Ontario.*

No. 38.
Reasons for
Judgment of
the Court of
Appeal.
(Macdonnell,
J.A.)

The majority of the Court has concluded, for reasons which I have had the privilege of reading, that the appeal should be allowed. With great respect,
10 however, I am unable to agree.

Prior to 1928 the defendant Solloway was engaged with the defendant Mills in partnership carrying on a brokerage business under the name of Solloway, Mills & Company. At the end of May, 1928, they had incorporated under the laws of the Dominion of Canada a company known as Solloway, Mills & Company, Limited, another of the defendants herein, which took over the business of the partnership. Solloway and Mills personally owned practically all the shares in this Company, became its directors, and had complete management and control of it. Again in December, 1928, they had incorporated under the laws of the Province of Ontario another company with the same name, Solloway, Mills &
20 Company, Limited, the remaining defendant herein, which took over the Ontario business of the Dominion Company. Practically all the shares in this second company were owned by the Dominion Company, while Solloway and Mills became its directors and had complete management and control of it.

The exact relations of these two companies to each other, and the parts they respectively played, are difficult to determine. Much argument has been had as to whether or not the one acted as broker for the other, whether or not loans were made by one to the other, whether or not the Ontario Company ever in fact acquired the right to act as a broker in Ontario. The situation was so complicated and obscure that probably even Solloway and Mills themselves could not
30 have told exactly what it was. In my view, however, the determination of all this is unnecessary. It is important only to note that both companies have gone into insolvency after the payment of large sums of money by way of dividends which reached Solloway and Mills.

On October 16th, 1929, the plaintiff engaged the defendant Solloway, Mills & Company Limited (the Ontario company) to purchase on margin for him 7,000 shares of Sudbury Basin Mines Limited as the market price. This the defendant agreed to do. And as collateral security for the unpaid balance of the purchase price, supposed to be provided by the defendant, upon which the plaintiff should pay interest, the plaintiff deposited with the defendant 3,500
40 other shares of Sudbury Basin. The defendant did in fact purchase the 7,000 shares but, instead of holding them for the plaintiff as it should have done, almost immediately sold them. Also it sold the other 3,500 shares and converted the proceeds therefrom to its own use. Then treating the plaintiff as if his account were a reality, it rendered him statements of account, charged him interest on the balance supposed to have been provided, and from time to time demanded and received from him moneys and further shares of stock to be held by it as collateral. In all the defendant obtained from the plaintiff \$8,000 in

*In the
Supreme
Court of
Ontario.*

No. 38.

Reasons for
Judgment of
the Court of
Appeal,
(Macdonnell
J.A.)

—continued

cash and 14,000 shares of Sudbury Basin, to be held as collateral. It did not hold these shares however, but sold all but 2,200 almost immediately after receiving them, without notice to the plaintiff, and converted the proceeds to its own use.

On January 13th, 1930, the plaintiff decided to close his account. The amount then shown as owing by him was \$42,143. Accordingly he paid the defendant that amount and in return received 21,000 shares of Sudbury Basin. These shares were not, however, the 7,000 shares originally bought for him and the 14,000 deposited by him from time to time, but were shares that the defendant went on the market and purchased at the time of the closing of the account. In the result, by reason of a continually falling market, the defendants had made a large secret profit. 10

Subsequently the plaintiff discovered what had happened and so instituted this action for the return of the moneys paid by him and the profits secretly made by the defendants. The amount finally found to be due him on this account is \$55,922.98; and the accuracy of this figure is not in dispute. So far as the Dominion Company is concerned, some arrangement appears to have been arrived at; the action against it was not continued. So far as the Ontario Company is concerned, it has not appealed. It is Solloway and Mills as individuals that are appealing. 20

The plaintiff in his claim alleged, inter alia, a conspiracy among the defendants, and asked for damages against Solloway and Mills; and the learned Assistant Master, following the judgment of the Supreme Court of British Columbia, in *Johnson v. Solloway*, 13 C.B.R. 359, (later reversed in the Privy Council though for reasons that may not be applicable to the present case (1934) A.C. 193, 15 C.B.R. 319) found him entitled to a judgment for damages against them. For the reasons given by my brother Davis, I think the learned Assistant Master erred in the way he arrived at his conclusion. But that is not to say that the plaintiff is not entitled to any judgment against Solloway and Mills, even for damages. 30

Although the plaintiff in one sense dealt with only one of the defendants, the Ontario Company, yet in reality he dealt with all the defendants and particularly with Solloway and Mills. The system of transacting business employed by the Ontario Company was instituted by Solloway and Mills and, having been perfected by them, was under their direction and control continued by the companies. The companies were in fact mere agents or tools of Solloway and Mills, created and governed by them for the purpose of continuing the system developed by the partnership. Had the companies never been formed and had all the dealings with the plaintiff's moneys and shares been carried out by Solloway and Mills as individuals or partners, the plaintiff undoubtedly would be entitled to recover from them personally: *Sutherland v. Cox*, (1884), 6 O.R. 505. 40
And I am unable to understand why they should be allowed to avoid responsibility by reason of having used the machinery of the Companies Acts. It is true that, legally, the companies must be regarded as persons distinct from Solloway and Mills and from each other; but even so, each of them was a mere agent of Solloway and Mills, an agent having less ability to act apart from Solloway and Mills than any straw man. The transactions throughout were in reality those of

Solloway and Mills; it was they that instigated every movement; when all operations were completed, it was they that had made the profits.

When several persons have joined together to convert moneys to their own use and make secret profits, transferring the moneys and profits backwards and forwards among each other, none of them, surely, can be heard to disclaim liability on the ground that he did not immediately transact business with the person wronged. In particular those that originated and directed the operations cannot be heard to say that they are liable only for what they took directly, not for what they reaped through the agency of their tools or companions, now dere-

*In the
Supreme
Court of
Ontario.*

No. 38.
Reasons for
Judgment of
the Court of
Appeal,
(Macdonnell
J.A.)

—continued

10 licit or defunct.

Apart from this, in my opinion the plaintiff would be entitled to damages against Solloway and Mills, not, as the learned Assistant Master seems to have found, for instituting and directing the transactions had (any claim for damages on this footing has already been dealt with) but for instigating their company in January, 1930, not to pay what was then properly owing by way of moneys received and profits made. If A. owes B. money, and if C. instigates A. to avoid payment, B. has a good cause of action against C. for damages, the damages being the amount of the debt unpaid. In January, 1930, the Ontario Company, at least, owed the plaintiff \$55,922.98; and both Solloway and Mills

20 instigated it to avoid payment. I see no reason, therefore, why judgment should not be given against Solloway and Mills by way of damages for that wrongful act. This does not at all involve first affirmation and then repudiation of the transactions had; it means affirmation of the transactions down to January, 1930, demand then for payment of the amount due, and damages against Solloway and Mills for then instigating the avoidance of payment, the damages being the amount of the debt unpaid.

In my opinion the plaintiff is entitled on the pleadings and evidence to judgment against Solloway and Mills, as against the Ontario Company, for moneys paid and profits secretly made, or in the alternative for damages, the

30 amount of the judgment amount found by the learned Assistant Master, namely, \$55,922.98.

If the majority of the Court shared this view, it would be necessary to consider the question raised as to the constitutional validity of Section 67 of The Judicature Act (*supra*) and as the jurisdiction of the Assistant Master to try the action. This is not the case, however, so that it seems idle to enter upon a consideration of those questions.

JUDGMENT OF THE COURT OF APPEAL
IN THE SUPREME COURT OF ONTARIO

*In the
Supreme
Court of
Ontario.*

No. 39.
Judgment
of the Court
of Appeal,
5th June,
1934.

THE RIGHT HONOURABLE THE CHIEF JUSTICE
OF ONTARIO
THE HONOURABLE MR. JUSTICE RIDDELL
THE HONOURABLE MR. JUSTICE MIDDLETON
THE HONOURABLE MR. JUSTICE DAVIS
THE HONOURABLE MR. JUSTICE MACDONNELL

TUESDAY, THE
5TH DAY OF
JUNE, 1934.

10

Between:

J. P. McLAUGHLIN,

Plaintiff,

—and—

SOLLOWAY MILLS & CO. LIMITED, AND ISAAC W. C.
SOLLOWAY AND HARVEY MILLS, SOLLOWAY MILLS
& CO. LIMITED (a Company incorporated under the laws of
the Dominion of Canada),

20

Defendants.

UPON MOTION made unto this Court on the 14th and 15th days of November, 1933, and the 1st, 2nd and 19th days of March, 1934, by counsel for the Defendants Isaac W. C. Solloway and Harvey Mills, by way of Appeal from the Judgment herein of the Honourable Mr. Justice Kerwin dated the 13th day of June, 1933, dismissing the Appeal of the said Defendants from the report of O. E. Lennox, Esquire, Assistant Master, dated the 30th day of January, 1933, in the presence of counsel for the Plaintiff, no one appearing for the Defendant companies, upon hearing read the pleadings, the evidence adduced at the trial and the said Judgment, and upon hearing what was alleged by counsel aforesaid, and Judgment having been reserved until this day,

30

1. THIS COURT DOTH ORDER that the Appeal of the Defendants Isaac W. C. Solloway and Harvey Mills be and the same is hereby allowed, and that the said Judgment of the Honourable Mr. Justice Kerwin dated the 13th day of June, 1933, be varied and as varied be as follows:

(1) THIS COURT DOTH ORDER AND ADJUDGE that this Appeal be allowed and the Report herein of O. E. Lennox, Esquire, Assistant Master, dated the 30th day of January, 1933, be and the same is hereby vacated and set aside.

40

(2) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that this action be and the same is hereby dismissed as against the Defendants Isaac W. C. Solloway and Harvey Mills.

(3) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff do pay to the Defendants Isaac W. C. Solloway and Harvey Mills their costs of this action and the reference before the said O. E. Lennox, Assistant Master, forthwith after taxation thereof.

(4) AND THIS COURT DOTH FURTHER ORDER AND AD-
JUDGE that the Plaintiff do pay to the Defendants Isaac W. C. Solloway
and Harvey Mills their costs of this Appeal forthwith after taxation
thereof.

2. AND THIS COURT DOTH FURTHER ORDER that the Plaintiff do
pay the Defendants Isaac W. C. Solloway and Harvey Mills their costs of this
Appeal forthwith after taxation thereof.

*In the
Supreme
Court of
Ontario.*

No. 39.
Judgment
of the Court
of Appeal,
5th June,
1934.

- continued

No. 40

ORDER OF THE REGISTRAR OF THE SUPREME COURT OF CANADA
DISPENSING WITH PRINTING OF CERTAIN EXHIBITS

10

IN THE SUPREME COURT OF CANADA

Before the Registrar in Chambers

}

Friday, the 12th day of
October, A.D. 1934.

Between:

J. P. McLAUGHLIN,

(Plaintiff) Appellant

—and—

ISAAC W. C. SOLLOWAY AND HARVEY MILLS

(Defendants) Respondents

—and—

20

SOLLOWAY MILLS & CO. LIMITED, AND SOLLOWAY
MILLS & CO. LIMITED, (A Company incorporated under
the laws of the Dominion of Canada),

Defendants
(Not appearing)

UPON the application of the above named Appellant and upon hearing
read the Notice of Motion and the Affidavit of Francis Andrew Brewin filed,
and upon hearing counsel for both the Appellant and the Respondents.

No. 40.
Order of the
Registrar
dispensing
with
printing
certain
Exhibits,
12th
October,
1934.

1. IT IS ORDERED that the printing in the Appeal Case of Exhibits 26,
28, 28(a), 32, 34, 36, 37, 38, 39, 39(a), 39(b), 41 and 43 in this case be dis-
pensed with, but that the said Exhibits be produced in Court at the hearing of
this Appeal.

2. IT IS FURTHER ORDERED that the printing in the Appeal Case of
Exhibits 21, 22, 27, 29, 29(a), 30, 30(a), 30(b), 31, 33, 35 and 40 in this case be
dispensed with, but that the said Exhibits be produced in Court at the hearing of
this Appeal, and that at least eight (8) photographic copies of the said Exhibits
be furnished by the Appellant for the use of the Judges.

3. AND IT IS FURTHER ORDERED that the costs of and incidental to
this application fixed at the sum of \$25.00 and disbursements be costs in the ap-
peal.

40

“J. F. Smellie,”
Registrar.

JUDGMENT OF THE SUPREME COURT OF CANADA
IN THE SUPREME COURT OF CANADA

*In the
Supreme
Court of
Canada.*

No. 41.
Judgment of
the Supreme
Court of
Canada,
28th
February,
1936.

FRIDAY, the 28th day of February, A.D. 1936.

PRESENT:

THE RIGHT HONOURABLE SIR LYMAN P. DUFF, G.C.M.G., P.C.,
Chief Justice,
THE HONOURABLE MR. JUSTICE LAMONT,
THE HONOURABLE MR. JUSTICE CANNON,
THE HONOURABLE MR. JUSTICE CROCKET,
THE HONOURABLE MR. JUSTICE DYSART (ad hoc)

10

The Honourable Mr. Justice Lamont and the Honourable Mr. Justice Dysart (ad hoc) being absent, their judgments were announced by the Right Honourable the Chief Justice, pursuant to the Statute in that behalf.

BETWEEN:

J. P. McLAUGHLIN,
(Plaintiff) Appellant

—and—

ISAAC W. C. SOLLOWAY AND HARVEY MILLS
(Defendants) Respondents 20

—and—

SOLLOWAY MILLS & CO. LIMITED AND SOLLOWAY
MILLS & CO. LIMITED, (A Company incorporated under
the laws of the Dominion of Canada)
Defendants (Not appearing)

The appeal of the above named appellant from the judgment of the Court of Appeal for Ontario pronounced in the above cause on the 5th day of June in the year of our Lord 1934 reversing the judgment of The Honourable Mr. Justice Kerwin of the Supreme Court of Ontario rendered in the said cause on the 13th day of June in the year of our Lord 1933 having come on to be heard before this Court on the 14th and 17th days of June in the year of our Lord 1935 in the presence of Counsel as well for the appellant as for the respondents whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment. 30

THIS COURT DID ORDER AND ADJUDGE that the said appeal should be and the same was allowed, that the said judgment of the Court of Appeal for Ontario should be and the same was reversed and set aside, and that the said judgment of the Honourable Mr. Justice Kerwin should be and the same was

restored, save as to the question of costs, and varied so as to substitute for the figure "\$55,922.98" in paragraph 2 of the said judgment, the figure "\$28,281.40", and that in all other respects the said appeal should be and the same was dismissed.

*In the
Supreme
Court of
Canada.*

No. 41.
Judgment of
the Supreme
Court of
Canada,
28th
February,
1936.

—continued

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the said appellant should and do pay to the said respondents the costs of the appeal from the report of O. E. Lennox, Esq., Assistant Master, dated the 30th day of January, 1933, to The Honourable Mr. Justice Kerwin and the costs of the appeal from the judgment of The Honourable Mr. Justice Kerwin dated June 10 13th, 1933, to the Court of Appeal for Ontario.

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the said respondents should and do pay to the said appellant the said appellant's costs of the action, except the costs exclusively attributable to the issue in respect of the group of 14,000 shares of stock deposited with the defendant company by the appellant as collateral security for the appellant's account.

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the said respondents should and do pay to the said appellant the costs incurred by the said appellant in this Court.

(Sgd.) J. F. SMELLIE,
Registrar.

20

Minutes settled as above this
21st day of March, 1936.

(Sgd.) J. F. SMELLIE.

No. 42

REASONS FOR JUDGMENT OF THE SUPREME COURT OF CANADA

J. P. McLAUGHLIN

v

SOLLOWAY AND MILLS
AND SOLLOWAY, MILLS & CO. LTD.

30 B E F O R E : THE CHIEF JUSTICE AND LAMONT, CANNON, CROCKET AND DYSART (ad hoc) JJ.

Dysart, J. (ad hoc) :

(Concurred in by the Chief Justice and Lamont,
Cannon, Crocket, JJ.)

This appeal from the Court of Appeal of Ontario has to do with claims made by a customer against directors of a stock brokerage company, arising out of fraudulent dealings by the company, instigated by the directors, in connection with, (1) shares which the company bought, and delivered to the customer in professed execution of the customer's previous order to buy such shares for him

No. 42.
Reasons for
Judgment of
the Supreme
Court of
Canada,
(Dysart, J.
[ad hoc]),
28th
February,
1936.

*In the
Supreme
Court of
Canada.*

No. 42.
Reasons for
Judgment of
the Supreme
Court of
Canada,
(Dysart, J.
[ad hoc]),
28th
February,
1936.

continued

on margin; and (2) shares which the customer deposited with the company to secure that margin. For convenience, the two groups will be considered separately.

The action, as commenced by the customer, was against four defendants,—Solloway, Mills & Co. Ltd. (hereinafter referred to as the Dominion Company), Solloway, Mills & Co. Ltd. (to be called the Ontario Company), Isaac W. C. Solloway and Harvey Mills. Before trial, the Dominion Company, being then in bankruptcy, was eliminated as a defendant because leave to proceed against it had not been obtained as required by the Bankruptcy Act. The trial took place before the Assistant Master of the Court on a reference, and judgment was obtained for a large sum in favour of the plaintiff against the Ontario Company and the two individual defendants. On appeal, that judgment was affirmed by Kerwin J. for the sum of \$55,922.98, but was subsequently reversed as to the two individual defendants by the Court of Appeal, Macdonnell J.A. dissenting. From that reversal this appeal is taken by the customer. 10

Dealing with the first group of shares: On October 16th, 1929, the Ontario Company agreed to act as the agent and broker of the customer in purchasing for him 7,000 shares of the Sudbury Basin Mines Ltd. on the Toronto Stock Exchange at market prices on margin. In due course, the company, by a series of "bought notes", notified the customer that it had bought for his "account and risk" the ordered shares, and had charged his account with the price thereof, namely \$48,937.50 plus brokerage fees. The bought notes also stated that the purchases were: 20

"made subject in all respects to the Rules, by-laws and customs existing at the time at the Exchange. . . ." and with the distinct understanding that the actual delivery is contemplated", and that "all securities. . . may be loaned . . . or. . . pledged. . . for the sum due thereon or for a greater sum. . . without further notice to the customer".

The company thereafter rendered periodical accounts showing the customer's indebtedness for the above sums together with interest thereon, and showing nothing to suggest that the marginal securities were in any degree inadequate to satisfy the marginal requirements. This state of things continued until the transaction was closed in January, 1930. 30

Under the terms of the accepted order for purchase, and the representations regarding its execution, there was a legal duty upon the company to get delivery of the shares so bought for its customer, and to carry them ready for delivery to him whenever that delivery might be demanded (*Conmee v. Securities Holding Company* (1907) 38 S.C.R. 601); or, at least, bearing in mind that, in contemplation of law, one share of stock is as good as another share of the same denomination, and that physical certificates themselves are merely evidence of the shares, the company was bound to have and to keep on hand at all times a sufficient number of such shares available for that delivery (*Solloway v. Blumberger*, 1933 S.C.R. 163, at p. 167). 40

Contrary to its contractual duty and to its representations, the company did not fully execute the customer's order. True, it did go upon the Exchange and buy 7,000 shares of the ordered stock, but at the same time it virtually nullified that purchase by selling shares of the same denomination on its own account.

The consequence of this selling was that, in accordance with the Stock Exchange practice, the company's sales of each day were set off *pro tanto* against its purchases of the day, and only the excess, if any, of the purchased shares over the sold shares were at the close of the day's trading, delivered to the company. In the result, the company took delivery of few, if any, of the shares so bought for the customer. Nor did it have on hand or carry other such shares from which it could make delivery if and when required. Thus the company did not fully execute the customer's order in that, although it bought, it did not get or carry, the shares so ordered.

*In the
Supreme
Court of
Canada.*

No. 42.
Reasons for
Judgment of
the Supreme
Court of
Canada,
(Dysart, J.
[ad hoc]),
28th
February,
1936.

10 On January 13th, 1930, the customer called for delivery of the 7,000 shares. He was then told that the total amount owing for price, brokerage and interest, was \$50,334.92. The company at the same time went upon the market and bought 7,000 shares of the stock for approximately \$25,000. and delivered them to the customer as and for the shares which he had ordered on October 16th, 1929. The customer accepted the shares, and paid the amount demanded, believing that the shares were those which he had ordered on October 16th, 1929, and which he was contractually bound to accept and pay for.

20 All that the company did in connection with these shares in breach of its duty, was done in pursuance of a general scheme or system whereby the company sold shares when its customers bought, using the customer's shares to make delivery of its own sales. This system was so extensively practised that the company was at times "short" 100,000 shares of this particular stock. The system had been inaugurated by these two individual defendants some years before when as partners under the name of Solloway, Mills & Co. they conducted the brokerage business which in substance was continued through successive transfers down to the date of the transactions now under review. The first of these transfers took place on May 31st, 1928, when the partners turned their Dominion-wide business over to the Dominion Company, which they had organised to take over the business; and the second was on November 30th, 1928, when the 30 Dominion Company transferred the Ontario portion of the business to the Ontario Company which the original partners had likewise organised to accept this transfer. There is some question as to the completeness of these transfers, but there is no doubt that the "system" was carried on without change or interruption by the successive owners and operators of the business.

40 The active participation of the individual defendants in the fraudulent scheme or system as conducted by the Ontario Company was made possible and probable by the fact that as officers and almost the sole shareholders of the Dominion Company, which in turn owned practically all the shares of the Ontario Company, they stood to benefit substantially from all profits or gains made by the Ontario Company; and that, as high officials and directors of the Ontario Company, they controlled and directed all the business and practices of that company, including this system of making profit. Positive evidence was given at the trial that the directors did take an active part in directing the operations of the system, and, although available at the trial, they did not give testimony in denial—a reticence on their part from which strong inferences may properly be drawn. The Assistant Master has expressly found as a fact that the fraud was the concerted action of the Ontario Company and the two directors—a find-

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*In the
Supreme
Court of
Canada.*

No. 42.
Reasons for
Judgment of
the Supreme
Court of
Canada,
(Dysart, J.
[ad hoc]),
28th
February,
1936.

-continued

ing that is amply supported by the evidence, and has not been questioned in any of the appeal judgments.

Before examining the claims put forward in this action, it will be helpful to consider briefly what remedies were open to the customer, and how far they were affected or circumscribed by his own conduct. In the first place, it is clear that on discovering the fraud the customer had the choice either of retaining the shares or of rejecting them. If he retained them he would thereby ratify or adopt the action of the company; in other words, would acknowledge that in so buying the shares the company acted as agent for him under some authority which, if not previously given, would then be conferred so as to relate back to the time of the purchase; and the only remedy open to him would be to hold the company to a strict accounting as his agent. The customer here did elect to retain the shares—he had previously taken delivery of them, and he never afterwards returned them, nor offered to return them. A further consequence of his retention of the shares would be to deprive him of the right which he otherwise would have had to sue for the conversion of the shares, because conversion presupposes that title to the shares had passed from him to someone else, whereas his retention of them was a denial of that supposition. Further, retention after election amounts in law to a waiver of the conversion, not only against the converting company, but against all who participated in the conversion, including the two directors; because the waiver extends to the entire cause of action, absolving all the joint tort-feasors; *Buckland v. Johnson* (1854) 1 C.B. 145. 10 20

The purchase which was adopted must have been either that of October 16, 1929, or that of January 13, 1930. It could not possibly be both, because there could not in this transaction be more than one purchase of these shares by the company for the customer. The adoption of one purchase necessarily means that the other was not adopted, and so was left on the company's hands as its own, and disappears from the case. If the October purchase were adopted, it would have to be on the assumption that, contrary to the facts, but consistent with the company's representations, the company acquired the shares in October, and thereafter carried them until it delivered them on January 13th; if, on the other hand, the purchase of January were adopted, it would assume that the shares had not been purchased for the customer prior to January. In either case, the customer's remedy would be based not on conversion but on agency, and would seek to recover from the agent all secret profits made during the agency. 30

We shall now see how the customer framed his action. In his statement of claim he alleges *inter alia* that on October 16, 1929, he employed the company as his agent and broker to buy for him 7,000 shares; that the company repeatedly represented that it had executed the order; that in fact the company never fully executed the order; that on January 13, 1930, the company, without knowledge or acquiescence of customer, bought 7,000 shares and delivered them to him; that the company then by false representations induced him to pay for these shares a sum far greater than the actual price it had paid for them; and that the company so acted in pursuance of a system of fraud in which the directors actively participated. In his prayer for relief he asks for: 40

(b) The recovery of \$28,637.50 paid by the plaintiff to the defendant company upon the representation that the defendant company had paid for the

account of the plaintiff the sum of \$48,937.50 for 7,000 shares of Sudbury Basin Mines Limited purchased for the account of the plaintiff, when in fact it paid \$20,300.00.

This pleading also contains averments that the Company "converted and sold" the shares in October, and asks for general damages.

It is to be observed that the customer here, seeks to pursue two divergent courses, one based on agency, the other on tort. The conversion claimed is stated only in a secondary way, and at any rate is defeated by the retention of the shares; and if the agency claim, which is stated more explicitly, is to stand, the conversion claim must be rejected, because no one may on the same set of facts sue in tort and agency at the same time, such causes of action being so different, if not opposite in their natures, as to be incompatible with each other: *Smith v. Baker* (1873) L.R. 8 C.P. 350; *Rice v. Reed*, (1900) 1 Q.B.D. 54.

The action must therefore be considered as having been laid in agency. It is also clear that the purchase which has been adopted is that of January, and the claim is for the overcharge made on that day. As thus regarded, the claim is entirely consistent with the retention of the shares, as well as with the adoption of the agency, and entitles the customer on proof submitted in support thereof to recover from the company all moneys which on January 13th he paid in excess of the actual price, plus proper brokerage fees. That claim is now merged in the judgment which stands against the company, and which to that extent is hereby affirmed.

Although the judgment against the company stands unchallenged, it cannot be regarded as the measure of the directors' liability in respect of the frauds, because, as stated by Lord Blanesburg in delivering the judgment of the Judicial Committee in *Solloway v. Johnson* (1934 A.C. 192, at p. 206), a case in which similar questions were under consideration, and in which the appellant was a director:

So far their Lordships have been dealing with the case as it affects indifferently both the defendant company and the appellant. But the actual liability of the appellant is a thing distinct and apart from that of the company, and the judgment, even if well founded as against the company, may be incapable of support as against him.

Before a director can be held liable for the acts of his Company two facts must be established: (1) fraud of the Company, and (2) loss or damage to the customer attributable to that fraud, or benefit accruing to the director from the fraud (*Solloway v. Johnson*, supra, at pp. 207-8).

In the case under review the fraud of the company is clearly established. The loss would seem to be no less clear. The customer was induced by misrepresentations of its agent to part with a large sum of money (over and above the actual amount which he should have paid), and has not since been able to secure the return of that excess. Surely that sum represents loss or damage to him. In the Court of Appeal it was said that the customer suffered no damage because "he got the shares that he had purchased at the price at which he had agreed to purchase them". With this view I cannot agree. The shares which the customer got and retained had not been purchased by him, nor at any agreed price. The order of October to buy at October prices was never fully executed

*In the
Supreme
Court of
Canada.*

No. 42.
Reasons for
Judgment of
the Supreme
Court of
Canada,
(Dysart, J.
[ad hoc]),
23rd
February,
1936.

continued

*In the
Supreme
Court of
Canada.*

No. 42.

Reasons for
Judgment of
the Supreme
Court of
Canada,
(Dysart, J.
[ad hoc]),
28th
February,
1936.

and so came to naught, and relieved the customer of any contractual obligation to take any shares at any price; and no order for purchase was subsequently given by him. The January purchase by the company was at January prices; but here again there was no order, and so no obligation on the customer to take or retain the shares at even January prices—certainly not at October prices. By electing to retain these shares after discovering the facts, the customer bound himself to recoup his agent for the actual price it had paid for the shares, and to compensate it for its brokerage services. That is the position he now takes. The excess or overcharge, as collected by the agent, resulted in something to the customer that cannot be designated as anything less than direct loss or damage. 10

continued The customer is therefore entitled to succeed in respect of this first group of shares.

Turning now to the second group, namely, the 14,000 shares of Sudbury Basin Mines Limited deposited as security to maintain the margin,—the plaintiff deposited 3,500 of these shares with the company on October 16, 1929, when placing his order to buy, and thereafter, keeping pace with the company's calls for additional margin in a falling market, he deposited at varying intervals other shares of the same stock in smaller lots, until by December 16th he had put up a total of 14,000 shares. This collateral, in the language of the Assistant Master, "was disposed of, in most instances, immediately it was deposited". In 20 all 11,800 of the shares were so disposed of for sums approximating \$65,320. Then on January 13, 1930, in order to satisfy the customer's demand for the return of his securities when closing out his account, the company went upon the market and repurchased 11,800 of the shares for about \$32,000, and these, along with the 2,200 shares which it had not sold, it delivered to him as and for the shares which it had received from him on deposit. The company retained the secret illegal profit of about \$33,320 which it had made on the sale and repurchase of this collateral.

There never was at any time the slightest possible right in the company to sell the collateral shares, because (1) there was no margin to sustain where the 30 October order to buy had not been fully executed; and (2) even apart from that, the falsely asserted marginal requirement had always been met by the customer promptly and fully and to the satisfaction of the company.

The sale and repurchase of these shares had been carried out in pursuance of another branch of the same general scheme or system which has already been described, and were, in the finding of the Assistant Master, fraudulently perpetrated by the concerted action of the Company and the directors.

The discussion in regard to the first group of shares will serve to shorten the consideration of this group. On discovering the fraud the customer had the 40 right to (1) reject and return the 11,800 shares, and sue the company and its directors as tortfeasors for converting his shares, claiming the proceeds of the conversion sale or the value of the shares; or (2) to retain the shares and sue the company as his agent for the profit secretly made in the course of the agency and to include therein the directors benefiting from the fraud.

In his statement of claim on this branch of the case the customer alleges only that the company wrongfully converted and sold" the shares in pursuance of a conspiracy existing between itself and its directors and claims generally

for damages. The pleading also lays some indirect foundation for the specific prayer in which he asks for—

“28(a) The sum of \$33,320.00 being the profit made by the defendants on the sale of 11,800 shares of the Sudbury Basin Mines Limited stock delivered by the plaintiff to the defendant Company, and sold by it and repurchased for delivery to the plaintiff at a lesser price”.

The claim for damages for conversion is defeated by the retention of the shares, and must be rejected. The specific claim for “profit” remains alone for consideration; and although direct allegations in support of the claim are wanting in the pleading, there are, it would seem, sufficient indirect allegations which when coupled with the retention of the shares and the general evidence offered, may serve to form a basis for dealing with this group of shares upon an agency footing.

*In the
Supreme
Court of
Canada.*
...
No. 42.
Reasons for
Judgment of
the Supreme
Court of
Canada,
(Dysart, J.
[ad hoc]),
28th
February,
1936.

continued

The judgment obtained against the company for the profits, although not challenged by the bankrupt company, can be upheld as against the directors only upon proof of the two elements already discussed, namely, fraud and loss. Loss, as we have seen, includes benefit accruing to the directors attributable to the fraud. By retaining the shares the customer has elected to treat them as being the very shares that he deposited as collateral. In order to secure their return he did not, as he did in the case of the 7,000 shares, pay any money for their return, nor did he part with anything, nor enter into any obligation in order to secure their return. Assuming that he is entitled to the profits, the withholding of the profits from him is not in itself a loss to him, because any right that he may have to recover those profits is based upon the theory, not that they belong to him, nor that he has lost what the agent has gained, but rather is based upon the broader doctrine of morality, that good faith and honest dealing forbid an agent to make secret profits out of the agency; or, if he has made profits, demand that he account for them to his principal; *Parker v. McKenna* (1874) L.R. 10 Ch. App. 96, at 118; *Hutchinson v. Fleming*, 40 S.C.R. 134. On no ground, therefore, is it conceivable that the customer can be said to have suffered “loss and damage” in respect of these shares.

He is, however, entitled to the secret profits but only by proving that the directors have either received the profits, or have derived some benefit attributable to the fraud. This claim for profit, it may be repeated, is based on assumption of agency, and precludes all ground partaking of the nature of tort. In his prayer, the customer asks for “the profit made by the Defendants”; and this may be taken as an implied allegation that the directors derived benefit through the company, and not that they made profit directly. They could not have made profit directly because they were not the agent of the customer—their company alone was the agent, as the customer alleges. If they directly participated in making the illegal profit, they might have been guilty of tort but that has been waived. The right to sue them for profit is very well established. In *Solloway v. Johnson*, *supra*, a case in which the customer claimed profit against a director, the claim was refused, because, in the language of Lord Blanesburg, at p. 207,

“as has already been pointed out, no loss or damage attributable to the fraud is here proved; no benefit from any proved fraud is shown to have accrued to the appellant”.

*In the
Supreme
Court of
Canada.*

No. 42.

Reasons for
Judgment of
the Supreme
Court of
Canada,
(Dysart, J.
[ad hoc]),
28th
February,
1936.

—continued

Inferentially, if proof had been furnished, the claim would have been allowed. In the case before us no foundation is laid, either in the pleadings or in the evidence, upon which a conclusion could be based that the directors secured any benefit to themselves attributable to fraud; least of all that they have secured profits. If a contrary conclusion were drawn, it would be solely upon the assumption that the profits made by the Ontario Company found their way through the Dominion Company to the directors, but that is not shown; in the absence of the Dominion Company, it would not be feasible or possible to establish that as a fact.

On this branch of the case, therefore, the appeal must fail.

The general result, therefore, is:—

The appeal should be allowed and the judgment of Mr. Justice Kerwin restored with respect to the group of 7,000 shares, but only to the extent of the monies paid by the customer to the Ontario Company in excess of the actual market price as paid by that Company for the shares on January 13th, 1930, and the proper brokerage charges based on that price. Interest on this excess is allowed from January 13th, 1930.

In respect of the group of 14,000 shares, the appeal should be dismissed.

As to the costs, the appellant should have the costs of the action against the respondents Isaac W. C. Solloway and Harvey Mills, except the costs exclusively attributable to the issue on which the appellant fails. The appellant should pay to the respondents the costs of the appeal to Mr. Justice Kerwin and of the appeal to the Court of Appeal. The appellant should have his costs of the appeal to this Court.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF CANADA

Between:

ISAAC W. C. SOLLOWAY and HARVEY MILLS
 (Defendants) Petitioners

—and—

J. P. McLAUGHLIN,
 (Plaintiff) Respondent

—and—

SOLLOWAY MILLS AND CO., LIMITED (a Company incorporated under the laws of Ontario) and SOLLOWAY MILLS AND CO., LIMITED (a Company incorporated under the laws of the Dominion of Canada),
 (Defendants) (Not appearing)

TO THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

THE HUMBLE PETITION of the above named Petitions, ISAAC W. C. SOLLOWAY and HARVEY MILLS SHEWETH as follows:

In the Privy Council.

No. 43.
 Petition by the Appellants, Isaac W. C. Solloway and Harvey Mills for special leave to appeal from the Judgment of the Supreme Court of Canada.

1. YOUR PETITIONERS desire to obtain leave to appeal from a Judgment of the Supreme Court of Canada dated the 28th day of February, 1936,
 20 insofar as it allows the Respondent McLaughlin's appeal from a Judgment of the Court of Appeal for Ontario dated the 5th day of June, 1934, whereby the Respondent's claim against the Defendant Solloway Mills & Co., Limited and the Petitioners, Directors of that Company, arising out of the purchase of mining stock by that Company on the Exchange as the Respondent's broker, was dismissed as against the Petitioners. Under the Judgment of the Supreme Court the damages payable by the Petitioners to the Respondent with interest amount to \$32,569.44.

1a. THAT questions of law of wide general importance are involved, including the questions:—
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(a) Whether when parties have consented to an Order of Court that the matters between them be referred to a particular individual viz:—the Master of the Supreme Court—that individual may order those matters to be decided by his subordinate official—the Assistant Master—without the consent of one party and despite their objections to that person and their protest and despite the fact that the existing law gave no power to refer to him and whether a subsequent Statute enacting

“The Master of the Supreme Court shall include the Assistant Master

40 “This Amendment shall come into force and take effect as from the 1st day of January, 1932” can validate the substitution of an arbitrator ap-

In the Privy Council.

No. 43.
Petition
by the
Appellants,
Isaac W. C.
Solloway and
Harvey Mills
for special
leave to
appeal from
the
Judgment of
the
Supreme
Court of
Canada.

- continued

pointed without the consent of the parties for one appointed with and solely because of such consent.

(b) Whether a principal whose Orders to buy shares on a certain date have not been properly carried out can

(1) adopt as his own a purchase by the agent Company of similar shares at a later date not made on his account wholly repudiate the earlier purchase, and

(2) having adopted the later purchase, sue the agent Company for an account for secret profits based on the supposition that the earlier purchase was made on his behalf and

(3) sue the Directors of the agent Company for fraud in respect of the earlier and repudiated contract

(c) Whether when a principal dealing with a Company as his brokers, has waived his claim in tort for commission or wrongful dealing with his property and proceeded against and recovered judgment against the Company on the footing of account for profits alleged to have been made by them, as agents in dealing with his property, viz., shares purchased by him, he can at the same time in the same action and upon the same evidence recover against the Directors of the Company for the tort.

(d) Whether when such principal has received and retained that which he originally contracted to buy from the agent Company, namely, mining shares at the price originally agreed to be paid, he has a right of action either against the Company or its Directors for damages other than purely nominal damages without returning the property.

(e) Whether "while as against the Company a Brookman and Rothschild decree 'may be made without proof of loss of fraud' there is no liability for damages" upon directors of the Company "unless both are proved"—(see Judgment of Privy Council in Solloway vs. Johnston P.C. Appeal No. 25 of 1933 reported Western Weekly Reporter 1934).

(f) Whether even if an Order based upon account can be made against the agent Company upon the ground of fraud, any such order can be made upon the directors separately or jointly.

(g) Whether a tort can be waived against one of several Joint tort-feasors without waiving it against all.

(h) Whether a purchaser who has disavowed a transaction completely, can recover damages for alleged fraud in connection with that transaction, although, had it been carried out exactly in accordance with his instructions, he would have suffered loss equivalent to the damages claimed and could in no event have made a profit.

2. IN this action the Defendants were Solloway Mills & Co. Limited, an Ontario company carrying on business of stock brokers in the Province of Ontario, Solloway Mills & Co. Limited, a Dominion brokerage company having its head office at the City of Toronto, carrying on business as stock brokers, with many branches in the United States and in Canada except the Province of Ontario (these Defendants will be hereafter referred to as the Ontario and Dominion Companies) and Isaac W. C. Solloway and Harvey Mills, the first the President and the second a Director of both companies. I. W. C. Solloway was the owner

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of all but five shares of the Dominion Company, which in turn owned all shares except five of the Ontario company.

3. THE action arises out the purchase by the Respondent of 7,000 shares of Sudbury Basin Mines Limited on margin through the Ontario Company, which acted as his broker, and the deposit by the Respondent of 14,000 shares of the same stock with that Company to finance the transaction.

In the Privy Council.

No. 43.
Petition
by the
Appellants,
Isaac W. C.
Solloway and
Harvey Mills
for special
leave to
appeal from
the
Judgment of
the
Supreme
Court of
Canada.

—continued

4. THE Respondent in his Statement of Claim, as originally filed, based his claim against the Ontario Company on the allegation that the Company had made secret profits by the sale repurchase of 11,500 of the 14,000 shares deposited as margin or cover to finance the purchase of the 7,000 shares, and on the allegation that the Company had in fact purchased the 7,000 shares at a lower figure than represented. Before trial, by an amendment to the Statement of Claim, the Respondent defined his damages as "loss on the money invested through the Defendants as indicated in the Defendants' books of account, the loss of interest on the same, the loss of the money owing by the Defendants to the Plaintiff, as may be found on an accounting herein, and the loss of the use of the same". At the trial the Respondent abandoned his contention that the 7,000 shares had not been purchased as represented and demonstrated that the 7,000 shares had been properly and regularly purchased, but claimed that the Company did not hold the shares and had made secret profits on the subsequent sale and re-purchase of these shares, as well as on the shares deposited as collateral and claimed such profits. The claim against the Petitioners was based on the allegation that they as Directors had conspired with the Company to make secret profits by the sale and re-purchase of customers' shares and to pay the profits to themselves in dividends.

5. BEFORE the trial of the action the Ontario Company made an assignment in bankruptcy and the Dominion Company was voluntarily wound up under the Dominion Winding Up Act. Leave of the Bankruptcy Court was obtained to continue the action against the Ontario Company. No leave was obtained from the Court to continue the action against the Dominion Company and, at the opening of the trial before the Assistant Master who tried the case, the action was abandoned as against the Dominion Company. The trial then proceeded as against the Ontario Company and the Petitioners.

6. THE substantial questions in dispute in this Appeal are, *Firstly*, whether the Assistant Master who tried the case had any jurisdiction to do so, *Secondly*, whether the Judgment against the Ontario Company was justified, and if so, *Thirdly*, whether the Petitioners, as Directors of the Ontario Company, are liable to the Respondent for damages or profits arising out of wrongful dealing by that Company with the 7,000 shares purchased on margin for the Respondent.

7. THE Respondent's claim was allowed against the Ontario Company and the Petitioners by the Assistant Master, who tried the case, at \$48,529.92, with interest at 5% from the date the Respondent took delivery of the shares, making a total, as set out by the Master's Report, of \$65,129.92 upon the basis that the Shares had been bought for the Respondent but improperly dealt with.

8. THE Petitioners appealed to the Honourable Mr. Justice Kerwin and, by a Judgment dated the 13th day of June, 1933, he varied the amount found due by substituting the figure \$55,922.98 for \$65,129.92 but otherwise confirmed the

In the Privy Council.

No. 43.
Petition
by the
Appellants,
Isaac W. C.
Solloway and
Harvey Mills
for special
leave to
appeal from
the
Judgment of
the
Supreme
Court of
Canada.

—continued

Assistant Master's findings and dismissed the appeal. The Ontario Company did not appeal.

9. THE Petitioners appealed to the Court of Appeal for Ontario from the Judgment of Kerwin, J., and that Court set aside the Judgment against the Petitioners and dismissed the action as against them with costs.

10. FROM the Judgment of the Court of Appeal for Ontario the Respondent appealed to the Supreme Court of Canada and the latter Court restored the Judgment of Kerwin, J., with respect to the claim made on the 7,000 shares purchased on margin, but dismissed the Respondent's appeal in respect to the claim against the Petitioners for profits made out of the 14,000 shares deposited with the Company to finance the purchase of the 7,000 shares. 10

11. BETWEEN the years 1926 and the 31st day of May, 1928, the Petitioners as a partnership had carried on a brokerage business with many offices throughout the Dominion of Canada and the United States. On the 31st day of May, 1928, they sold their business to the Dominion Company, which they had caused to be incorporated some time prior to that date. The Dominion Company carried on the business without change until the 20th of December, 1928, when it sold out its business in the Province of Ontario, including its seats on the Exchange, to the Ontario Company. Thereafter, the Dominion Company, which had its head office at the City of Toronto, continued to carry on a general brokerage business throughout Canada, except in Ontario, and the Ontario Company carried on the brokerage business in Ontario. 20

12. BEFORE the Dominion Company sold its business in Ontario it had traded heavily in the market on its own account and had from time to time used shares which it was holding for customers, either as having been purchased on margin or as collateral security, for the purpose of making deliveries of shares sold on its own account. This practice was called "short trading". At the date of the transfer of the Ontario business to the Ontario Company, the Dominion Company did not have sufficient shares on hand in the aggregate to satisfy in full its obligations to all its customers. The aggregate number of shares short to customers was called the "short position". 30

13. THE short position was dealt with in the agreement of purchase and sale between the two companies as follows:—(a) the Ontario Company took on the cash on hand and in the bank and assumed the liabilities of the Dominion Company to its customers in Ontario (b) The stock position of the Dominion Company was entered in a separate account in the books of both the Dominion and Ontario companies. The Dominion Company credited the Ontario Company on its books with the stocks short, and the Ontario Company credited the Dominion Company with the cash proceeds. The result of this arrangement was that all profits arising out of sale and purchase of shares for the Dominion Company (i.e. out of the short account) belonged to that company, and conversely the Dominion Company was under obligation to make good any losses and to replace in the hands of the Ontario Company, the stock borrowed from customers. From the inception of the Ontario Company, the Dominion Company continued to make purchases and sales on its own account through the Ontario Company and other brokers. The Ontario Company acted as the Dominion Com- 40

pany's agents in taking delivery of shares purchased by the Dominion Company through brokers and on the Exchange, and placed these shares in its own box with like shares and likewise made deliveries of shares sold for the Dominion Company out of like shares in its general box. The resulting net balance in shares in all cases where the Dominion Company had sold more shares than it owned was shown on both companies' books as shares owing by the Dominion Company to the Ontario Company, in other words, as shares loaned by the Ontario Company to the Dominion Company, and conversely when the Dominion Company had purchased more shares than it had sold, the books of both companies showed
 10 shares owing by the Ontario Company to the Dominion Company.

14. AT no time were shares ear-marked for any customer, like shares being all placed together in one box and one share being treated as good as another. This was the practice among brokers on the Exchange and has been recognised in the Courts of Canada as proper practice.

15. As a result of the agreement between the two companies and the subsequent dealings between them the Dominion Company was, on the date the Respondent had his first transaction with the Ontario Company, short to the Ontario Company a considerable amount of shares of Sudbury Basin Mines Limited: this may be best expressed by the Statement that the Dominion Company
 20 owed the Ontario Company those shares on call.

16. THE Ontario Company never made sales or purchases of stock on its own account and never used any stock purchased for customers for its own purposes and, if the stock loaned to the Dominion Company by the Ontario Company be calculated as available for delivery by the Ontario Company to its customers, the Ontario Company always had on hand sufficient shares of all stocks to satisfy its liabilities to all its customers.

17. THE transaction out of which this litigation arises took place on the 16th day of October, 1929, the Ontario Company having been in business by that date for a period of approximately eleven months. On that date the Respondent engaged the Ontario Company as his broker to purchase for him on the Exchange
 30 7,000 shares of Sudbury Basin Mines Limited and deposited with his broker 3,500 shares of the same stock as margin or cover to finance the transaction. (The Respondent never met or transacted any business directly or indirectly with the Petitioners).

18. THE Ontario Company regularly and properly purchased all of the 7,000 shares in the ordinary course of business on the Exchange on the day the Respondent gave his order at \$7.00 and \$6.95 per share for a total purchase price of \$48,937.50 plus brokerage fees. The following day the Respondent received
 40 from the Ontario Company a confirmation of the purchase, on which was printed the following:—

“Purchases or sales are made subject in all respect to the rules, by-laws and customs existing at the time at the Exchange where executed: and also with the distinct understanding that the actual delivery is contemplated, and that the parties giving the orders agree to its terms. It is agreed between broker and customer that all securities from time to time carried in the customer's marginal account or deposited to protect the same may be

In the Privy Council.

—
 No. 43.
 Petition
 by the
 Appellants,
 Isaac W. C.
 Solloway and
 Harvey Mills
 for special
 leave to
 appeal from
 the
 Judgment of
 the
 Supreme
 Court of
 Canada.

—continued

*In the Privy
Council.*

No. 43.
Petition
by the
Appellants,
Isaac W. C.
Solloway and
Harvey Mills
for special
leave to
appeal from
the
Judgment of
the
Supreme
Court of
Canada.

-- continued

loaned by the broker or may be pledged by him, either separately or together with other securities, either for the sum due thereon or for a greater sum, all without further notice to the customer. It is understood and agreed that on marginal business the right is reserved to close transactions without further notice when margins are unsatisfactory. Stock selling at 40c or less per share may not be carried on margin. Cash must be paid for this and delivery taken by client."

E. & O. E.

"SOLLOWAY MILLS & CO. LIMITED"

19. BY a rule of the Exchange the broker is required to make delivery to or take delivery from the Clearing Department of the Exchange on the day following the transaction, the difference between sales and purchases only being received or delivered. This rule is modified by a further rule that the selling broker may postpone delivery for three days. Frequently, however, by arrangement, delivery is postponed for a longer period. It will be noted that this rule precludes the possibility of receiving individual shares for individual bargains. 10

20. THE records of the Exchange and the Ontario Company's books show that on the 16th day of October, 1929, it purchased for customers on the Exchange 7,010 shares, 10 being for a customer other than the Respondent. On the same day it sold 665 shares for customers, which were used by the Exchange to satisfy the purchase of an equivalent number of shares, leaving a balance of 6,345 to be received from the Clearing House, of which number 5,995 were received on October 17th. Delivery of the balance of 350 shares was postponed and were delivered from Clearing—200 on October 18th, 100 on October 24th and 50 on November 15th. All of the 7,010 shares thus physically coming into possession of the Ontario Company namely 6,345 from the Exchange and 665 shares of customers sold on Exchange and appropriated by the Stock Exchange to the Company's purchases. 20

21. THERE were two recognized methods of setting off sold shares against purchased shares. First, under a practice approved by the Exchange and called "put throughs" described thus—Where a broker has a customer who offers to sell a block of shares and a customer who desires to buy an equivalent number of shares at the same price and there is no other broker on the floor bidding for that class of shares the broker whose customers desire to sell and buy is permitted to record on the Exchange the sale and purchase, showing that he is the only broker in both transactions, and to transfer the shares on his own books from one customer to the other, and he is not required to clear either the sale or purchase through the Clearing House. Under this method 360 of the 665 shares sold for customers satisfied the purchase of an equivalent number of shares for the Respondent. The balance of the 665 shares sold, being 305 shares, satisfied the purchase of an equivalent number in Clearing. Both sales and purchases other than "put throughs" were recorded on their respective sides of the Clearing Sheets and set off against each other, the difference between the two sides being received or delivered. 30 40

22. THE delivery to the Ontario Company of the shares purchased for the Respondent and the one other Customer may be summarized as follows:—

No. of shares purchased for all customers	7,010	
Satisfied by sales "put throughs"		360
Satisfied by sales recorded on Clearing		305
Delivered from Clearing October 17th		5,995
Delivered from Clearing October 18th		200
Delivered from Clearing October 24th		100
Delivered from Clearing November 15th		50
	7,010	7,010

In the Privy Council.

No. 43.
Petition
by the
Appellants,
Isaac W. C.
Solloway and
Harvey Mills
for special
leave to
appeal from
the
Judgment of
the
Supreme
Court of
Canada.

—continued

10

23. ON the same day that the Respondent ordered the purchase of the 7,000 shares and deposited 3,500 shares to finance that purchase, the Dominion Company sold on its own account through brokers other than the Ontario Company 3,500 shares. It made no other sales for itself on that day. The next day the Ontario Company delivered Share Certificates representing 2,500 of the shares deposited as collateral by the Respondent to the brokers through whom the Dominion Company had sold the 3,500 shares. The balance of the shares sold by the Dominion Company, being 1,000 shares, were delivered by the Ontario Company in Certificates other than those received from the Respondent. The balance of the collateral deposited by the Respondent on October 16th was used by the Ontario Company within a few days thereafter to make deliveries to Clearing to customers and to other brokers who had made sales for the Dominion Company.

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24. 5,900 shares of the 5,995 that were delivered to the Ontario Company by the Clearing House on October 17th in satisfaction of the Respondent's purchase on October 16th were used on or before October 21st by the Ontario Company to make deliveries to the Clearing House in satisfaction of customers' transactions and to other brokers against sales made by the Dominion Company.

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25. THE short position of the Dominion Company, both on its own books and on those of the Ontario Company, show that at the close of business on October 15th, 1929, the Dominion Company was short to the Ontario Company 88,880 shares of Sudbury Basin Mines Limited, and, at the close of business on the 16th of October, the Dominion Company was short a further 3,485 shares as shown by the books. This additional short position on the night of October 16th was brought about by the sale of the 3,500 shares made by the Dominion Company, that number corresponding with the number of shares deposited by the Respondent to finance his purchase.

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26. AFTER the 16th October, 1929, the market price of Sudbury Basin stock declined, and the Ontario Company required the Respondent to furnish further margin or cover. This the Respondent did by depositing from time to time until 20th December, 1929, a further 10,500 shares of Sudbury Basin and \$8,000 in cash. The Ontario Company's books showed that it was then holding for the Respondent 21,000 shares, 7,000 of which had been purchased and the balance of 14,000 had been put up as margin, and the Respondent owed the Ontario Company about \$42,149.92.

*In the Privy
Council.*

No. 43.
Petition
by the
Appellants,
Isaac W. C.
Solloway and
Harvey Mills
for special
leave to
appeal from
the
Judgment of
the
Supreme
Court of
Canada.

—continued

27. THE \$8,000 cash put up as margin was deposited in the Ontario Company's general bank account and the 21,000 shares of Sudbury Basin as they came in were placed in the box where the company kept similar shares. 2,200 shares were later placed in a safety deposit box at the Bank by the Company. The balance of the shares was used by the Ontario Company as previously stated in the ordinary course of business, some of it being loaned to the Dominion company and some being used for the purpose of making deliveries to clearing from time to time in place of other shares on hand or available.

28. THE evidence in the case does not disclose how many shares were sold or purchased by the Dominion Company on its own account between October 16th, 1929, and the 14th of January, 1930, the date upon which the Respondent took delivery of all of his stock, but during the whole period it was short a considerable number of Sudbury Basin Mines Limited shares. On October 15th the Dominion Company was short 88,880 shares. At the close of business on October 16th it was short 92,365. On October 28th this short position had increased to 101,532. On November 7th it reached its maximum at 107,102, and, on January 10th it had decreased to 99,357. On January 13th, 1930, there was a further decrease to 90,837.

29. THE Ontario Company always kept shares of Sudbury Basin Mines Limited stock on hand or in a Safety Deposit box at the bank, although on November 30th, 1929, the amount of stock on hand and in the Safety Deposit box fell slightly below the amount that the Company ought to have been holding for delivery to the Respondent. At no time during the existence of the Company did it ever fail to satisfy promptly the demands of the Respondent or any other customer.

30. ON the 14th day of January, 1930, the Respondent requested the Ontario Company to deliver all the 21,000 shares to the Canadian Bank of Commerce. On the same day as the request for delivery was made, and without delay, the Ontario Company delivered 21,000 shares to the bank, and the bank paid \$42,334.92, being the balance owing by the Respondent on the 7,000 shares at the price the Company paid for them on October 16th, 1929. The shares delivered to the bank were represented as follows:

2,200 in the same certificates as the Respondent had deposited as collateral.

5,700 in certificates which had been received from a customer by the name of J. R. Gordon on January 13th.

10,000 in certificates which were recorded as having been received from "Stobie, Forlong Loan" on January 13th.

2,700 in certificates which are recorded as being received on January 13th from "Royal Loan".

400 in certificates recorded as being received on January 13th from "transfer".

21,000

31. THERE is nothing in the evidence to suggest that either Company went out in the market and bought these shares. It is not shown under what arrangement the Company acquired the shares delivered to the Respondent or

what, if anything, was paid for them. The account of the Dominion Company shows 8,500 shares bought in the market on January 13th, and 9,000 on January 14th and 8,000 on January 15th.

36,800 shares were received by the Ontario Company on January 13th and 14,230 were delivered by the Ontario Company for all purposes.

40,070 shares were delivered January 14th and 20,600 shares were received.

32. IN the year 1930 a number of brokers in Canada were prosecuted for irregularities and it came to public notice that many of them had maintained short positions in the market. The Respondent thereupon had his account with the Ontario Company investigated and as a result commenced this action on the 27th day of January, 1931, more than one year after he had taken delivery of his shares. He did not either before or after action brought return or offer to return the shares.

33. THIS action came on for trial before the Honourable Mr. Justice Kelly who, on consent of all parties, on the 24th day of February, 1932, referred the whole action to the Master for trial under Section 67 of the Ontario Judicature Act, R.S.O. 1927, Chap. 88, which reads as follows:

67. In an action,

(a) if all the parties interested who are not under disability consent, and where there are parties under disability the Judge is of opinion that the reference should be made and the other parties interested consent; or,

(b) where a prolonged examination of documents or a scientific or local investigation is required which cannot in the opinion of the Court or a Judge conveniently be made before a jury or conducted by the Court directly; or,

(c) where the question in dispute consists wholly or partly of matters of account, a Judge of the High Court Division may at any time refer the whole action or any question or issue of fact arising therein or question of account either to an official referee or to a special referee agreed upon by the parties.

The Master by an endorsement on the record directed the Assistant Master to try the case.

34. AN official referee is defined by Section 90 of the Ontario Judicature Act.

90. (1) Judges of county courts, the Master of the Supreme Court, Registrars, local masters, local registrars, deputy clerks of the Crown and Pleas, and deputy registrars shall be official referees for the trial of such questions as may be directed to be tried by an official referee.

(2) Where the business requires additional official referees, the Lieutenant-Governor in Council may appoint them.

(3) Subject to subsection 4 of section 69 in the case of officers who are paid by salary, the fees on a reference or trial shall be paid in law stamps; other referees shall be paid in money.

35. BY a Statute of Ontario, 22 Geo. V. Chap. 63, Section 10, Section 1 of the Ontario Judicature Act was amended by adding the following clause.

(v) "Master of the Supreme Court" shall include Assistant Master.

The Statute received the Royal Assent on March 29, 1932, but by its pro-

In the Privy Council.

No. 43.
Petition
by the
Appellants,
Isaac W. C.
Solloway and
Harvey Mills
for special
leave to
appeal from
the
Judgment of
the
Supreme
Court of
Canada.

—continued

*In the Privy
Council.*

No. 43.
Petition
by the
Appellants,
Isaac W. C.
Solloway and
Harvey Mills
for special
leave to
appeal from
the
Judgment of
the
Supreme
Court of
Canada.

—continued

visions it was made retroactive to come into force as of the 1st day of January, 1932.

36. AT the opening of the trial before the Assistant Master, the Petitioners objected to the trial proceeding before him on the ground that they had consented to trial before the Master and not the Assistant Master. Notwithstanding the Petitioners' objection the Assistant Master proceeded with the trial.

37. BY an Ontario Statute passed almost two years after this action was tried, the Ontario Judicature Act was further amended by Statute, 24 Geo. V., Chap. 54, Sec. 13;

13. Section 79 of The Judicature Act is amended by adding thereto 10
the following subsection:

(4) Where under any statute, rule or order, or in any action or proceeding, anything is directed to be done by the Master of the Supreme Court, any Assistant Master shall have, and shall be deemed to have always had power to act as fully and effectually as the Master of the Supreme Court.

38. THE Assistant Master allowed the Respondent's claim. The tenor and effect of the Judgment was that the Defendants, the Ontario Company and the two Directors, became jointly and severally liable to the Respondent to satisfy it. The Judgment against the Ontario Company was one for secret profits presumably made by the Ontario Company by the sale and re-purchase of the Respondent's stock. The Judgment against the two Petitioners as Directors was for damages (found by the Master to be the same as the secret profits) presumably sustained by the Respondent as a result of his entering into the same trans- 20
action.

39. THE Assistant Master stated the Plaintiff's case as follows:

"The contention of the Plaintiff is that the Defendant Company did not purchase the 7,000 shares in question and hold them for his account; and that 11,500 out of the 14,000 shares deposited as collateral were converted by the Defendants for their own use. The Defendants, it is alleged, thereby made a secret profit for the benefit of the Defendants Solloway and Mills, 30
who conspired together to dispose of customers' shares and re-purchase such shares later at a lower price and not to account for the difference in price at which the stock was sold and the price at which it was re-purchased. The Plaintiff now claims such difference in price and damages for conspiracy."

40. THE Assistant Master found as a fact in respect to the transaction on the 16th October, 1929:

"The records show, in fact it is conceded, that his order was purchased regularly on the Standard Stock and Mining Exchange, and cleared in the approved fashion. A further examination, however, reveals the Defendant 40
Company or its sister Company the Dominion Company, which one, incidentally is the most pertinent issue here, sold on its own account 3,500 shares."

41. THE Assistant Master disregarded the separate existence of the two Companies and proceeded as if the Dominion Company had been before the Court at the trial. In his view it was not necessary to determine which Company was short. He found that, because of the short position, the Ontario Company, al-

though properly purchasing and paying for the 7,000 shares, could not be said to hold these shares. In his opinion, if a broker has not sufficient shares on hand to satisfy the demands of all his customers he is guilty of a conversion when he allows share certificates received from or for a customer to leave his custody or control.

In the Privy Council.

No. 43.
Petition
by the
Appellants,
Isaac W. C.
Solloway and
Harvey Mills
for special
leave to
appeal from
the
Judgment of
the
Supreme
Court of
Canada.

continued

42. THE Assistant Master charged the Ontario Company with the difference between the market price of the shares on October 16, 1929, and January 13, 1930, as the measure of its profits on the assumption that it had acquired the shares on the latter day at the market price for the purpose of delivering them
10 to the Respondent.

43. THE Assistant Master found that the Ontario Company was liable to account to the Respondent for secret profits made on the sale and re-purchase of the Respondent's shares. He based his decision not as their Lordships in the Supreme Court of Canada seem to have thought, on any theory that the shares were not purchased, but on his findings that the shares although acquired properly were not held for the Respondent but converted to the Company's use. The Assistant Master charged the Ontario Company with the profits presumably on the assumption that it was the Ontario Company and not the Dominion Company to whom such profits accrued, although he finds "that it could not be said
20 that the Ontario Company actually commenced operations as brokers."

44. THE Assistant Master found the Petitioners liable for the profits or damages for causing the profits to be made out of the Respondent's stock so that they might receive such profits by way of dividends.

45. Mr. Justice Kerwin in dismissing the appeal from the Assistant Master's report, found as a fact that the Ontario Company had agreed on December 20, 1928, to take over the Ontario business of the Dominion Company and that the Ontario Company had made no sales on its own account and never owned any shares, that the short position was evidence of an intention to injure the Respondent, and that even if the Respondent had taken a Judgment against the
30 Ontario Company for profits, these same profits could be claimed as damages for conspiracy against the Directors.

46. THE majority of the Judges of the Court of Appeal for Ontario (Mulock, C.J.O., Middleton and Davis, J.J.A.), in allowing the Appeal of the Petitioners and dismissing the action against them, agreed with the finding of the Assistant Master that the Ontario Company had properly acquired the 7,000 shares but regarded the subsequent use of the Respondent's stock as a conversion. The claim and recovery of the profits of the sale and repurchase was in their opinion substantially equivalent to recovering the same by an action for money had and received. But even if the Judgment against the Ontario Company could not be
40 correctly regarded as equivalent to an action for money had and received, it was as a matter of fact a clear affirmance of the wrongful dealing of the Company with the shares and the Respondent had waived any claim in damages, if such a claim existed, against the Petitioners.

47. SO far as the claim for damages was concerned, the majority of the Court of Appeal held that because the 7,000 shares were in fact purchased and came into the Ontario Company's possession, and 21,000 shares were delivered to the

In the Privy Council.

No. 43.
Petition
by the
Appellants,
Isaac W. C.
Solloway and
Harvey Mills
for special
leave to
appeal from
the
Judgment of
the
Supreme
Court of
Canada.

—continued

Respondent he suffered no damage by reason of their conversion. "He got the shares that he purchased at the price that he agreed to purchase them."

48. Mr. Justice Davis in the Court of Appeal pointed out that the Respondent was entitled no doubt to an account and to Judgment against the Ontario Company for the profit which that Company made, but that the profit could only be payable to the Petitioners by reason of their being shareholders in the Dominion Company, and that the question might well be raised as to the right, in any event, of the Respondent to obtain a personal Judgment against the Petitioner Solloway in the absence of the Dominion Company. (The Petitioner Mills had transferred his holdings to Solloway in November, 1929). Mulock, 10 C.J.O., and Middleton, J.A., agreed with Davis, J.A.; Riddell, J.A., agreed in the result.

49. Macdonnell, J.A., dissented. In his opinion the Petitioners were liable to the Respondent for secret profits or in the alternative in damages in the same amount. He found as a fact that the 7,000 shares had been purchased but, the Company, instead of holding them as it should have done, almost immediately sold them. He finds that for the reasons stated by Davis, J.A., the Assistant Master erred in the way he arrived at his conclusion, but the Respondent was nevertheless entitled to a Judgment against the Petitioners for profits on the ground that "the transactions throughout were in reality those of Solloway and 20 Mills; it was they that instigated every movement; when all operations were completed it was they that made the profits". In Mr. Justice Macdonnell's opinion, damages in the same amount as the profits could also be recovered against the Petitioners for instigating the Company not to pay what was then properly owing by way of moneys received and profits made.

50. THERE was no evidence that the Petitioners or either of them instigated either Company to avoid payment or even that they knew that the Respondent was a customer. Moreover, there was no evidence that Mills knew anything about the business of either Company.

51. THE Judges of the Supreme Court of Canada although concurring in the 30 findings of the Courts below that the Company did go upon the Exchange and buy 7,000 shares of the ordered stock, found that it did not fully execute the customer's order in that, although it bought, it did not get or carry the shares so ordered.

52. ON the basis that the Ontario Company never received the 7,000 shares and without considering the admissions of witnesses for the Respondent and the findings of fact of the Assistant Master to the contrary, which were concurred in by the Court of Appeal, the Supreme Court was of the opinion that the only shares acquired for the Respondent were shares represented by the certificates delivered on the 14th of January, 1930; that the account on the basis of a pur- 40 chase on the 16th October, 1929, showing \$49,462.50 paid, was a misrepresentation by the Petitioners under the "system" as no purchase had in fact been made on that day; that the true amount owing was the amount paid by the Ontario Company on January 13, 1930, and that the Petitioners who were responsible for the system were liable in damages for the difference.

53. IN respect of the collateral shares, the Supreme Court agreed with the Petitioners' contention that the Respondent suffered no damage by their sale and

re-purchase, that the Respondent's right of action was against the Ontario Company only for secret profits; the claim for profit precluded all ground partaking of the nature of tort; in any event, by the retention of the shares, the claim in tort for conversion had been waived. No foundation had been laid, either in the pleading or the evidence, upon which a conclusion could be based that the Directors secured any benefit to themselves; that in the absence of the Dominion Company it was not feasible or possible to establish that the profits found their way through the Dominion Company to the Petitioners.

54. THAT there are four actions pending in the Supreme Court of Ontario brought against the Petitioners by former customers of the Ontario and Dominion Companies and arising out of the business carried on by the companies. The facts are similar to the facts in this case, and the result of this appeal will determine the liability of the Petitioners in all four actions.

55. THAT the Petitioner, I. W. C. Solloway, has been charged (under Section 125 of the Winding Up Act, R.S.C. 1927, Chapter 213) with misfeasance and breach of trust in his office as a Director of the Dominion Company. In that proceeding the Assistant Master has held him liable to account to the Company for \$3,296,591.36 paid to him as dividends, salary, etc., or paid out with his approval out of the profits made by that Company in dealing with shares purchased for customers by either the Dominion or the Ontario Company, or deposited by customers with either Company as margin, on the basis that these moneys were trust moneys that can be followed into his hands. The result of this appeal will determine in a large measure his liability to the Dominion Company.

56. YOUR Petitioners submit that the Judgment of the Supreme Court of Canada is wrong in respect to the purchase of the 7,000 shares, because:

(1) The Assistant Master had no jurisdiction to try the case.

(2) The contract between the Ontario Company and the Respondent permitted the Ontario Company to loan the Respondent's shares to the Dominion Company. The Ontario Company was not required to keep the certificates in its possession.

(3) The Ontario Company fulfilled all its obligations to the Respondent and at all times had on hand sufficient shares to satisfy the demands of all its customers, it being proper brokerage accounting to calculate loaned shares as being on hand.

(4) It was not open to the Respondent to rely upon the short position existing before he made his purchase, as a ground for repudiating the transaction of October 16, 1929.

(5) Certificates representing 7,000 shares were physically delivered to the Ontario Company or were in its possession.

(6) The only shares sold by the Dominion Company on the date of the Respondent's purchase were 3,500 which number was the same as the number of collateral shares received from the Respondent. These shares were in the possession of the Ontario Company at the time of sale. The sale and delivery of 3,500 shares had no effect on the receipt of the 7,000 shares.

(7) If the use of the 7,000 shares by the Ontario Company be construed as a conversion, the legal consequences are the same as on the use or

In the Privy Council.

No. 43.
Petition
by the
Appellants,
Isaac W. C.
Solloway and
Harvey Mills
for special
leave to
appeal from
the
Judgment of
the
Supreme
Court of
Canada.

... continued

*In the Privy
Council.*

No. 43.
Petition
by the
Appellants,
Isaac W. C.
Solloway and
Harvey Mills
for special
leave to
appeal from
the
Judgment of
the
Supreme
Court of
Canada.

continued

sale of the shares deposited as margin or security; but it is submitted that as the Respondent repudiated the purchase and therefore the ownership of the shares, no conversion was possible.

(8) The Respondent took delivery of 21,000 shares and suffered no damage by reason of the alleged conversion.

(9) The Respondent waived his right of action in tort against the Petitioners by retaining the shares; by disavowing the earlier transaction: and that profits cannot be recovered as damages.

(10) The Supreme Court having held that the earlier purchase was as regards the Respondent, a complete nullity and having further held that the Respondent could adopt and did adopt the later purchase has found that the Respondent can recover large damages against the Petitioners for an alleged fraud in connection with the void and disavowed transaction, although had that transaction been effective he would have in the event suffered a loss equivalent to that damage and could not have made a profit.

(11) The Respondent having adopted the later purchase, his only remedy was for money had and received in excess of the purchase price by the Company, and because there was no evidence that the said money was received by the Petitioners.

(12) The Respondent was not entitled to interest.

(13) The Judgment of the Court of Appeal for Ontario is right.

57. THAT appended hereto are copies of the reasons for Judgment of Mr. Justice Kerwin of the Judges of the Court of Appeal of Ontario and of the Supreme Court of Canada reported in Canadian Supreme Court Reports 1936 part IV at page 127.

YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT

Your Most Gracious Majesty in Council will be pleased to order that Your Petitioners shall have special leave to appeal from the said Judgment of the Supreme Court of Canada dated the 28th day of February, 1936, and that the certified transcript of the proceedings produced at the hearing of this Petition may be used on the hearing of the Appeal and that Your Majesty may be graciously pleased to make such further or other order as to Your Majesty in Council may appear fit and proper.

AND YOUR PETITIONERS WILL EVER PRAY, ETC.

WILFRID BARTON.

(L.S.)

ORDER OF HIS MAJESTY IN COUNCIL GIVING THE APPELLANTS SPECIAL LEAVE TO APPEAL *In the Privy Council.*

AT THE COURT AT BUCKINGHAM PALACE

The 24th day of July, 1936

PRESENT

THE KING'S MOST EXCELLENT MAJESTY

PRIME MINISTER

LORD CHAMBERLAIN

10 LORD PRESIDENT

MR. CHANCELLOR OF THE
DUCHY OF LANCASTER

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 13th day of July, 1936 in the words following viz.:—

20 “WHEREAS by virtue of His late Majesty King Edward the Seventh’s Order in Council of the 18th day of October, 1909, there was referred unto this Committee a humble Petition of Isaac W. C. Solloway and Harvey Mills in the matter of an Appeal from the Supreme Court of Canada between Isaac W. C. Solloway and Harvey Mills Appellants and J. P. McLaughlin Respondent and Solloway Mills and Co., Limited (a Company incorporated under the laws of Ontario) and Solloway Mills and Co., Limited (a Company incorporated under the laws of the Dominion of Canada) (Defendants) (Not appearing) setting forth (amongst other matters) that the Petitioners desire to obtain special leave to appeal from a Judgment of the Supreme Court of Canada dated the 28th day of February, 1936, insofar as it allowed the Respondent McLaughlin’s Appeal from a Judgment of the Court of Appeal for Ontario dated the 5th day of June, 1934, whereby the Respondent’s claim against the Defendant Solloway Mills and Co., Limited and the Petitioners Directors of that Company arising out of the purchase of mining stock by that Company on the Exchange as the Respondent’s broker was dismissed as against the Petitioners: that under the Judgment of the Supreme Court the damages payable by the Petitioners to the Respondent with interest amount to \$32,569.44: that in this Action the Defendants were Solloway Mills and Co., Limited an Ontario company carrying on business of stock brokers in the Province of Ontario Solloway Mills and Co., Limited, a Dominion brokerage company having its head office at the City of Toronto carrying on business as stock brokers with many branches in the United States and in Canada except the Province of Ontario (these Defendants thereafter referred to as the Ontario and Dominion Companies) and Isaac W. C. Solloway and Harvey Mills the first the President and the

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40

No. 44.
Order of His Majesty in Council giving the Appellants special leave to appeal, 24th July, 1936.

*In the Privy
Council.*

No. 44.
Order of His
Majesty
in Council
giving the
Appellants,
special leave
to appeal,
24th July,
1936.

--continued

second a Director of both companies: that I. W. C. Solloway was the owner of all but five shares of the Dominion Company which in turn owned all shares except five of the Ontario Company: that the Action arises out of the purchase by the Respondent of 7,000 shares of Sudbury Basin Mines Limited on margin through the Ontario Company which acted as his broker and the deposit by the Respondent of 14,000 shares of the same stock with that Company to finance the transaction: that the Respondent in his Statement of Claim as originally filed based his claim against the Ontario Company on the allegation that the Company had made secret profits by the sale and repurchase of 11,500 of the 14,000 shares deposited as margin or cover to finance the purchase of the 7,000 shares, and on the allegation that the Company had in fact purchased the 7,000 shares at a lower figure than represented: that before trial by an amendment to the Statement of Claim the Respondent defined his damages as "loss on the money invested through the Defendants as indicated in the Defendants books of account the loss of interest on the same the loss of the money owing by the Defendants to the Plaintiff as may be found on an accounting herein and the loss of the use of the same": that at the trial the Respondent abandoned his contention that the 7,000 shares had not been purchased as represented and demonstrated that the 7,000 shares had been properly and regularly purchased but claimed that the Company did not hold the shares and had made secret profits on the subsequent sale and re-purchase of these shares as well as on the shares deposited as collateral and claimed such profits: that the claim against the Petitioners was based on the allegation that they as Directors had conspired with the Company to make secret profits by the sale and re-purchase of customers' shares and to pay the profits to themselves in dividends: that the substantial questions in dispute in this Appeal are *First* whether the Assistant Master who tried the case had any jurisdiction to do so *Secondly* whether the Judgment against the Ontario Company was justified and if so *Thirdly* whether the Petitioners as Directors of the Ontario Company are liable to the Respondent for damages or profits arising out of wrongful dealing by that Company with the 7,000 shares purchased on margin for the Respondent: that the Respondent's claim was allowed against the Ontario Company and the Petitioners by the Assistant Master who tried the case at \$48,529.92 with interest at 5 per cent. from the date the Respondent took delivery of the shares making a total as set out by the Master's Report of \$65,129.92 upon the basis that the shares had been bought for the Respondent but improperly dealt with: that the Petitioners appealed to Kerwin, J., and by Judgment dated the 13th day of June, 1933, he varied the amount found due by substituting the figure \$55,922.98 for \$65,129.92 but otherwise confirmed the Assistant Master's findings and dismissed the Appeal: that the Ontario Company did not appeal: that the Petitioners appealed to the Court of Appeal for Ontario from the Judgment of Kerwin, J., and that Court set aside the Judgment against the Petitioners and dismissed the Action as against them with costs: that the Respondent appealed to the Supreme Court of Canada and the latter Court restored the Judgment of Kerwin, J., with

respect to the claim made on the 7,000 shares purchased on margin but dismissed the Respondent's Appeal in respect to the claim against the Petitioners for profits made out of the 14,000 shares deposited with the Company to finance the purchase of the 7,000 shares: And humbly praying Your Majesty in Council to order that the Petitioners shall have special leave to appeal from the Judgment of the Supreme Court dated the 28th February, 1936, or for such other Order as to Your Majesty in Council may appear fit:

10 "THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion (1) that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Supreme Court of Canada dated the 28th day of February, 1936, upon depositing in the Registry of the Privy Council the sum of £400 as security for costs (2) that leave ought also to be granted to the Respondent to cross-appeal against the said Judgment without depositing any security for costs (3) that the Appeal and Cross-Appeal ought to be consolidated and heard together upon one Printed Case on each side and (4) that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

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HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

30 Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

In the Privy Council.

No. 44.
Order of His Majesty in Council giving the Appellants, special leave to appeal, 24th July, 1936.

continued.

PART II. EXHIBITS.

PART OF EXHIBIT 17 B.

(PLAINTIFF'S EXHIBIT)

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part of
Exhibit 17 B.
By-law No. 5
of Solloway,
Mills and
Co., Ltd.,
authorizing
purchase of
partnership
assets,
31st May,
1928.

BY-LAW NO. 5 OF SOLLOWAY MILLS & CO. LIMITED (DOMINION COMPANY) AUTHORIZING PURCHASE OF PARTNERSHIP ASSETS.

Authorizing the purchase of assets and the execution of an Agreement.

WHEREAS I. W. C. Solloway and Harvey Mills have heretofore carried on business at Toronto and elsewhere under the name, style and firm of Solloway, Mills & Co. as Stock Brokers;

AND WHEREAS the Company has been incorporated with a view of acquiring the business of Solloway, Mills & Co. as a going concern, and the said I. W. C. Solloway and Harvey Mills have agreed to sell the said business as a going concern including the goodwill thereof to the Company upon the basis of the Agreement annexed hereto as a schedule to this By-law;

BE IT THEREFORE ENACTED as By-law No. 5 of the Company:

1. That the offer of I. W. C. Solloway and Harvey Mills to sell the business carried on by them at Toronto and elsewhere under the name, style and firm of Solloway, Mills & Co. to the Company, be and the same is hereby accepted on behalf of the Company, and that the Company do purchase from the said I. W. C. Solloway and Harvey Mills the said business and all the assets thereof as a going concern upon the basis of the Agreement hereto annexed as a schedule to this By-law.

2. That the President and General Manager be and they are hereby authorized and required, after confirmation of this By-law by the Shareholders of the Company, to execute on behalf of the Company the above mentioned Agreement between the Company and the said I. W. C. Solloway and Harvey Mills.

3. That, after confirmation of this By-law by the Shareholders of the Company and the execution of the above mentioned Agreement, there be allotted and issued to the said I. W. C. Solloway and Harvey Mills and/or their nominees 24,995 fully paid up and non-assessable shares of the Company.

4. That the President, Secretary and General Manager be and they are hereby authorized and required to sign and seal with the Company's seal and to deliver to the said I. W. C. Solloway and Harvey Mills and/or their nominees forthwith after allotment of the said shares, certificates for fully paid up shares in accordance with the terms of the said Agreement, and to do, sign, perform and execute all deeds, documents or things necessary or incidental to the carrying out of the said purchase or which Counsel may advise, and to fix the seal of the Company to all documents required for that purpose.

ENACTED this 31st day of May, 1928.

"I. W. C. Solloway",
President.

(Corporate Seal) "M. V. Webster",
Secretary.

PART OF EXHIBIT 17B
(PLAINTIFF'S EXHIBIT)

AGREEMENT BETWEEN I. W. C. SOLLOWAY AND HARVEY MILLS AND
DOMINION COMPANY.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part of
Exhibit 17 B.
Agreement
between
I. W. C.
Solloway and
Harvey Mills
and
Dominion
Company,
— , May,
1928.

THIS AGREEMENT made in duplicate this day of May, 1928.

Between:

I. W. C. SOLLOWAY and HARVEY MILLS, carrying on
business under the name, style and firm of Solloway, Mills &
Company,

10

hereinafter called "the Vendors"
OF THE FIRST PART.

—and—

SOLLOWAY, MILLS & CO. LIMITED, a Company incor-
porated under the laws of the Dominion of Canada, having
its head office at the City of Toronto, in the Province of On-
tario,

hereinafter called "the Purchaser"
OF THE SECOND PART.

WITNESSETH that in consideration of the undertaking and agreements
hereinafter expressed, the Vendors and Purchaser have agreed as follows:

20

1. The Vendors agree to sell, transfer, assign, convey and deliver to the Pur-
chaser and the Purchaser agrees to buy and receive and pay for as a going
concern all the assets and property of the business carried on by the Vendors
and including without in anywise limiting the foregoing words, the good-will
of the said business, trade accounts, marginal accounts, all seats on stock
exchanges and memberships thereof, and all effects and property whatsoever of
every nature and kind and wheresoever situate belonging to the said firm for the
price and subject to the terms and conditions hereinafter set out.

30

2. The sale and purchase hereby made shall take effect as of the 31st day of
May, 1928, on the basis of the balance sheet certified to by G. O. Merson & Com-
pany, as of 31st January, 1928, hereto annexed.

3. The Vendors covenant and agree that the business and affairs of the firm
will be carried on in the usual course of business until the consummation of the
sale herein provided for and that the liabilities of the firm will not be increased
except in the usual course of business, and that the Purchaser shall be entitled to
all benefits and advantages accruing from the business since the 31st day of Jan-
uary, 1928, and assume all obligations incurred since that date.

4(a) The Vendors hereby subscribe for 24,995 shares of the capital stock of the
Purchaser, the same being shares without nominal or par value at Ten dollars

*In the
Supreme
Court of
Ontario.*

Exhibits.

Part of
Exhibit 17 B.
Agreement
between
I. W. C.
Solloway and
Harvey Mills
and
Dominion
Company,
—, May,
1928.

—continued

\$10.00) per share, all such shares to be issued and delivered to the Vendors or their nominees.

The Purchaser hereby accepts such subscription and allots the shares subscribed for, such shares to be issued and delivered to the Vendors or their nominees.

(b) A part consideration payable by the Purchaser for the assets and property hereby purchased, is the sum of the Two hundred and fifty thousand dollars (\$250,000.00) which is hereby applied by the Vendors and accepted by the Purchaser in full payment for the shares above subscribed for, and also in full payment for the five shares of no par value subscribed for by the applicants for Letters Patent incorporating the Purchaser; all such shares are to be free from liabilities for calls or otherwise and the stock certificates therefor are to declare the said shares fully paid up and non-assessable, and the Purchaser hereby releases the Vendors from all liability in respect of the said shares. 10

(c) As a further part consideration for the sale and purchase hereby made, the purchaser covenants and agrees to pay, satisfy and discharge all liabilities and obligations of the Vendors of every nature and kind whatsoever, and to indemnify and save harmless the Vendors and each of them therefrom.

(d) As a further part consideration of the sale and purchase hereby made, the Purchaser shall pay all costs and expenses of and incidental to this agreement and to the carrying out of the terms and provisions thereof including the expenses in connection therewith and the expenses of the Vendors in connection with the Division between them of the full proceeds of the sale. 20

5. IT IS UNDERSTOOD AND AGREED that the seats on stock exchanges and all membership thereof shall be transferred to the nominee or nominees of the Purchaser and that such nominees shall execute declarations of trust that they hold such seats and memberships for the benefit of the Company, and that the Company is entitled to receive all profits and advantages accruing therefrom and to the purchase price in the event of any sale thereof.

6. The Vendors and Purchaser covenant, promise and agree to do all things and execute all documents useful or necessary for the purpose of giving effect to the intention of this agreement. 30

IN WITNESS WHEREOF this agreement has been executed.

Signed, Sealed and Delivered
in the presence of

SOLLOWAY, MILLS & CO. LIMITED

“I. W. C. Solloway”,
President.

Secretary.

PART OF EXHIBIT 17
(PLAINTIFF'S EXHIBIT)

BY-LAW NO. 12 DOMINION COMPANY AUTHORIZING SALE OF
ONTARIO BUSINESS TO ONTARIO COMPANY

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part of
Exhibit 17.
By-law
No. 12 of
Dominion
Company
authorizing
sale of
Ontario
business to
Ontario
Company,
20th
December,
1928.

BE IT ENACTED as a By-law of Solloway, Mills & Company Limited, as follows:

(1) That the Company do sell such of its undertaking, property and assets subject to liabilities all as specifically set forth in the Agreement dated December 20th, 1928, between this Company therein referred to as the Dominion
10 Company and Solloway, Mills & Co., Limited, a company incorporated under the Ontario Companies Act and therein and herein referred to as the Ontario Company (which said agreement is annexed hereto and is hereby made a part of this by-law) to Solloway, Mills & Company Limited, the Ontario company, upon the terms and for the consideration set forth in the said agreement.

(2) That the officers of this company be and they are hereby authorized to enter into and execute on behalf of the company under its corporate seal, the said agreement hereto annexed and forming part of this by-law providing for the sale by this company and the purchase by the purchaser of the undertaking, property and assets of this company as set forth in the said agreement upon the
20 terms therein expressed.

(3) That the officers of this company are hereby authorized to do all acts and things and to sign and execute under the corporate seal of this company and otherwise all such conveyances, deeds, transfers, assignments, assurances, documents and other instruments as the solicitor of this company may consider necessary, expedient or advisable for the purpose of giving effect to and carrying out the said agreement and of passing the property and assets of this company as set out in the said agreement to the purchaser in accordance with the terms and conditions of the said agreement.

Passed by the Directors this 20th day of December, 1928.

30

"I. W. C. Solloway",
President.

(*Corporate Seal*) "L. L. Masson",
Secretary.

Ratified and confirmed by the Shareholders this 20th day of December, 1928.

"I. W. C. Solloway",
President.

(*Corporate Seal*) "L. L. Masson",
Secretary.

PART OF EXHIBIT 18.
(PLAINTIFF'S EXHIBIT)

BY-LAW NO. 6 OF ONTARIO COMPANY AUTHORIZING PURCHASE OF
ONTARIO BUSINESS FROM DOMINION COMPANY

SOLLOWAY, MILLS & CO., LIMITED

By-law Number Six

WHEREAS it is deemed expedient to enter into an agreement with Solloway, Mills & Co., Limited, a company incorporated by Letters Patent under the Companies Act (Canada) for the purpose of acquiring from that company generally the brokerage business carried on by that company in the Province of Ontario. 10

NOW THEREFORE BE IT ENACTED as By-law Number Six of Solloway, Mills & Co., Limited as follows:

(1) THAT the Directors of the Company be and they are hereby authorized and required to enter into an agreement dated the 20th day of December, 1928, between Solloway, Mills & Co., Limited, a company incorporated by Letters Patent under the Companies Act (Canada), therein called the "Dominion Company" of the first part, and this Company, therein called the "Ontario Company" of the second part, which said agreement is marked Schedule "A" to this by-law. 20

(2) THAT the Directors of the Company are hereby authorized after the confirmation of this by-law, to allot and issue to Solloway, Mills & Co., Limited (Dominion Company), the party of the first part in the agreement above referred to, or to its nominee or nominees, four thousand nine hundred and ninety fully paid shares of this Company without any nominal or par value, as provided for in the said agreement.

(3) THAT the proper officers of this Company be and they are hereby authorized to affix the Corporate Seal of this Company to the said agreement, and to execute the same on behalf of this Company, and to do all things which may be necessary to carry out the said agreement in accordance with its terms. 30

PASSED by the Directors this 20th day of December, A.D. 1928.

(Corporate Seal)

"Gordon N. Shaver"
President

"G. Grant Paulin"
Secretary-Treasurer

RATIFIED AND CONFIRMED by the Shareholders this 20th day of December, A.D. 1928.

(Corporate Seal)

"Gordon N. Shaver"
President

"G. Grant Paulin"
Secretary-Treasurer

In the
Supreme
Court of
Ontario.
—
Exhibits.
Part of
Exhibit 18.
By-law No. 6
of Ontario
Company
authorizing
purchase of
Ontario
business
from
Dominion
Company,
20th
December,
1928.

PART OF EXHIBIT 17
(PLAINTIFF'S EXHIBIT)

AGREEMENT TRANSFERRING ONTARIO BUSINESS FROM DOMINION
TO ONTARIO COMPANY.

*In the
Supreme
Court of
Ontario.*

MEMORANDUM OF AGREEMENT made in duplicate this 20th day of
December, A.D. 1928.

Exhibits.
Part of
Exhibit 17.
Agreement
transferring
Ontario
business from
Dominion to
Ontario
Company,
20th
December,
1928.

Between:

SOLLOWAY, MILLS & CO., LIMITED, a company incor-
porated under the Companies Act (Canada) by Letters
Patent dated the 31st day of October, 1927, hereinafter
called the "Dominion Company"

Of the first part;

—and—

SOLLOWAY, MILLS & CO., LIMITED, a company incor-
porated under the Companies Act (Ontario) by Letters
Patent dated the 20th day of December, 1928, hereinafter
called the "Ontario Company"

Of the second part;

WHEREAS the Dominion Company carries on a general brokerage and
financial business throughout the province of Ontario and elsewhere in the
Dominion of Canada under the name of "Solloway, Mills & Co., Limited".

20 AND WHEREAS the said Dominion Company in connection with its
business in the Province of Ontario has acquired certain assets and assumed
liabilities, and is the equitable owner of three seats on and memberships in the
Standard Stock & Mining Exchange, which seats and memberships are registered
in the names of various individuals, but are operated for the benefit of the
Dominion Company.

30 AND WHEREAS the Dominion Company has agreed to sell, assign, transfer
and set over to the Ontario Company the goodwill, business and undertaking of
the Dominion Company in connection with its general brokerage and financial
business carried on in the Province of Ontario together with the assets and
subject to the liabilities as hereinafter more particularly set out, for the
consideration and upon the terms and conditions hereinafter mentioned.

AND WHEREAS the Dominion Company has agreed with the Ontario
Company that it will cause the holders of the said assets on and memberships in
the Standard Stock & Mining Exchange to hold the said seats and memberships
as the nominee of and in trust for the Ontario Company.

40 AND WHEREAS the Ontario Company was incorporated under the
Companies Act (Ontario) by Letters Patent dated the 20th day of December,
1928, with a capital divided into five thousand shares without any nominal or
par value, and is by its Charter and the provisions of the Companies Act
(Ontario) under which it is incorporated, empowered to acquire or undertake
the whole or any part of the business, property and liabilities of any business
or company carrying on any business which the Company is authorized to carry
on, or possessed of property suitable for the purposes of the Company.

AND WHEREAS the Ontario Company is desirous of acquiring the good-
will, business and undertaking of the Dominion Company in connection with its

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part of
Exhibit 17.
Agreement
transferring
Ontario
business from
Dominion to
Ontario
Company,
20th
December,
1928.

continued

general brokerage and financial business in the Province of Ontario, and as herein mentioned, and has agreed to assume the liabilities of the Dominion Company as herein set out, and has also agreed to indemnify and save harmless the Dominion Company from all loss, costs, damages and expenses in connection with the liabilities assumed by this agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, the mutual covenants and agreements herein contained and expressed, and the sum of Fifty Thousand dollars to be paid by the Ontario Company to the Dominion Company, as hereinafter set out, the parties hereto agrees as follows:

(1) The Dominion Company hereby sells, assigns, transfers and sets over unto the Ontario Company the following assets:

(a) The goodwill, business and undertaking of the Dominion Company in connection with the general brokerage and financial business carried on by the Dominion Company solely in the Province of Ontario;

(b) All cash in hand and in any chartered bank or banks or the branches thereof, or in any other depository or depositories in the Province of Ontario;

(c) All accounts and notes receivable from any person, firm or corporation in any way connected with or arising out of the business of the Dominion Company carried on in the Province of Ontario, except such accounts as have been transferred to the stock revenue account or the suspension account in the books of the Dominion Company as of the 30th of November, 1928, and except also the accounts of Messrs. I. W. C. Solloway and Harvey Mills;

(d) All customers accounts subject to settlement by the Ontario Company or the various customers from time to time in shares or money according to the nature of the stock trading;

(e) All furniture, fixtures, office equipment, leases, contracts and agreements in any way part of or connected with the operation of the general brokerage and financial business in the Province of Ontario;

(f) The equity in three seats on and memberships in the Standard Stock & Mining Exchange, it being understood that the three seats and memberships are now held in the names of I. W. C. Solloway, Arthur Irvine and Joseph Cameron;

(g) All shares and share warrants, rights to shares, bonds, debentures and other securities belonging to, carried by or in the possession of the Dominion Company with respect to or in connection with the operation of its general brokerage and financial business in the Province of Ontario.

(2) The said sum of Fifty thousand dollars to be paid by the Ontario Company to the Dominion Company shall be paid and satisfied by the allotment and issue to the Dominion Company or its nominee or nominees, of four thousand nine hundred and ninety shares of the capital stock of the Ontario Company, without any nominal or par value, fully paid up and non-assessable, the said shares to be free from all liability and calls whatsoever, and the stock certificates to declare the said shares fully paid, and the Ontario Company hereby releases the Dominion Company, its nominee or nominees from all liability in respect of the said share.

(3) And as further consideration for the said transfer the Ontario Com-

10

20

30

40

pany hereby assumes the liabilities of the Dominion Company to brokers, customers and creditors in any way connected with or arising out of its general brokerage and financial business carried on by the Dominion Company in the Province of Ontario, but with such limitations as are herein contained and expressed, and the Ontario Company hereby for itself, its successors and assigns, covenants, promises and agrees with the Dominion Company its successors, to indemnify and save harmless the Dominion Company from all loss, costs, damages and expenses in any way connected with or arising out of the liabilities hereby assumed.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part of
Exhibit 17.
Agreement
transferring
Ontario
business from
Dominion to
Ontario
Company,
20th
December,
1928.

--continued

10 (4) In consideration of the foregoing and particularly in consideration of the assumption of liabilities by the Ontario Company as hereinbefore set out, the Dominion Company hereby assumes all liability to the Ontario Company with respect to the accounts set out in Schedule "A" which said schedule is hereby made part of this agreement, and the Dominion Company hereby guarantees to the Ontario Company the settlement in shares or money from time to time on the demand of the Ontario Company of the accounts set out in Schedule "B", which said schedule is also made part of this agreement.

20 (5) And the Dominion Company hereby for itself and its successors and assigns, covenants, promises and agrees with the Ontario Company, its successors, to indemnify and save harmless the Ontario Company from all loss, costs, damages and expenses in any way connected with or arising out of the liabilities hereby assumed by the Dominion Company according to the true intent and meaning of this article, or arising out of the guarantee.

30 (6) The Dominion Company hereby covenants and agrees with the Ontario Company that it will cause I. W. C. Solloway, Arthur Irvine and Joseph Cameron to hold their seats on and memberships in the Standard Stock & Mining Exchange as nominees of and in trust for the Ontario Company, upon the express condition that the Ontario Company will pay or cause to be paid all membership fees and dues in connection with the operation of the said seats and memberships, and that the Ontario Company will guarantee all trades in connection therewith, and will indemnify and save harmless the Dominion Company from all loss, costs, damages and expenses in any way connected with or arising out of the operation of the said seats.

40 (7) The sale and purchase hereby contemplated shall be closed as of the close of business on the 30th day of November, 1928, it being understood and agreed between the parties hereto that the Ontario Company is to be entitled to the benefit of all business done by the Dominion Company from the 30th November, 1928, to the date hereof, and that the Ontario Company assumes all liability incurred by the Dominion Company and becomes responsible for all expenses of the Dominion Company in connection with the operation of its business in the Province of Ontario since that date, the intention being that this paragraph shall be limited in its operation to benefits, liabilities and expenses relating solely to the general brokerage and financial business of the Dominion Company carried on by it in the Province of Ontario, and hereby sold and assigned to the Ontario Company.

(8) The parties hereto mutually covenant and agree each with the other that they will forthwith after the execution hereof and from time to time as may be required, execute and do all further assurances, conveyances, assign-

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part of
Exhibit 17.
Agreement
transferring
Ontario
business from
Dominion to
Ontario
Company,
20th
December,
1928.

—continued

ments, transfers, deeds and releases as may be reasonably required to carry out the intention of this agreement.

THIS AGREEMENT shall enure to benefit of and be binding upon the parties hereto and their successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement.

Signed, Sealed and Delivered
in the presence of

SOLLOWAY, MILLS & CO., LIMITED
(Incorporated under the Companies
Act (Canada)

“I. W. C. Solloway”
President

10

(Corporate Seal)

“L. L. Masson”

“Harvey Mills”
Secretary-Treasurer

SOLLOWAY, MILLS & CO., LIMITED
(Incorporated under the Companies
Act (Ontario)

“Gordon N. Shaver”
President

“G. Grant Paulin”
Secretary-Treasurer

20

PART OF EXHIBIT I.
(PLAINTIFF'S EXHIBIT)

Exhibits.
Part of
Exhibit 1.
Receipt
Ontario Co.
to J. P.
McLaughlin
for 3500
shares
Sudbury
Basin Mines
Limited,
16th
October,
1929.

RECEIPT ONTARIO COMPANY TO J. P. McLAUGHLIN FOR 3,500
SHARES SUDBURY BASIN MINES LIMITED DEPOSITED WITH ON-
TARIO COMPANY TO FINANCE PURCHASE OF 7,000 SHARES.

EL 6371

“ 0416

29 Munroe Park Ave.

Oct. 16, 1929

RECEIVED from J. P. McLAUGHLIN 3,500 shares Sudbury Basin as follows:

500.....	23571	200.....	01593	100.....	5543
100.....	10690	100.....	01768	100.....	5549
100.....	10691	100.....	00544	100.....	5550
200.....	01606	100.....	04011	100.....	5538
200.....	01588	100.....	04012	100.....	5539
200.....	01587	100.....	10745	100.....	5540
200.....	13632	100.....	5072	100.....	5541
200.....	01594	100.....	03985	100.....	04795
				100.....	04796

SOLLOWAY MILLS & CO. LIMITED 40
per “J. Wright”
Bay

EXHIBIT 2.
(PLAINTIFF'S EXHIBIT)

BOUGHT NOTE SENT BY ONTARIO COMPANY TO J. P. McLAUGHLIN
CONFIRMING PURCHASE OF 1,800 SHARES SUDBURY BASIN MINES
LIMITED.

Continent Wide International
Chain of Offices
Connected by Private Wire

These Offices in Toronto
Metropolitan Building
19 King St. East
Adelaide at Bay

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Exhibit 2.
Bought Note
sent by
Ontario
Company to
J. P.
McLaughlin
confirming
purchase of
1800 shares
Sudbury
Basin,
16th
October,
1929.

10 Officials of the Company are Members of the Standard Stock and Mining Ex-
change and Twelve Other Exchanges

SOLLOWAY MILLS & CO. LIMITED

Specialists in
Mines, Oils, Industrials and Grain
Toronto, Canada

BOUGHT NOTE—

We have this day bought for your account and risk as undermentioned.
Oct. 16, 1929.

J. P. McLAUGHLIN
29 Munroe Park Ave.,

1800 Sud. Basin

20	Price	Amount	Brokerage	Total
	7.00	12,600.00	135.00—	12,735.00

Crang. Col. But.
Dob. Stobie,
Scott, Sol. B 3,
New account HO754 Rob.

30 Purchases or sales are made subject in all respect to the rules, by-laws and
customs existing at the time at the Exchange where executed: and also with
the distinct understanding that the actual delivery is contemplated, and that the
parties giving the orders agree to its terms. It is agreed between broker and
customer that all securities from time to time carried in the customer's mar-
ginal account or deposited to protect the same may be loaned by the broker or
may be pledged by him, either separately or together with other securities, either
for the sum due thereon or for a greater sum, all without further notice to the
customer. It is understood and agreed that on marginal business the right is
reserved to close transactions without further notice when margins are unsatis-
factory. Stock selling at 40c or less per share may not be carried on margin.
Cash must be paid for this and delivery taken by client.

SOLLOWAY MILLS & CO. LIMITED

EXHIBIT 3.

(PLAINTIFF'S EXHIBIT)

*In the
Supreme
Court of
Ontario.*

Exhibits.
Exhibit 3.
Bought Note
sent by
Ontario
Company to
J. P.
McLaughlin
confirming
purchase of
5200 shares
Sudbury
Basin,
16th
October,
1929.

BOUGHT NOTE SENT BY ONTARIO COMPANY TO J. P. McLAUGHLIN
CONFIRMING PURCHASE OF 5,200 SHARES SUDBURY BASIN MINES
LIMITED.

Continent Wide International
Chain of Offices
Connected by Private Wire

These Offices in Toronto
Metropolitan Building
19 King St. East
Adelaide at Bay

10

Officials of the Company are Members of the Standard Stock and Mining Ex-
change and Twelve Other Exchanges

SOLLOWAY MILLS & CO. LIMITED

Specialists in
Mines, Oils, Industrials and Grain
Toronto, Canada

BOUGHT NOTE—

We have this day bought for your account and risk as undernoted.

20

Oct. 16, 1929

J. P. McLAUGHLIN, 5200 Sudbury Basin

12.50	6.95		
39.50	7.00	36,337.50	3,900.00
			Total, 36,727.50

Bought from

East, Gib. Dob. Sol.
Moy. Craw. Sto.
Mcd. East. But. Scott,
Lor. Bio.
New account Robinson.

30

Purchases or sales are made subject in all respect to the rules, by-laws and
customs existing at the time at the Exchange where executed: and also with
the distinct understanding that the actual delivery is contemplated, and that the
parties giving the orders agree to its terms. It is agreed between broker and
customer that all securities from time to time carried in the customer's mar-
ginal account or deposited to protect the same may be loaned by the broker or
may be pledged by him, either separately or together with other securities, either
for the sum due thereon or for a greater sum, all without further notice to the
customer. It is understood and agreed that on marginal business the right is
reserved to close transactions without further notice when margins are unsatis-
factory. Stock selling at 40c or less per share may not be carried on margin.
Cash must be paid for this and delivery taken by client.

40

SOLLOWAY MILLS & CO. LIMITED

EXHIBIT 24
(PLAINTIFF'S EXHIBIT)

DUPLICATE BOUGHT NOTE SHOWING NAMES OF SELLING BROKERS
NUMBER OF SHARES PURCHASED FROM EACH AND PRICE ON EXECUTION OF PURCHASE OF 7,000 SHARES FOR J. P. McLAUGHLIN.
16th October, 1929.

BUY 7,000 shares Su. at 7.00

Name — J. P. McLaughlin

Order completed

10	300	7.00	Crang
	100	7.00	Col.
	600	7.00	But.
	100	7.00	Dob.
	500	7.00	Scott
	50	7.00	Sto.
	50	7.00	Sol.
	100	7.00	Stob.
	400	6.95	East.
	400	6.95	Gib.
20	100	6.95	Dob.
	50	6.95	Sol.
	50	7.00	Sol.
	300	6.95	Moys.
	500	7.00	Crawf.
	800	7.00	Sto.
	200	7.00	Moys.
	200	7.00	Sol.
	50	7.00	Moy.
	50	7.00	Sto.
30	500	7.00	East.
	600	7.00	But.
	300	7.00	Scott.
	600	7.00	Lors.
	100	7.00	Sto.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Exhibit 24.
Duplicate
Bought Note
showing
Names of
Selling
Brokers,
Prices, etc.
on purchase
of 7,000
shares for
J. P.
McLaughlin,
16th
October,
1929.

EXHIBIT 23
(PLAINTIFF'S EXHIBIT)

*In the
Supreme
Court of
Ontario.*

Exhibits.
Exhibit 23.
Buy and
sell slips
other than
those
referable to
J. P.
McLaughlin,
16th
October,
1929.

BUY AND SELL SLIPS, OTHER THAN THOSE REFERABLE TO. J. P.
McLAUGHLIN, FOR OCTOBER 16TH, 1929.

SOLLOWAY MILLS & CO. LIMITED

SELL S 26 Oct. 16, 1929

	75 shares SU	at	7.00		
Cash, Open or Delivery				Branch Jo.	Com—
Day or Open Order	75 — 700		Sol.		Tax 168
			525.		10

BUY Oct. 16, 1929

	_____ shares Su				
	Name _____				
	Order completed				
	17 7.00		Sol.		
			105.00		

SELL Oct. 16, 1929

	_____ shares Su				
	Name _____				
	Order completed				
	100 7.00		Sol.		20
			700.		

SELL _____ 192 _____

	_____ shares Su				
	Name _____				
	Order completed				
	3500 7.00		Sol.		
			24,500.00		

BUY Oct. 16, 1929 30

Buy B-29					
10 shares	Su	at	7.00		
	Branch HX				
10	7.00		Sol.		
			70.00		

SELL					Oct. 16, 1929	<i>In the Supreme Court of Ontario.</i>
	50 shares Su	7.00				
		Branch Bo.				
	50	7.00	Sol.			Exhibits.
				350.00		Exhibit 23.
						Buy and sell slips other than those referable to J. P.
SELL					Oct. 16, 1929	McLaughlin, 16th October, 1929.
10	100 shares Su	at	6.95			
	Name —	R. C. Smythe				
	Order completed					<i>—continued</i>
	100	6.95	But.			
				695.00		
SELL					Oct. 16, 1929	
	— shares Su					
	Order completed					
	100	7.00	Sto.			
				700.00		
20 SELL	50 shares	Su	at 6.90		Oct. 16, 1929	
		Branch Wy				
	50	6.95	Sol.			
				347.50		
SELL					Oct. 16, 1929	
	50 shares Su	at	—			
		Branch Vx				
	50	6.85	But.			
30				342.50		
SELL					Oct. 16, 1929	
	50 shares Su	at	—			
		Branch Vx				
	50	7.00	Sol.			
				350.00		

<i>In the Supreme Court of Ontario.</i> — Exhibits. Exhibit 23. Buy and sell slips other than those referable to J. P. McLaughlin, 16th October, 1929. —continued	SELL	50 shares Su	at	7.00	Oct. 16, 1929
			Branch Vx		
		25	7.00	Sol.	
		25	7.00	Sol.	350.00
		<hr/>			
	SELL	— shares Su	—		Oct. 16, 1929
			Branch Vx		10
		5	6.90	Sto.	
				34.50	
		<hr/>			
	SELL	100 shares Su	at	7.00	Oct. 16, 1929
			Branch Vx		
		100	7.00	Sol.	
				700.00	
		<hr/>			
	SELL	100 shares Su	at	6.90	Oct. 16, 1929 20
			Branch Vx		
		100	6.90	Pat.	
				690.00	
		<hr/>			
	SELL	50 shares Su	at	7.00	Oct. 16, 1929
			Branch Vx		
		50	7.00	Cris.	
				350.00	30

EXHIBIT 25

(PLAINTIFF'S EXHIBIT)

SUMMARY OF EXHIBIT 25, DUPLICATE CONFIRMATION FROM COMPANY'S RECORDS SHOWING NUMBER OF SHARES BOUGHT AND SOLD OCTOBER 16TH, 1929.

In the Supreme Court of Ontario.

Exhibits. Summary of Exhibit 25 duplicate confirmation from Company records showing shares bought and sold, 16th October, 1929.

BOUGHT

DATE	CLIENT	SHARES	SECURITY	PRICE	AMOUNT	Brokerage	TOTAL	BOUGHT FROM
Oct 16 29		100	SUD BASIN	7.00	700 00			
Oct 16 29		15	SUD BASIN	7.00	105 00			
Oct 16 29	HALIFAX	10	SUD BASIN	7.00			70 00	SOL A12 OPEN
<p>N.B.—The following brokers sold shares as brokers for Dominion Company. Confirmations were made out as if they were clients purchasing shares so that the bookkeepers would enter the amounts in these brokers' accounts to show them entitled to receive these amounts of shares.</p>								
Oct 16 29	J M SCOTT	600	SUD BASIN	7.00	4 200 00	900	1326	SOL A80 DEL
Oct 16 29	J T EASTWOOD	500	SUD BASIN	7.00	3 500 00	750	1105	SOL A88 DEL
Oct 16 29	LORSCH & CO	600	SUD BASIN	7.00	4 200 00	900	1326	SOL A90 DEL
Oct 16 29	COLLING & COLLING	600	SUD BASIN	7.00	4 200 00	900	1326	SOL A82 DEL
Oct 16 29	BUTLER & HEVENOR	600	SUD BASIN	7.00	4 200 00	900	1326	SOL A78 DEL
Oct 16 29	J H CRANG	600	SUD BASIN	7.00	4 200 00	900	1326	SOL A86 DEL

SOLD

DATE	CLIENT	SHARES	SECURITY	PRICE	AMOUNT	Brokerage	TAX	NET AMOUNT	SOLD TO
Oct 16 29		3500	SUD BASIN	7.00	24 500 00				
Oct 16 29		100	SUD BASIN	7.00	700 00				
Oct 16 29	ST. JOHN	75	SUD BASIN	7.00	525 00		1 68	523 32	SOL B96 OPEN
Oct 16 29	WINNIPEG	50	SUD BASIN	6.95	347 50		1 12	346 38	SOL C14 OPEN
Oct 16 29	VANCOUVER	50	SUD BASIN	7.00	350 00		1 12	348 88	SOL B98 OPEN
Oct 16 29	VANCOUVER	100	SUD BASIN	7.00	700 00		2 21	697 79	SOL C8 OPEN
Oct 16 29	VANCOUVER	50	SUD BASIN	6.85	342 50		1 12	341 38	BUT D38 OPEN
Oct 16 29	VANCOUVER	50	SUD BASIN	7.00	350 00		1 12	348 88	SOL C72 OPEN
Oct 16 29	VANCOUVER	100	SUD BASIN	6.90	690 00		2 21	687 79	PAT A98 OPEN
Oct 16 29	VANCOUVER	5	SUD BASIN	6.90	34 50		13	34 37	STO B65 OPEN
Oct 16 29	R C SMYTH	% BAY ST	SUD BASIN	6.95	695 00		2 21	685 29	BUT A5 ROBINSON
Oct 16 29	VANCOUVER	50	SUD BASIN	7.00	350 00		1 12	348 88	CHRIS A75 OPEN

EXHIBIT 42
(PLAINTIFF'S EXHIBIT)

*In the
Supreme
Court of
Ontario.*

Exhibits.
Exhibit 42.
Confirmation
of sales
made by
other
Brokers for
Solloway,
Mills and
Company,
Limited,
16th
October,
1929.

CONFIRMATIONS OF SALES MADE BY OTHER BROKERS FOR SOL-
LOWAY MILLS AND COMPANY LIMITED OCTOBER 16TH, 1929
J. H. CRANG & CO.

Member of Standard Stock and Mining Exchange Date, October 16th, 1929

We have this day sold for your account and risk, subject to the Rules and Regulations of the Exchange, where executed.

Broker	Shares	Security	Price	Amount	Brokerage	Tax	Net Amount	Client
Patterson	300	Sudbury Basin	7.00	2100.00	4.50	6.63	2088.87	Solloway
Solloway	300	Sudbury Basin	7.00	2100.00	4.50	6.63	2088.87	Mills

Colling & Colling sold 600 Sud. B. at 7.00.

Butler, Hevenor & Co. sold 600 Sud. B. at 7.00 to Sol.

J. M. Scott Jr. sold 300 Sud. B. at 7.00 to Patterson.

300 Sud. B. at 7.00 to Sol.

Lorsch & Co. sold 600 Sud. B. to Sol. at 7.00.

Eastwood sold 500 Sud. B. at 7.00.

EXHIBIT 44—(Continued)

DATE RECEIVED	CERTIFICATE NUMBER	NUMBER OF SHARES	IN NAME OF	DELIVERED TO	DATE	PARTICULARS
1929					1929	
Oct. 29	12,359	100	Stobie	Clearing	Oct. 30	
"	12,360	100	"	"	"	
"	10,815	100	F. J. Crawford	London	"	
"	12,361	100	Stobie	Vancouver	"	
"	12,362	100	"	"	"	
"	10,816	100	F. J. Crawford	"	"	
"	12,363	100	Stobie	Regina	Nov. 13	
"	12,554	100	A. L. Hudson	Crang	Nov. 5	Delivered to Crang in settlement of sales for House Account Nov. 2 and 4 at \$5.90 to 6.25.
"	13,749	100	F. J. Crawford	"	"	" " " " " " 5.90 to 6.25.
"	15,067	100	A. Pratt	"	"	" " " " " " 5.90 to 6.25.
"	7,447	100	G. W. Blaikie	Eastwood	"	" " " " " " 5.95.
"	13,748	100	F. J. Crawford	"	"	Nov. 2 at \$5.95.
"	15,604	100	J. P. Cannon	"	"	" " " " " " 5.95.
"	10,811	100	F. J. Crawford	"	"	" " " " " " 5.95.
"	6,536	100	Stobie	"	"	" " " " " " 5.95.
"	6,535	100	"	"	"	" " " " " " 5.95.
"	10,810	100	Crawford	"	"	" " " " " " 5.95.
"	6,534	100	Stobie	"	"	" " " " " " 5.95.
"	5,073	100	N. Tovell	"	"	" " " " " " 5.95.
"	10,809	100	F. J. Crawford	"	"	" " " " " " 5.95.
"	5,072	100	N. Tovell	"	"	" " " " " " 5.95.
"	5,071	100	"	Butler Hevenor	"	" " Butler Hevenor in settlement of sales for House Account Nov. 4 at \$6.10 to 6.15.
Dec. 3	6,461	100	W. R. Pointon	"	"	" " " " " " 6.10 to 6.15.
"	423	100	Stobie	Vancouver	Dec. 4	
"	1,592	200	A. L. Hudson	Clearing	"	
"	1,591	200	"	Hamilton	"	
"	11,326	200	C. G. Murphy	Clearing	Dec. 10	
"	20,913	200	A. L. Riordon	"	Dec. 4	
"	3,279	500	A. L. Hudson	"	"	
"	3,256	1,000	Chipman-Hogg	"	"	
Dec. 16	25,195	300	Chipman-Hogg	Scott	Dec. 12	Delivered to Scott in settlement of sales for House Account Dec. 12 at \$3.70 to 3.71.
"	9,191	500	F. J. Bailes	Transfer	Dec. 6	
"	5,305	100	Stobie	Clearing	Dec. 17	
"	4,234	100	W. H. Megill	"	1930	
"	25,189	100	Chipman-Hogg	"	Jan. 14	
"	25,188	100	"	"	"	
"	13,240	100	Mara McCarthy	"	"	
"	12,038	100	Fleming & Marvin	"	"	
"	3,057	100	M. MacCrea	"	"	
"	19,270	100	Aird McLeod	"	"	
"	8,088	100	W. G. Mitchell	"	"	
"	12,076	100	Stobie	"	"	
"	11,103	100	R. O. Denman & Co.	"	"	
"	22,361	100	Parker McElroy	"	"	
"	16,289	100	Stobie	"	"	
"	25,187	100	Chipman-Hogg	"	"	
"	25,186	100	"	"	"	
"	25,185	100	"	"	"	
"	22,360	100	Parker McElroy	"	"	

In the Supreme Court of Ontario.

Exhibits.
Exhibit 44.
Particulars of disposition of certain shares deposited by J. P. McLaughlin with Ontario Company as security.

—continued

EXHIBIT 45

(PLAINTIFF'S EXHIBIT)

*In the
Supreme
Court of
Ontario.*Exhibits.
Exhibit 45.
Schedule
showing
certain
certificates
by Ontario
Company
from clearing
and later
disposition
of same,
17th
October,
1929.

SCHEDULE SHOWING CERTAIN CERTIFICATES RECEIVED BY			BY	
ONTARIO COMPANY FROM CLEARING OCTOBER 17TH, 1929, AND				
LATER DISPOSITION OF SAME				
	21635	300	Scott	October 18
	17583	400	Clearing	October 18
	* 1606	200	Scott	" 18
	19317	100	Scott	" 21
10	181	100	"	" 21
	22316	100	"	" 21
	23403	100	"	" 21
	5318	100	"	" 21
	10733	100	"	" 21
	* 1388	200	Lorsch	" 18
	* 7	200	"	" 18
	* 13632	200	Clearing	" 18
	17009	200	Scott	" 18
	16238	100	Clearing	" 18
20	23415	100	"	" 18
	21323	100	"	" 18
	5878	100	"	" 18
	13828	100	"	" 18
	23249	100	"	" 18
	2764	100	Scott	" 18
	9102	100	Lorsch	" 18
	23012	100	Butler	" 18
	13415	100	"	" 18
	5272	100	"	" 18
30	20995	100	"	" 18
	21965	100	"	" 18
	13320	100	Scott	" 18
	21318	100	"	" 18
	* 4011	100	"	" 18
	* 4012	100	"	" 18
	* 10745	100	"	" 18
	* 5538	100	"	" 18
	* 9	100	"	" 18
	* 5540	100	"	" 18
40	22934	100	Clearing	" 18
	20956	100	Scott	" 18
	23433	100	"	" 18
	23534	100	Crang	" 18
	5	100	"	" 18

<i>In the</i>	10692	100			
<i>Supreme</i>	23536	100	Crang	October	18
<i>Court of</i>	17488	100	"	"	18
<i>Ontario.</i>	13300	100	"	"	18
Exhibits.	22973	100	Lorsch	"	18
Exhibit 45.	18473	100	"	"	18
Schedule	22965	100	"	"	18
showing	5891	100	"	"	18
certain	23035	100	"	"	18
certificates	11315	100	Scott	"	21
by Ontario			"	"	21
Company					
from clearing					
and later					
disposition					
of same,					
17th					
October,					
1929.					

* Deposited by Plaintiff as collateral on October 16, 1929.

—continued

Exhibit 4.
Letter
Ontario
Company to
J. P.
McLaughlin,
21st
October,
1929.

EXHIBIT 4

(PLAINTIFF'S EXHIBIT)

LETTER ONTARIO COMPANY TO J. P. McLAUGHLIN

SOLLOWAY, MILLS & CO., LTD.

I. W. C. Solloway,
Member Standard Stock
and Mining Exchange,
Calgary Stock Exchange.
Arthur E. Irvine
Member Standard Stock
and Mining Exchange.

Specialists in
Mining and Oil Securities
Head Office
Metropolitan Building, Toronto 2

Harvey Mills
Member Vancouver Stock Exchange
Seattle Stock Exchange
L. W. Hicks
Member Mining Section
Winnipeg Stock Exchange
and Winnipeg Grain Exchange

TO MR. J. P. McLAUGHLIN

Oct. 21, 1929.

Dear Sir,

At prevailing market prices your account requires an additional
deposit of \$4,500.00 to bring it up to proper marginal requirements.
Please let us have an immediate remittance to cover.

Signed, SOLLOWAY, MILLS & CO., LTD.

Per "S. M. Walker".

EXHIBIT 14
(PLAINTIFF'S EXHIBIT)

ACCOUNT SENT J. P. McLAUGHLIN BY ONTARIO COMPANY OCTOBER
31ST, 1929

*In the
Supreme
Court of
Ontario.*

Exhibit 14.
Account
sent to J. P.
McLaughlin
by Ontario
Company,
31st
October,
1929.

Officials of the Company are Members of
the Standard Stock and Mining Exchange,
Toronto, also Members of 12 other ex-
changes.

Specialists in
Mines, Oils, Industrials and Grain
Metropolitan Building
Toronto 2

10

To J. P. McLaughlin 29 Munroe Park Ave., Toronto.				Price	Debit	Credit	Bal. Credit in red
Date	Bought	Sold	Stock				
1929							
			Bal. Brought Forward				
Oct. 16	3,500		Sud. Basin Recd. 4023				
	1,800		" " 7.00		12,735.00		
	5,200		" " 1250 6.95				
			" " 3950 7.00		36,727.50		49,462.50*
22	1,500		" " Recd. 4467				49,462.50
25	500		" " Recd. 4496				49,462.50
22			Interest		60.98		49,523.48
29	1,500		Sud. Basin Recd. 4663				
	2,000		" " Recd. 4461				49,523.48

Stock position—16,000 Sudbury Basin

E. & O. E. Please report immediately if this statement does not agree with your records.

EXHIBIT 5

(PLAINTIFF'S EXHIBIT)

RECEIPT FOR COLLATERAL SOLLOWAY MILLS & CO. LTD. TO J. P.
McLAUGHLIN

Exhibit 5.
Receipt for
Collateral,
Solloway,
Mills and
Co., Ltd.
to J. P.
McLaughlin,
22nd
October,
1929.

Date, Oct. 22/29.

RECEIVED from J. P. McLaughlin 1,500 shares of Sud. Basin.
(Numbers of certificates not copied)

SOLLOWAY, MILLS & CO., LIMITED

Per "C. R. Miller".

EXHIBIT 6

(PLAINTIFF'S EXHIBIT)

*In the
Supreme
Court of
Ontario.*

Exhibits.
Exhibit 6.
Letter,
Solloway,
Mills and
Co., Ltd.
to J. P.
McLaughlin,
24th
October,
1929.

LETTER SOLLOWAY MILLS & CO., LTD. TO J. P. McLAUGHLIN
SOLLOWAY, MILLS & CO., LIMITED

SPECIALISTS IN MINES, OILS, INDUSTRIALS AND GRAIN

I. W. C. Solloway A. E. Irvine R. J. Cameron
Members Standard Stock and Mining Exchange, Toronto
Officials of the Company are also Members of the
Chicago Board of Trade Winnipeg Grain Exchange
Chicago Curb Exchange Association
Vancouver Grain Exchange Clearing Association
Vancouver Stock Exchange Calgary Stock Exchange
Seattle Stock Exchange
Telephone EL 6371
Head Office
Metropolitan Building
Toronto

10

TO J. P. McLAUGHLIN
29 Munroe Park Ave., City.

Oct. 24, 1929

Dear Sir,

20

At prevailing market prices your account requires an additional
deposit of \$1,500.00 to bring it up to the proper marginal requirements.
Please let us have an immediate remittance to cover.

SOLLOWAY, MILLS & CO., LIMITED

Per "S. M. Walker".

EXHIBIT 7

(PLAINTIFF'S EXHIBIT)

RECEIPT FOR 500 SHARES COLLATERAL, SOLLOWAY MILLS & CO.,
LTD. TO J. P. McLAUGHLIN

29 Munroe Park Ave.

Oct. 25, 1929.

30

RECEIVED from J. P. McLaughlin 500 shares Sudbury Basin,
500 — 21635 .

SOLLOWAY, MILLS & CO., LIMITED

Per "E. R. Miller".

Exhibit 7.
Receipt for
500 shares
Collateral,
Solloway,
Mills and
Co., Ltd.
to J. P.
McLaughlin,
25th
October,
1929.

EXHIBIT 8
(PLAINTIFF'S EXHIBIT)

RECEIPT SOLLOWAY MILLS & CO., LTD. TO J. P. McLAUGHLIN FOR
1,500 SHARES OF COLLATERAL

29 Munroe Park Ave. Oct. 28, 1929.

RECEIVED from J. P. McLaughlin 1,500 Sudbury Basin,

5071	06536
5072	10811
10809	15604
5073	13748
06534	07447
10810	15067
06535	13749
	12554

10

*In the
Supreme
Court of
Ontario.*

Exhibits.
Exhibit 8.
Receipt
Solloway,
Mills and
Co., Ltd.
to J. P.
McLaughlin
for 1500
shares
collateral.
28th
October,
1929.

SOLLOWAY, MILLS & CO., LIMITED

Per "A. W. Robinson"

EXHIBIT 9

(PLAINTIFF'S EXHIBIT)

RECEIPT SOLLOWAY MILLS & CO., LTD. TO J. P. McLAUGHLIN FOR
2,000 SHARES OF COLLATERAL

20 29 Munroe Park Ave. Oct. 28, 1929.

RECEIVED from J. P. McLaughlin 2,000 shares Sudbury Basin,

100 each.

22732	10813
22971	12358
10750	10814
22969	12359
16290	12360
07151	10815
10330	12361
10812	12362
18593	10816
17488	12363

30

Exhibit 9.
Receipt
Solloway,
Mills and
Co., Ltd.
to J. P.
McLaughlin
for 2,000
shares of
collateral.
28th
October,
1929.

SOLLOWAY, MILLS & CO., LIMITED

Per "_____"

*In the
Supreme
Court of
Ontario.*

Exhibits.
Exhibit 15.
Account for
November,
1929 sent
by
Solloway,
Mills and
Co., Ltd.,
30th
November,
1929.

EXHIBIT 15
(PLAINTIFF'S EXHIBIT)

ACCOUNT FOR NOVEMBER, 1929, SENT BY SOLLOWAY MILLS AND
CO., LTD., TO J. P. McLAUGHLIN
SOLLOWAY, MILLS & CO., LIMITED

Specialists in
Mines, Oils, Industrials and Grain
Metropolitan Building, Toronto 2

To J. P. McLaughlin
29 Munroe Park Ave.,
Toronto, Ont.

10

Date	Bought	Sold	stock	Price	Debit	Credit	Balance
1929			Bal. Brought Forward				Credit
Nov.			Interest		315.48		in red
22			Stock position—16000 Sudbury Basin				49,523.48
							49,838.96

Exhibit 12.
Receipt
Solloway,
Mills and
Co., Ltd.
to J. P.
McLaughlin
for 2500
shares
collateral,
3rd
December,
1929.

EXHIBIT 12

(PLAINTIFF'S EXHIBIT)

RECEIPT, SOLLOWAY MILLS AND CO., LTD., TO J. P. McLAUGHLIN 20
FOR 2,500 SHARES COLLATERAL

29 Munroe Park Ave. Dec. 3, 1929.
RECEIVED from J. P. McLaughlin 2,500 shares Sudbury Basin.

100—06461	200—11326
100—00428	200—20913
200—01592	500—03279
200—01591	1000—03256
	2500 Total

SOLLOWAY, MILLS & CO., LIMITED
Per "A. W. Robinson".

30

Exhibit 10.
Letter,
Solloway,
Mills and
Co., Ltd.
to J. P.
McLaughlin,
13th
December,
1929.

EXHIBIT 10

(PLAINTIFF'S EXHIBIT)

LETTER, SOLLOWAY MILLS & CO., LTD., TO J. P. McLAUGHLIN

J. P. McLAUGHLIN

Dec. 13, 1929.

Dear Sir,

At prevailing market prices your account requires an additional
deposit of \$7,900.00 to bring it up to proper marginal requirements.

Please let us have an immediate remittance to cover.

SOLLOWAY, MILLS & CO., LIMITED
Per "S. M. Walker".

EXHIBIT 11
(PLAINTIFF'S EXHIBIT)

*In the
Supreme
Court of
Ontario.*

RECEIPT, SOLLOWAY, MILLS & CO., LTD., TO J. P. McLAUGHLIN FOR
2,500 SHARES COLLATERAL

Date Dec. 16, 1929.

29 Munroe Park
RECEIVED from J. P. McLaughlin 2,500 shares Sudbury Basin,
11103—100, 25185—100, 25186—100, 25187—100, 16289—100, 22361—100,
22360—100, 12076—100, 08088—100, 19270—100, 03057—100, 12038—100,
13240—100, 25188—100, 25189—100, 5305—100, 04232—100.
25195—300
09191—500

SOLLOWAY, MILLS & CO., LIMITED
Per "A. W. Robinson".

Exhibits.
Exhibit 11.
Receipt
Solloway,
Mills and
Co., Ltd.
to J. P.
McLaughlin
for 2500
shares
collateral,
16th
December,
1929.

EXHIBIT 13

(PLAINTIFF'S EXHIBIT)

RECEIPT, SOLLOWAY, MILLS & CO., LTD., TO J. P. McLAUGHLIN FOR
\$8,000 CASH MARGIN

Dec. 20, 1929.

29 Munroe Park
RECEIVED from J. P. McLAUGHLIN Eight thousand dollars
cash,
\$8,000.00

SOLLOWAY, MILLS & CO., LIMITED
Per "A. W. Robinson".

Exhibit 13.
Receipt
Solloway,
Mills and
Co., Ltd.
to J. P.
McLaughlin
for \$8,000
cash
margin.

EXHIBIT 16

(PLAINTIFF'S EXHIBIT)

ACCOUNT FOR DECEMBER, 1929, SENT BY SOLLOWAY, MILLS & CO.,
LTD., to J. P. McLAUGHLIN

SOLLOWAY, MILLS & CO., LIMITED

30 To J. P. McLaughlin,
29 Munroe Park Ave., City.

Date	Bought	Sold	Stock	Price	Debit	Credit	Balance
1929			Bal. Brought				Credit
Dec.			Forward				in red
3	2,500		Sud. Basin Recd. 5652				49,838.96
16	2,500		" " Recd. 5946				49,838.96
20			By chq. 12515			8,000.00	41,838.96
22			Interest		303.96		42,142.92
40			Stock position—21,000 Sud. Basin				

Please report immediately if this statement does not agree with your records.
E. & O. E.

Exhibit 16.
Account
for
December,
1929 sent by
Solloway,
Mills and
Co., Ltd.
to J. P.
McLaughlin,
31st
December,
1929.

EXHIBIT 46
(PLAINTIFF'S EXHIBIT)

PARTIAL LIST OF SUDBURY BASIN CERTIFICATES DELIVERED TO
McLAUGHLIN JANUARY 14, 1930

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Exhibit 46.
Partial list of
Sudbury
Basin
certificates
delivered
to J. P.
McLaughlin,
14th
January,
1930.

Date 1930	Certificate No.	No. of Shares	Registered Name	From whom Received
Jan. 13	16302	100	Stobie	J. R. Gordon
	21450	100	Crawford	"
	4546	100	Stobie	"
10	21455	100	Crawford	"
	21036	100	"	"
	8	100	"	"
	21040	100	"	"
	21461	100	"	"
	11562	100	"	"
	21028	100	"	"
	8090	100	H. Storsteed	"
	21022	100	Crawford	"
	14795	100	G. L. Whyte	"
20	19793	100	Draper Dobie	"
	1019	100	Stobie	"
	10598	100	"	"
	4829	100	"	"
	12098	100	"	"
	16301	100	"	"
	13064	100	Leslie	"
	23860	100	F. G. Oke	"
	12355	100	Stobie	"
	23011	100	G. M. Black	"
30	10481	100	Stobie	"
	2559	100	E. Cronyn	"
	12357	100	Stobie	"
	22984	100	Stobie	"
	5	100	Stobie	"
	6845	100	H. L. Gibson	"
	12390	100	Stobie	"
	23373	100	Mrs. A. Dunn	"
	19790	100	Draper Dobie	"
	5965	100	Crawford	"
40	22528	100	W. A. Findly	"
	12532	100	Stobie	"
	3	100	"	"
	4	100	"	"
	14677	100	Logan Bryon	"

<i>In the Supreme Court of Ontario.</i>	Date 1930 Jan. 13	Certificate No.	No. of Shares	Registered Name	From whom Received	
<i>Exhibits. Exhibit 46. Partial list of Sudbury Basin certificates delivered to J. P. McLaughlin, 14th January, 1930. —continued</i>		22153	100	J. F. Morton	J. R. Gordon	
		20056	100	McCaing	"	
		16394	100	Osler Hammond	"	
		6021	100	C. Peaker	"	
		9454	100	G. N. Goad	"	
		21448	100	Crawford	"	
		21034	100	"	"	
		5	100	"	"	
		22563	100	W. A. Findly	"	10
		15146	100	J. Goad	"	
		12086	100	Stobie	"	
		14895	100	Geo. Blaikie & Co.	"	
		23423	100	Bongard	"	
		23853	100	F. G. Oke	"	
		5	100	"	"	
		6	100	"	"	
		7	100	"	"	
		7599	100	H. Wallace	"	20
		23858	100	F. G. Oke	"	
		22018	1000	F. O'Hearn	Stobie Forlong Loan	
		7756	1000	A. Bowman	"	
		25409	1000	Stobie	"	
		25413	100	"	"	
		24021	500	Ames Tudhope	"	
		25414	500	Stobie	"	
		25411	500	"	"	
		2	500	"	"	
		24374	200	J. Lucas	"	30
		25375	100	C. Kinsey	"	
		64	100	Stobie	Stobie Forlong Loan	
		14615	100	G. McLean	"	
	13300	100	Mara & McCarthy	"		
	3613	100	Child & Co.	"		
	13729	100	W. J. Smart	"		
	19614	100	W. A. Findly	"		
	11911	100	E. Parser	"		
	18643	100	N. Samuel	"	40	
	13237	100	W. J. Smart	"		
	10634	100	Stobie	"		
	24455	100	"	"		
	11428	100	"	"		
	22017	1000	O'Hearn	"		

Date 1930	Certificate No.	No. of Shares	Registered Name	From whom Received	<i>In the Supreme Court of Ontario.</i>
Jan. 13	7412	1000	A. Gentles	Stobie Forlong Loan	-- Exhibits.
	22019	1000	F. O'Hearn	"	Exhibit 46.
	25173	100	J. F. M.	Royal Loan	Partial list of
	4	100	"	"	Sudbury
	24675	100	O'Hearn	"	Basin
	6	100	"	"	certificates
10	7	100	"	"	delivered
	24695	100	"	"	to J. P.
	25363	100	"	"	McLaughlin,
	25184	100	Chip Hogg	"	14th
	22457	500	A. Forbes	"	January,
	6503	500	Stobie	"	1930.
	9192	500	F. J. Bailes	"	--continued
	20126	200	Greenshields	"	
	20007	100	Biggar Crawford	"	
	23413	100	Baptist Johnson	"	
20	25755	100	J. F. M.	Transfer	
	6	100	"	"	
	7	100	"	"	
	8	100	"	"	

EXHIBIT 47
(PLAINTIFF'S EXHIBIT)

*In the
Supreme
Court of
Ontario.*

Exhibits.
Exhibit 47.
Statement
showing
calculation
of Plaintiff's
claim as at
14th
January,
1930.

STATEMENT SHOWING CALCULATION OF PLAINTIFF'S CLAIM

Amount claimed re Sudbury Basin shares purported to be purchased and carried by the defendants on behalf of the plaintiff which the plaintiff alleges were not so purchased and/or carried.

Amount charged to J. P. McLaughlin's Account on 16th October, 1929, purporting to be for the purchase of 7,000 shares Sudbury Basin

\$49,462.50

10

Value at date delivered to plaintiff:

7,000 shares @ \$3.70 per share \$25,900.

Plus Brokerage

280.

26,180.00

\$23,282.50

Amount claimed for value due on collateral deposited by the plaintiff with the defendants which the plaintiff alleges was disposed of by the defendants.

Date Deposited	Number of Shares of Sudbury Basin	Approximate Value at date disposed of by Defendants	20
16th October, 1929	3,500 (2,500) (1,000)	Per Share 7.00 6.60	\$17,500.00 6,600.00
			\$24,100.00
22nd October, 1929	1,500	6.35	9,525.00
25th October, 1929	500	6.10	3,050.00
29th October, 1929	3,500	6.00	21,000.00
3rd December, 1929	2,500	3.70	9,250.00
	11,500		
16th December, 1929	2,500		
	14,000		\$66,925.00

No claim made as same certificates with exception of one for 200 shares were returned to the plaintiff

30

Value at date delivered to plaintiff—11,500 shares @ \$3,70 per share

42,550.00

Amount claimed re interest charged by the defendants which the plaintiff claims should not be charged

872.42

\$48,529.92

Plus: Interest on the above amount from the 14th January, 1930, (Which at 5% per annum to 15th October, 1932, amounts to approximately \$6,500.00).

40