

68, 1939

In the Privy Council.

No. 94 of 1938.

ON APPEAL FROM THE SUPREME COURT OF
ONTARIO (APPELLATE DIVISION).

BETWEEN

FRANCIS DAY & HUNTER LIMITED - (*Plaintiffs*) *Appellants*

AND

TWENTIETH CENTURY FOX CORPORATION
LIMITED AND FAMOUS PLAYERS CANADIAN
CORPORATION LIMITED - - - (*Defendants*) *Respondents.*

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

No.	Description of Document.	Date.	Page.
IN THE SUPREME COURT OF ONTARIO.			
1	Statement of Claim - - - - -	17th March 1936 - -	1
2	Statement of Defence - - - - -	5th May 1936 - -	3
3	Joinder of Issue - - - - -	8th May 1936 - -	5
<i>Plaintiff's Evidence.</i>			
4	Proceedings on Trial - - - - -	25th May 1937 - -	6
5	James P. O'Loghlin - - - - -	25th May 1937 - -	17
6	Elliott Shapiro - - - - -	25th May 1937 - -	21
7	Proceedings on Trial - - - - -	25th May and 9th June 1937 - -	36
8	James P. O'Loghlin (<i>recalled</i>) - - - - -	9th June 1937 - -	42
9	Elliott Shapiro (<i>recalled</i>) - - - - -	9th June 1937 - -	43

No.	Description of Document.	Date.	Page.
<i>Defendant's Evidence.</i>			
10	William Werner - - - - -	9th June 1937 - - -	48
11	Robert Andrew Hutchon - - - - -	9th June 1937 - - -	64
12	Edwin P. Kilroe - - - - -	9th June 1937 - - -	73
13	Counsel's arguments (<i>not printed</i>) - - - - -	9th and 10th June 1937	90
14	Formal Judgment - - - - -	23rd November 1937 -	90
15	Reasons for Judgment of Mr. Justice McEvoy -	23rd November 1937 -	91
IN THE SUPREME COURT OF ONTARIO APPELLATE DIVISION.			
16	Notice of Appeal - - - - -	10th December 1937 -	98
17	Defendants' Statement of points of law and of fact (<i>not printed</i>) - - - - -	19th April 1938 - - -	100
18	Factum of Plaintiff (<i>not printed</i>) - - - - -	9th May 1938 - - -	100
19	Formal Judgment - - - - -	13th June 1938 - - -	100
20	Reasons for Judgment of Middleton J. (concurrent in by Henderson and Masten JJ.A.) - - - - -	13th June 1938 - - -	101
IN THE PRIVY COUNCIL.			
21	Order in Council granting leave to appeal to His Majesty in Council - - - - -	4th November 1938 -	104

EXHIBITS.

Exhibit Mark.	Description of Document.	Date.	Page.
1	Admissions of Counsel - - - - -	21st May 1937 - - -	129
	Schedule "A" thereto - - - - -	- - - - -	130
	Schedule "B" thereto - - - - -	- - - - -	140
1A	Statement of Theatres without licence at which "The Man Who Broke the Bank at Monte Carlo" was exhibited - - - - -	- - - - -	142
2	Affidavit of Charles Coborn - - - - -	3rd November 1936 -	124
3	(a) Assignment Charles Coborn to Francis Day & Hunter - - - - -	11th April 1892 - - -	125
	(b) Receipt Charles Coborn to Francis Day & Hunter - - - - -	21st July 1924 - - -	125

Exhibit Mark.	Description of Document.	Date.	Page.
4	(a) Affidavit of Esther Howe - - - -	3rd November 1936 -	126
	(b) Death Certificate of Frederick Young Gilbert - - - -	15th April 1903 - -	127
	(c) Death Certificate of Emma Gilbert Widow of Frederick Gilbert - - - -	25th April 1905 - -	128
5	Certificate of Registration of Copyright by Francis Day & Hunter - - - -	18th March 1893 -	112
6	Assignment : Francis Day & Hunter to Francis Day & Hunter Ltd. - - - -	6th March 1936 -	120
7	Assignment : Esther Howe to Francis Day & Hunter Ltd. - - - -	29th May 1936 - -	121
8	Printed copy of the Song "The Man Who Broke the Bank at Monte Carlo." (<i>Separate document.</i>) - - - -	- - - - -	170
9	Printed script of the Play "The Gamble" also known as "The Man Who Broke the Bank," "Monsieur Alexandre," "Igra," "Le Jeu." (<i>Separate document.</i>) - - - -	- - - - -	170
10	Continuity and dialogue taken from the screen of the Motion Picture "The Man Who Broke the Bank at Monte Carlo." (<i>Separate document.</i>) - - - -	- - - - -	170
11	(a) Copy letter Messrs. Lawson Trebilcock Stratton & Elliott to Fox Film Corporation Ltd. - - - -	16th January 1936 -	118
	(b) Letter Twentieth Century Fox Corporation Limited per J. P. O'Loughlin to Mr. J. Earl Lawson K.C. - - - -	17th January 1936 -	119
12	Copy letter Messrs. Lawson Trebilcock Stratton & Elliott to Famous Players Canadian Corporation Limited - - - -	16th January 1936 -	119
13	Copy letter Shapiro Bernstein and Company Inc. to Twentieth Century Fox Corporation -	12th July 1935 - -	114
14	Advertising matter re : "The Man Who Broke the Bank at Monte Carlo." (<i>Separate document.</i>) - - - -	- - - - -	170
15	Admitted copy of material screened when "The Man Who Broke the Bank at Monte Carlo" is run - - - -	- - - - -	144
16	Statement re damages - - - -	- - - - -	154
17	Statement of rentals received by Twentieth Century Fox Corporation Limited - - - -	- - - - -	157
18	(a) Assignment Zittel to Bernstein - - - -	6th September 1923 -	113
	(b) Assignment Bernstein to Shapiro Bernstein and Company Inc. - - - -	3rd October 1923 -	114
19	Statement of profit to Canadian Company on "The Man Who Broke the Bank at Monte Carlo" - - - -	- - - - -	167
20	Specimen form of licence issued by Canadian Performing Right Society Limited - - - -	- - - - -	151
21	Photostatic copies of "The Times" London Newspaper (<i>extracts</i>) etc. - - - -	2nd March 1891 to 11th January 1892 -	107

Exhibit Mark.	Description of Document.	Date.	Page.
22	" Monte Carlo " titles as listed in the " Film Daily Year Book 1937 " - - - -	- - - -	147
23	Synopsis of Picture " The Man Who Broke the Bank at Monte Carlo " - - - -	9th December 1935 -	116
24	List of foreign countries where " The Man Who Broke the Bank at Monte Carlo " exhibited with foreign titles and English translations -	- - - -	146
25	List showing purchase prices paid by Twentieth Century Fox Film Corporation for titles from November 1927 to March 1937 - - - -	- - - -	148
25A	File of documents evidencing the purchase of various titles - - - -	- - - -	149
26	Copy letter John G. Paine to Edwin P. Kilroe -	8th October 1935 -	115
27	Copy letter Edwin P. Kilroe to Francis Day & Hunter Limited - - - -	9th October 1936 -	123

In the Privy Council.

No. 94 of 1938.

ON APPEAL FROM THE SUPREME COURT OF
ONTARIO (APPELLATE DIVISION).

BETWEEN

FRANCIS, DAY & HUNTER LIMITED - (*Plaintiffs*) *Appellants*

AND

TWENTIETH CENTURY FOX CORPORATION
LIMITED AND FAMOUS PLAYERS CANADIAN
CORPORATION LIMITED - - - (*Defendants*) *Respondents*.

RECORD OF PROCEEDINGS.

No. 1.

Statement of Claim.

IN THE SUPREME COURT OF ONTARIO.

(Writ issued the 27th day of February 1936)

Between

FRANCIS, DAY & HUNTER LIMITED - - *Plaintiff*

and

TWENTIETH CENTURY FOX CORPORATION LIMITED AND FAMOUS
PLAYERS CANADIAN CORPORATION LIMITED - - *Defendants*

*In the
Supreme
Court of
Ontario.*

No. 1.
Statement
of Claim,
17th March,
1936.

- 10 1. The plaintiff is a Company incorporated under the laws of the United Kingdom with head office at the City of London, England, and are successors to Francis, Day & Hunter, a partnership carried on preceding the incorporation of the Company. The defendant Twentieth Century Fox Corporation Limited is an incorporated Company carrying on business in Canada, with head office at the City of Montreal. The defendant Famous Players Canadian Corporation Limited is an incorporated Company carrying on business in Canada, with Head Office at the City of Toronto.

*In the
Supreme
Court of
Ontario.*

No. 1.
Statement
of Claim,
17th March,
1936—con-
tinued.

2. The Plaintiff is and was at all times the owner of the copyright (including the sole right to perform in public throughout the Dominion of Canada), in the musical and theatrical work known as "The Man Who Broke the Bank at Monte Carlo." Francis, Day & Hunter, a partnership, were the original publishers of the said musical and theatrical work and recorded as number 8309 their copyright in the Public Record Office in pursuance of the Statute 1 & 2 Vict., c. 94 at London, England, on the 18th day of March 1893, the date of first publication being the 22nd of April 1892. The plaintiff herein is successor to the said partnership of Francis, Day & Hunter and acquired by assignment from the said Francis, Day & Hunter the said 10 copyright. The sole right of performing in public the said musical and theatrical work by mechanical device was acquired by the plaintiff by assignment from the legal representatives of the author and composer.

3. That the central idea, theme, melody and title of the song "The Man Who Broke the Bank at Monte Carlo" forms the basis of a motion picture of the same name and that the said motion picture was produced, presented and advertised so as to lead the public to believe that the said musical and theatrical composition "The Man Who Broke the Bank at Monte Carlo," and the photoplay was and is identical in concept, purpose and artistic value. The great universal popularity of the song "The Man 20 Who Broke the Bank at Monte Carlo" since its publication in 1892 has become fixed and permanent in the anthology of English songs and has been sung the world over wherever the English language is used as a medium of expression. Because of its unique appeal, millions of copies of the song have been sold to the public.

4. The defendant Twentieth Century Fox Corporation Limited has acquired for distribution to motion picture theatres in Canada for exhibition purposes, the motion picture film captioned "The Man Who Broke the Bank at Monte Carlo" and has rented the same to exhibitors of motion pictures in the Province of Ontario and the Dominion of Canada for the purpose of 30 performing the same in public. The defendant Famous Players Canadian Corporation Limited are owners of theatres in Canada, including the Imperial Theatre on Yonge Street in the City of Toronto, and are carrying on the same as a place of public entertainment, to which an admission fee is charged.

5. On the 22nd to the 28th days of February 1936 and at other times, the dates of which are unknown to the Plaintiff, the Defendants infringed the plaintiff's said copyright,—the defendant Twentieth Century Fox Corporation Limited by permitting the same to be performed,—and the defendant, Famous Players Canadian Corporation Limited, by performing 40 in public at the said Imperial Theatre, the said musical work known as "The Man Who Broke the Bank at Monte Carlo" or a substantial part thereof, without the consent of the plaintiff.

6. Alternatively the defendants have infringed the plaintiff's said copyright by permitting the said theatre and the said motion picture to be

used for the said performance for the private profit of the defendants, without the consent of the plaintiff.

7. By reason of the wrongful acts of the defendants as aforesaid, the plaintiff has suffered damages.

The Plaintiff therefore claims :

1. A declaration that it is the owner of copyright in the said musical work, including the sole right to perform the same in public throughout the Dominion of Canada.

10

2. A declaration that the defendants have infringed the plaintiff's copyright in the said musical work by the performance thereof in public, or alternatively, by permitting the said theatre and the said motion picture to be used for the said performance for the defendants' private profit, without the consent of the plaintiff.

3. Damages, and in addition thereto, such part of the profits which the defendants have made from such infringement as this Honourable Court may decide to be just and proper.

4. The costs of this action.

5. Such further and other relief as the nature of the case may require and to this Honourable Court may seem meet.

20

The plaintiff proposes that this action be tried at the City of Toronto in the County of York.

Delivered this seventeenth day of March 1936, by Lawson, Trebilcock, Stratton & Elliott, 1401 Sterling Tower Building, 372 Bay Street, Toronto, Ontario, Solicitors for the Plaintiff.

No. 2.

Statement of Defence.

1. The Defendants admit that the Plaintiff is an incorporated Company but do not admit that the Plaintiff is successor to the partnership of Francis, Day and Hunter or that the Plaintiff acquired by assignment from the said partnership the copyright and the right of public performance in the musical work "The Man Who Broke the Bank at Monte Carlo." The Defendants further admit that each of them is an incorporated Company but the head office of the defendant, Twentieth Century-Fox Film Corporation Limited is at the City of Toronto and not at the City of Montreal as is alleged in paragraph (1) of the Plaintiff's Statement of Claim. Save as hereinafter expressly admitted the Defendants deny all the allegations contained in the Plaintiff's Statement of Claim and put the Plaintiff to strict proof of all matters material to its alleged cause of action.

30

2. The Defendants admit that the work entitled "The Man Who Broke the Bank at Monte Carlo" is a musical work and entitled to copyright as such but they deny that the same is a theatrical work as is alleged in the

40

*In the
Supreme
Court of
Ontario.*

No. 1.
Statement
of Claim,
17th March,
1936—con-
tinued.

No. 2.
Statement
of Defence,
5th May,
1936.

*In the
Supreme
Court of
Ontario.*

No. 2.
Statement
of Defence,
5th May,
1936—con-
tinued.

Statement of Claim if by that is meant that the same is a dramatic work and entitled to copyright protection as such.

3. The Defendants say that whatever copyright in the said musical work was owned, in the first instance, by the partnership of Francis, Day and Hunter and later by the Plaintiff Company, did not include the right of public performance because of the failure of said partnership and the Plaintiff Company to print on every copy of said musical work published by them respectively a notice to the effect that the right of public representation and performance is reserved as required by The Copyright (Musical Compositions) Act 1882, 45 and 46 Victoria, Chapter 40 (Imperial) which remained in force in Great Britain until 1st July 1912 and in Canada until 1st January 1924 and that the only right now subsisting in respect of such musical work is copyright as defined by the Imperial and Canadian Acts now in force except the sole right to perform the work or any substantial part thereof in public. 10

4. The Defendants further say that the term of copyright in the said musical work under the Imperial and Canadian Statutes in force at the time of the publication of such work expired before the date of the commencement of this action and that the ownership of the copyright for the additional term granted by the Imperial and Canadian Acts now in force is vested in the author and composer or in his personal representatives and not in the Plaintiff. The Defendants have no knowledge of and do not admit that the Plaintiff acquired the sole right of public performance in the said musical work by assignment from the legal representatives of the author and composer. 20

5. The Defendant, Twentieth Century-Fox Film Corporation Limited admits that it has acquired for distribution to motion picture theatres in Canada for exhibition purposes a motion picture play entitled "The Man Who Broke the Bank at Monte Carlo" and that it has rented the same to exhibitors of motion picture plays in the Dominion of Canada. The Defendant Famous Players Canadian Corporation Limited admits that it is the owner of motion picture theatres in Canada and that on the 21st to the 27th days of February 1936 the said Defendant exhibited such motion picture play in public at the Imperial Theatre, Toronto. The Defendants deny that the central idea, theme and melody of the motion picture play are the same as those of the musical work entitled "The Man Who Broke the Bank at Monte Carlo" and say that the only thing in common between the said motion picture play and the said musical work is the title "The Man Who Broke the Bank at Monte Carlo." The Defendants further deny that the said motion picture play was produced, presented and advertised in such a way as to lead the public to believe that the same was in concept, purpose and artistic value identical with the musical work of the same name and they deny that they have been guilty of infringement of any copyright in such musical work which may be owned by the Plaintiff. 30 40

6. The Defendants deny that the title "The Man Who Broke the Bank at Monte Carlo" is original and distinctive within the meaning of

Clause (v) of Section 2 of the Copyright Act and amending Acts. In the alternative the Defendants say that if the copyright in such musical work includes the title thereof the use of such title in respect of a dramatic work is not an infringement of the copyright in such musical work.

*In the
Supreme
Court of
Ontario.*

7. The Defendants deny that the Plaintiff has suffered damages. In the alternative the Defendants say that the damages suffered by the Plaintiff do not exceed \$100 and the Defendants pay that amount into Court with this their defence.

*No. 2.
Statement
of Defence,
5th May,
1936—con-
tinued.*

8. The Defendants plead the provisions of Sections 22 and 42 of the
10 Copyright Act of 1921.

9. The Defendants submit that this action should be dismissed with costs.

Delivered this 5th day of May 1936 by Tilley, Thomson & Parmenter,
80 King Street West, Toronto, Solicitors for the above named Defendants.

No. 3.

Joinder of Issue.

The plaintiff joins issue on the defendants' Statement of Defence.
Dated at Toronto this 8th day of May 1936.

*No. 3.
Joinder of
Issue,
8th May,
1936.*

LAWSON TREBILCOCK STRATTON & ELLIOTT,
1401 Sterling Tower Building,
372 Bay Street,
Toronto 2.
Solicitors for the Plaintiff.

20

To TILLEY THOMSON & PARMENTER,
80 King Street West,
Toronto,
Solicitors for the Defendants.

In the
Supreme
Court of
Ontario.

No. 4.
Proceedings on Trial.

IN THE SUPREME COURT OF ONTARIO

No. 4.
Proceedings
on Trial,
25th May,
1937.

Between :

FRANCIS, DAY & HUNTER LIMITED - - - - - Plaintiff
and

TWENTIETH CENTURY FOX CORPORATION LIMITED AND FAMOUS
PLAYERS CANADIAN CORPORATION, LIMITED - - Defendants.

Tried before the HONOURABLE MR. JUSTICE JOHN A. McEVoy, at
Toronto Non-Jury Sittings. 10

Hon. J. EARL LAWSON, K.C., *Counsel for the plaintiff.*

A. J. THOMSON, K.C., *Counsel for the defendants.*

Mr. LAWSON : I appear for the plaintiff, my Lord, and my learned
friend, Mr. Thomson, K.C., appears for the defendants. The action is
one for infringement of copyright. The plaintiffs allege that they are the
holders of copyright which, under the Canadian Act, it is alleged, includes
performing right in a song called "The Man Who Broke the Bank at Monte
Carlo." The song was written immediately prior to 1892, and, it is alleged,
was popularized on the English music-hall stage and, it is alleged, is well
known throughout the English-speaking world. It is further alleged by
the plaintiff that Twentieth Century Fox Film Corporation of America, 20
a United States Corporation, produced a picture, the name of which was,
"The Man Who Broke the Bank at Monte Carlo;" it is alleged that the
picture contained music as part of the accompaniment to the picture. The
plaintiff admits that there is no infringement of copyright in the United
States of America, as the song, by reason of the operations of the Copyright
acts of the United States of America, is in the public domain. The plaintiff
alleges that there is copyright in other countries, including the Dominion of
Canada.

I should say it is alleged that the defendant, Twentieth Century Fox 30
Corporation, Limited, is a Canadian corporation, which is a subsidiary
of the producer of the picture, Twentieth Century Fox Film Corporation of
America.

I hope I have made myself clear in that simple reference.

It is conceded by the plaintiff that the music or air of the song, "The
Man Who Broke the Bank at Monte Carlo," though included in the picture
as produced in the United States, was not in the picture as produced and
shown in the Dominion of Canada. Therefore, your Lordship will appreciate
that in its final analysis, subject to other defences which my learned friend
is unfortunately going to raise, it comes down to the question, is there copy- 40
right in the title?

The Famous Players Canadian Corporation, Limited, is a Canadian company operating many theatres in Canada, at one of whose theatres it is alleged the picture in question was shown.

Our pleadings are so constituted that I think I can safely say it will not be expected of your Lordship to assess the damages. We are anxious to determine the principle, and the Act prescribes certain things that flow as damages, and they can very well be taken care of before the Master.

*In the
Supreme
Court of
Ontario.*

No. 4.
Proceedings
on Trial,
25th May,
1937—*con-
tinued.*

For the purpose of facilitating your Lordship I had intended to procure for your Lordship a copy of the original Canadian Copyright Act insofar as musical compositions are concerned, which was passed in 1921, but did not come into effect until the 1st January, 1924, and the amending Act assented to on the 11th January, 1931. As I have not procured those acts yet, I propose to hand to your Lordship my copies which happen to have on the sides of them some notes, but those notes are not in any way descriptive, misleading or referable to this particular case. I think it would be a convenience if your Lordship had those instead of the statutes, which are rather heavy and cumbersome.

Before submitting the evidence which, by the way, will not be lengthy, my learned friend and I have agreed on certain admissions, which will save a lot of formal evidence, but I thought it might facilitate matters did I outline to your Lordship what I conceive the law generally to be under our Copyright Act, without going into the points which are contentious as between my learned friend and myself in this particular litigation.

“Copyright” is defined by Section 3 of the Copyright Act of 1921, and briefly, omitting the words not applicable to the particular case at bar, would read,—

“For the purposes of this Act, ‘copyright’ means the sole
“right to produce or reproduce the work or any substantial part
“thereof in any material form whatsoever, to perform, . . . the
“work or any substantial part thereof in public. . . .”

Then by Sub-section (d),—

“In the case of a . . . musical work, to make . . .
“any cinematograph film, or other contrivance by means of which
“the work may be mechanically performed or delivered.”

Then, “work” itself is defined by Section 2 of the said Act, and the definition particularly referable to a musical work, which a song is, is under sub-paragraph (p) of Section 2,—

“‘Musical work’ means any combination of melody and
“harmony, or either of them, printed, reduced to writing, or
“otherwise graphically produced or reproduced.”

By the amending Act of 1931, which is in the Statutes of 1931, Chapter 8, which I have supplied to your Lordship in pamphlet form, Section 2, Sub-section 1 (v), it is provided that the word “work” “shall include the title thereof when such title is original and distinctive.”

*In the
Supreme
Court of
Ontario.*

No. 4.
Proceedings
on Trial,
25th May,
1937—con-
tinued.

In its final analysis, subject to my learned friend's arguments in respect of other issues, this is the issue to be determined, the question of copyright in title.

If I might go back to the original Act for a moment or two, copyright is conferred under the Canadian Act by Section 4 of the Copyright Act of 1921 (that is the original Act) which reads, omitting the words which I do not deem necessary,—

“ Subject to the provisions of this Act, copyright shall subsist
“ in Canada for the term hereinafter mentioned, in every . . .
“ musical . . . work, if the author was at the date of the making 10
“ of the work a British subject . . . and if . . . the work
“ was first published within His Majesty's Dominions. . . . ”

By Sub-section 3 of the same Section, Section 4, it is provided that,—

“ Copyright shall subsist for the term hereinafter mentioned in
“ records, perforated rolls, and other contrivances by means of
“ which sounds may be mechanically reproduced, in like manner
“ as if such contrivances were musical . . . works.”

Then the term of the copyright is covered by Section 5 of the original Act,—

“ The term for which copyright shall subsist shall, except as 20
“ otherwise expressly provided by this Act, be the life of the author
“ and a period of fifty years after his death.”

I think I might at this point say that the author died in 1903. Therefore, subject to other things, the copyright would exist for a term until 1953.

Then who holds the copyright? By Section 42 of the original Act, the Canadian Act of 1921, copyright in Canada is vested in the person immediately entitled thereto before the 1st January, 1924. That is the date upon which the Canadian Act of 1921 came into force. And the rights vested in him are those set out in the first schedule to the Act. I do not think for the moment we need concern ourselves with the schedule. But 30
by Sub-section 2 of the said Section 42, if the term of the copyright has been assigned by the original author for the whole term of his copyright (and that did occur in this case) then at the date when the copyright would have expired but for the extended term provided by the Canadian Act, the copyright for the extended term passes to the author. In this case the term in copyright would have expired but for the Canadian Act in the year 1934.

His LORDSHIP : Does Section 7 affect it ?

Mr. LAWSON : Section 7 ?

His LORDSHIP : Of the original Act.

Mr. LAWSON : No, my Lord, it does not apply in this case. In whom 40
the copyright is vested by Section 42, would be in the assignee were it not for Sub-section 2, which vests it for the extended term in the author.

Then I draw your Lordship's attention to the fact that Sub-section 4 of Section 42 defines "author" as including the legal representatives of the deceased author. The author in this case died in 1903.

Now, as copyright in the musical work in question would have expired in 1934 in Canada, had it not been for the extended term of the Canadian Act—

His LORDSHIP: Would legal representatives include the assignee?

Mr. LAWSON: No, I think not, my Lord. In this Act it makes a clear distinction, particularly by Sub-section 1 of Section 42. I think "legal representatives" means just what it does in our courts.

Mr. THOMSON: It is defined in Paragraph (m) of Section 2, your Lordship.

Mr. LAWSON: Yes, "includes heirs, executors, administrators and assigns or other legal representatives."

My view is, and I think my learned friend agrees with it (and this might save your Lordship considerable time), that as the copyright in the musical work in question would have expired in Canada in 1934 had it not been for the extended term of the Canadian Act, the additional term of copyright granted by the Canadian Act must be taken to have been vested in the author or his heirs, and I admit that the plaintiff, subject to the presumptions provided in the Act, must prove his title from the heirs for this extended period. There are certain presumptions provided by the Act that I think I should call to your Lordship's attention. By Section 20, sub-section 3 of the original Act, as amended by the Copyright Amendment Act of 1931, it is provided that where in any action for infringement of copyright the defendant puts in issue either the existence of the copyright or the title of the plaintiff thereto, which occurs in this case, two presumptions arise:

"(a) The work shall, unless the contrary is proved, be presumed to be a work in which copyright subsists; and

"(b) The author of the work shall, unless the contrary is proved, be presumed to be the owner of the copyright."

I doubt if the next provision I wish to call your Lordship's attention to will arise in this action, but in case it should it might be well to have a note of it. Under the Copyright Amendment Act of 1931, Section 7, sub-section 3 (b) (i), it is provided that where registration has not been had under the Canadian Act, the presumption then is that if the name of the author is printed on the work, the person whose name is so printed shall be presumed to be the author of the work. I have outlined the provisions of the Act which I thought might facilitate your Lordship if you had them before you as the case proceeded.

I now wish to file a number of admissions signed by counsel with the relevant exhibits. I think, my Lord, I will read those admissions and then

*In the
Supreme
Court of
Ontario.*

—
No. 4.
Proceedings
on Trial
25th May,
1937—*con-
tinued.*

*In the
Supreme
Court of
Ontario.*

No. 4.
Proceedings
on Trial,
25th May,
1937—con-
tinued.

file the exhibits as I proceed, giving a connected story in more or less chronological order.

“ For the purpose of the trial of this action the parties by their respective Counsel make the following admissions and agreements :

“ 1. There may be introduced in evidence, without formal proof, the following :

“ (a) Affidavit of Charles Coborn dated November 3rd 1936;”

EXHIBIT 1 : Admissions of Counsel. 10

Mr. LAWSON : I tender original affidavit of Charles Coborn, which reads as follows :

“ 1. That I was a performer on the musical stage in the United Kingdom.

“ 2. That Fred Gilbert, who was a writer and composer of songs and music and well known to me, composed a song with music known as ‘ The Man Who Broke the Bank at Monte Carlo.’

“ 3. That the said Gilbert assigned all copyright, including the right of public performance and publication of the said song, to me prior to the 11th day of April A.D. 1892. 20

“ 4. That on the 11th day of April A.D. 1892 I assigned all my copyright and interest, present and future, including the right of presenting or performing the same or causing the same or permitting the same to be presented or performed to Messrs. Francis, Day & Hunter, Musical Publishers of ‘ Blenheim House, 195 Oxford Street, London, England.

“ 5. That the said song was first published by printing and distributing the same by the said Francis, Day & Hunter on the 22nd of April, 1892.”

EXHIBIT 2. Affidavit of Charles Coborn, dated November 3, 1936. 30

Mr. LAWSON : I am filing, my Lord, in conjunction with that affidavit, a photostatic copy of an original assignment, dated 11th April, 1892, from Charles Coborn to Francis, Day & Hunter, and annexed thereto a photostatic copy of an original receipt, which reads as follows : I suggest the two might be pinned together as Exhibit 3.

“ London, April 11, 1892.

“ Received of Francis, Day & Hunter, Music Publishers, of Blenheim House, 195, Oxford Street, Five pounds for the absolute sale of all my copyright and Interest, present and future, vested and contingent for this and all other countries, of and in the song entitled ‘ The Man That Broke the Bank at Monte Carlo,’ words and music by Fred Gilbert, together with the right of representing 40

“ or performing the same or of causing or permitting the same to be
 “ represented or performed, under condition of the payment to me
 “ of a royalty of One Guinea on each hundred copies sold, after
 “ allowing 200 copies for distribution as samples, the said Francis,
 “ Day & Hunter being entitled to use the melody in any separate
 “ musical publication that they may issue, free from any royalty
 “ or other consideration in respect of such use.”

*In the
 Supreme
 Court of
 Ontario.*

No. 4.
 Proceedings
 on Trial,
 25th May,
 1937—*con-
 tinued.*

And annexed is just a formal receipt with an English stamp tax on it.

EXHIBIT 3: Assignment dated 11th April, 1892, Charles Coborn to
 10 Francis, Day & Hunter. Receipt dated 21st July, 1924.

Mr. LAWSON: Then Item (b) of Paragraph I of the admissions,
 “ Affidavit of Esther Howe dated November 3rd, 1936.” This reads,
 omitting the formal part,—

“ 1. That I am a daughter of Fred Gilbert, author and com-
 “ poser of songs and musical works.”

His LORDSHIP: This was not the Gilbert of Gilbert and Sullivan, was
 it?

Mr. LAWSON: No, I think not. I am afraid Gilbert of Gilbert and
 Sullivan ante-dates this gentleman considerably. He might have been his
 20 grandfather. Mr. Shapiro tells me they were both alive at the same time
 and that Gilbert of Gilbert and Sullivan died in 1905.

“ 2. That the said Fred Gilbert composed the song ‘ The Man
 “ Who Broke the Bank at Monte Carlo.’

“ 3. That the said Fred Gilbert was married to my mother
 “ Emma Hudson on the 21st of December, 1873 at St. John’s
 “ Parish Church, Waterloo Road, S.E.1, London, England.

“ 4. That my said father died in 1903, without a will, leaving
 “ him surviving only my mother, my sister Emma, who was born
 “ on the 4th day of April, 1875, and me, who was born on the
 30 “ 22nd of April, 1877, who were my father’s sole heirs at law.

“ 5. My said mother died on the 23rd of April, 1905, without
 “ a Will, leaving her surviving my said sister and me, who are my
 “ mother’s only heirs at law, my said sister being alive at the
 “ date of this affidavit.

“ 6. My said father sold outright the copyright and performing
 “ right in respect of the song ‘ The Man Who Broke the Bank at
 “ Monte Carlo ’ to Charles Coborn.

“ 7. That the said Fred Gilbert was at the date of the making
 “ of the said work a British subject and that the said work was
 40 “ first published in England within His Majesty’s Dominions.”

And then the formal subscription to the affidavit.

In conjunction with that affidavit I would tender the death certificate
 issued from Somerset House, London, of the death of Frederick Young

*In the
Supreme
Court of
Ontario.*
—
No. 4.
Proceedings
on Trial,
25th May,
1937—con-
tinued.

Gilbert, who died on the 12th April, 1903. The registration was made on the 15th April, 1903.

And the death certificate of Emma Gilbert, issued from Somerset House, widow of Frederick Gilbert, song writer, certifying the death on the 23rd April, 1905, and registration on the same date.

HIS LORDSHIP : Could you not put them all in as Exhibit 4 ?

MR. LAWSON : Yes, they might all very well be filed as one exhibit.

HIS LORDSHIP : Because they relate to the affidavit.

MR. LAWSON : They are all covered by the affidavit.

EXHIBIT 4 : (a) Affidavit of Esther Howe, dated November 3, 1936. 10
(b) Death certificate of Frederick Young Gilbert. (c) Death certificate of Emma Gilbert, widow of Frederick Gilbert.

MR. LAWSON : Then Paragraph 1 (c) of the admissions :

“ Certificate of registration on 22nd April 1892 by the firm
“ of Francis, Day & Hunter of copyright in the musical work
“ ‘ The Man Who Broke the Bank at Monte Carlo.’ ”

That is merely a formal document, certifying the recording of the copyright, and it will be Exhibit 5.

EXHIBIT 5 : Certificate of registration of copyright by Francis, Day & Hunter. 20

MR. LAWSON : “ (d) Duplicate original of assignment dated 16th March, 1936, from the firm of Francis, Day & Hunter to Francis, Day & Hunter, Limited.”

Your Lordship will observe the plaintiffs are a limited company, whereas all the prior assignments in the affidavits refer to assignments to a partnership of Francis, Day & Hunter. The document I am now tendering is a duplicate original of an assignment of copyright from Francis, Day & Hunter, the partnership, to Francis, Day & Hunter, Limited, dated March 6, 1936, recorded in the Canadian Copyright Office under the Canadian Copyright Act on the 9th March, 1936, certified as recorded by the Commissioner of Patents. It is very brief, and I might read it, because it is confirmatory of a prior assignment,— 30

“ For and in consideration of the sum of One Pound, to us in
“ hand paid, receipt whereof is hereby acknowledged, we hereby
“ transfer, set over and assign unto Francis, Day & Hunter, Ltd.,
“ for all countries of the world, all our right, title and interest,
“ including the copyright thereof, in and to the musical composition
“ entitled

“ ‘ The Man Who Broke the Bank at Monte Carlo ’
“ by Fred Gilbert, of which song we are the original publishers 40
“ and owners of the copyright. This assignment is executed

“ confirmatory of a previously executed and delivered assignment
 “ dated April 8th, 1926.

“ Francis, Day & Hunter
 “ By (signed) Frederick Day,”

*In the
 Supreme
 Court of
 Ontario.*

—
 No. 4.
 Proceedings
 on Trial,
 25th May,
 1937—*con-
 tinued.*

one of the partners.

EXHIBIT 6 : Assignment from the firm of Francis, Day & Hunter to Francis, Day & Hunter, Ltd., dated 6th March, 1936.

Mr. LAWSON : “ (e) Duplicate original of the assignment dated 29th May 1936 from Esther Howe to Francis, Day & Hunter, Limited.”

10 That is a purely formal document in the form required by the Canadian Copyright Office, which assignment is registered in the Canadian Copyright Office, and certified by the Commissioner of Patents as recorded on the 8th day of June, 1936.

EXHIBIT 7 : Copyright assignment, Esther Howe to Francis, Day & Hunter, Ltd., dated May 29, 1936.

His LORDSHIP : Why did they need that assignment ?

Mr. Lawson : As a matter of fact, I do not think they did. They obtained it, but under the law my own view is that they did not. If they had been the Canadian Performing Right Society they would have something
 20 to register, but as they are not a musical protective society, I do not think they did.

Mr. THOMSON : His Lordship’s question is not, why did they register it.

His LORDSHIP : Why did they need it ?

Mr. THOMSON : I think the answer to that is Section 42 of the Act. By virtue of that section the original author had the entire copyright prior to 1934 ?

Mr. LAWSON : I am sorry. I did not quite appreciate your Lordship’s question. Then Paragraph 2 of the admissions :

30 “ That the motion picture titled ‘ The Man Who Broke the
 “ ‘ Bank at Monte Carlo ’ has before and since the commencement
 “ of this action been distributed throughout Canada by Fox Films
 “ Corporation by leasing the same, in return for rentals, to
 “ exhibitors of motion picture theatres and was performed in public
 “ for private profit in the theatres, in the places, and on the dates
 “ set out in Schedule ‘ A ’ hereto, and that the said picture has been
 “ performed in public for private profit in theatres owned, operated
 “ and controlled by the Defendant Famous Players Canadian
 “ Corporation Limited at the theatres, in the places, and on the
 “ dates set out in Schedule ‘ B ’ hereto.”

40 Mr. THOMSON : May I make an explanation as to “ 2 ” ? My friend Mr. Lawson asked me to bring those schedules up to date. The examination for discovery in this action took place last year. I found out that as far as Famous Players were concerned, there were no additions to be made to

*In the
Supreme
Court of
Ontario.*

schedule "B." I asked for the same information as to Schedule "A" and I did not receive it until this morning. So I ask your Lordship to permit us to amend Schedule "A" by adding some later performances, or substitute a correct one.

No. 4.
Proceedings
on Trial,
25th May,
1937—con-
tinued.

His LORDSHIP: Schedule "A" is the large one?

Mr. THOMSON: That covers all the theatres in which it was exhibited in Canada.

Mr. LAWSON: Then Paragraph 3 of the admissions,—

"That publication in printed form of the musical work 'The Man Who Broke the Bank at Monte Carlo' prior to the alleged 10
infringement of copyright complained of in this action may be
proven by production of a printed copy of the same endorsed
'Charles Coborn's famous song, The Man Who Broke the Bank at
Monte Carlo Written and composed by Fred Gilbert Copy-
right by Francis Day & Hunter Ltd.'"

I am filing a copy of the song in pursuance of that admission.

His LORDSHIP: Was Coborn the man who used to sing it?

Mr. LAWSON: He was the man who used to sing it, according to the affidavit.

EXHIBIT 8: Printed copy of the song, "The Man Who Broke the 20
Bank at Monte Carlo."

Mr. LAWSON: "4. That the copyright in Canada in the said musical work would have expired at some date prior to the commencement of this action had the term of such copyright not been extended by the Canadian Copyright Act, which came into force on 1st January, 1924."

"5. That before the motion picture play entitled 'The Man Who Broke the Bank at Monte Carlo' was written and produced there had been written and produced a comedy in three Acts by Ilia Surgutchoff and Frederick Albert Swann entitled 'The Gamble' also known as 'The Man Who Broke the Bank,' 'Monsieur Alexander,' 'Igra,' 'Le Jeu' and that 30
the text of such Comedy may be proved by a printed copy endorsed with the notation,— 'Copyright, 1935

" 'Twentieth Century Pictures, Inc.,

" 'All rights throughout the world reserved.' "

My friend is filing in conjunction with that admission the play referred to, called "The Gamble" and the other titles which appear.

EXHIBIT 9: Printed script of the play "The Gamble," also known as "The Man Who Broke the Bank," "Monsieur Alexandre," "Igra," "Le Jeu."

Mr. LAWSON : " 6. That the continuity and dialogue of the motion picture play, ' The Man Who Broke the Bank at Monte Carlo,' may be proved by a mimeographed copy of the same endorsed,—

" ' Copyrighted 1935 by
20th Century-Fox Film Corporation
" ' All Rights reserved.
" ' Certificate No. 1546.' "

*In the
Supreme
Court of
Ontario.*

—
No. 4.
Proceedings
on Trial,
25th May,
1937—*con-
tinued.*

Mr. THOMSON : Your Lordship, I have gone over that particular exhibit, and I doubt if it will be very helpful to us. It would be, of course, to anyone
10 in the motion picture business. If I may just read a sample of it, " Scene 1
—Fade in—long shot of Monte Carlo. Lap dissolve to : Scene 2—Long
shot of the Sporting Club. Lap dissolve to : Scene 3—Int. Sporting Club—
long shot—general activity (voices)."

In place of that I am prepared to put in as part of my case a summary of the so-called plot of this play, which I think will be intelligible to your Lordship. I am afraid this may not be.

Mr. LAWSON : Unfortunately I have not seen what my learned friend proposes. I suggest he might put this in in the meantime.

Mr. THOMSON : I think it is just cluttering the record, your Lordship.

20 His LORDSHIP : Perhaps you could put it in as Exhibit 10, and then if you wish to make a memorandum, you and Mr. Lawson could agree on one that could go in as Exhibit 10.

Mr. THOMSON : There is one other point on this going in ; I want to make clear—my friend did tell your Lordship that the music of this song was not used in the motion picture play as exhibited in Canada. This so-called continuity and dialogue indicates the playing of that music or singing of it, at certain points.

Mr. LAWSON : The singing of the song.

30 Mr. THOMPSON : The continuity of it is not the continuity and dialogue of the motion picture play as exhibited in Canada. I have no objection to its going in.

Mr. LAWSON : I think my friend and I can agree on this, and accept it as an admission of counsel, that although the words of the song and the script would indicate that the music of the song was used in the original production in the United States, yet I admit that in the production used in Canada and shown in Canada on the screen, neither the words nor the music of the song appeared in what might be called for brevity the Canadian Edition. All that was left for us here was the title.

40 EXHIBIT 10 : Continuity and dialogue taken from the screen of the motion picture " The Man Who Broke the Bank at Monte Carlo."

His LORDSHIP : Was the picture used in the United States ?

Mr. LAWSON : The picture with the song and words was used in the United States.

*In the
Supreme
Court of
Ontario.*

No. 4.
Proceedings
on Trial,
25th May,
1937—*con-
tinued.*

His LORDSHIP : In Canada just the picture ?

Mr. LAWSON : In Canada the picture and the title, but the song and words were omitted. Then Paragraph 7 of the admissions,—

“ That on none of the copies of the musical work ‘ The Man
“ ‘ Who Broke the Bank at Monte Carlo ’ published by the firm of
“ Francis, Day & Hunter and by the plaintiffs, Francis, Day &
“ Hunter, Ltd., was there printed a notice to the effect that the right
“ of public representation and performance is reserved.”

Your Lordship will recollect I put in a copy of a comparatively recent publication, and the front page of that will give you what is on the song. 10
My learned friend desired this admission because he raises a legal issue in respect thereof. These admissions are signed by counsel for both parties.

His LORDSHIP : You did not give the date of that. That is in paragraph 3, is it not ?

Mr. LAWSON : Yes, my Lord. We have not the date when this copy of the song, Exhibit 8, was published, but I think my learned friend and I will agree that that in itself is immaterial to the issue, so long as we admit that prior to the alleged infringement of the copyright complained of it was published.

His LORDSHIP : Paragraph 7 says that there was no notice ?

20

Mr. LAWSON : Yes. In paragraph 7 I admit for the purposes of this action that on none of the copies of the musical work published by the firm of Francis, Day & Hunter and by the plaintiff was there printed a notice to the effect that the right of public representation and performance is reserved.

His LORDSHIP : Does that not differ a little from paragraph 3 ?

Mr. LAWSON : I think not, my Lord.

His LORDSHIP : Oh, yes—“ the right of public representation.”

No. 5.

Evidence of James Peter O'Loghlin.

EXAMINED BY MR. LAWSON :

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

No. 5.
James Peter
O'Loghlin.
Examina-
tion.

Q. Mr. O'Loghlin, what is your official position with the Twentieth Century Fox, Ltd.?—A. Twentieth Century Fox Corporation, Ltd.

Q. Twentieth Century Fox Corporation, Ltd.?—A. I am Canadian District Manager.

Q. And Twentieth Century Fox Corporation, Ltd., is a Canadian corporation?—A. That is right.

10 Q. And engaged in Canada in the business commonly known as a film exchange, whose functions are to distribute pictures for rental to motion picture theatres?—A. Correct.

Q. Who are the directors of Twentieth Century Fox Corporation, Limited, the Canadian Corporation?—A. Well, there is Mr. — to give you accurate information on that I would have to refer to my records which I have not got with me.

Q. Subsequently to your examination for discovery your counsel advised me as to the answers you would like to make in reply to the same question, and I presume with my learned friend's approval—

20 Mr. THOMSON : You can show him that.

WITNESS : I might name you some of them.

MR. LAWSON : Your counsel wrote the Examiner and gave these as the list of officers (*handing paper to witness*). Would you accept that?—A. Yes.

Q. Would you just repeat those?—A. President, S. R. Kent; Secretary, J. A. Jenkins; Treasurer, Sydney Towell.

Q. Are there any directors of Twentieth Century Fox Corporation, Ltd., the Canadian corporation, other than those whom you have just named as officers?—A. Oh, yes, there are a number of directors.

30 Q. Of the Canadian corporation?—A. Of the Canadian corporation, yes.

Q. Who, except for qualifying shares of directors—what persons, or corporation, or corporations are the shareholders of Twentieth Century Fox Corporation, Ltd.?

Mr. THOMSON : Does your Lordship think that information relevant to the issues here, the control of this company through its shareholders? I submit it is entirely irrelevant.

40 Mr. LAWSON : I propose to adduce evidence to show that the Canadian corporation is a subsidiary of the United States Corporation, and then I propose to adduce in evidence a notice of the copyright to the United States corporation, because a section of our Copyright Act provides that where there is no notice of a copyright I lose certain of my valuable remedies.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

No. 5.

James Peter
O'Loghlin.
Examina-
tion—con-
tinued.

Mr. THOMSON : I would like my friend to specify the section he is relying on so I can answer that argument. Assuming for the purpose of my argument that the Canadian Company is a subsidiary of the American company, it does not at all follow, I submit to your Lordship, that notice to the American company—a shareholder, let us assume, of the Canadian company—is notice to the Canadian company.

His LORDSHIP : That may be.

Mr. LAWSON : We have no jury, and surely, we can argue the question of law afterwards. To answer the question my friend has specifically asked, the Section of the Act to which I refer is Section 22 of the Canadian Copy- 10
right Act, which is specifically pleaded by him as one of his defences.

His LORDSHIP : Subject to your objection, Mr. Thomson, as there is no jury, I will allow the question.

Mr. LAWSON : Q. Except for the qualifying shares of directors, Mr. O'Loghlin, what persons or corporations are the shareholders of Twentieth Century Fox Corporation, Ltd.?—A. The three names that I have submitted plus a number of others that I am not sufficiently familiar with to give you offhand, but I can get from my records if you require it.

Q. Can you tell us without waiting to go for your records whether or not Twentieth Century Fox Film Corporation, the United States Corpora- 20
tion, controls the majority of the stock?—A. I could not say positively, but it is my understanding that they do.

Q. Your records would disclose that?—A. Yes.

Q. Who are the directors of Twentieth Century Fox Film Corporation, the United States Corporation ?

Mr. THOMSON : This is going still farther afield, I suggest, your Lordship, the directors of the American Company. I do not know where we will end.

Mr. LAWSON : It has the same officers.

Mr. THOMSON : I submit the evidence should be kept within reasonable 30
bounds, your Lordship.

His LORDSHIP : It has the same directors ?

Mr. THOMSON : I cannot see the object of the evidence. I do not want to spend more time objecting than it will take to have the evidence given, which may have no weight with your Lordship at all.

His LORDSHIP : No, it may not. Still, it may with the Court of Appeal.

Mr. LAWSON : I think I will just leave that for a moment, and put in a letter, which will put it beyond all doubt.

Q. I now show you a copy of a letter, written by the legal firm of Lawson, Trebilcock, Stratton and Elliott, to Messrs. Fox Film Corporation Limited, 40
dated January 16, 1936. Did you receive the original of that letter (*hand-
ing letter to witness*)?—A. Yes, that original letter was received by me.

Q. I now show you an original letter from J. P. O'Loghlin on the station-
ry of Twentieth Century Fox Corporation, Limited, dated January 17,

1936. Is that a letter written by you to my firm (*handing letter to witness*)?
—A. That is correct.

Mr. LAWSON: The copy, which is the first part of the exhibit, is purely a formal letter from solicitors notifying of infringements of performing rights, and the letter in reply, which will be part of Exhibit 11, from Mr. O'Loghlin, is,—

“ Dear Mr. Lawson :

“ I have your letter of the 16th inst., claiming an infringement
of your clients' rights by our releasing in Canada the production

10 “ entitled ‘The Man Who Broke the Bank of Monte Carlo.’

“ I have referred this matter to our Legal Department, in New
York, and as soon as I receive their reply I will advise you further.

“ With very kind regards. . . .”

EXHIBIT 11: (a) Copy of letter from Messrs. Lawson, Trebilcock, Stratton and Elliott, to Fox Film Corporation, Ltd., dated January 16, 1936.

(b) Letter, Twentieth Century Fox Corporation, Ltd., per J. P. O'Loghlin, to Mr. J. Earl Lawson, K.C., dated January 17, 1936.

20 Q. Then I would ask you to note, Mr. O'Loghlin, that it says at the top of this stationery, “ Twentieth Century Fox Corporation Limited. Head Office, 444 West 56th Street, New York., N.Y.”—A. That is correct.

Q. And underneath that, “ 110 Bond Street, Toronto, Ontario ”?—A. That is right.

Q. 110 Bond Street, Toronto, being the address in Toronto of the Canadian Corporation, Twentieth Century Fox Corporation, Limited?—A. It is also the address of the head office of the Canadian Company, 110 Bond Street.

30 Q. So this statement on the letterhead saying, “ Head Office, 444 West 56th Street, New York,” refers to the head office of the Twentieth Century Fox Film Corporation, the United States corporation?—A. They are also at the same address.

Q. In New York?—A. That is right.

Q. Then I come back, Mr. O'Loghlin, and will ask you this: you told me that Mr. S. R. Kent was the President of the Canadian Corporation?—A. Yes.

Q. I refer to Twentieth Century Fox Corporation, Ltd., as the Canadian corporation for brevity. Does Mr. S. R. Kent hold any office with Twentieth Century Fox Film Corporation, the United States corporation?—A. He is also President of that body.

40 Q. You told me that Mr. J. A. Jenkins is Secretary of the Canadian corporation. Does Mr. Jenkins hold an office with the United States corporation?—A. He is also Secretary of the American corporation.

Q. You told me Mr. Sydney Towell is Treasurer of the Canadian corporation. Is he also an officer of the United States corporation?—A. He is also Treasurer of the United States corporation.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

No. 5.

James Peter
O'Loghlin.
Examina-
tion—con-
tinued.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

No. 5.
James Peter
O'Loghlin.
Examina-
tion—con-
tinued.

Q. Are any other directors of the Canadian corporation also directors of the United States corporation?—*A.* I believe there are, yes, if my memory serves me.

Q. You will obtain from your records for me who are the shareholders of the Canadian corporation?—*A.* That is right.

Q. Just one other thing, Mr. O'Loghlin—

Mr. THOMSON: I could perhaps shorten this, if your Lordship has admitted the evidence. I admit the fact that the American corporation has voting control of the Canadian company.

Mr. LAWSON: Then, Mr. O'Loghlin, you need not trouble to get that information for me after you leave. 10

Q. Just one other thing, Mr. O'Loghlin: you distribute in Canada to motion picture theatres—when I say “you,” I mean your Canadian company—motion pictures in the form of what are known as positive prints?—*A.* That is correct.

Q. From what sources do you obtain those positive prints?—*A.* From what sources in Canada?

Q. I do not care where. From what sources do you obtain them?—*A.* I might qualify that answer to your first question, when I said yes, by saying that we also receive positive prints from the United States. We do not get all our positive prints in Canada. 20

Q. Then we can take it that some of your positive prints come from the United States and some from Canada?—*A.* That is correct, yes.

Q. Having reference to the picture, “The Man Who Broke the Bank at Monte Carlo,” did you get your positive prints from a Canadian source, or from a United States source, or both?—*A.* From a Canadian source entirely—that is, the positive prints.

Q. From what source did you obtain those positive prints?—*A.* I think they were secured through the Associated Screen News of Montreal.

Q. The business of Associated Screen News of Montreal is to take what are commonly known as negatives of motion pictures and reproduce positive prints therefrom?—*A.* That is a section of their business, yes. I understand they also do something else. 30

Q. That is their business insofar as it relates to your obtaining positive prints?—*A.* We obtain positive prints from them from negatives we supply them.

Q. You say, “from negatives you supply them”; with reference to the picture, “The Man Who Broke the Bank at Monte Carlo,” who, or what corporation, supplied the negatives to Associated Screen News, Ltd., of Montreal?—*A.* The negative was shipped from the United States to them. 40

Q. Shipped from the United States by what corporation?—*A.* Well, I imagine it would be by the Twentieth Century Fox Film Corporation.

Q. Possibly I should ask you this; was Twentieth Century Fox Film Corporation, the United States corporation, the producer of that picture, “The Man Who Broke the Bank at Monte Carlo”?—*A.* It is my understanding that they were, yes.

Q. And the United States corporation, Twentieth Century Fox Film Corporation, you say, shipped the negative to Associated Screen News?—
A. Correct.

Q. And you in turn obtained the positives from Associated Screen News?—*A.* That is correct.

Q. Can you tell me who paid Associated Screen News for making the positives?—*A.* I presume the Canadian company paid them.

Q. And what became of the negative after they had finished making the positives?—*A.* The negative was either returned to the United States
 10 or forwarded to some other British possession.

Q. Returned to Twentieth Century Fox Film Corporation of the United States?—*A.* Returned to the party who shipped it to us, whether
 it was they or not.

Q. You mean returned it to the party who shipped it to Associated Screen News?—*A.* Yes.

Q. Or somebody under their direction?—*A.* It left Canada, anyway, after we made the positive prints.

Mr. THOMSON: No questions.

Mr. LAWSON: I might at this stage put in a copy of a letter, which
 20 I served notice on my friend to admit, from the firm of Lawson, Trebilcock, Stratton and Elliott to Famous Players Canadian Corporation, Ltd., dated January 16, 1936. That is a formal letter notifying them of the copyright.

EXHIBIT 12: Copy of letter from Messrs. Lawson, Trebilcock, Stratton and Elliott, to Messrs. Famous Players Canadian Corporation, Limited, dated January 16, 1936.

Mr. LAWSON: It was purely a formal letter; that was why I did not read it; notifying them of our alleged copyright rights, as will appear by the dates of the schedules to the admissions, prior to the actual exhibition of the film. The same remarks apply to the previous copy of a letter filed
 30 to Fox Film Corporation; it will appear from their schedules that it preceded letting of the pictures for the purpose of showing.

No. 6.

Evidence of Elliott Shapiro.

EXAMINED BY MR. LAWSON.

Q. Mr. Shapiro, you are a member of the firm of Shapiro, Bernstein and Company of New York City?—*A.* That is right.

Q. And what is the business of Shapiro, Bernstein and Company?—
A. Among other things we are music publishers.

Q. And what connection, if any, have you with the plaintiffs in this
 40 action, Francis, Day & Hunter, Ltd.?—*A.* We are attorneys for Francis, Day & Hunter in connection with certain rights in certain of their songs, and in particular, "The Man Who Broke the Bank at Monte Carlo."

*In the
 Supreme
 Court of
 Ontario.*

Plaintiffs'
 Evidence.

No. 5.
 James Peter
 O'Loughlin.
 Examination—*con-
 tinued.*

No. 6.
 Elliott
 Shapiro.
 Examination.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

No. 6.
Elliott
Shapiro.
Examina-
tion—con-
tinued.

Q. When you say attorneys for—under power-of-attorney?—A. Under written power-of-attorney.

Mr. LAWSON (To Mr. Thomson): Do you want that in?

Mr. THOMSON: There is no object in putting it in if nothing turns on it.

Mr. LAWSON: I want to define the knowledge of the witness.

Mr. THOMSON: Most of the evidence, so far, I submit, is irrelevant.

Mr. LAWSON: I thought I had been particularly regular, and I am hoping, effective.

Q. In the course of your business are you familiar with copyright in songs in general, and is it an essential part of your business that you should familiarize yourself with copyrights, etc., in songs among other publications?—A. I have qualified as an expert in many courts. 10

Q. That will not qualify you here?—A. I am familiar with the copyrights of the most popular songs of the world as a whole.

Q. And you have made a special study of songs and copyrights in respect to them?—A. I have made a special study, yes.

Q. I think we are all agreed that there is no copyright in the song, "The Man Who Broke the Bank at Monte Carlo," in the United States?—A. That is right. The song is in the public domain in the United States. 20

Q. I now show you a copy of a letter, notice of admission of which I have given my learned friend, dated July 12, 1935, which purports to be a copy of an original letter written by Shapiro, Bernstein, Inc., to Twentieth Century Fox Film Corporation, Hollywood, California.

Mr. THOMSON: That I object to, your Lordship, as not being evidence against the Canadian company, and certainly, not against Famous Players. I appear for both defendants.

Mr. LAWSON: It is not suggested it is evidence against Famous Players.

Mr. THOMSON: I suggest it is not evidence against the Canadian Fox Company, either. It seems to me objectionable to clutter up the record with exhibits— 30

His LORDSHIP: May I see it?

Mr. THOMSON:—that are not properly admissible, and I suggest this is not admissible.

His LORDSHIP: Have you not really that evidence in your admission?

Mr. LAWSON: Inferentially I have, but I have another point in mind in connection with putting in this letter—not merely Section 22 of our own Act which is raised by my learned friend, but another defence raised by my learned friend. My learned friend is going to allege that an Act passed in England in 1882—my learned friend alleges that by this Act it was obligatory for these plaintiffs to have printed on the title-page of their song, if they wished to preserve their right, words to the effect that the representation or right of public performance was reserved. Your Lordship will 40

notice in the admission there is a paragraph dealing with the facts of that subject-matter. One of my replies to my learned friend's defence is going to be, "All that avails you nothing because we gave you specific notice." Therefore, I have to prove the specific notice, and this letter is the proof of it. I am really not tendering things without giving them a great deal of consideration before commencing this trial.

His LORDSHIP: It is really proof to the American company, but is it proof to the Canadian company?

10 Mr. LAWSON: Prima facie, my Lord, they are separate entities, but there is always a legal question as to whether they are separate entities de jure or de facto, and I think I can refer your Lordship to several cases, which I have not at the moment, in which the point has come up as between a parent and subsidiary where, in fact, notice has been proved. The offence of the Canadian company is in the distribution. They are controlled by an outside organization which produces something, and the outside organization says to them, "Here it is, and you distribute it."

His LORDSHIP: Yes, but is not the Canadian corporation a separate entity?

Mr. LAWSON: It is in law, subject to certain conditions.

20 His LORDSHIP: Would notice to an American company owning a Canadian company be notice to the Canadian company?

Mr. LAWSON: I say in the circumstances of this case, yes.

Mr. THOMSON: Might I mention one other point that I was not aware of before? I am now instructed that this company to which this letter is addressed, Twentieth Century Fox Film Corporation, did not come into existence until about a month after the date of this letter. It was a merger of two companies, one having the name of Twentieth Century—

30 Mr. LAWSON: My learned friend is now giving evidence, which I suggest he must not do, and if he will put a witness in the box to give that very evidence, I will then immediately prove that all the corporations received this letter by their correspondence. I say, therefore, my friend should not give evidence.

Mr. THOMSON: Allow me to finish. I will not give evidence until my case opens. My friend introduced a letter to another company, not any company a party to this action, and I submit I am quite within my rights in saying that, according to my instructions, this company, although it was in the air in July, 1935, did not come into existence until a month later.

His LORDSHIP: Mr. Thomson, if I let the letter in, when you are presenting your case, could you not give that evidence?

40 Mr. THOMSON: I could, your Lordship, but I submit that is putting an unfair onus on me. I submit when my friend produces a letter to a company, not a party to this action, he must in some way connect it with a company party to this action.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

No. 6.

Elliott
Shapiro.
Examina-
tion—con-
tinued.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

No. 6.
Elliott
Shapiro.
Examina-
tion—con-
tinued.

His LORDSHIP : He is trying to connect it through control. Whether that is a legal connection or not, I suppose will be for me to decide.

Mr. THOMSON : I submit the onus should be on him to show there was such a company in existence in July, 1935, and I suggest he cannot meet that onus, if your Lordship rules that the onus is on him.

Mr. LAWSON : I wonder if we might solve our problem for the moment and get on by having the letter in question marked for identification, and your Lordship can decide later, after you have heard all the evidence for both the plaintiff and the defendant, whether it is admissible or not.

His LORDSHIP : It will be Exhibit 13. 10

EXHIBIT 13 : Copy of letter from Shapiro, Bernstein & Company, Inc., to Twentieth Century Fox Film Corporation, dated July 12, 1935.

Mr. LAWSON : Q. Mr. Shapiro, I think when we interrupted your examination I was dealing with the question of there being no copyright in the United States because the song was in the public domain there. Did you actually see the picture, "The Man Who Broke the Bank at Monte Carlo" reproduced on the screen in the United States?—A. I did.

Mr. THOMSON : I object to that, your Lordship. That is not anything with which we are concerned here. I submit the question which your Lordship has to decide is whether there was any infringement of the plaintiff's rights in Canada, and I submit what my friend now asks for has no possible bearing on that question. 20

His LORDSHIP : But the question has been asked, and the answer given, Mr. Thomson.

Mr. THOMSON : The answer could be struck out.

Mr. LAWSON : I do not think that question could hurt my learned friend. If he objects to the next one I am going to ask—

Mr. THOMSON : This must be highly objectionable, then.

Mr. LAWSON : My next question was : Was the music of the song and the words used in the picture as shown in the United States? 30

Mr. THOMSON : I object to that, your Lordship.

Mr. LAWSON : I think my friend has already admitted it. He has put in the script showing it was used, and I have admitted it was not used in Canada. Surely, that cannot be very objectionable.

His LORDSHIP : I do not think it affects the matter very much here, Mr. Lawson. It has been admitted that the song was used in the picture in the United States, and it has been admitted that only the picture was used here.

Mr. LAWSON : As long as it is clear, the admission that the music and the words were in the picture in the United States, I think I have accomplished my purpose. 40

His LORDSHIP : I think Exhibit 10 shows that.

Mr. THOMSON : No, Exhibit 10 was amended before it went in by deleting that reference to the song and music. I do suggest to your Lordship that there is some object in the rules of evidence. They shorten a case if they are observed, and keep it within proper bounds. My friend in one breath says it is already proved by admission; then he goes on and occupies the time of the court to get it repeated in a way I suggest should not be done.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

His LORDSHIP : I know, but the Court has all the time in the world.

No. 6.

Elliott
Shapiro.
Examina-
tion—con-
tinued.

Mr. LAWSON : I do not want to take up the time to argue why it becomes important. You see, my Lord, in its final analysis, one of the questions
10 your Lordship is going to have to determine is, what is the meaning of that amendment to the Canadian Copyright Act which provided the word "work" should include the title, provided it is original and distinctive. My learned friend is going to argue the interpretation of that amendment to be one thing. Frankly, I am going to argue to your Lordship that it was an attempt to create in Canada as a statutory right that which was a more or less limited right under the common law and under the doctrine of passing off. If this action were founded purely on a question of passing off, there could be no doubt in my mind that the question I now ask and the answer would be not only admissible but essential. As I am going to argue
20 ultimately that the object of the statutory provision was to create that right by statute in Canada which was previously a common law right under the doctrine of passing off, I do submit that the evidence becomes most admissible; and as my learned friend seems to be making a somewhat, shall I say for want of a better word, evasive admission as to whether the song and the music were in the picture in the United States, I thought I had better make sure.

Mr. THOMSON : I do not make any admission because I think it is irrelevant.

His LORDSHIP : It may be, Mr. Thomson, but I will let the witness
30 answer.

Mr. LAWSON : Q. I think you did answer the question, "Yes"?—
A. Yes.

Q. What have you to say with reference to the title of the song in question being original and distinctive?

Mr. THOMSON : I object to that, your Lordship. That is something your Lordship must pass on.

Mr. LAWSON : How can his lordship pass on it without evidence?

Mr. THOMSON : Let me state my objection, please. It is well known law as to what are and what are not the functions of the expert. We have
40 had a very, very slight qualification of this witness as an expert, to begin with, he has some knowledge of copyright law, presumably American. Then what no witness can do, no matter what his qualifications, is pass on any question which the Court has to decide. He cannot in a patent case be asked whether the solution of a problem is obvious. That is for the Court. He cannot pass in this case on the interpretation of an Act of Parliament.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

No. 6.
Elliott
Shapiro.
Examina-
tion—con-
tinued.

Parliament says that copyrights shall include certain titles; namely, those that are original and distinctive. That is for your Lordship to decide, and I object as strongly as I can to any evidence, either from this witness or any other, on that issue. I suggest it is entirely improper, and my friend should not press it.

Mr. LAWSON: And I submit, my Lord, that it is quite so that your Lordship must determine whether or not the title is original and distinctive. For the life of me I am unable to see how your Lordship can possibly determine it unless you have some evidence relevant thereto.

His LORDSHIP: I do not think the cases go that far, although I know very little copyright law. I always thought it was the jurisdiction of the Court on its own initiative to pass it on. 10

Mr. LAWSON: As to the interpretation of the Act, yes. I may say to your Lordship, so far as my research has disclosed I can find no cases under this section, and unless I give your Lordship some facts on which you can make a finding, or my learned friend does, how can your Lordship make a finding? Surely, the question as to whether the title is original and distinctive must be a question of fact. Frankly, I couched my question in very wide terms by saying, "What have you to say as to the question of title being original and distinctive?" By that I did not mean the witness should say whether it was original and distinctive. I had in mind that the witness would go on and tell me all the facts which he has in his mind, and support the evidence, of which he is capable, showing whether or not the title has ever been used before or since, what are the sources available to him from which he makes his studies, and the records of all copyright and patent offices in different parts of the world. It was not that the witness was to usurp your Lordship's functions. 20

His LORDSHIP: He might answer the question as to whether the title was used prior.

Mr. LAWSON: I will break it up into several sections. 30

Mr. THOMSON: It is not a matter of the way the question is framed; it is the question itself. No matter how it is framed, I will object to it. The last suggestion of your Lordship's, I suggest, does not meet the case. If this witness is asked whether he knows of any use of this title before, with the object of showing it to be original, that is evidence, I submit, of no real value to your Lordship; it is negative evidence. My friend might call a dozen experts who never heard of this title being used before, or twenty, and I might call one to give chapter and verse for its use before, and that would negative the evidence of the twenty. This witness, as I mentioned before, is in no sense qualified to give this opinion. 40

His LORDSHIP: Is there any question as to whether there is anything wrong with the copyright? It is not a question as to whether the picture has been distributed and displayed in Canada—it can be displayed in the United States—it is in the public domain, did you say?

WITNESS : In the public domain.

His LORDSHIP : But it is not in Canada. Is that not the whole question ?

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

No. 6.

Elliott
Shapiro.
Examina-
tion—con-
tinued.

Mr. THOMSON : No, your Lordship. There is a difference between my friend and myself. He will argue, and will have this witness argue, if your Lordship permits, to supplement his argument, that this title is original and distinctive. I will submit to your Lordship, but I will not adduce evidence, that this title is not original and distinctive. For the moment I was not basing my objection on any ground of copyright law, but on the
10 law of evidence as to what the function of an expert is. Taking patent actions—there, of course, there is more apt to be expert evidence than in any other class of case—in patent actions, experts may give evidence : (1) to explain the technical terms employed ; (2) to instruct the Court in the scientific principles applicable to the case ; (3) to show the state of scientific knowledge existing at the time of the grant ; (4) to explain the nature, working characteristic features, and probable mechanical results of an invention ; together with what is old or new in the specification, and how far any scientific advance has been made thereby ; as well as in the case of rival inventions, to point out the similarities or differences there-
20 in, and how far these are material or unimportant. There is a very recent case—I do not know whether I can find it while I am on my feet—it is a decision of the Supreme Court of Canada, quoting with approval a recent judgment of the House of Lords in England, and his Lordship Chief Justice Duff criticized very strongly a mass of evidence that was given. Most of it, he said, was entirely inadmissible.

His LORDSHIP : How are you going to prove whether a patent is good or bad, because of a name, or because of what the patent is, that it is distinctive ?

Mr. THOMSON : Of course, I was not thinking of these particular words
30 in the Act. It is a novel submission. I have heard it from my friend for the first time. I do not remember ever having heard that advanced before, that in construing an Act of Parliament a witness, expert or otherwise, may be asked, is a certain thing within that definition or is it not ? That seems to me entirely a matter of argument. Of course, that is what my friend wants from this witness, an argument in favour of this title being original and distinctive.

His LORDSHIP : He might want to take your suggestion and abandon the question.

Mr. THOMSON : I do not want to repeat myself. I have made my
40 objection.

Mr. LAWSON : I quite conceded that if I were endeavouring to have this witness give his opinion as to whether or not the title of the song was original and distinctive, I might have considerable difficulty in convincing your Lordship that it was admissible, but that is not what I am trying to do. I do say this witness is entitled to give facts, not opinions at all.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

No. 6.

Elliott
Shapiro.
Examina-
tion—con-
tinued.

I will deal with opinion subsequently, but for the moment he is entitled to give facts which are available to him because of his peculiar knowledge of this business, and because of his research and study.

His LORDSHIP : But what kind of facts ?

Mr. LAWSON : For example, as to whether or not, having had access to all the records, or all the registration offices of the United States and Great Britain, or the United Kingdom, and so forth, that title has been used at any time prior to 1892 ; as to whether or not that title has been used since as the title of a song ; then, next, as to whether or not the song is generally known.

10

His LORDSHIP : I think I can take judicial notice of that, of its being known.

Mr. LAWSON : Yes, it is pretty well known. Quite frankly, I should have something on the record, even though your Lordship might take judicial notice of it.

His LORDSHIP : The Court of Appeal might not.

Mr. LAWSON : Sometimes counsel get up against some difficult technical objections in a higher court.

His LORDSHIP : If those are the questions you want to ask, I will take the evidence subject to Mr. Thomson's objection.

20

Mr. LAWSON : I may say to my learned friend I have no intention of asking this witness to give his opinion.

His LORDSHIP : I do not want any opinion.

Mr. LAWSON (*to witness*) : I do not want you to express your opinion about whether it is original or distinctive, anything of that kind.

Would your Lordship think this a convenient time to adjourn ? I shall probably be another twenty minutes with this witness.

His LORDSHIP : Yes. We will adjourn till 2.15.

Q. At the adjournment I had asked you a question in connection with the originality or distinctiveness of the title. Would you please tell me something about which I asked you earlier and did not follow up : What has been your experience in dealing with matters of songs or publications and copyright, etc. ?—A. During my many years in the music publishing business I have made the acquaintance of a great many people both in the music publishing business and performers, writers and librarians in many institutions in the United States. I am constantly called upon for assistance by publishers, writers, etc.

30

Q. Assistance in what form ?—A. In the form of giving information which I extend to them as a courtesy, hoping that sometime in the future they will extend some sort of courtesy to me personally. It is given by me personally and has nothing to do with my firm.

40

Q. As a result of your knowledge have you been a witness in cases where it was necessary to call your knowledge into use ?—A. I have been a witness in copyright cases and other cases concerning infringements, some

of them not connected with legal matters. I was chosen by the Post Office Department of the United States last July to go to Washington and testify in the so-called "Song Shark" case as a witness for the music industry. The Post Office Department was trying to suppress this evil, and I had to qualify not only as a copyright expert but as a musician and musical expert, and also as a writer.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

Q. For the purpose of giving such information and evidence as you have outlined has it been necessary for you to make exhaustive searches as to the records of songs, their titles, and their registration in the proper offices for registration of copyrights in the United Kingdom and in the United States?—A. Yes, in the United Kingdom, the United States, and also in the Dominion of Canada.

No. 6.
Elliott
Shapiro.
Examina-
tion—con-
tinued.

Q. For how many years have you been engaged in such studies and searches as you have outlined here in your previous evidence?—A. I entered the music publishing business in 1912 and became what you might call a student under a man named Robert Kaiser, who used many pseudonyms in his lifetime as a writer, and who taught me many things concerning the old publishing firms on both sides of the water, their copyrights and the melodies of their songs; also stories about the writers and about the songs, and about the plays he had witnessed.

Q. Is there recorded in recording offices songs in which there are copyright, for example in the United Kingdom?—A. In the United Kingdom? Do you refer to "The Man Who Broke the Bank at Monte Carlo" or songs generally?

Q. Songs generally?—A. Prior to the Copyright Act of 1911 songs were recorded at Stationers' Hall; it was not compulsory registration.

Mr. THOMSON: I do not want to interrupt too much, but I object to this evidence. This witness is testifying as to the requirements of the British law as to copyright before 1911. I suggest that my friend should intimate that this evidence is to give your Lordship some facts which will enable your Lordship to say that this title is distinctive and original.

Mr. LAWSON: I quite agree with my friend.

Mr. THOMSON: Let us get to the case.

Mr. LAWSON: Q. In the ordinary course of events songs were recorded, I understood you to say, up to 1911 at Stationers' Hall?—A. They were not necessarily recorded; they were only recorded before a lawsuit could be instituted. Subsequent to 1911 it was necessary.

Q. And they were recorded where?—A. In the British Museum.

Q. And are there similar recording offices in the United States?—A. Yes.

Q. And since 1924 a similar recording office in Canada?—A. In Ottawa.

His LORDSHIP: 1924 or 1921?

Mr. LAWSON: The Act was enacted in 1921 but did not come into effect until 1924, my Lord.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

No. 6.
Elliott
Shapiro.
Examina-
tion—con-
tinued.

Q. Have you made specific searches in addition to your general knowledge with respect to the song, "The Man Who Broke the Bank at Monte Carlo"?—*A.* I have.

Q. And we know that song was recorded, by one of the exhibits which is here. Was there any song recorded of the same or similar name in the United Kingdom or the United States prior to the recording of the song in question in this action?—*A.* No, sir.

Q. Has there been any song recorded of the same or similar name since the recording of the song in question in this action?—*A.* Yes, in the United States.

Q. And what are the recordings in the United States since the date of the recording in England of this song as proven in this action?—*A.* Various arrangements of the same song.

Q. Various arrangements?—*A.* Various arrangements of the same song, "The Man Who Broke the Bank at Monte Carlo," by Mr. Fred Gilbert, published by many American publishers not only in separate sheet form but in music folios.

Q. And when they were published in separate sheet form and music folios were they specified to be the song, "The Man Who Broke the Bank at Monte Carlo," by Mr. Fred Gilbert?—*A.* They were.

Q. And these subsequent productions to which you refer were different arrangements of that song?—*A.* Correct.

Q. "Arrangements" means, I presume, for different instruments or more than one instrument, or something of that kind?—*A.* Different instruments and more than one instrument: The guitar and solo instruments, and different piano parts; the same words and the same music.

Q. What have you to say as to the song, "The Man Who Broke the Bank at Monte Carlo," being little known or well known?—*A.* I would say that the number is known, or the song is known, wherever the English language is spoken.

Q. That is this song, "The Man Who Broke the Bank at Monte Carlo"?—*A.* Yes, this song, "The Man Who Broke the Bank at Monte Carlo."

Q. I realize, Mr. Shapiro, that you are not a mechanical expert on motion pictures, but do you know whether a motion picture is produced by mechanical contrivances?

Mr. THOMSON: I object to that question, my Lord. The first part of my friend's question admits that the witness is not qualified——

Mr. LAWSON: ——as a mechanical expert.

Mr. THOMSON: ——to answer the question, and then my friend goes on and puts it to him. I submit that is not proper. My friend has in mind, of course, a certain section of the Copyright Act, and again he is asking the witness to comment or to make a statement in regard to the issue which your Lordship must decide. I do not know how this witness or any other can say whether or not the throwing of a title on a screen is a production by mechanical means within the meaning of certain sections of the Copyright Act, and I submit it is not a proper question and ask your Lordship to so rule.

Mr. LAWSON : I submit that while my friend is correct that it is not competent for any witness to come here and say that the throwing of the title on the screen is a production by mechanical means within the terms of the Copyright Act, I am not asking the witness that. I am asking a simple question which any witness who ever saw a motion picture machine could answer, namely, whether it is a mechanical contrivance. I am only using the ordinary meaning of the English word "mechanical contrivance."

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

No. 6.

His LORDSHIP : You may ask the witness if he is qualified to answer that question.

Elliott
Shapiro.
Examina-
tion—con-
tinued.

10 Mr. LAWSON : *Q.* Have you ever seen a motion picture machine?
—*A.* Yes. I was present in the studio in which this picture was run off, about a week ago.

Q. Have you seen sound recorded on film?—*A.* I have.

Q. And have you seen a motion picture machine through which a positive film is run reproduce the sound or pictures upon a screen in a motion picture theatre?—*A.* I have.

Q. And from that observation can you say whether or not a motion picture film is produced by a mechanical contrivance?—*A.* I would say it was done by mechanical means.

20 *Q.* Is sound from a motion picture film produced by mechanical contrivances?—*A.* I would say so.

Q. And is the picture contained on a motion picture film produced by mechanical contrivance?—*A.* By mechanical photograph process.

Q. Wherein do you allege the plaintiff is damaged by the use of the title of the song : "The Man Who Broke the Bank at Monte Carlo" as the title of the motion picture?—*A.* As the actual title of a motion picture it deprives the firm of Francis, Day & Hunter Limited of the privilege of bargaining for and making arrangements for the sale of a motion picture themselves or producing a motion picture themselves if they wish to do so. It might affect the sale of a stage play if they wished to have a stage play made out of it, or if they wished to sell the rights to a producer of stage plays either in this country or abroad.

Mr. THOMSON : I suggest that this is argument by the witness, my Lord. My friend is perfectly able to argue his case without the assistance of this witness.

Mr. LAWSON : I have found his assistance valuable in the past and may do so in the future. I submit that the first part of his answer is perfectly proper.

WITNESS : May I continue ?

40 His LORDSHIP : *Q.* Yes?—*A.* It is true that the firm of Francis, Day & Hunter will be unable to find anybody else who will make them an offer for the rights of a play or picture based on the song : "The Man Who Broke the Bank at Monte Carlo." Nobody else will buy it from them because it has been used.

CROSS-EXAMINED BY MR. THOMSON.

*In the
Supreme
Court of
Ontario.*
—
Plaintiffs'
Evidence.
—
No. 6.
Elliott
Shapiro.
Cross-exa-
mination.

Q. Was any effort made by the plaintiff company to sell the dramatic rights of this song to anybody, to your knowledge?—*A.* I could not say.

Q. That was not a matter that your company was handling under its power-of-attorney, was it?—*A.* Not the dramatic rights.

Q. And by "dramatic rights" you understand that I include depicting it on a motion picture film, do you?—*A.* We did have the right to sell to a—

Q. Please answer the question?—*A.* I did not understand "dramatic rights" to mean that. 10

Q. Then do you want to qualify the answer you gave me a moment ago now that you know I include motion picture plays in my term "dramatic rights"?—*A.* Yes.

Q. What is the qualification?—*A.* There were negotiations with Twentieth Century Fox Corporation in connection with this.

Q. And those negotiations resulted in no agreement?—*A.* In no agreement.

Q. I was rather interested in what you said about the searches you made. I understood you to say to my friend Mr. Lawson that you made, first, a search at Stationers' Hall?—*A.* The search was made for the title at 20 Stationers' Hall.

Q. You made the search?—*A.* No, not personally.

Q. So you are giving us hearsay?—*A.* No.

Q. Somebody else reported something to you?—*A.* In the regular course of business my firm—

Q. Just a moment. Somebody else reported something to you as to a search which he had made at Stationers' Hall?—*A.* That is right.

Q. You have no personal knowledge of that search being made at all?—*A.* Outside of the certificate which was offered in evidence from Stationers' Hall bearing the office date 1893, and stating that the song was copyrighted 30 and registered by Francis, Day.

Q. I am talking about a search I understood was made with a view to finding whether this title or a similar title had been used before Francis, Day & Hunter brought out this piece of music?—*A.* I personally made such a search, not in Stationers' Hall or in the British Museum, but in publications of Folk Lore societies of British songs, which are available at the New York Public Library and in books—

Q. Just a moment.

Mr. LAWSON: Let the witness finish his answer.

Mr. THOMSON: I did not ask for that. The witness goes on to give me 40 a mass of information I have not asked for. I submit I am within my rights in stopping him and getting the information in the form I desire.

Q. Let me get this clear. You personally did not make any search at Stationers' Hall or the British Museum to learn whether the title or a similar title had been used before its use by Francis, Day & Hunter?—*A.* No, sir.

Q. And nobody did that on your behalf?—*A.* Yes.

Q. Who did?—A. The firm of Francis, Day & Hunter, whom we represent.

Q. And they reported to you the result of that search?—A. They produced the copyright certificate from Stationers' Hall.

Q. I am talking of prior registration. Did they report to you the result of that search?—A. Mr. Fred Day, of Francis, Day & Hunter did.

Q. Is that report of his in writing?—A. No.

Q. It was oral?—A. Yes.

Q. So you are giving us hearsay evidence on that point?—A. If oral
10 evidence is hearsay, I am.

Q. It is hearsay evidence. It is something Mr. Day can swear to of his knowledge, and you cannot swear to of your knowledge?—A. That is correct.

Q. Did you make any search at Stationers' Hall or the British Museum for registrations subsequent to the registration by Francis, Day & Hunter?—A. Only in the same manner, reported to me orally by Mr. Fred Day.

Q. Did you make any search in the United States Copyright Office for this title?—A. I have searched the printed volumes issued by the Copyright Office.

Q. And how far back did that search go?—A. My own personal search
20 would go back to 1906, but they are available to 1891. I personally did not go back farther than 1906, with one exception.

Q. Before we come to your own exception, I was talking about searches made for prior registrations, and you give me a date subsequent to the registration by Francis, Day & Hunter, which was in 1892, was it not?—A. Yes.

Q. Did you make any search of any American Copyright Office publication to ascertain whether this title or a similar one had been used before Francis, Day & Hunter used it?—A. Yes.

Q. How far back did that search go?—A. I have the volume on the
30 desk next to Mr. Lawson.

Q. How far back did that search go?—A. 1870.

Q. And that was your personal search?—A. The volume is here.

Q. I did not ask you that?—A. My personal search, yes.

Q. Just follow me and we will get on better. Does that exhaust the personal searches you made?—A. No.

Q. You then searched for registration subsequent to the registration by Francis, Day & Hunter?—A. That is right.

Q. And you found nothing except the same song re-arranged?—A. That is right.

Q. And in none of these searches did you find any title which was very
40 closely similar to the title of this song with which we are concerned here?—A. I found no title similar other than the original song and its arrangements.

Q. Is this publication you have spoken of an official publication of the American Patent Office?—A. The American Copyright Office.

Q. It is?—A. Yes.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

—
No. 6.
Elliott
Shapiro.
Cross-exa-
mination—
continued.

In the
Supreme
Court of
Ontario.
—
Plaintiffs'
Evidence.
—
No. 6.
Elliott
Shapiro.
Cross-exa-
mination—
continued.

Q. Is it in the nature of a copyright gazette corresponding with the Patent Office Gazette?—A. No; it is a compiled catalogue of all copyrights between 1870 and 1916 of dramatic works.

Q. Of dramatic works?—A. Yes.

Q. Not musical works?—A. In some cases dramatico-musical works which we know as musical comedies or plays with music.

Q. I wondered why you went to such a publication to find a title of a song. Did you find it there?—A. I did not.

Q. You know of no similar publication that deals with musical works primarily?—A. There are organizations which have those musical titles in the United States on card index forms. 10

Q. I was not talking about organizations. I understood that the publication you spoke of was an official publication of the Copyright Office?—A. Yes.

Q. But it deals primarily with dramatic works and dramatical musical works?—A. Yes.

Q. You know of no similar authentic publication dealing with musical works?—A. Only in yearly form.

Q. And you did not make any search of those publications in yearly form?—A. Yes. 20

Q. With what result?—A. I found nothing outside of arrangements.

Q. And you did not find any record of the original copyright of Francis, Day & Hunter of this song we are concerned with?—A. In the United States?

Q. Yes?—A. Yes, I did.

Q. You found that in what year?—A. 1892.

Q. And did you search those yearly publications farther back than 1892?—A. They only start with 1891.

Q. But you did go back to 1891?—A. I personally did not.

Q. Who did at this time? Who made the searches?—A. The searches are on record on card form in various places. 30

Q. Who made them?—A. I received a copyright certificate.

Q. You told me that?—A. I beg your pardon. I received a letter from the Copyright Office in Washington in connection with their search.

Q. Have you that letter?—A. Yes.

Q. May I see it?—A. Yes (*produces letter*).

Q. That is not a letter such as I understood you were going to hand to me. I thought you were going to hand me something which would show that a search at the American Copyright Office disclosed no registrations whatever of this title or any similar title with two exceptions, first, the registration by Francis, Day & Hunter; and, second, the registrations by others of re-arrangements of that song. Have you any such letter as that?—A. No; I have not. 40

Q. What part did you personally take in making any search at the American Copyright Office?—A. The American Copyright Office or of the printed records? May I include that?

Q. Yes?—A. Personally I have checked up on them since 1906.

Q. Doing that at Washington?—A. Doing that in my own office where I have copies of those official publications to date.

Q. Which you call the yearly ones?—A. Yes.

Q. And are they primarily only for dramatic and dramatical musical works?—A. These are for musical works, songs and instrumental compositions.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

10 Q. Have you told me everything you should tell me as to the searches you have personally made?—A. No. I went through the files of the New York Public Library and searched amongst such authorities as Cecil Sharpe and a society in England called the Folk Songs Society, I believe, who have issued various books. I daresay I must have gone through, including American and British books, when searching for this and other numbers at the same time over a period of two or three months perhaps one hundred books or more.

No. 6.
Elliott
Shapiro.
Cross-examination—
continued.

Q. Did you make any search in Canada?—A. No, other than to look at the publications by Canadian publishers. I have a lot of old Canadian re-print folios, and the number does not appear in them.

20 Mr. LAWSON: May I take it that my friend did not wish to put in this letter he got from the witness which the witness said he received from the Copyright Office at Washington?

Mr. THOMSON: It was not what the witness described at all.

Mr. LAWSON: And you do not wish to put it in?

Mr. THOMSON: No.

Witness withdrew.

Mr. LAWSON: My Lord, there is an exhibit which I should have filed this morning with our Admissions. It is merely the advertising for this picture: "The Man Who Broke the Bank at Monte Carlo" which we are admitting as the advertising distributed by the Canadian company.

30 EXHIBIT No. 14: Advertising matter re: "The Man Who Broke the Bank at Monte Carlo."

Then, my Lord, by admission of counsel we are also putting in as Exhibit 15 an exact copy of what we admit appears upon the motion picture screen in a motion picture theatre and what is seen by an onlooker when the picture "The Man Who Broke the Bank at Monte Carlo" is run. I think that describes it.

Mr. THOMSON: So that there may be no misunderstanding about that, these items are lettered from a to g.

His LORDSHIP: Should I not see the picture?

40 Mr. THOMSON: I think your Lordship should. It is available. First they flash on the title and then something else, and then the case, a series of pictures that look like still-life, but they are not, I believe.

Mr. LAWSON: I think that even my friend would admit that if your Lordship saw the picture it might be a stern duty rather than a pleasure.

EXHIBIT No. 15: Admitted copy of material screened when "The Man Who Broke the Bank at Monte Carlo" is run.

Mr. LAWSON: That is the plaintiff's case, my Lord.

Proceedings on Trial.

No. 7.
Proceedings
on Trial,
25th May,
1937.

Mr. THOMSON : At this stage I think I should say I do not at all accede to my friend's suggestion that if your Lordship finds in his favour there should be a reference on the question of damages. My friend has submitted no evidence whatever except the so-called evidence of the last witness as to damages, and I am prepared to give evidence on that point. I ask your Lordship to find on that issue, if your Lordship is against me on my defences, as well as the others; and I object strongly to a reference.

Mr. LAWSON : I wish my friend had informed me of that at an earlier date. I am terribly surprised at his taking that position now. I discussed the matter with him informally and rather took it for granted that there would be a reference. I made the statement that we would not have to bother with the question of damages at the trial, although we might have the issue determined. Then another matter arises: Under the Copyright Act—I have not the reference before me at the moment because I did not anticipate that the point would arise—there is a provision that the plaintiff in proving damage in a copyright case need merely prove the receipts received by the defence, in this case receipts from the showing of the picture. 10

His LORDSHIP : Yes? 20

Mr. LAWSON : In the case of the defendant Twentieth Century Fox Corporation Limited it would be a matter of their receipts from rentals, and in the case of the defendant Famous Players Canadian Corporation, Limited, it would be a matter of their receipts from their motion picture theatres, which I understand number about 227 in Canada. On the examination for discovery, having obtained the schedules which were then correct as to the runs of the pictures, I proposed to go into the question of receipts as the measure of damages, and my learned friend there took the position before the Examiner, that I could not do so until I had established my right to damages. I was somewhat surprised at his position, but I must confess that I had an opportunity of looking into the law and came to the conclusion that he was right, and consequently did not move. Now, had I had any intimation that the issue was not to be determined first, of course I would have subpoenaed an official of Famous Players Canadian Corporation in order to prove their receipts, and would also have served a subpoena duces tecum upon Mr. O'Loughlin instead of one requiring his own presence. It would not be possible for me to prove my damage now because Famous Players would have to get data and information from various places throughout Canada. 30

His LORDSHIP : Do you recall the section? 40

Mr. THOMSON : Subsection 4 of Section 7 of the Amending Act of 1891.

His LORDSHIP : I assume that you do not want to put in your evidence and let your clients' books be exposed until you know whether or not I am going to rule in favour of the plaintiffs.

Mr. THOMSON : That section to which I have referred does two things, as I read it. In the first place it gives an owner the right to claim something beyond his damages : Such proportion of the infringer's profit as the court may deem proper to add to the true damages. In the second place it deals with the onus of proof : The owner of the right need only prove the receipts of the infringer, leaving the infringer to claim as a deduction from that figure all and every element of cost. On this part of my statement I am assuming that your Lordship is against me on all points and is going to find for the plaintiffs.

*In the
Supreme
Court of
Ontario.*

No. 7.
Proceedings
on Trial,
25th May,
1937—con-
tinued.

10 His LORDSHIP : That is a bad assumption.

Mr. THOMSON : Yes ; but I have to make my point, otherwise the question of damage is an academic one, and has no practical bearing at all. I suggest that the way it should be looked at is this : That section, of course, contemplates a complete invasion of a right. The worst that can be said about us is that we have taken what I will argue is not a substantial part of the copyright at all, but a very minor part. Surely my friend cannot seriously contend if he succeeds before your Lordship, that he is entitled to go into our profits, earned if you like in a small part by the use of this title but in a large part from the play itself, its attraction to the public, its dramatic value—if moving picture plays can be said to have any—and a dozen other things as, for example, the “ star ” who happens to play in the picture and who has taken the public eye. Surely it is idle for him to contend, if we did make a profit in showing this picture and he establishes the right he claims, that all our profits or any substantial part of them have to be considered.

His LORDSHIP : Would that not be a matter for me to decide after a reference ?

Mr. THOMSON : I think your Lordship should pass on that. I have evidence as to what titles sell for, which I propose to submit to your Lordship. The sale is, of course, for the world rights, and when you come to
30 Canada her proportion of that sum would be very small.

His LORDSHIP : You see, the Act says : In addition, such parts of the profits, etc., as the court may decide. Now, if you succeed, of course there would be no reference, but should there not be a reference if I decide in favour of the plaintiff.

Mr. THOMSON : I submit that your Lordship will have to do that because it is for your Lordship and not for any referee to decide what portion of the profits should be awarded in addition to damages. If it were not for that section I assume your Lordship, if you found for the plaintiff, would give nominal damages only : \$5 to \$25.

40 His LORDSHIP : What about the prior part of the claim ?

Mr. THOMSON : That is the actual damage, and there is no evidence except the vague general statement of Mr. Shapiro on that point.

His LORDSHIP : That he may have suffered ?

*In the
Supreme
Court of
Ontario.*

No. 7.
Proceedings
on Trial,
25th May,
1937—con-
tinued.

Mr. THOMSON : Yes. I think the whole clause is objectionable. It is there in the statute, and there is no use my attacking it because your Lordship is bound by it. I have argued before a committee of parliament that even infringers have some rights, and that they should not be assessed first the damages that the owner has suffered, and second, part of the infringer's profit.

His LORDSHIP : Mr. Thomson, have you any objection to letting Mr. Lawson bring in this evidence later ?

Mr. THOMSON : No. So long as I have an opportunity to meet it I do not object. 10

Mr. LAWSON : I am exceedingly sorry, my Lord. I do not often come into court without being prepared. I am not making any accusations of any kind, but I am tremendously surprised, in view of the conversations we have had, that my friend should raise the question at this time that there should not be a reference in regard to damages. Your Lordship will appreciate that the only thing I can ask for—your Lordship having determined the principles, of course—is an adjournment to a subsequent date. I would have to bring a witness from Famous Players here. They would have to compile those records from all over Canada.

His LORDSHIP : How am I going to decide the damage which the owner of the right infringed may have suffered unless I refer that to the Master ? 20

Mr. LAWSON : Always the Court has power to decide damages in any action, but under a section of the Judicature Act the Judge can refer the question of damage to a Master. While referring to that section, my friend has said that it is very unfair that the owner should get such damages as the Court might deem proper for the infringement, and in addition thereto the profits which the infringer shall have had. As a matter of fact, the reason for the statute reading in that way is because it would be an almost impossible task for a plaintiff who has a copyright to prove what his damages are. My friend says we have no evidence before this court except a general statement by Mr. Shapiro. If I had fifty witnesses I could not put anything before the Court other than a general statement. The fact remains that motion pictures do purchase the titles of popular songs and make pictures under those titles. 30

His LORDSHIP : What other damages could the plaintiff have suffered ? He might have sold it to someone for more money, I suppose ?

Mr. LAWSON : I beg your Lordship's pardon ?

His LORDSHIP : What other damages could the plaintiff suffer ?

Mr. LAWSON : What other damages in addition to a share of profits ?

His LORDSHIP : Yes. I suppose he might have sold it to someone else for more money ? 40

Mr. LAWSON : As a practical matter of working out this section I would think your Lordship would determine the damage having regard to the profit which was realized and having regard to the fact that if a profit

were not realized—let us assume that—the owner of the copyright in the song might have made an advantageous sale of his rights for a fixed sum to some other producer. I know of no other practical way of getting at it. I think the section is deliberately worded that way.

His LORDSHIP : Is it not very hard to prove damages suffered other than from receipts ?

Mr. LAWSON : Yes. There is no way of proving it except such general damage.

10 Mr. THOMSON : I have a suggestion to make that possibly will solve our difficulty. Certainly I have no intention of taking my friend by surprise, and if he has been surprised I do not want to take advantage of it, whether or not I was to blame. My suggestion to your Lordship is that on such evidence as is adduced before your Lordship today your Lordship should determine the issues as to liability or no liability, and if your Lordship's finding is against me and in favour of the plaintiff the trial be resumed on the question of damages before your Lordship.

His LORDSHIP : But even if my finding on the question of liability were against the plaintiff I would have to assess the damages so that in the event of the case going to appeal it would not be sent back for a new trial.
20 If the damages were assessed then the Court of Appeal would know my views thereon.

Mr. THOMSON : I do not quite appreciate my friend's difficulty in some respects. A right such as this is a very vague thing. I think titles have some value to motion picture producers, but there is little market for them. I have evidence of actual prices at which titles have been sold. That is the best evidence there is as to what such titles are worth. It may be that motion picture producers are unduly timorous and buy these titles because, as it is sometimes put, they have a nuisance value, which is about all the value they have. But even a nuisance value is some evidence that might
30 assist your Lordship, and that evidence is open to my friend as well as to me.

His LORDSHIP : Yes, but Mr. Lawson might desire to put in his own evidence.

Mr. THOMSON : Quite; but similar evidence along those lines. It is about all one can get on it. Certainly the sale of sheet music has not fallen off because a motion picture play of the same name has been produced. If anything, it would have the reverse effect. My friend does not make any charge against me. He and I did have a good many discussions, and they were all entirely friendly, but at a certain stage we got to grips and prepared the Admissions which have been put in as Exhibit No. 1. That is all I
40 thought I had conceded or admitted, and my friend, I would think, thought the same as to his side of the case.

Mr. LAWSON : During the course of our discussions we talked about having the damages assessed.

His LORDSHIP : If Mr. Lawson wishes an adjournment to get his evidence, I do not see why I should not grant it.

*In the
Supreme
Court of
Ontario.*

—
No. 7.
Proceedings
on Trial,
25th May,
1937—con-
tinued.

*In the
Supreme
Court of
Ontario.*

No. 7.
Proceedings
on Trial,
25th May,
1937—con-
tinued.

Mr. THOMSON : I would not strongly oppose that, my Lord.

His LORDSHIP : I would like to have the whole case before me so that no matter which way it goes I might be able to assess the damages in order to avoid a new trial.

Mr. LAWSON : If I might have ten minutes and my learned friend will not object to my calling one or two of the officials of his clients Famous Players Canadian Corporation, who will probably not be contaminated because they happen to be my clients for some purposes, I can possibly ascertain just how rapidly I can prove what were the receipts from this picture.

10

His LORDSHIP : I was just going to look up my appointments for next week.

Mr. LAWSON : I might be able to go on right after the next case is finished, my Lord.

His LORDSHIP : The next case will be lengthy, and also the one after it, and will likely occupy the whole of the remainder of this week. I can give you Monday next and also Thursday and Friday of next week.

Mr. LAWSON : We could finish it on Monday.

Mr. THOMSON : I have only one objection to that. I do not know when the June sittings of the Court of Appeal commences. If it commences on the 31st May, which is next Monday, I am engaged in the second case on that list. If it does not start until the 7th June, which is the first Monday in June, I shall be free any day next week which may suit your Lordship and my friend.

His LORDSHIP : Then shall we adjourn the case until Monday, and if it is not resumed then it will be resumed on Thursday and Friday of next week in one of the court rooms at Osgoode Hall.

Mr. LAWSON : Because of the involved nature of the case upon which my friend and I really desire to obtain a decision, we have agreed to request the shorthand reporter to make a verbatim transcript of the legal argument in order that it may be available to your Lordship; and as the evidence is not voluminous we might also ask him to transcribe the evidence so that your Lordship will have the whole record before you, the costs thereof to be in the cause. There are points upon which we really need a decision, my Lord.

Mr. THOMSON : My Lord, I am sorry to say that Monday of next week would not suit me.

His LORDSHIP : Then shall we say Thursday of next week ?

Mr. THOMSON : Yes, Thursday, the 3rd June.

Mr. LAWSON : That will not be a public holiday this year, will it ?

40

His LORDSHIP : I can sit then in any event. The case will be adjourned until Thursday, the 3rd June, at 11.00 o'clock a.m.

Mr. LAWSON : If it would be convenient for your Lordship to let me have the draft of the Copyright Act with the notes on it I will have fresh copies made and furnished to your Lordship.

*In the
Supreme
Court of
Ontario.*

Mr. LAWSON : At the opening of this case, my Lord, originally certain admissions were filed by counsel and to those admissions there were attached schedules, one being a schedule of the theatres in which the picture in question had been run by licence from the Fox Film Corporation of Canada, and that schedule at that time was not quite complete, because the defendant Fox had to gather information from all over Canada. We now have
10 the necessary pages to complete that schedule, and, with your Lordship's permission and consent of counsel, I should file those now, merely as part of those original admissions which were Exhibit I. At the lunch hour adjournment I will take the schedule of that exhibit apart and substitute these pages in the proper order in that schedule.

No. 7.
Proceedings
on Trial,
9th June,
1937—con-
tinued.

My Lord, the adjournment took place for the purpose of permitting me to submit evidence on the matter of damage, and I subpoenaed an officer of the defendant Famous Players Canadian Corporation; when his figures were available by consent of counsel and to save time we went to the office of Famous Players Canadian Corporation, went over the figures,
20 and by consent of counsel I am filing those figures, without calling that official here. That will be Exhibit No. 16.

The exhibit is in two sheets. The first one shows theatres owned and operated directly by the defendant Famous Players. The second sheet shows theatres owned and operated indirectly by Famous Players; that is, they may have operating agreements. In many cases both of those operated directly and indirectly, someone other than the defendant Famous Players under their respective agreement shares in the profits. So in this statement they have shown the receipts in each case, the full rental, the general house expense, that is, of the theatre in each case, with which basis we are not
30 quarrelling or questioning. Then they show the gross profit or loss, and in the final column the net profit or loss to the Famous Players. It results in a net profit to Famous Players of \$398 in respect of theatres indirectly operated by the defendant Famous Players.

EXHIBIT 16 : Statement re damages.

Mr. LAWSON : Then I call Mr. O'Loughlin, the district manager of the defendant Fox.

*In the
Supreme
Court of
Ontario.*

No. 8.

Further Evidence of James Peter O'Loghlin.

EXAMINED BY MR. LAWSON :

Plaintiffs'
Evidence.

No. 8.
James Peter
O'Loghlin
(recalled).
Examina-
tion.

Q. Mr. O'Loghlin, you were previously a witness in this case?—
A. I was.

Q. And you were subpoenaed to produce here to-day a statement of the rentals received by Twentieth Century Fox Corporation Limited from the licensing of the picture, "The Man Who Broke the Bank at Monte Carlo"?—A. That is right.

Q. And you now produce a statement showing the locations where the picture was run, the name of the theatre, the play dates and the rentals received?—A. That is right.

Q. Resulting in a total rental to the defendant Fox of \$25,816?—
A. That is correct.

Q. Then you have deducted from that, less credit to Famous Players Canadian Corporation, \$1,500.04?—A. That is right.

Q. Making a net revenue to the defendant Fox of \$24,315.96?—A. Correct.

Q. I presume this credit to Famous Players is in pursuance of some arrangement you have with them?—A. It is a rebate. The picture originally paid us a certain percentage, subject to it reaching a certain figure at the box office, which it did not, and we had to give them a rebate.

Mr. LAWSON : That will be Exhibit 17, my Lord.

EXHIBIT 17 : Statement of rentals received by Twentieth Century Fox Corporation Ltd.

His LORDSHIP : What is the difference between that and Exhibit 16?

Mr. LAWSON : Exhibit 16 would reflect the amount of money taken in by Famous Players Canadian Corporation from the public in box office receipts, less their operating expenses, including their operating expenses of the theatre and of their head office and so forth.

His LORDSHIP : Exhibit 17 is the—

Mr. LAWSON : Exhibit 17 is the gross receipts by Fox, the defendant Fox, from the picture, some of which gross receipts would come from Famous Players Canadian Corporation, but it would also come, of course, from other theatres.

That is all, thank you.

Mr. THOMSON : No questions. (*Witness retires.*)

His LORDSHIP : Is that your case?

Mr. LAWSON : No, I have just one other thing, my Lord. I will recall Mr. Shapiro, purely on a matter of specific damage, not general damage, of which I tendered evidence before.

Further Evidence of Elliott Shapiro.

EXAMINED BY MR. LAWSON:

Q. Mr. Shapiro, I think you told us previously that you were a partner of the firm of Shapiro, Bernstein & Company, music publishers?—A. I am an officer of the firm of Shapiro, Bernstein & Company, Incorporated.

Q. It is an incorporated company?—A. Incorporated.

Q. Shapiro, Bernstein & Company, Incorporated, of New York City. I now show you an original assignment from C. F. Zittel to Louis Bernstein, dated the 6th day of September, 1923, and on the back thereof an original assignment from Louis Bernstein to the firm of Shapiro, Bernstein & Company, Incorporated, of rights as therein set out in respect of a motion picture entitled "Yes! We Have No Bananas."

Mr. THOMSON: Your Lordship, this document has not been included in my friend's productions; I am not familiar with it; I do not know for what purpose it is tendered. It apparently relates to some other song entirely. I submit this document is not evidence in any way as against the defendants in this action. Whether my friend can get what he wants in some other way through this witness is another question, but I certainly object to the admission of that document as evidence against either defendant. This is a transaction, apparently, between this witness's company and some third parties, and how it can have any bearing on the issues your Lordship has to try I cannot quite see.

Mr. LAWSON: My learned friend, my Lord, intimated at the adjournment of the trial that he proposed to prove in evidence the prices paid for songs for the titles of pictures. Here is a specific case of payment which I propose to prove—

His LORDSHIP: Yes, but would that not come in reply?

Mr. LAWSON: The only reason I was tendering it now was for fear it should be held that I should not give it in reply. If I may tender the evidence in reply, I will immediately withdraw this evidence that I propose to put in now. I was afraid my learned friend might then be objecting to my splitting my case.

Mr. THOMSON: I think, your Lordship, if the evidence is admissible I would prefer that it go in now, so that I will have a chance to meet it.

His LORDSHIP: Maybe you had better look it over first.

Mr. THOMSON: For the moment I am objecting to the matter being proved by a document which I have not seen.

Your Lordship, on a very hurried reading of this document, I find no price mentioned except one dollar and I assume my friend is not producing the document to show that one dollar was the true consideration payable under this assignment. I suggest that if this witness has personal knowledge of what price was paid he may be asked that, but he cannot of course give hearsay evidence, and this document does not seem to prove what my friend tenders it for, as showing some amount paid for the use of a title.

*In the
Supreme
Court of
Ontario.*

—
Plaintiffs'
Evidence.

—
No. 9.
Elliott
Shapiro
(recalled).
Examina-
tion.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

No. 9.
Elliott
Shapiro
(recalled).
Examina-
tion—con-
tinued.

Mr. LAWSON : I did not say I tendered it for that purpose, my Lord. I made no statement about it.

His LORDSHIP : The witness may know. If you would rather have it go in—

Mr. THOMSON : I think I would, your Lordship; I would then know what I have to meet in my defence.

His LORDSHIP : Well, subject to objection I will allow it.

Mr. LAWSON : It will be Exhibit No. 18.

EXHIBIT 18 : Assignment, Zittel to Bernstein, Sept. 6, 1923, and Bernstein to Shapiro, Bernstein & Co. Inc., Oct. 3, 1923. 10

Mr. THOMSON : You have no copies of that, I suppose ?

Mr. LAWSON : No, I have not. It was just brought to me this morning—merely evidence of a transaction.

Q. By this document labelled "Assignment," Mr. Shapiro, one Zittel assigned to Louis Bernstein, and Bernstein in turn to Shapiro, Bernstein & Company, an undivided one-half interest of the ownership of a motion picture photoplay and of the copyright therein and thereto, known as "Yes! We Have No Bananas."?—A. That is right, Mr. Lawson.

Q. Would you please tell me the foundation on which this contract was based, if it is of your own knowledge?—A. In 1923 my firm, Shapiro, 20 Bernstein & Company, Incorporated, were the publishers of the song "Yes! We Have No Bananas".

Q. And did they have the copyright therein?—A. We were the selling agents and we owned the copyright. It was a subsidiary—the original Skidmore Music Company, Incorporated, the copyright owners, were a subsidiary of our firm. We were approached by Mr. C. F. Zittel, who wished to acquire the right to make a motion picture, what is technically known as a "short."

Q. Just before you go on with that, a "short" in the trade means a short picture?—A. A short picture. 30

Q. Not a feature like "The Man Who Broke the Bank at Monte Carlo"?—A. No; a short picture.

Q. Yes?—A. Two or three reels; I don't know the exact length of it.

Q. Yes?—A. Of the song "Yes! We Have No Bananas," to use the story of the song in any manner he saw fit and to call the picture "Yes! We Have No Bananas," and—

Mr. THOMSON : Your Lordship, I think I must interrupt here. This is not, I submit, evidence. Here are some negotiations between this witness's company, the company with which he is associated, and some third party. Now, my friend announced, as I understood him at any rate, that he proposed 40 to call evidence to show that for a title a certain sum was paid. I submit that it is entirely improper for this witness to give a long, rambling account of the negotiations that may have culminated in the payment of some sum for a title. If he knows as a fact of his own personal knowledge that a certain sum was paid for the use of a title let him say so, but I object to this long story.

His LORDSHIP: I think that is what he said at the start, that he did not know.

Mr. LAWSON: Q. As a result, Mr. Shapiro, of negotiations which took place, did your firm authorize Zittel to use the title in which you had copyright, "Yes! We Have No Bananas," as the subject matter of a picture?—A. Our firm did.

Q. Was the consideration which your firm received for that authorization the assignment to you of a one-half interest in the picture itself—

Mr. THOMSON: That is leading, of course, your Lordship.

10 Mr. LAWSON: Q. —which is embodied in Exhibit 18?—A. That is correct.

Q. As a result of your ownership of a one-half interest in the picture in question what amount of money did your firm receive from your share of the rentals and profits therefrom?—A. I cannot give you the round figures, but it was approximately \$10,000 for our end.

Q. What you mean is, you cannot give me the exact figures?—A. That is right.

Q. Have you any books or record of any kind in connection with the receipts from that picture?—A. I don't think that we could produce those 20 records. We have moved twice since 1923.

Q. In the days when this transaction took place between Zittel and Shapiro, Bernstein & Company, was there any sound in pictures or on pictures?—A. Not being used at that time. Of course, we had had the Edison experiment, the kinetoscope, but it was not in commercial use at that time. There were no sound pictures; these were silent.

Q. May I take it, then, that the picture which was produced, "Yes! We Have No Bananas," was a silent picture?—A. That is correct.

Q. In other words, contained nothing but photography, no sound?—A. Photography and sub-titles.

30 Q. Now, have you any personal knowledge of other transactions for the sale of titles or songs for use in motion pictures?—A. I know certain things which are common knowledge in the music business, and which have come to me through my—

His LORDSHIP: No, no.

WITNESS: But I have no personal knowledge.

Mr. LAWSON: Q. No transaction in which you yourself participated?—A. In which I myself actually participated, that I can recollect.

Q. That is all, thank you.

CROSS-EXAMINED BY MR. THOMSON.

40 Q. Mr. Shapiro, the assignment that has been put in, Exhibit 18, is of what copyright? The American only, or wider than that?—A. The document states that it is the American copyright and also reserves that second page to any foreign copyright which may be acquired.

Q. And I suppose foreign copyrights were acquired?—A. Presumably.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

No. 9.
Elliott
Shapiro
(recalled).
Examina-
tion—con-
tinued.

Cross-exa-
mination.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

No. 9.
Elliott
Shapiro
(recalled).
Cross-exa-
mination—
continued.

Q. Can you tell me this : the play, the photoplay, when it was produced had a circulation outside of the United States?—A. I presume so.

Q. And the assignment was of the complete copyright in that song, was it?—A. The complete copyright of the song.

Q. So that that assignment carried with it— —A. Pardon me; one half the complete assignment, one half of the complete copyright, not the complete copyright.

Q. I thought it was the entire copyright or the entire right to use the title for this particular purpose?—A. It is a one-half interest in the copy-
right. 10

Q. One-half interest?—A. Yes.

Q. And in exchange for a one-half interest in the photoplay?—A. That is right.

Q. That assignment would carry with it the right to play the music in connection with the exhibiting of the play?—A. By mechanical means or—

Q. Or by orchestra—any way you choose?—A. That would have to be done through a Performing Right Society.

Q. Now, just a minute. Would have to be done?—A. Would have to be licensed through a Performing Right Society. 20

Q. Have to be licensed through a Performing Right Society; in the United States that would be the American Society of Composers, Authors and Publishers?—A. That is right.

Q. Commonly called ASCAP?—A. That is right.

Q. Do you know whether that Society was in existence in 1923?—
A. Yes, sir, it was in existence.

Q. Do you know about the Performing Right Society of Great Britain?
—A. I do.

Q. Was that in existence in 1923?—A. I believe it was.

Q. Was the Canadian Performing Right Society in existence in 1923?—
A. I am reasonably sure that it was not. 30

Q. You do know that the present Canadian Copyright Act did not come into force until the 1st of January, 1924?—A. That is correct.

Q. When you speak of the receipts from this photoplay bearing the same title as this song, your company's books would show the actual receipts, would they not?—A. Presumably.

Q. You have not looked for that, I suppose?—A. We have looked; we cannot find the books.

Q. And you cannot tell me from memory in how many countries of the world that play was exhibited?—A. We know that it was sent abroad, and I believe sent to Canada. 40

Q. Was it sent to Canada?—A. I presume so.

Q. But you do not know?—A. I do not know of my own knowledge.

Q. I suppose you do know enough about it to say that if it was played in Canada the receipts from the performance in Canada would be a very small percentage of the world receipts?—A. I don't quite understand what you mean by performance.

Q. The exhibition of this silent photoplay?—A. Would be a certain percentage of the world.

Q. A certain percentage———A. A certain percentage of the English-speaking world—pardon me.

Q. All right, the English-speaking world. It would be a very small percentage of the total receipts from the performance of that play in the English-speaking world?—A. I really don't think so, because in this particular case this was a song which was in a certain slang or idiom, and which would perhaps not be as attractive to the rest of the world as it would be to the English-speaking countries.

10

Q. I am confining myself to the English-speaking countries, and if you like I will confine myself to this continent. You would expect that the percentage of the receipts earned in Canada as compared with the total receipts from the two countries, Canada and the United States, would be very small?—A. It would be smaller.

Q. It would be very small?—A. I cannot say of my own knowledge; I would presume it to be smaller.

20

Q. You presume it to be small; and could you hazard a guess? Would it be five per cent. of the total receipts from the two countries?—A. I really could not say.

Q. You would not be surprised to find a smaller percentage than that, would you?—A. I am not in a position to say.

Q. All right, that is all.

Mr. LAWSON: Thank you, Mr. Shapiro. (*Witness retires.*)

Mr. LAWSON: That is the plaintiff's case, my Lord.

His LORDSHIP: Mr. Thomson.

*In the
Supreme
Court of
Ontario.*

Plaintiffs'
Evidence.

—
No. 9.
Elliott
Shapiro
(recalled).
Cross-exa-
mination
continued.

*In the
Supreme
Court of
Ontario.*

No. 10.

Evidence of William Werner.

EXAMINED BY MR. THOMSON.

Defendants'
Evidence.

No. 10.
William
Werner.
Examina-
tion.

Q. Mr. Werner, you live in New York City?—A. In Rye, one of the suburbs of New York City.

Q. But your business is in New York City?—A. It is.

Q. Associated with what company?—A. Twentieth Century Fox Film Corporation.

Q. That is the American Company that has been discussed here?—
A. Yes. 10

Q. What position do you hold with that company?—A. Assistant to the comptroller.

Q. Are you an accountant?—A. I am.

Q. Holding any title in that respect?—A. I am a Certified Public Accountant of the State of New York.

Q. You have gone over Exhibit 17, which is a list prepared by the Canadian subsidiary company of the total receipts from rentals of this photoplay, "The Man Who Broke the Bank at Monte Carlo"; have you prepared a statement showing the net profit or loss to the Canadian Company, the Canadian subsidiary company, from the exhibition of that photoplay?—A. I have had a statement prepared. 20

Q. I show you this statement and ask you if it is the one you refer to, or a copy of it?—A. This is the statement.

Mr. LAWSON: I am not so sure that that is admissible, my Lord. When Mr. Shapiro gave evidence that he had had a search made for him, somebody conducting it under his direction, his evidence was excluded. now my learned friend produces a witness who comes along and says, "No, I didn't make that, but I have had it made." Surely one is in as high a position as the other.

Mr. THOMSON: I don't think anything was excluded. 30

Mr. LAWSON: Oh, yes; when Mr. Shapiro was giving evidence——

Mr. THOMSON: Might I just try to differentiate those two cases? I do not agree that your Lordship ruled out any of my learned friend's evidence.

His LORDSHIP: What I said to Mr. Shapiro was that he did not know it of his own knowledge.

Mr. LAWSON: Then on the same basis——

His LORDSHIP: Does this witness know this of his own knowledge?

Mr. THOMSON: My Lord, I put it on this basis: In any big corporation no senior man does all the arithmetic necessary to prepare a statement; 40 he gets help from others, those under him; but he is responsible for that statement, he takes full responsibility. Now, this is the witness I am

producing, the man under whose direction it was prepared, by his own company, and a statement for which he is responsible. I submit that is always admissible. It is quite another thing when Mr. Shapiro goes into the box and says, "I had a search made in London," and so on, and testing that I find out he did not make the search at all and it was not made by anyone associated with his company, and not made under his direction. If your Lordship is allowing that to go in, I tender it as an exhibit, and I would like to give a little explanation of it, if I may, to your Lordship.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 10.
William
Werner.
Examina-
tion—con-
tinued.

10 In the first place, the gross income from Canada differs slightly from the total figures shown by Exhibit No. 17.

Mr. LAWSON : Might I have a copy of this statement you are putting in, so that I can follow it ?

Mr. THOMSON : Yes.

20 The difference is slight, a matter of a few hundred dollars, and I am instructed it is accounted for by two facts. In the first place, the statement that I am now tendering is not brought up to quite as late a date as Exhibit 17. Exhibit 17 is absolutely up to date—in fact, it is more than up to date, because it includes some theatres that have booked this film and have not yet played it. Then apparently this \$1,500 credit shown on Exhibit 17 was not taken into account in the exhibit I am now tendering. Those differences will have no real effect on the result except the matter of a few cents. Perhaps your Lordship would like to follow me on a copy of this. The first item starts with a figure of \$24,806.01 as against a figure of \$24,315.96 in Exhibit 17, and that income is 2.74 per cent. of the world-wide gross.

His LORDSHIP : Why do they bring in the world-wide gross ?

Mr. THOMSON : To find out profit, to find what the profit or loss is. A small profit is shown by the statement.

His LORDSHIP : Aren't we just dealing with Canada ?

30 Mr. THOMSON : Yes, your Lordship, and this is confined to Canada, but your Lordship will appreciate that one of the big items in the cost of any picture is what they call the negative cost; that means every cost incurred in producing this picture, acting it, paying royalties, and so on, up to the point where you have got your completed film in negative form. Now, obviously, Canada and Belgium and every other country in which this Fox Company does business have to bear part of that negative expense; that cannot be ignored. What is done in this statement, that 2.74 per cent. is only used for this purpose : that percentage is taken of the total negative cost and charged to Canada. Nothing else would be fair, because
40 Canada, only producing about two and three-quarters per cent. of the revenue from the picture, can only be charged with two and three-quarters per cent. of the negative cost. That explains that item, and it is the only purpose for which it is used, your Lordship.

The next is what is termed the positive cost, and in the case of this picture—and this is generally so—the positives are made in Canada, as

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 10.
William
Werner.
Examina-
tion—con-
tinued.

there is an advantage, I understand, from the standpoint of customs duty, and this is an actual disbursement in Canada to make positive prints from the negatives supplied from the United States.

The next item is based on a more or less arbitrary percentage, but it is found this way: the auditor's statement for the year 1936 is taken—

His LORDSHIP: I think we should have an auditor on the Bench.

Mr. THOMSON: Well, perhaps this witness can do it better than I can, but I am always afraid of these highly trained witnesses, they get so technical, and I thought at least I would not make that mistake; I may not be as accurate, but I won't be too technical, because I have not the ability to be technical on this subject. 10

The second is taken in this way: It was found that out of every dollar taken in in film rental in Canada twenty cents roughly had to be counted on as the expenditure to run these exchanges through which the films are marketed, and that figure is applied to the Canadian receipts from this particular photoplay, resulting in the figure your Lordship sees in the statement.

Then in the same way it is found that to sell pictures you have to take another sixty cents out of your dollar as selling expense, and that again is applied to the \$24,800 realized in Canada from this picture. 20

The last item is in the same category, only there it is five cents out of every dollar. Again I am ignoring the decimals.

Q. Now, Mr. Werner, you have listened to my explanation to his Lordship?—A. Yes.

Q. Have I expressed that accurately, the way this statement is made up?—A. You have.

Q. Was I also correct in saying to his Lordship that this statement was made up under your supervision?—A. Yes.

Q. And do you take responsibility for it?—A. I do.

Mr. THOMSON: Attached to the copy I am putting in, your Lordship, is a photostatic copy of the auditors' report, because that has to be referred to to see how we get certain of these percentages. 30

Mr. LAWSON: Which auditors' report?

Mr. THOMSON: Touche, Niven & Company's report on the Canadian Company for the year 1936.

Mr. LAWSON: I do not think, my Lord, that that is admissible. I object to that auditors' statement of Touche, Niven & Company being put in, for this reason: I am not suggesting for a moment they may not be the most reputable, well-known firm of auditors in Canada, but the fact remains that I have no opportunity to know what is in it or why and what it represents. I do not think that can be admissible in evidence, unless I have an opportunity to cross-examine somebody from Touche, Niven & Company. 40

Mr. THOMSON: My friend appreciates, I suppose, that this is only attached to the exhibit for one purpose. If your Lordship chooses to check this statement, take exchange expense, 20·1 per cent. of the Canadian gross,

you can do so by referring to the auditors' statement, which of course gives that item applied to all the company's business for the year 1936; having got that percentage, we apply it.

His LORDSHIP: Maybe if you would let Mr. Lawson see it—

Mr. THOMSON: Yes. Here is an extra copy for my friend. May it be marked in the meantime for identification, your Lordship, and possibly my friend after studying it will not object.

His LORDSHIP: Exhibit 19.

10 EXHIBIT 19: Statement of profit to Canadian Company on "The Man Who Broke the Bank at Monte Carlo."

Mr. THOMSON: You may have the witness, Mr. Lawson.

Mr. LAWSON: I will have to ask your Lordship to excuse me for a minute while I look at this statement.

His LORDSHIP: Q. Would you explain to me that exchange expense?—A. We arrive at the twenty per cent. in the following manner: we take the gross receipts for the company for the entire period, or one year, rather, 1936.

Q. You mean throughout the—?—A. Canadian.

20 Q. Through the different countries, do you?—A. No; in this instance the twenty per cent. is based purely on the Canadian business. We take the gross receipts for the year 1936, we apply against that the cost of maintaining and operating the various exchanges in Canada.

Mr. THOMSON: Q. Film exchanges?—A. Film exchanges.

Mr. THOMSON: Does your Lordship appreciate, that is where films are stored and sent out and returned, and it is a clearing house for these films; each company doing this business in Canada has to operate several exchanges in different parts of Canada.

WITNESS: That is the ratio between the gross receipts and the direct costs.

30

CROSS-EXAMINED BY MR. LAWSON.

Cross-examination.

Q. Mr. Werner, how many feature films did the defendant Fox, that is, the Canadian Corporation, handle in Canada in the year 1936?—A. I do not know the exact number, but it would approximate 55, 56.

Q. Approximately 55 or 56 films?—A. Yes.

Q. And is there any statement available to you anywhere or have you any statement showing—excuse me; in this statement of Touche, Niven & Company it shows gross income from sales and rentals of film and literature, \$1,184,472.63, so that I can take it that your gross income from 55 films was \$1,184,872.63 (sic)?—A. Yes.

40 Mr. THOMSON: I did not catch the first of that question; the income from what?

Mr. LAWSON: Q. 55 films which they handled in their exchange in Canada in 1936?—A. Yes.

*In the
Supreme
Court of
Ontario.*
—
Defendants'
Evidence.
—
No. 10.
William
Werner.
Cross-exa-
mination—
continued.

His LORDSHIP : Q. 55 or 56?—A. I did not know the exact number.

Mr. LAWSON : Q. 55 or 56; so that we have that figure to compare with the gross income of \$24,806 received from this picture?—A. That is right—pardon me: you have some news reel income in the gross of one million one eight.

Q. In addition to feature films?—A. In addition to feature films.

Q. So that without having the number of news reels supplied and the actual number of features run we cannot get any information to enable us to check from this statement of Touche & Company the average for each one, can we?—A. No, not very well.

Q. I notice that the net profit, according to the statement of Touche & Company, for the Canadian Corporation for the year 1936, after deducting all income tax, etc., resulted in a net profit of \$87,135.88?—A. That is correct.

Q. But of that gross profit of \$87,135, from 55 or 56 films plus some news reels, you say only \$613 was attributable to this film, "The Man Who Broke the Bank at Monte Carlo"?—A. That is correct.

Q. Who prepares the returns of the defendant Fox, the Canadian Corporation, for income tax purposes in this country? You?—A. No, I do not.

Q. Does Touche, Niven & Company?—A. No.

Q. Who does?—A. Our tax department, of which Mr. Seco is a representative.

Q. Who?—A. Mr. Seco.

Q. Is that somebody employed in Canada or somebody employed by the parent company in the United States?—A. Employed by the parent company in the United States.

Q. Well as you are assistant comptroller of Fox of the United States Corporation I presume it is within your knowledge and done under your direction?—A. The greater part of tax work is not done under my direction; it is done more under the comptroller's direction and the tax department.

Q. It is within your knowledge?—A. Very little now; I have very little knowledge of the Canadian situation.

Q. Do you know as a fact that you do not prepare your statement of profits and losses for income tax purposes in Canada on anything like the basis of this document which has been presented to the Court as Exhibit No. 19?—A. I do not.

Q. You know nothing about it?—A. No.

Q. Now let us examine this Exhibit 19 in detail, I mean that part of it prepared by you. Do I understand the first statement contained in it to mean that the gross income from Canada as compared to the gross income of the United States Fox Corporation from all the world in respect of all pictures produced, is 2.74 per cent.?—A. No.

Q. Then what does it mean?—A. The gross income of the particular picture has arrived at, and that portion which was earned in Canada has been applied against the total—

Q. In other words, 2·74 per cent represents the gross revenue in Canada as compared to the gross revenue throughout the world in respect of the one picture?—*A.* That is right.

Q. “The Man Who Broke the Bank at Monte Carlo”?—*A.* That is right.

Q. Now, when you say the world-wide gross on the picture, to which countries did you send the picture?—*A.* The picture went to practically every country in which we have an exchange, and we maintain exchanges in practically all countries of the world.

10 *Q.* You would not send the picture to a non-English-speaking country, would you?—*A.* The picture would go to a non-English-speaking country with titles superimposed so as to make it understandable to the people of that particular nation.

Q. Even though the sound track is in the English language?—*A.* Yes.

Q. So that the gross revenue from Canada then represented 2·74 per cent. of the gross revenue from the whole world?—*A.* That is right.

Q. Now, the next item being your 2·74 per cent.—

His LORDSHIP : *Q.* Wouldn't the Canadian Company work on its own? It is a Canadian Company; wouldn't it take in its gross itself? Why 20 should it be based on what came from the other countries?—*A.* This percentage is only arrived at to determine some means of applying the cost of producing the picture to the various countries from which we obtain revenue. The picture is produced for the entire world. We have no other means of allocating the cost to each individual country unless we take it on a percentage basis. We cannot say at the time the picture is produced that—

Q. You pay the original cost?—*A.* Yes, sir.

30 *Q.* Then you divide that up among your different subsidiary companies in different countries, allocating a certain amount of the cost to those different countries?—*A.* It is not done in that manner. The various countries will remit by contract a certain percentage of the gross receipts of that country. Out of that percentage remitted to the parent company is obtained the necessary funds to make the picture or to pay for the picture. In this instance we have attempted to allocate to Canada its correct share of the cost of the negative, and we have done so by taking the gross receipts throughout the world and applying against that the gross receipts from Canada.

Q. You base it on the gross receipts that you get from Canada or any other country?—*A.* That is right.

His LORDSHIP : Sorry to have interrupted you, Mr. Lawson.

40 Mr. LAWSON : Not at all, my Lord. I was going to come at the finish to something your Lordship has now touched upon, and I will follow up a bit, as your Lordship has touched upon it.

Q. In the ordinary course of business does not the defendant Fox—which, for convenience, I am going to call the Canadian Corporation to distinguish it from the United States Corporation—does not the Canadian

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 10.
William
Werner.
Cross-exa-
mination—
continued.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 10.
William
Werner.
Cross-exa-
mination—
continued.

Corporation pay to the American Corporation a rental in respect to film received from the American Corporation?—*A.* It does.

Q. And how is that rental based?—*A.* On a percentage of the gross.

Q. On a percentage of what gross?—*A.* Of the gross receipts taken in Canada.

Q. In other words, the Canadian Corporation pays to the American Corporation for the use of positive prints, or dupes, as they are called in the trade, a percentage—cut out the word “dupes”; “dupes” is a technical word given to a something similar to a negative which they ship in here to have positive prints made. I will start my question over again, if I may. 10
The Canadian Corporation pays to the American Corporation for the positive prints supplied to it in Canada a percentage of its gross receipts?—*A.* You have not got it quite right.

Q. Then would you state it correctly?—*A.* I will state it. The Canadian Company pays to the United States for the privilege of distributing—

His LORDSHIP : *Q.* You mean to the United States Company?—*A.* To the United States Company, for the privilege of distributing the picture, a certain percentage of the gross, but the Canadian Company purchases its own prints. 20

Mr. LAWSON : *Q.* That is, the Canadian Company purchases its own prints by paying the cost of producing those positive prints from a negative, which cost is paid to Associated Screen News of Montreal, to whom or to which the United States Corporation supplies the negative; that is right, is it?—*A.* Yes.

Q. Now, the Canadian Corporation having paid Associated Screen News of Montreal the cost of producing the positive prints, is that deducted in turn by the Canadian Corporation from its remittance to the United States Corporation of that percentage of the gross rental in Canada to which the United States Corporation is entitled?—*A.* No. 30

Q. Then we have it that the Canadian Corporation pays to the United States Corporation a percentage of its gross receipts and also pays the cost of obtaining the positive film?—*A.* Right.

Q. What percentage of its gross receipts is payable by the Canadian Corporation to the United States Corporation?—*A.* Sixty per cent.

Q. Now I take the auditors' report filed as part of Exhibit 19, of Touche, Niven & Company. I have already mentioned the amount of the gross receipts, and I notice under expenses this item, “Participation in film rentals, \$676,425.24.” Does that represent that sixty per cent. payable by the Canadian Corporation to the United States Corporation?— 40
A. It does.

Q. One other thing : the first item in the expense account is “Amortization of film and literature costs, \$166,896.” What expense does that represent?—*A.* That would be the prints which have been bought and paid for by the Canadian Corporation and any advertising material which they had acquired.

Q. That is, by purchase?—A. By purchase.

Q. And the receipts likewise reflect the sale of any advertising material?
—A. They would—it would.

Q. The gross receipts would?—A. That is right.

Q. And may we take it that the advertising material is a very small factor in the whole situation?—A. Yes.

Q. Almost negligible?—A. It is not a very large item.

Q. All right. Then we have it here that in the first place the Fox Corporation of the United States gets sixty per cent. of all the gross rentals of the Canadian Corporation received from the use of any film?—A. That is right.

His LORDSHIP : Sixty per cent. of the gross receipts.

Mr. LAWSON : Sixty per cent. of the gross rentals—I beg your pardon ; I am using receipts and rentals as synonymous, because he said the advertising was practically negligible, and the whole source of revenue is rentals from film.

WITNESS : That is right.

Mr. LAWSON : Q. Then, despite the fact that the United States Company gets sixty per cent. of the gross receipts of the Canadian Company as rental for these films, you still charge against the Canadian Corporation a percentage of the cost of producing the original negative by this statement, part of Exhibit 19, do you not?—A. Yes.

Q. In other words, you charge 2·74 per cent. of the cost of producing the original negative against the Canadian Corporation?—A. Pardon me; you are a little ahead of yourself. The sixty per cent. is not charged on this statement.

Q. No, I didn't say it was, I didn't say it was?—A. On this statement there is only charged the determinable figure in lieu of the sixty per cent.

Q. Let me ask you this, and I might solve a lot of my problems and save some time : The Canadian Company is a separate legal entity from the United States Corporation?—A. That is correct.

Q. It carries on its own business?—A. That is correct.

Q. It has its own expense account?—A. Yes.

Q. Though it is a subsidiary of the United States Corporation?—A. Yes.

Q. Now, there is nothing to prevent you from allotting the net profit earned in Canada of \$87,135 as the profit earned on the respective features and pictures shown in Canada in proportion as the gross on the one is to the aggregate gross of all, is there?—A. It can be done.

Q. It can be done; but you have not chosen to do that; instead of that you have chosen for the purpose of Exhibit 19 to mix up the accounts of the United States Corporation, the Canadian Corporation and all its subsidiaries in every country in the world in which this picture was shown, for the purpose of getting your percentages?—A. No, we have not. I believe I could state this briefly so that you will follow the trend.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 10.
William
Werner.
Cross-examination—
continued.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 10.
William
Werner.
Cross-exa-
mination—
continued.

Q. All right?—A. In the statement which you have, the corporate lines have been eliminated, in order to determine as clearly as possible the true cost of the negative applicable to Canada. The sixty per cent. which we have spoken about has been eliminated. The actual cost of the prints on this particular picture have been taken into consideration. There has been applied against the gross receipts of the—

Q. Excuse me; the actual cost of the prints or the actual cost of the original negative?—A. The actual cost of the prints. The 2·74 is the proportionate share of the negative cost. The first item of \$14,000 is the proportionate share—

Q. Now, just stop there and see if I can get this in my mind. What was the gross cost of producing the negative of the picture, "The Man Who Broke the Bank at Monte Carlo"?—A. I can give you the round figures, but if I may refer to my papers I will give you it exactly.

Q. You may refer to anything?—A. The cost of production is \$543,723·16.

Q. That is what it actually cost the United States Corporation to produce the original negative?—A. Yes, together with the necessary royalties to be paid and dupes to be used for the foreign countries. That is the actual cost. You interrupted me there by asking the question as to the cost of the negative.

Q. Yes, and now you have given me the gross cost of the original negative plus the dupes to send out to other countries in order that positive prints may be made?—A. That is right.

Q. Yes?—A. Now, we have applied 2·74 per cent. of this cost to Canada, arriving at the figure of \$14,898·01.

Q. Why did you apply 2·74 per cent.?—A. We applied 2·74 per cent. because that was the percentage of revenue throughout the entire world that was obtained from Canada. In other words, the picture as a whole grossed \$904,340. Of that sum, \$24,806 was gross in Canada.

Q. I think I have got your point now?—A. So we have attempted to allocate to the various countries their proportionate share of the cost of the negative.

Q. I understood you to say this picture went to every country in the world, practically speaking?—A. Yes. I cannot give you the exact countries where they went, but I know we maintain exchanges throughout the world, and the normal picture goes there.

Q. Did you know that the song "The Man Who Broke the Bank at Monte Carlo" was a very well known song in England?—A. I did not. I had never heard of the song.

Q. Did you know it was a very well known song in Canada?—A. No. I know nothing about it.

Q. You know nothing about it?—A. Not a thing.

Q. Then let me ask you this: Assuming that the song "The Man Who Broke the Bank at Monte Carlo" was a very famous, well known song in England, would you expect the revenue from that song to be greater in

10

30

40

England than it would be from France or some other country where it was not known?—*A.* That is most assuredly.

Q. That would be most assuredly. And consequently if it was a well known song in Canada you would expect the revenue in Canada to be higher than in some other country where it was not so well known?—*A.* That is possible.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 10.
William
Werner.
Cross-exa-
mination—
continued.

Q. That is possible. Having regard to the fact that the only thing we can litigate here is the question of what damages should be payable in respect of its use in Canada, do you suggest to me that this basis which you adopt
10 is a fair basis on which to determine that proportion of the negative cost which should be charged to Canada?—*A.* It is the only fair way that I know.

Q. So that though you in fact sell the right of user of your pictures to the Canadian Corporation on a basis of sixty per cent. of the gross receipts, for the purpose of this litigation you say Canada should bear a proportion of the negative cost, and never mind what our deal was with the Canadian Corporation at all as to the receipts?—*A.* I am attempting in this statement to arrive at what is the nearest to the correct profit or loss made on this picture in Canada, ignoring corporate lines.

Q. Yes, but I do not want to ignore corporate lines. It is the Canadian
20 Corporation that is handling this picture in Canada, and it is the Canadian Corporation that is receiving the rentals?—*A.* Yes.

Q. And under the agreement between the Canadian Corporation and the United States Corporation the Canadian Corporation pays to you for the use of that picture sixty per cent. of the gross rentals?—*A.* Right.

Q. And no additional charges for negative cost or anything else?—*A.* That is right.

Q. That is right in fact; all right. Now I want to pass down here to the third item—

His LORDSHIP: Haven't you a statement of the Canadian Company's
30 receipts and expenses?

Mr. LAWSON: That, my Lord, is covered by the statement of Touche & Company.

WITNESS: Pardon me: the figures which I believe you want to obtain can be calculated very rapidly, and I do not think there is any material difference between the results arrived at, using sixty per cent. or using this method; there is not a material difference.

Mr. THOMSON: I suggest the witness give my friend the result, computed on the basis my friend contends is the proper one. The witness does not agree, but he can give him the figures.

40 Mr. LAWSON: Well, I haven't any idea what the witness is going to calculate, but to my mind there is one way and one way only to determine it, and that is, as the gross revenue from this picture, \$25,000, bears to the gross revenue of the Canadian Corporation after deduction of the rentals paid to the United States, is to the total net profit of \$87,135·88, that is the profit applicable to this picture.

*In the
Supreme
Court of
Ontario.*

*Defendants'
Evidence.*

*No. 10.
William
Werner.
Cross-exa-
mination—
continued.*

WITNESS : Your net figure there, I believe, is \$87,000 or \$88,000; is that correct?

Mr. LAWSON : Q. According to the statement of Touche & Company the net profit of the Canadian Corporation for the year 1936 is \$87,135?—

A. And you tell me that according to that statement the gross receipts are \$1,180,000 odd?

Q. \$1,185,331?—A. And the gross receipts on "The Man Who Broke the Bank at Monte Carlo" was approximately \$24,000?

Q. \$24,315?—A. So the gross receipts of the picture "The Man Who Broke the Bank at Monte Carlo" was approximately two per cent. Two per cent. applied to your \$87,000 profit would give you approximately \$1,700 profit, not a very material difference between our \$600. 10

Q. No, just the material difference of a thousand dollars, that is all. Now, there is one other thing I would like to understand in this statement of yours. The third item I understand; that is what you paid for positive prints?—A. Yes.

Q. The fourth item, exchange expense, 20.1 per cent. of Canadian gross based upon ratio of total operating expenses to gross income of Canadian Company, that does not bring in now the United States Corporation at all?—A. No. That is clear. 20

Q. Let me see now if I understand that?—A. May I explain it?

Q. Yes, if you please.—A. The Canadian Company did a total business of \$1,180,000 odd. Their expenses as per Touche Niven report—that is eliminating the first item—are approximately \$233,000.

Q. That is their expenses omitting the rentals paid to the United States Corporation?—A. That is right. In other words, that is the operating expense, maintaining the exchanges—

Q. That is the operating ratio?—A. That is the operating ratio; and we apply that to the individual picture to attempt to determine what it cost to release that picture. 30

Q. I can follow that. Now let me see the sales overhead expense here. Here you change, apparently, and you base it upon the ratio of total sales overhead expense to gross income United States and Canada?—A. The sales overhead?

Q. Yes?—A. Yes.

Q. Well, why is that? Let me put it this way: Your operating ratio of 20.1 per cent. for the Canadian Company includes the cost of selling the picture in Canada, does it not?—A. That includes the cost of maintaining the exchanges, distributing and selling in Canada.

Q. Yes?—A. But it does not necessarily include numerous other expenses which go into the maintaining of an organization. 40

Q. Well, tell me what they are; I am only interested in the Canadian Company. What expenses are there in connection with the Canadian Corporation for selling pictures?

A. We maintain in the main office a sales department, sales manager, assistants; we have now dropped the sixty per cent. line and we are attempting to determine the profit without relation to corporate lines.

Q. Now, just so we may understand it, what selling do any of your salesmen employed by the United States Corporation do in Canada?—
 A. They may not as individuals do a great deal of selling on the ground, but they—

*In the
 Supreme
 Court of
 Ontario.*

Q. Not a great deal; do they do any?—A. I do not know of any particular instances where they do any selling, but we have a sales manager here who could testify as to the extent—

Defendants'
 Evidence.

Q. Well, you know, you have Mr. O'Loghlin here; he is the sales manager for Canada, isn't he?—A. Nevertheless a policy is laid out—

No. 10.
 William
 Werner.

10 Q. I am not interested—

Cross-exa-
 mination—
 continued.

His LORDSHIP: Q. How can you separate, if you are operating a different company, the corporate entity, why don't you keep books for each company in each country that you operate, rather than basing it on your whole system?—A. We do, your Honour, keep books for each individual company. We do maintain books here, and on the basis of the books maintained here we have just decided that the approximate profit, ignoring all home office items except the sixty per cent., would be \$1,600 to \$1,700. I have explained that the statement which we have prepared—

20 Q. You only show \$613?—A. Yes, that is true; I have explained that. That statement was prepared with the attempt to determine on one individual picture as near as we could the true profit or loss in a particular territory.

Q. Couldn't you base that on your Canadian Company's books without — — A. It could be—

Q. You say here, based upon ratio of total sales overhead expense to gross income United States and Canada?—A. You could do that.

30 Mr. THOMSON: Your Lordship, may I interject something here? I feel in a sense responsible for this statement, because I think it was at my suggestion that corporate lines were ignored. I made the suggestion, as I often do, for this reason, that the price which a parent company charges to a subsidiary is often a very arbitrary thing. Sometimes it runs matters so that the subsidiary company can never make a profit, sometimes it reverses that policy and allows the subsidiary a very handsome profit.

His LORDSHIP: Very seldom.

Mr. THOMSON: I only introduced the American Company for the purpose of getting at true cost, and, as a matter of fact, as this witness has explained to your Lordship, it makes very little difference whether any one of three methods is adopted.

His LORDSHIP: It makes a difference of about a thousand dollars.

40 Mr. THOMSON: Oh, yes, but we are dealing with large companies, your Lordship. On such a picture a profit of \$1,700 or \$2,500 is negligible. The thing is almost a failure with such a profit as that; \$2,500 in red or in black means nothing on a picture like this. To put it in another way, no producer would ever bring out a picture in Canada if he were assured in advance that the most handsome profit he could expect would be \$2,500 or \$1,700

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 10.
William
Werner.
Cross-exa-
mination—
continued.

This is just one of the things that did not go over, in spite of my friend's suggestion that this song was so popular in Canada. I think he is speaking of people of my age, rather than of his own, who remember that far back.

Mr. LAWSON : Well, my Lord, all I am doing is trying to get an understanding of what this is, and what part of it is to be chargeable.

Q. Let me come back to the item I was at, sales overhead expense?—

A. Yes.

Q. I want to get at the fact : you do maintain in Canada, the Canadian Corporation maintains in Canada, a sales manager and a sales force, does it not?—A. That is right. 10

Q. Those salesmen sell the film in Canada?—A. That is right.

Q. You do not send into Canada from the United States salesmen to sell film to exhibitors in Canada?—A. No.

Q. But this item included in this statement, sales overhead expense, represents a proportion of the selling overhead expense of the United States Corporation and the Canadian Corporation combined ; now, am I right in that?—A. That is right.

Q. Now, administrative overhead expense, 5·18 per cent. of producer's share of gross on picture in Canada ; let me see what that is. In other words, you say that the United States Corporation has an overhead expense for administration, and that 5·18 per cent. represents Canada's share of that?—A. Yes ; 5·18 per cent. of the 60 per cent. that we obtain from Canada. This allocation requires an explanation. The administrative expenses of the home office are divided as between the gross revenue in the United States and the net revenues ; that is, the 60 per cent. or what other percentage we may obtain from any other country which flows into the United States, so that your 5 per cent. is not calculated on the total figure of \$24,000, which is the gross in Canada on " The Man Who Broke the Bank at Monte Carlo," but it is calculated on 60 per cent. of that figure, or approximately \$14,000. 20 30

Q. Now, I cannot see the reason for that, but that does not matter to my point at the moment. What I am after is this : in this administrative overhead expense have you included there the administrative expense in Canada?—A. No.

Q. Nothing of the Canadian Corporation is included there at all?—A. No.

Q. But in fact what you are doing is this : you are asking to charge against the gross receipts of the Canadian Corporation from the film in Canada a proportion of the overhead administrative expense of the United States Corporation?—A. That is correct, because we have eliminated our charge of 60 per cent., and we simply have substituted the actual expenses in lieu thereof. 40

Q. Right?—A. Those actual expenses heretofore we could obtain from the 60 per cent. which Canada paid.

Q. Now, you have other subsidiary companies in other countries?—A. Yes.

Q. Let us take England, for example; do they pay 60 per cent. of the gross revenue from their rentals to the parent corporation, the United States Corporation, or a lesser or a greater percentage?—A. Greater.

Q. Have you a subsidiary in France?—A. Yes.

Q. Does it pay a greater or a lesser?—A. The same.

Q. The same; that is 70 or 60?—A. 60.

Q. In other words, I may take it that each subsidiary of the United States Corporation pays a percentage of gross to the parent corporation?—A. That is correct.

10 Q. Which percentage has been arbitrarily fixed at some time by the parent corporation?—A. It has been fixed by the parent corporation, that is correct.

Q. How long ago was this Canadian percentage fixed, the percentage for the Canadian Corporation, at 60 per cent.?—A. I cannot give you the exact date.

Q. Could you give me the approximate date?—A. I believe that it has been in effect since sometime in 1915.

20 Q. No change?—A. But whether it was lived up to completely in the early part of the period I do not know. I am quite sure—it has been in effect for the last four or five years, to the best of my knowledge.

Q. To the best of your knowledge that percentage has been in effect for the last four or five years. Now, when the parent corporation arbitrarily fixes this percentage of gross payable by the subsidiary, there must be some basis on which they are fixed, is there not?—A. You do not just arbitrarily say one will pay 60, one 70, one 80, and another 40; there must be some general basis on which these percentages are fixed; am I right in that?—A. Yes.

30 Q. And is not the general basis this, that, having taken into account all the factors of cost of production to the parent company, it anticipates that the 60 per cent. payable by the Canadian Corporation will return to it a fair proportion of its production cost?

His LORDSHIP: And profit.

Mr. LAWSON: I assume, and a profit.

WITNESS: Yes, I would say that would be a correct assumption.

Mr. LAWSON: Q. In other words, the parent company through its directors and officials conclude that if they get a certain percentage of gross from a given country that will cover their cost, and I presume give them a profit?—A. I doubt whether you can state it in that manner. Obtaining a certain percentage may not necessarily give you the cost.

40 Q. No, no; I say is not that in contemplation at the time you fix the percentage?—A. It would seem the most logical—

Q. Your calculation may be wholly wrong, your calculation may be entirely wrong, in the result, but I say the basis of determining these percentages is to return to the parent company an amount of money which

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

—
No. 10.
William
Werner.
Cross-exa-
mination—
continued.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 10.
William
Werner.
Cross-exa-
mination—
continued.

will result in paying the cost of operation of the parent company for production and so forth and result in some profit to the parent company?—*A.* That would appear logical.

Q. Now, could you tell me one other thing? Has the Canadian Corporation declared a dividend so that the United States Corporation might receive a share of the accumulated profits in Canada, say during the last three or four or five years?—*A.* I do not know.

Q. Have you any way of knowing?—*A.* Yes; I can ask Mr. Seco.

Q. Could you obtain the information?

Mr. SECO : Yes; in the year 1931—

10

Mr. THOMSON : No; you are not sworn.

Mr. LAWSON : Just give it to him and let him tell it.

WITNESS : 1931 a dividend was declared.

Mr. LAWSON : *Q.* Any since 1931?—*A.* No.

Q. Could you also tell me the number of shares of the Canadian Corporation owned by the United States Corporation or under its control in relation to the total number of issued shares?—*A.* I do not have the figures of that, but I assume that it has the complete control.

Q. In other words, you assume that all the shares other than necessary qualifying shares of directors, is by the United States Corporation?—*A.* Yes.

Q. Thank you, that is all.

Re-exa-
mination.

RE-EXAMINED BY MR. THOMSON.

Q. Mr. Werner, had you figured out what the profit on this picture would have been had you adopted the other system, the system actually in use to-day, which does not ignore corporate boundaries, if I may call them that? That is to say, what would have been the result as to this picture if the gross income of the Canadian Company was 40 per cent. of its takings, that is, less the 60 it has to pay to the American Corporation, and you had to deduct from that the cost of making positives and all other selling and administration expenses of the Canadian Company only? What would that have resulted in as to this picture?—*A.* Approximately \$2,500.

Q. Well, haven't you figured it out exactly? I thought the figure was there in the document in your hands?—*A.* The figure is \$2,517.67.

Q. Now, I thought my friend rather led you astray on one point, but possibly he did not. He got you to give a figure of 55 or 56 feature pictures handled by the Canadian Company in the year 1936?—*A.* Yes.

Q. Was that the total of pictures in operation, as it were, in that year, or the new pictures produced in that year?—*A.* That would be the new pictures produced.

Q. Then would there or would there not in 1936 have been other feature pictures distributed by the Canadian Company?—*A.* Oh, yes.

His LORDSHIP : I think he mentioned that, Mr. Thomson.

Mr. THOMSON : He mentioned news reels, your Lordship, but I thought not what I understand are called carry-overs, from the previous years, that still had some popularity.

WITNESS : There would be quite a number of those.

Mr. THOMSON : Q. Now, you did mention news reels; are there not also what are termed shorts?—A. There are shorts and news reels.

Q. So that is this a fair summary as to the earnings of the Canadian Company, the source of those earnings: first what I might term current feature films?—A. Yes.

10 Q. Second what I have termed carry-overs?—A. That is right.

Q. Third news reels, and fourth shorts?—A. Yes.

Q. So all those four have to be taken into account if you want to analyse the revenues of the Canadian Company?—A. Yes.

Q. With the object of determining what its revenue was from one particular feature film; is that right?—A. Rather, what the average earnings would be for the feature films.

Q. And then, having arrived at that average, you would apply it to the gross receipts of one particular film, would you?—A. Yes.

His LORDSHIP : What was the fourth, Mr. Thomson?

20 Mr. THOMSON : The current features, the carry-over features, the news reels and the shorts, my Lord. I am using the technical terms, I hope correctly, your Lordship.

That is all, Mr. Werner.

Mr. LAWSON : If I might, my Lord.

FURTHER CROSS-EXAMINED BY MR. LAWSON.

Q. Just so that it may be clear, my learned friend referred to carry-overs; by that you mean features obtained by the corporation in a previous year from which some rentals were still coming in in the year 1936?—A. That is correct.

30 Q. But also as against that, in order to get at accurate figures, you would have to credit all the moneys paid out for the production of positive film which had not been used in 1936, though paid for in 1936, and for which release dates might be in 1937, wouldn't you?—A. Would you kindly restate that?

Q. Let me put it this way: if the Canadian Corporation received pictures in December of 1936 they would have to pay to Associated Screen News the cost of those prints when they received the pictures, wouldn't they?—A. That is correct.

40 Q. They would have to pay the railway cost of distributing those positive films to your different exchanges in Canada, wouldn't they?—A. That is right.

Q. And if the release dates of those films, that is, the dates at which they were going to be shown in motion picture theatres, did not occur until 1937, you would have a lot of expense in connection with those features in 1936 but no revenue till 1937?—A. No.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 10.

William
Werner.
Re-exa-
mination—
continued.

Further
cross-exa-
mination.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 10.
William
Werner.
Further
cross-exa-
mination—
continued.

Q. So that that factor, I say, would have to be an offset to the carry-overs to which my friend referred which might be producing revenue from a previous year?—*A.* No, I do not believe you have stated it correctly. The expenses incurred towards the end of 1936 would be pro-rated. If you look at Touche Niven's report you will find that they pro-rated it.

Q. Then likewise would they not pro-rate the revenue received?—*A.* The revenue from pictures released in 1934 or 1935 would undoubtedly be pretty clear, for the simple reason that the expenses have been pro-rated and taken up much more rapidly than the film expires.

Q. But, in other words, if you were trying to figure out a statement on the basis which my learned friend went over with you, there were other factors offsetting those to which you referred which would have to be taken into account?—*A.* There would be some other factors.

Q. That is all, thank you.

No. 11.
Robert
Andrew
Hutchon.
Examina-
tion.

No. 11.

Evidence of Robert Andrew Hutchon.

EXAMINED BY MR. THOMSON :

Q. Mr. Hutchon, you are an officer of the Canadian Performing Right Society?—*A.* Yes, sir.

Q. What office do you hold?—*A.* Assistant Secretary of the Company. 20

Q. And for how long have you held that office?—*A.* I have been in the employment of the Society since 1933, December 1933.

Q. Tell his Lordship in a very general way what that Society is and how it functions?—*A.* The Canadian Performing Right Society licenses the public performance of copyright musical works.

Q. The public performance in Canada?—*A.* In Canada.

Q. Yes?—*A.* In a non-dramatic form, non-dramatic rendering of public performance.

Q. Have you gone over the schedules that are attached to the admissions, Exhibit 1 in this case—and I refer to the amended schedule—to determine what theatres in which this photoplay, "The Man Who Broke the Bank at Monte Carlo," was played, did not have licences from your Society when such playing took place?—*A.* Yes, sir, I have gone over the schedules. 30

Q. Now, deal first with the theatres set out in schedule B of the admissions, that would be the Famous Players group; were there any theatres in that group which were not licensed by your Society at the time when they played this particular photoplay?—*A.* At the dates shown in schedule B each of the theatres held licence of the Canadian Performing Right Society. 40

Q. Then passing to schedule A to Exhibit 1, I think you found there a number of theatres that did not have the Society's licence when they

exhibited this picture with which we are concerned; is that the fact?—
A. That is the fact. I have no knowledge, of course, of the theatres at which this picture was exhibited.

Q. Well, I am asking you to base your answers on this exhibit or the schedules to the exhibit. Now may I show you this statement and ask whether you can vouch for this as being a correct statement of the theatres not holding the Society's licence at which, according to Exhibit I, this picture was exhibited?—*A.* Yes, that is correct.

*In the
 Supreme
 Court of
 Ontario.*

Defendants'
 Evidence.

—
 No. 11.

Robert
 Andrew
 Hutchon.
 Examination—*con-
 tinued.*

Mr. THOMSON: I tender that as an exhibit, your Lordship. I might
 10 perhaps explain that this witness is not responsible for the right-hand
 column, rental; that is taken from Exhibit 17 and put on here for the
 purpose of your Lordship's convenience. My friend can check that.

His LORDSHIP: Had you better put that in as Exhibit 1A?

Mr. THOMSON: Whatever your Lordship says.

His LORDSHIP: Well, it refers to Exhibit 1.

Mr. THOMSON: Yes, it does. That will be, then, Exhibit 1A.

EXHIBIT 1A: Statement of theatres without licence at which "The
 Man Who Broke the Bank at Monte Carlo" was exhibited.

Mr. THOMSON: I may explain that the reason I carried that extra
 20 column, for which this witness is not responsible, is this, that almost without
 exception, I think, it is the smaller theatres that have not taken out the
 Society's licence, and that is reflected in the film rentals, the total of which
 is very small as compared with the total of the film rentals shown in
 Exhibit 17.

So that I may give your Lordship the exact figures, the total of rentals
 paid by the theatres without this Society's licence is a little short of \$2,300,
 and the total of rentals by all theatres as shown by Exhibit 17 is slightly in
 excess of \$24,300.

Q. Did you find certain theatres in schedule A to Exhibit 1 that had
 30 not yet played this picture but had booked it for some dates which have
 not yet arrived?—*A.* Yes, that is true.

Q. As to those theatres, are they theatres with or without your Society's
 licence for the year 1937?—*A.* These theatres you mention have not the
 Society's licence for the present year.

His LORDSHIP: Would you kindly go back, Mr. Thomson, and explain
 to me what this Canadian Right Society is?

Mr. THOMSON: If I may explain it in my own way, your Lordship,
 the witness will correct me if I go astray.

It was originally formed before the amendment of the Copyright Act
 40 in 1931, and was in the first instance a subsidiary of Performing Right Society,
 a British Society, and that British Society had then some sort of affiliation
 with various European societies, so it did control a substantial body of
 music but did not control any American music in the first instance. At a
 later date an arrangement was made between ASCAP, the American Society,

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 11.
Robert
Andrew
Hutchon.
Examina-
tion—con-
tinued.

and P.R.S., the British Society, and that arrangement has continued to date ASCAP owns one half of C.P.R.S., the Canadian Society, and P.R.S., the British Society, owns the other half. There are, of course, the usual directors' qualifying shares, but my recollection is that each of these two parent Societies has equal representation on the Board of Directors. The members of each of the parent Societies grant in some form or another, or get grants in some form or another from their members of the right of public performance of copyrighted music throughout the world.

Mr. LAWSON: With that statement I take exception; that is much too broad. 10

Mr. THOMSON: Well, at any rate, for more than Canada, a great deal more than Canada.

Mr. LAWSON: I mean I take exception to the statement that they got rights to grant licences; they got rights to grant licences for what are known as small rights.

Mr. THOMSON: Small rights come in only in connection with operatic music and so on, as I think the witness will explain. At any rate, I will make the statement to his Lordship, and it is subject to correction by my friend or by the witness.

Then the parent Societies in turn grant the right of public performance 20 in Canada to this Canadian Society, and the Canadian Society, armed with that grant, issues licences to various users of music, theatre owners, dance-hall proprietors, hotels, steamboats, and those licences are to play the entire repertoire controlled by the Canadian Society for Canada, and it runs up into the millions of works.

In 1931 the Canadian Copyright Act was amended, and as a price of something this Canadian Society wanted something was imposed on it which it distinctly did not want; that was, the obligation to file lists, detailed lists, of the music which it controlled.

His LORDSHIP: That is referred to, is it not, by Chief Justice Rose? 30

Mr. THOMSON: Yes, my Lord, in the case against the Canadian National Exhibition. They did not want that, but it was imposed on them, and they have, in part at least, and now I think to a substantial extent, complied with that provision, and lists, very long lists, have been filed with the Copyright Office at Ottawa.

Possibly I should, following that rather long statement, ask Mr. Hutchon if he wishes to correct it in any respect.

Q. Do you, Mr. Hutchon? I know there is a good deal that I have not covered, but have I stated anything wrongly?—A. Nothing that I would say is radically wrong, and I think the general explanation that you have given is a pretty correct explanation of the functions of the Canadian Performing Right Society, which was incorporated in the year 1925. 04

Q. Now, Mr. Hutchon, as to this question of small rights, since it has been raised by my friend, I should like your comment on that. Take a popular song such as "The Man Who Broke the Bank at Monte Carlo,"

what performing right in respect of that song does your Society control in Canada?—*A.* We control in Canada the public performance of the words and the music of that song.

Q. Yes?—*A.* Controlling them and licensing them simply in the form of non-dramatic rendering. We do not license the dramatic rights, dramatic performance of the song.

Q. Is there such a thing as a dramatic performance of a popular song, without converting it into something that it is not at present?—*A.* Well, I would like to make a little explanation in reply to that.

10 *Q.* Yes, do, please?—*A.* Public performance may take place, I think, in two different ways. We have two kinds of music, music containing dramatic rights, and music without dramatic rights of any sort.

Q. Would operatic music be an instance of the first class?—*A.* Yes, music with dramatic rights.

Q. Yes?—*A.* The Canadian Performing Right Society licenses that particular kind of public performance, being the public performance in its non-dramatic form. It does not license the visual performance in public of any dramatic incident connected with the piece of music.

20 *Q.* Just let me get this clear in my own mind. You don't mean by the explanation you have just given me that if one singer chooses to fold his hands while he is singing the song and another singer illustrates his singing by appropriate gestures, the first is covered by your licence and the second not, do you?

Mr. LAWSON : Surely that is a question for the Court, and we ought to have produced whatever the authority is.

Mr. THOMSON : I am trying to get the witness's explanation as to what he means by it.

30 *WITNESS :* Perhaps I might answer by saying that the dramatic work itself is defined in the Copyright Act, and musical work is defined in the Copyright Act, and performance itself is defined in the statute.

Mr. THOMSON : *Q.* Isn't there a third class of work that you have not mentioned, dramatico-musical work?—*A.* I wished to try—

Q. Is there a third or not, please? Just first tell me that?—*A.* There is not so much a third, but two classes simply.

Q. Yes?—*A.* One purely musical, with no dramatic rights, the other musical—dramatico-musical, musical with the dramatic incidents.

Q. And then the third, dramatic?—*A.* We only handle musical works; if there is no music of course it does not fall within our—

40 *HIS LORDSHIP :* *Q.* There are only the two definitions, one of musical work and one of dramatic work. What is choregraphic?—*A.* Choregraphic, my Lord, I understand, is a musical work connected with a ballet.

Mr. THOMSON : *Q.* Is it not rather the plan of the dance itself, Mr. Hutchon, the steps and the positions that are taken?—*A.* The ballet being itself something that can be performed by way of a visual representation or by way of the musical representation.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

—
No. 11.
Robert
Andrew
Hutchon.
Examina-
tion—con-
tinued.

*In the
Supreme
Court of
Ontario.*

His LORDSHIP : *Q.* It is included in the meaning of dramatic work ?—
A. Yes, my Lord. In the case of a ballet the Canadian Performing Right Society licenses merely the right to play the music of that ballet, that and nothing else.

Defendants'
Evidence.

No. 11.
Robert
Andrew
Hutchon.
Examina-
tion—con-
tinued.

Mr. THOMSON : *Q.* To pass on to another point, can you tell me whether your Society controls the right of public performance in Canada by various assignments of the works published by Francis, Day & Hunter, Limited, of London, England ?—*A.* That is not strictly correct. The Canadian Performing Right Society has an agreement which it obtained from the Performing Right Society of Great Britain, and a separate agreement which it obtained from the American Society of Authors, Composers and Publishers, which agreement gives the Canadian Performing Right Society the exclusive right to license in Canada the public performance of musical works controlled by these two different societies. 10

Q. And does that body of music controlled by the Canadian Society include the music published by Francis, Day & Hunter, Limited ?—*A.* That is correct.

Q. And specifically it includes the song, "The Man Who Broke the Bank at Monte Carlo" ?—*A.* That is correct, yes.

Q. And is that song on the lists which have been filed at Ottawa pursuant to the Copyright Amendment Act of 1931 ?—*A.* Yes. 20

Q. I think I asked you, Mr. Hutchon, to bring with you a specimen of the license agreement that your Society issues to theatre owners.

My friend Mr. Lawson was good enough to say, your Lordship, that this witness need not produce the mass of licenses that his subpoena called for, and in place of that I think we are in agreement that the specimen form may be filed as an exhibit, unless your Lordship sees some objection to that. I tender that as Exhibit 20.

EXHIBIT 20 : Specimen form of license issued by Canadian Performing Right Society, Ltd. 30

Mr. THOMSON : Perhaps I might just read part of it to your Lordship, omitting the formal parts :

"The Society grants and the Licensee accepts for the period of
" to and thereafter from year to
" year until terminated as hereinafter set out a license publicly to
" perform at non-dramatic renderings of any
" and every musical work for the time being in the repertoire of this
" Society and in the repertoires of, and of which the right to license
" public performance has been conveyed to this Society by, the
" American Society of Composers, Authors and Publishers, The
" Performing Right Society, Limited, of England, the Societies in 40
" France, Germany, Austria, Italy, Spain, Sweden, Denmark,
" Hungary, Poland, Czechoslovakia, Roumania, Switzerland, Portugal,
" Brazil, Norway, Finland; Holland and Belgium affiliated with
" the British Society for the Dominion of Canada, and any other

“ societies that may become so affiliated for the Dominion of
“ Canada.”

Then there is a provision that the license is a personal one and restricted to the licensed premises, and is not to be transferred without consent.

Then perhaps I might read 3 to your Lordship :

“ This license shall not extend to or be deemed to authorise :

“ (a) The performance in their entirety of Oratorios, Choral
“ Works, Operas, Musical Plays, Revues or Pantomimes (in so
“ far as such Operas, etc., consist of words and music written
10 “ expressly therefore); nor of excerpts from such Operas, etc.,
“ accompanied by the words or any visual representation of the
“ same work; nor of ballets if accompanied by any visual representa-
“ tion thereof.

“ (b) Any work (or part thereof) whereof the stage presentation
“ and singing rights are reserved.

“ (c) The broadcasting or other transmission of any performance,
“ or the public audition of such performance, beyond the precincts
“ of the premises hereby licensed.”

Provision 4 I think is unimportant from our standpoint, and also 5,
20 which compels the licensee to make certain returns showing his use of
music, and 6, which gives a right to the Society to enter on the premises.

I might explain to your Lordship—it may be of some interest—that
the fees as to theatres are based on seating capacity, and of course if a
theatre owner returns fewer seats than he actually has the Society suffers;
they have a right to enter for the purpose of checking that.

Provision 7, if the theatre becomes a church or is used for some other
purpose, then something else happens.

Then there is the power to the Society to terminate the license in the
event of default on the part of the licensee, and then a certain warranty
30 by the licensee.

His LORDSHIP: *Q.* There is one thing on which I am not clear, Mr.
Hutchon. What is the origin of these different Societies?—*A.* They
originated separately in each country as an association of authors and
composers and publishers of music, for the purpose of protecting themselves
against infringement of copyright.

Q. I assume different societies would obtain copyrights, or maybe
members of the societies might own copyrights?—*A.* Yes, my Lord. The
publisher members of the British Society on becoming members authorize
the British Society to license the public performance of all their works.

40 *Q.* And the plaintiff in this action is a member of the British Society?—
A. Of the British Society.

Mr. THOMSON: *Q.* Mr. Hutchon, might I see your copy of the
admissions? There is something I want to put on the record. You have
given me the information, but it is hardly understandable. I mentioned
to you certain theatres in schedule A to Exhibit 1 opposite which were set

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 11.
Robert
Andrew
Hutchon.
Examina-
tion—con-
tinued.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 11.
Robert
Andrew
Hutchon.
Examina-
tion—con-
tinued.

out dates not yet arrived, and I think you told me that none of the theatres, those theatres, had been licensed by your Society for the present year; was that the answer you gave me?—*A.* Yes, although you did not identify the theatres.

Q. Will you read them into the record, please?—*A.* Page 3 of schedule A, the part headed "Calgary Branch," names of theatres: the Capitol Theatre at Raymond, Alberta; the Capitol Theatre at Hanna, Alberta; the Monarch Theatre at Medicine Hat, Alberta; the Unique Theatre at Rosetown, Saskatchewan. And names, dates, starting at June 14 to 16 in the case of the Capitol at Raymond, and September 16 to 18, 1937, in 10 the case of the theatre at Rosetown.

Q. None of those four theatres has the Society's license for the year 1937?—*A.* That is correct, yes.

Mr. LAWSON: For the year 1936.

Mr. THOMSON: 1937.

WITNESS: For the year 1937.

Mr. THOMSON: June to September 1937.

Mr. LAWSON: Oh, yes, I beg your pardon; the picture is to be run still.

Mr. THOMSON: Yes, it is still to be run. 20

You may have the witness.

Cross-exa-
mination.

CROSS-EXAMINED BY MR. LAWSON.

Q. Mr. Hutchon, I would like to go back for a moment to clarify something in my mind. You have a pretty wide knowledge of the provisions of Copyright Acts and matters relating to copyright?—*A.* I have had some experience, yes.

Q. Would you agree with me that originally copyright merely consisted in the reproduction by printing of, so far as musical works are concerned, the printed copy of the music?—*A.* Yes, I would say that it originally consisted in the right to make copies. 30

Q. Then by the course of time copyright developed to include the performing right, the right to perform in public a song?—*A.* That is true.

Q. Then by the further development in the course of time this performing right came to be recognized as divisible into grand rights and small rights?—*A.* I would rather put that in another way.

Q. All right, you put it your way?—*A.* And say that copyright itself is now a divisible right, and that one of the component parts of copyright is the right of public performance, or, rather, the sole right of authorizing public performance.

Q. Now, has that right of public performance again been divided into 40 what are known as small rights and grand rights?

Mr. THOMSON: Are you asking him now law or fact?

Mr. LAWSON: I am asking him fact.

WITNESS : I think in the Copyright Act—

Mr. LAWSON : *Q.* I mean in the trade; never mind the Copyright Act?—*A.* Yes, it is quite true—

His LORDSHIP : Was the last answer that one of the rights is the sole right of authorizing public performance?

The REPORTER : (*Reads answer as set out on lines 36 to 39 on page 70.*)

His LORDSHIP : Sorry to have interrupted you, Mr. Lawson.

Mr. LAWSON : *Q.* Then, leaving aside the question of law, in practice the performing right has in turn been subdivided into what are known as
10 grand rights and small rights?

Mr. THOMSON : As to what class of work?

Mr. LAWSON : In respect of musical works.

WITNESS : That is quite true, yes.

Mr. LAWSON : *Q.* I am confining myself to musical work, because I am not interested in all the other things?—*A.* But perhaps I might add that a similar division is made in the Copyright Act itself.

Q. In Canada?—*A.* In Canada.

Q. Yes?—*A.* By dividing the public performing right into two different rights; the visual representation is one right and the acoustic representation
20 is another right.

His LORDSHIP : What section is that?

Mr. LAWSON : My Lord, I cannot put my hand on that for you at the moment, but I can later on.

WITNESS : The definition of the word "performance," I think, Mr. Lawson.

Mr. THOMSON : That will be in section 2, your Lordship, I think.

Mr. LAWSON : It is amended, my Lord, from the original Act.

Mr. THOMSON : It is (*q*).

Mr. LAWSON : *Q.* Then, Mr. Hutchon, when one speaks of synchronizing
30 music in a picture, does that word "synchronizing" mean using the music in the picture by having the music recorded upon the motion picture film?—*A.* Perhaps it is a little outside my position to define what is meant by synchronizing, which is not a word used in our licence.

Q. Then let me put it this way, Mr. Hutchon, because for the purpose of a question I want to ask you, a very important question to me, I want to have our minds ad idem as to what we mean by the word "synchronize." Now, when I use the word "synchronize" in a question which I am going to ask you, I mean the recording of a piece of music on a motion picture film which will reproduce by mechanical means that piece of music or that
40 tune. Now, taking that as the meaning of synchronization, do you allege that your Society has the right to license a motion picture company to synchronize in their films a song, or does the publisher reserve that right to

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 11,
Robert
Andrew
Hutchon.
Cross-exa-
mination—
continued.

Defendants'
Evidence.

No. 11.
Robert
Andrew
Hutchon.
Cross-exa-
mination—
continued.

Re-exa-
mination.

himself?—*A.* Certainly the Canadian Performing Right Society does not license any such thing.

Q. Certainly they do not license any such thing. And you do not allege that they have the right to license that in Canada?—*A.* No, we do not allege that.

Q. Now one point further: in this litigation we are interested in a picture which is titled "The Man Who Broke the Bank at Monte Carlo"; does your Society claim to have any right to license the use in the picture of the title "The Man Who Broke the Bank at Monte Carlo"?—*A.* No, sir.

Q. That is all, thank you.

10

RE-EXAMINED BY MR. THOMSON.

Q. One question, Mr. Hutchon, arising out of my friend's very last question. Does your Society when it does authorize public performance or performance in public in Canada of musical works, take the position that the performer must omit the title and is not at liberty to give the title of the song he is singing?—*A.* We take the position that we have no rights in the title.

Q. No rights in the title?—*A.* In the title to the song.

Q. That is to say, if I were to sing a song in public, would I have to go to somebody else to get the right to announce the title to my song before I started to sing it?—*A.* I should think not, usually, but I would like to make a little explanation if I could as to what the licence of this Canadian Performing Right Society gives and what it does not give.

Q. Well, I think I had all I wanted of that, Mr. Hutchon, unless there is something that should be said to supplement what you said before?—*A.* I thought that it should be said, perhaps.

Q. Because I am limited to questions arising out of my friend's cross-examination.

Mr. LAWSON: I am not objecting.

WITNESS: When you raised the question of title I thought perhaps this should be said, that in giving by the Canadian Performing Right Society's licence, a licence to perform, we have not in any way parted with the copyright owner's right, his sole right, of authorizing the conversion of a non-dramatical into a dramatical work; we have not dealt with his title in that respect.

Mr. THOMSON: *Q.* I understand. Now, is this a fair way to put it, that your Society has not obtained from the owner of the copyright anything more than the right of public performance in Canada, whatever that includes?—*A.* That is quite true, and only in the limited form of acoustic representation.

Q. I quite understand you on that. Now, as to this synchronization, I should have defined that as the recording of sound so timed that it would fit in with some action of the picture; the right to record in that way is commonly called the recording right, is it not?—*A.* I think so, yes.

40

Q. And your Society has never controlled that right, has it?—A. We never controlled the graphic nor the recording right.

Q. And the recording right as to English music is controlled by a society other than the Performing Right Society, Limited, is it not?—A. That I do not know.

Q. You do not know. Do you know as to ASCAP, whether in the United States a society other than ASCAP controls this recording right?—A. That I do not know.

10 Q. And you equally do not know, I suppose, whether, if it was necessary, any society gave to the Fox Film Corporation, the producer of this picture, the right to record the music that appears in the picture as exhibited in Canada; you do not know that, do you?—A. I do not know that.

Q. That is all. Might I have an extra copy of that licence agreement?—A. Yes.

Mr. THOMSON: Your Lordship, I could hardly finish with the next witness before lunch; it is one o'clock now.

His LORDSHIP: Adjourn until 2.15.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

—
No. 11.

Robert
Andrew
Hutchon.
Re-exa-
mination—
continued.

No. 12.

Evidence of Edwin P. Kilroe.

EXAMINED BY MR. THOMSON.

No. 12.
Edwin P.
Kilroe.
Examina-
tion.

20

Q. Mr. Kilroe, you are connected with the Twentieth Century Fox Film Corporation, that is the American Company?—A. Yes, I am.

Q. In what capacity?—A. I am on the legal staff in charge of copy-right and production matters.

Q. And how long have you done that work and occupied that position?—A. Since February 1929.

30 Q. Now have you made any search or had a search made under your direction of publications in which the expression "broke" or "breaking the bank" occurs?—A. Yes, I have had a search made in the Public Libraries of New York and also abroad.

Q. I show you a publication issued in 1870 entitled "The Gaming Table: Its Votaries and Victims," and that appears to have been published in England, and there is a photostatic copy of the title page, and of page 170?—A. Yes. I think the original from which this was taken is in the Mercantile Library, New York City.

Mr. LAWSON: Is that a song?

40 Mr. THOMSON: No, it isn't a song, it is a publication; the full title is "The Gaming Table: Its Votaries and Victims, In all Times and Countries, especially in England and in France," and it is by an author called Andrew Steinmetz, Esq., of the Middle Temple, Barrister-at-law; and it adds his other publications here, and the page 170 contains this sentence, Your

*In the
Supreme
Court of
Ontario.*

Lordship: "He sat down at the Trente-et-quarante, broke the bank in 20 minutes. . . .", Now it is just offered because of that one expression.

Then possibly these publications might go in as one exhibit, Your Lordship.

Defendants'
Evidence.

The second is a publication in 1881 of a book called "Monaco and its gaming tables," by John Polson, another English publication.

No. 12.
Edwin P.
Kilroe.
Examina-
tion—con-
tinued.

Q. I show you, Mr. Kilroe, a photostatic copy of the title page and pages 26 and 47. Can you verify those?—A. Yes. The original from which these photostats were made is in the New York Public Library, on 42nd Street.

10

Mr. THOMSON: All I am referring to in that, on page 26, is this conversation: "The last time I was there," said the former speaker, "I got out at Monaco, had a fine chop and a small bottle of champagne at the Hotel de Nice. I felt so comfortable, I felt as if I could break the bank in no time."

Then on page 47 at the end of the page occurs this: "The well-known story of Garcia, the Spanish Count, illustrates this. He broke the bank at Wiesbaden and other places. . . ."

Q. Then next I show you a publication, or photostatic copies of part of a publication entitled "'The man who broke the bank.' Memories of the stage and music hall by Charles Coborn." Your Lordship will remember Charles Coborn was the man who one time owned the copyright in this song and frequently sang it. There are photostatic copies of that title page and pages 227 and 228, 124, 125 and then the music and words of the song. Now this is not dated but I understand it was published sometime fairly recently. Can you fix the year?—A. We have two in here, Mr. Thomson.

His LORDSHIP: Is that different from Exhibit 9?

Mr. THOMSON: I don't think so, Your Lordship, but the music is just there incidentally. I don't think I need to put that in.

WITNESS: That is another publication.

Mr. THOMSON: As to this, Your Lordship, I offer it for this purpose only: Apparently the composer, Fred Gilbert, got the idea of this song from something that happened in real life or was said to have happened. On page 227 Charles Coborn says: "Fred Gilbert wrote both the words and music shortly after the late Charles Wells brought out a book entitled, "How I Broke The Bank At Monte Carlo, or something like that."

Mr. LAWSON: That, I submit, my Lord, is not admissible in evidence, what one Coborn may have written as to what a dead man did.

Mr. THOMSON: It isn't that, in this sense, Your Lordship, that it is a history of the thing to show where the author of this song got the idea.

Then on page 228:

40

"I cannot happen upon the actual date when I first sang it, but I believe it was in the latter part of 1891. I know that it was published in April, 1892, and I believe I first sang it both at the Oxford and at Gatti's, Westminster Bridge Road. Although it has since enjoyed many years of popularity, it was not an easy song to start.

I had considerable difficulty with it at first, and David Day, of Francis, Day & Hunter, its publishers, said to me years afterwards, 'I never saw such an instance of dogged persistence in my life!'

*In the
Supreme
Court of
Ontario.*

That is largely valuable for history.

Then, Your Lordship, I have photostatic copies of a number of editions of *The London Times* in 1891 and one in 1892, January of that year. Now I do not propose to read them, the pages are marked in red pencil.

Defendants'
Evidence.

Mr. LAWSON: I doubt if these are admissible, but I am not—

His LORDSHIP: Subject to your objection.

No. 12.
Edwin P.
Kilroe.
Examina-
tion—*con-*
tinued.

10 Mr. THOMSON: It is for the one purpose only, Your Lordship, of showing that the breaking of the bank is not something new but is a common expression and was before the composition of this song. Possibly I may read just one of them, it is a sample of the rest. This is the edition of March 2, 1891:

20 "An exciting scene was witnessed by the occupants of the gambling rooms at Monte Carlo yesterday." (The dispatch is from Nice, dated 1st March). "A visitor from London had extraordinary luck and won in succession 14 Maximum stakes of 12,000 fr., in all nearly £7,000, at one of the trente-et-quarante tables. He thus accomplished the feat known as breaking the bank, and when he had cleared the table and the croupiers were obliged to seek the cashier for more funds to pay the player the excitement was unbounded, the people round the table cheering heartily at this signal defeat of the enemy."

EXHIBIT 21: Three photostatic copies of publications above described, (a fourth being later added) nine photostatic copies of the "Times"—London.

30 By Mr. THOMSON: Q. Then you said, Mr. Kilroe, when I offered you one of these publications that I had included something that didn't belong as a part of that?—A. Yes. That is from a recent publication by Geller.

Mr. THOMSON: To complete that, Your Lordship, this is a publication by James J. Geller.

Mr. LAWSON: I am lost on the numbers of these exhibits.

Mr. THOMSON: I was going to put them all in as one. This is entitled "Famous songs and their stories." I don't propose to read that to Your Lordship but it does give a little summary of this song that possibly is interesting.

Mr. LAWSON: I don't like something going in that I don't know anything about.

40 —Above described photostatic copy added to Exhibit 21.

Q. I think that is all on that point, Mr. Kilroe. Now then I ask you whether that is a list prepared by you or under your direction of plays—?

Mr. LAWSON: Well—

*In the
Supreme
Court of
Ontario.*
—
Defendants'
Evidence.

No. 12.
Edwin P.
Kilroe.
Examina-
tion—con-
tinued.

Q. Well now I show you certain reports here and ask you what they are—that is a better way. Will you explain them, please?—*A.* The first one that I am referred to is dated June 2nd, 1937, from Dalton Balasky, our Washington attorney on copyrights and patents; at my request he made a search of the Copyright Office for titles similar to or bearing the words "Monte Carlo" or "The Man Who Broke the Bank at Monte Carlo."

Mr. LAWSON: Well now, my Lord, I must object, on exactly the same grounds put forward by my friend when Mr. Shapiro was in the witness box and Mr. Shapiro wanted to give evidence of searches made under his direction in London, England; Your Lordship excluded it, he was only allowed to give information as to searches he had personally made in libraries in New York and in one instance of records in the United States Copyright or Patent Office, because he was able to produce the publication of the Patent Office itself, and I submit these are not admissible. 10

Mr. THOMSON: The point is not very important; I will not press it. I will put another question on the same line.

Q. Can you from any search you yourself made?

His LORDSHIP: I would have to allow that.

Q. Can you give me any proper list of titles the same as or resembling the title of this song we are concerned with and can you speak from a search made yourself?—*A.* Yes. I made the search for the titles that appear on this list. 20

Mr. LAWSON: If that report goes in my learned friend should have his witness advise us as to where the search was made.

Q. Answer that question, will you, Mr. Kilroe?—*A.* New York City. From the records in our office.

Q. What was the nature of these records?—*A.* Some of these records are newspaper files, some of them are cards, card systems for indexing titles, and some the year books issued by the Film Daily.

Mr. THOMSON: I might explain first what the list is, your Lordship; This is a list of motion picture plays bearing a title somewhat similar to this and the name of the producer, the release date and in certain instances the principal players. 30

Q. So you can verify that as a correct list prepared from the records you have just spoken of?—*A.* Yes.

Mr. LAWSON: Now, my Lord, I submit those are not sufficient records. Mr. Shapiro even detailed that music publishers make a business of keeping records; I am told that is a very elaborate card system which he had available to him, and he was not permitted to give evidence concerning it.

His LORDSHIP: I will allow it in the meantime; I would like to get all the information I can. 40

Mr. THOMSON: Then I tender that as Exhibit 22.

EXHIBIT 22: Paper referred to, headed " 'Monte Carlo' titles as listed in 'Film Daily Year Book 1937.' "

Now then, Your Lordship, I think this may be in that very voluminous exhibit, the advertising matter of the Fox Film Corporation. I am not now thinking of Your Lordship, because Your Lordship has seen this photo play, but if the case should go to appeal I think it might be well to have a synopsis of the plot of the picture or play and I have it here and this witness is responsible for the preparation of that.

Q. I just ask you, Mr. Kilroe, whether this is an accurate synopsis of the plot or story of the play?

Mr. LAWSON: If my learned friend will pardon me, we put in as an exhibit the original manuscript from which the play was produced and I cannot see how anything prepared by one of the solicitors as counsel for the defendant Fox could be admitted in that way.

Mr. THOMSON: May I remind Your Lordship of something? When that Exhibit went in I read parts of it and said I thought it meant nothing to anyone except a person engaged in the motion picture industry, and it is because of the difficulty of making anything out of that I offer this. Possibly if I might read this in part to Your Lordship you will see. I think it is entirely unobjectionable.

His LORDSHIP: Let Mr. Lawson see it first.

20 WITNESS: I didn't prepare that. It was prepared by a reader in our scenario department.

Mr. THOMSON: As I said before, this won't add much to your Lordship's knowledge, because the story of the play is fresh in your mind.

Mr. LAWSON: Well, my Lord, I won't take the time of the court while I read this through in detail, but it is what purports to be a synopsis of the picture, prepared by somebody else, not even this witness, with no opportunity to cross-examine on it. It may be a very accurate synopsis, I have no way of knowing; I don't think my learned friend should put that in. In Exhibit No. 10 here we have an exact verbatim record, except that, as
30 my learned friend pointed out, he has stricken out the song itself, which did not appear in Canadian prints, and I think this is very clear. It gives every word said by everybody in the picture.

Mr. THOMSON: Your Lordship, might that be marked for the purpose of identification and if my learned friend points out any inaccuracies he and I will have no difficulty in agreeing it may have to be supplemented or amended? It is not the full thing; it is what the heading implies, a synopsis of the story of the play.

Mr. LAWSON: I am sorry, my Lord, I must object, because I open this book, Exhibit 10, at random, there is no difficulty following that; it starts
40 off at the top of the page, "Scene 66—Semi closeup of Helen." We all know what that is. And Helen says "I suppose I can get all the skiing clothes there I need." Then "Cut to: Scene 67—Semi closeup of Bertrand—he notices Paul, out of scene, looking at Helen and glares at him. Cut to: Scene 66—Semi closeup of Helen." There is no difficulty following that,

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

—
No. 12.
Edwin P.
Kilroe.
Examina-
tion—con-
tinued.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 12.
Edwin P.
Kilroe.
Examina-
tion—con-
tinued.

that is the original document I have submitted and my learned friend should not press putting in a synopsis prepared by somebody an employee of the defendant Fox which can add nothing to the original.

Mr. THOMSON: I would be perfectly willing to allow in a proper synopsis prepared by the employee of the plaintiff. It is merely for the assistance it may give the court, and the other document to which my learned friend has referred is certainly a very voluminous document. This is a three page one.

His LORDSHIP: Couldn't we allow it in subject to Mr. Lawson's going over it? 10

Mr. THOMSON: Yes, that is quite agreeable to me. Well, then, I tender that as Exhibit 23.

EXHIBIT 23: Paper referred to, headed "The Man Who Broke the Bank at Monte Carlo—synopsis of picture."

Q. Now then, Mr. Kilroe, I show you another list which purports to give the countries in which this play was exhibited, the titles under which it was exhibited and where those titles are not in English the translation of the title into English. Is that a correct statement?—A. It is a correct statement, but I can't say that the pictures were actually exhibited in these countries. All I can say is, that a request came from our Foreign Department to register these titles for these countries, which was done. 20

Mr. THOMSON: I tender that as Exhibit 24.

By Mr. LAWSON: Q. That is for this picture?—A. For this picture.

Mr. THOMSON: Yes, this picture only.

EXHIBIT 24: Paper referred to, purporting to give countries in which play in question exhibited, titles under which exhibited and, where titles not in English, translation of same.

By Mr. THOMSON: Q. Now then, I want if you can, Mr. Kilroe, to have some information as to the prices paid for titles of songs, not including the right to use the music. Has your company purchased titles in the past?— 30
A. We have on occasions purchased titles of songs and of stories for motion pictures.

Q. Can you give me any instance of particular prices paid for—if you can find anything approximating this title I would like you to give me that first. Is there some other well-known old popular song?—A. Well, "Champagne Charlie" I think was both a song and a story.

Q. And what did you pay for that song?—A. Paid \$150 February 27th, 1935, for the use of the title—title only.

"After the Ball," February 1st, 1933, \$1000.

Then there are two numbers not on this list to which we bought not 40
only the right to use the title but also the right to use the music and the right to dramatize the story of the song.

Q. Can you verify the list which you have been reading as a correct list?—A. Yes, this is a correct list.

By Mr. LAWSON : Q. That is a list of song titles——?—A. No, this is not entirely a list of the song titles; it is a list of the titles which we have purchased from time to time——

Q. When you say “we have purchased,” you mean——?—A. Twentieth Century Fox Corporation.

Q. Of the United States?—A. Yes, of the United States.

Mr. THOMSON : May I just give your Lordship some further instances in this statement which I am tendering as Exhibit 25?

EXHIBIT 25 : “List showing purchase prices paid by Fox Film Corporation for titles from 1927—March 1937.”

“Sunrise,” November 29, 1927, \$600.

By His LORDSHIP : Q. Is that for the name alone?—A. For the name.

Mr. THOMSON : That is for the name, but I think the qualification the witness made was, it was not in all cases the name of a song; in some cases it was the title or name of some other work.

Mr. LAWSON : The one you are mentioning now is not a song at all, for example.

By Mr. THOMSON : Q. Do you remember one of them? Can you tell me, Mr. Kilroe?—A. Yes. That is the name of a song but it was not purchased as the name of a song.

By Mr. LAWSON : Q. What was it purchased as?—A. As the name of a story.

Mr. THOMSON : The one the witness has referred to, “After the Ball”——

Mr. LAWSON : I am afraid if my friend is going to put in a list that is mixed up——

Mr. THOMSON : Let me finish please.

The one the witness has referred to “After the Ball,” a thousand dollars, is the second largest on this list; the largest one, considerably larger, is “One in a Million,” purchased October 9, 1936, for \$2,500.

By His LORDSHIP : Q. Was that just for the name?—A. Well that was for a little more than a name, Your Honour; that was for the name of a motion picture which had certain distribution rights in certain territories and we didn’t want to have it conflict with our motion picture of the same title.

By Mr. THOMSON : Q. Now then when you made the purchases shown on this list Exhibit 25 did it cover the right to use the title in countries other than the United States?—A. All the world wide.

Q. Can you give me any idea of what portion of the purchase price of these titles shown in Exhibit 25 is fairly attributable to Canada?—A. I suppose you would arrive at that by comparing the results or the profits of the picture with the rest of the world.

Q. Can you give me some general idea as to what proportion of the profits from pictures generally may be expected to be earned in Canada,

*In the
Supreme
Court of
Ontario.*

Defendants’
Evidence.

No. 12.
Edwin P.
Kilroe.
Examina-
tion—con-
tinued.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 12.
Edwin P.
Kilroe.
Examina-
tion—con-
tinued.

the total profits from the whole world?—A. Well as a working formula from five to fifteen per cent.

You didn't want those, did you? Those are samples—

Mr. THOMSON: I have here, Your Lordship, but it is not complete, a file of some of the letters or contracts evidencing the purchase of titles. If my friend wishes me to put it in I will be glad to do so. In the case of "Champagne Charlie" there was a formal license agreement apparently; it is very brief, I will show that to my friend. As to some of the purchases of titles included in the list Exhibit 25 we have here the original documents evidencing the purchases.

10

Mr. LAWSON: Yes, these appear to be original letters specifying prices to be paid for story names or song names.

Mr. THOMSON: I think then, Your Lordship, I will tender those and I suggest that these be Exhibit 25A as it is linked with 25.

You may have the witness.

WITNESS: Oh, about "Waiting at the Church"—

By Mr. THOMSON: Q. Did you want to ask me something?—A. I was going to ask if you were interested in these other two song titles.

Q. I interrupted you. Possibly if you just finish that, will you?—A. In 1930 or 1931 we purchased the right to use the titles as well as the music of "Waiting at the Church" and "Poor John" for a thousand dollars each. We, however, never had occasion to use them. I haven't the documents along, but I closed the transaction.

20

EXHIBIT 25A: File of four documents evidencing the purchase of various titles.

Cross-exa-
mination.

CROSS-EXAMINED BY MR. LAWSON.

Q. Now, Mr. Kilroe, I want to go back to Exhibit 22 which purports to be a list of titles of anything in which the words "Monte Carlo" appear, and I see in this title list there is "Mr. Grex of Monte Carlo" and there is a release date. That means that a motion picture was produced under the name and this is the date the motion picture was released?—A. Yes.

30

Q. Then there is "Mr. Grex of Monte Carlo" in 1915, "Foolish Monte Carlo" 1922, "Monte Carlo" 1926, "Prodigals of Monte Carlo" 1928, "Monte Carlo" 1930, "Woman from Monte Carlo" 1932, "Monte Carlo Madness" 1932, "Revenge at Monte Carlo," 1933, "Monte Carlo Nights," 1934. Now then there is on here "Man Who Broke the Bank at Monte Carlo Twentieth Century-Fox November 29, 1935"; that refers to the picture in question in this litigation?—A. Exactly. And there is one other there too.

Q. Now then below that I see it has here too "The Widow from Monte Carlo," December 9, 1935, and then I see you have down here at the bottom, added on—?—A. Yes.

40

Q. —after this list was made up, apparently "The Man That Broke the Bank at Monte Carlo Universal November 25, 1922." What does that

mean?—A. That means that Universal released a picture under that title on that date.

Q. Where did you get that information?—A. I got that from the Year Book. I got that from Balasky's report.

Q. You got it from the Year Book of what?—A. Of the Film Daily, which I have already testified to.

Q. What is the Film Daily?—A. It is a motion picture newspaper.

Q. A paper published for the benefit of the motion picture trade?—A. That is right.

10 Q. And you saw in there——?—A. They compile——

Q. In this newspaper——?—A. No, they compile each year a manual which purports to show the titles of all pictures released.

Q. Of all pictures released, or all that are proposed to be released?—A. No, of pictures released.

Q. Then is that your source of information that Universal released a picture in 1922 called "The Man That Broke the Bank at Monte Carlo"?—A. No, I verified that by calling up Universal.

20 Q. That is hardly admissible evidence, I mean what you say somebody told you; I want what your records showed?—A. Well our records show that.

Q. That is the only record you have?—A. Yes, that is the only record we have, except the records that we receive from our attorneys who are assigned to make these investigations.

Q. From your attorneys in the United States?—A. Yes.

Q. Then you have added on here also "Around the World in Eighteen Days." What is the significance of that one being added on it?—A. "The Man That Broke the Bank at Monte Carlo" was Episode 4 in that serial.

Q. Let us get this clear. The Universal Pictures turned out a serial picture——?—A. Yes.

30 Q. ——the name of which was "Around the World in Eighteen Days"?—A. The general name, and each weekly instalment——

Q. Don't go too rapidly, I have one of these slow, one-track minds. A serial picture is a picture where a film exchange turns out a story in a series of pictures released so many of the series each week to be shown in the theatres?—A. It may not be a story; it may be a travelogue.

Q. But the idea of a serial picture is that you get an instalment of it at fixed times?—A. That is right.

Q. Of varying lengths?—A. That is right.

40 Q. And this serial turned out by the Universal Pictures was called "Around the World in Eighteen Days"?—A. Yes.

Q. And then in the course of that serial they had one episode of the serial——?—A. They had one instalment.

Q. ——which was called "The Man That Broke the Bank at Monte Carlo"?—A. Yes.

Q. And I notice that was in 1922?—A. Yes.

Q. That was in the days of silent pictures?—A. Yes.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 12.
Edwin P.
Kilroe.
Cross-exa-
mination—
continued.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 12.
Edwin P.
Kilroe.
Cross-exa-
mination—
continued.

Q. We can take it this was a silent picture. And have you any record of the advertising turned out by Universal in connection with that serial?—
A. No, I have not.

Q. From your experience of the production of serials would not the advertising for a serial carry in bold type the name of the serial "Around the World in Eighteen Days" just as "The Man Who Broke the Bank at Monte Carlo" is stamped on the front of Exhibit 14?—A. It might; not necessarily. It all depends on what emphasis the man who has prepared the advertising exerts and places on the instalment or on a main title.

Q. We can take it that Universal's emphasis in connection with this 10 serial must have been in the name "Around the World in Eighteen Days" because every episode was turned out under that name, wasn't it?—A. As the main title; the emphasis was placed on each issue.

Q. Yes, and the subtitle of each issue, and this is one of them, "The Man That Broke the Bank at Monte Carlo"?—A. Yes.

Q. But you have no knowledge whether it was or was not advertised as such?—A. No.

Q. Have you any knowledge of whether Universal in that case used the actual song "The Man Who Broke the Bank at Monte Carlo"?—A. No, I haven't any actual knowledge, but since it was a picture— 20

Q. No—?—A. You mean in the picture itself.

Q. Well, they couldn't use it in the picture itself, because it was silent?—
A. They might flash it on as a subtitle.

Q. They might flash it on as a subtitle?—A. Yes. That I don't know; I can't answer that.

Q. I want to come down to Exhibit 25, which is a list of purchase prices paid by Fox Film Corporation for titles from 1927 to March of 1937. We take the first one, "Sunrise," to whom paid: George L. Miller, Willard Mack, Benjamin Verschleiser and James P. Sinnott, \$600. Was "Sunrise" 30 a song, a story, or what?—A. I believe it was a story. That was five years before my time and I have to depend on what is noted on the records.

Q. According to the records it was a story?—A. It was a story.

Q. And will you tell me from your records as to whether or not copyright in respect of that story had expired or hadn't?—A. I can't tell you that.

Q. Now to save asking a lot of questions throughout here it may be that you can tell me if copyright in Canada, in the British Empire or in any other country had or hadn't expired in respect of any of the title songs?—
A. I can tell some.

Q. I will take them one at a time: "Sunrise," you can't tell whether 40 there was a copyright in it or not?—A. Except this, that if there was not copyright in it we would not have purchased it.

Q. Isn't that what you are reasoning now?—A. Yes.

Q. Sometimes you don't purchase them when there is copyright in them, you say?—A. No, I don't say that.

Q. We think we have proved that in this case?—A. That is for His Honour to say.

Q. Probably out of your own mouth before I get through with you, but still, never mind your reasoning, that you wouldn't have purchased them if there hadn't been copyright?—A. Well I would like to modify that because the law is a little different in the United States. It may be out of copyright but still have vogue and celebrity by use.

Q. In other words it might come into the field of unfair competition in the United States?—A. Yes.

Q. And, what is more, when you make this statement that you wouldn't have purchased it unless there was copyright in it or it might come into the field of unfair competition, you wouldn't know that as a fact at all, would you, because you have told us you had only been with this company for five years?—A. Probably that first one.

Q. The first one I am talking about, they bought in 1927?—A. Yes.

Q. So you wouldn't know what the man who was there at that date was willing to pay for it, would you?—A. No. I assume he was willing to pay that price, because it was paid.

Q. There is no question as to what he was willing to pay and as to its payment, I just want to see whether these were all copyrights or not. We will take "The Veiled Woman," Herman Bernstein, purchased November 15, 1928. Can you tell me of your own knowledge whether there was copyright in that title?—A. Yes, there was copyright in that—relying on the records.

Q. What was it, a song or a—?—A. It was a story, or a play.

Q. You say there was copyright in that, relying on the records. Do those card records from which this is a page say whether or not there is copyright in it?—A. Yes.

Q. They do?—A. Yes, sir.

Q. Well, then, may I take it that the card in respect to the first one I mention, "Sunrise," does not show that there is copyright?—A. That I can't say. When I say the card I mean of another file.

Q. And you have no recollection as to there being copyright in "Sunrise," but you have a recollection as to "The Veiled Woman"?—A. Yes.

Q. Now the next one, "Men Without Women," Ernest Hemingway, author?—A. Yes. There is copyright in that. I believe that that was a publication by Scribner's.

Q. That was a book, was it?—A. Yes.

Q. And for this book in 1930, or the right to use the story and the title, you paid \$500?—A. Only for the right to use the title.

Q. The title only, not the story?—A. That is right.

Q. Then the next one is "The Part Time Wife"; that you bought from Consolidated Film Industries, Incorporated, December 3rd, 1930. What rights did Consolidated Film Industries have in respect of it?—A. They acquired the rights from the producer of that picture on a laboratory lien, I believe.

Q. That is they acquired what right, a right to the picture itself?—A. The right to the picture—the right to the motion picture. In the picture and the right to the title.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 12.
Edwin P.
Kilroe.
Cross-exa-
mination—
continued.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 12.
Edwin P.
Kilroe.
Cross-exa-
mination—
continued.

Q. Would you buy the title?—A. Just the title.

Q. In other words you wanted to produce a picture of this title?—

A. Yes.

Q. And was there copyright in that title at that time?—A. There was copyright in both the title and in the picture; that is, if you can get copyright in a picture.

Q. Take "Skylines," Doubleday, Doran & Co., Incorporated, Publisher, and R. T. Townsend, author, March 19, 1931. What was that, a book or a song, or what?—A. It is a story.

Q. A book, I may take it then?—A. Yes.

Q. And was there copyright in that?—A. There was.

Q. In the United States as well as Canada?—A. Well, I assume that there was in Canada because as I understand it under our law now as soon as the work is created in the United States it is protected in Canada, since 1924.

Q. Well, this was protected in the United States?—A. This was protected in the United States.

Q. I don't want to take the time to go through all these, but the facts are that in respect of some of them you do not know whether copyright existed or didn't?—A. Well, I can tell by looking at them if you let me look at the list.

Q. If you will, tell me?—A. "After the Ball," "The Painted Woman," there is copyright in that. "After the Ball," that is copyrighted. "The Best of Enemies," "Devil Tiger," "Coming Out Party," "Heart Song," "Servants' Entrance," "Under Pressure," "It's a Small World," "Champagne Charlie," "Spring Tonic," "Our little Girl," "Steamboat Bill," "Navy Wife," "Back to Nature." Now "One in a Million" was affixed to a motion picture; we believe there was copyright in it, if you can obtain copyright in motion pictures.

Q. Have you given me the list of those in respect of which you think copyrights subsisted?—A. "Career Woman," "One Mile From Heaven," that completes the list.

Q. Those are the ones in which there was copyright?—A. Yes.

Q. And out of those title plays and songs listed here on Exhibit 25, in how many cases were you purchasing titles only as distinguished from the use of the music or the story as the case may be?—A. Every one of them, I believe.

Q. Every one of them titles?—A. I believe.

Q. Now from this card index system and data which is available to you I presume you have knowledge of what is paid by other purchasers for songs and titles and so forth, have you?—A. Well, only in a very indirect way.

Q. Let me see if you have knowledge of one or two: We dealt this morning with "Yes, We Have No Bananas." Do you know that "The Music Goes 'Round and Around" was sold by Select Music Creations in 1935 to Columbia Pictures for \$6000?—A. Yes; that was dramatized. I saw that picture.

Q. You know of that one?—A. Yes.

10

20

30

40

Q. And you know that that was for the right to the title only and the use of the song in the picture but not to the story?—A. No, I don't.

Q. Well, you saw the picture?—A. I saw the picture.

Q. Is it not a fact that the title only and the song only were used in the picture?—A. How can I tell, or anybody else, looking at it? It was dramatized.

Q. All right, I will take another one: Have you knowledge of the fact that Harms sold to Columbia Pictures in 1931 the title to the song "Ten Cents a Dance" for \$2500?—A. No.

10 Q. Have you knowledge that in 1933 the Marks Brothers sold to Metro. title to "The Peanut Vendor" for \$2000?—A. No, I haven't any information of that.

Q. Have you any knowledge or information as to the Paul Pioneer selling to Metro. in July 23rd, 1931, the exclusive right to the title only for five years of "On the Sidewalks of New York" for \$1500?—A. No, I haven't any. Such information might seep in through the daily papers with an incorrect price.

Q. A what?—A. With an incorrect price. There may be a story that the title was purchased.

20 Q. I am only taking the ones you know?—A. Yes.

Q. You probably know of Al. Jolson's famous song "My Mammy"?—A. Yes.

Q. Have you heard or have you knowledge that that was sold to Warner Brothers, title and song, for \$4000 and they produced a picture?—A. I know they produced a picture, but I don't know at what price.

Q. No knowledge as to price?—A. No knowledge as to price.

Q. Have you knowledge of a sale to Metro. of "A Pretty Girl is Like a Melody," a song entitled that, for \$5000?—A. No.

30 Q. That was made very famous, I suppose you know, by the Ziegfeld Follies?—A. Well I couldn't say as to that.

Q. Did you ever hear of "Rhapsody in Blue," a song?—A. Yes, I heard, yes.

Q. And there is a picture produced of that name?—A. Yes.

Q. And have you knowledge of the fact that that was sold to Universal, title and music, for \$50,000?—A. No, no knowledge.

Q. Have you any knowledge that "Look for the Silver Lining," title and music, sold to Metro. for \$10,000?—A. No. I mean none of that information would come to the other companies.

40 Q. Would come to your company?—A. Or any other company, unless you happened to be personally acquainted with somebody in that department who would give you the information.

Q. You heard of the song "Smiling Through," haven't you?—A. I have heard of the play "Smiling Through"; in fact I saw that.

Q. Did you see the play?—A. I saw the play; it is quite a while ago.

Q. And the song "Smiling Through" was sung in the play, was it not?—A. I don't think it was; it may have been in the motion picture.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 12.
Edwin P.
Kilroe.

Cross-exa-
mination—
continued.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 12.
Edwin P.
Kilroe.
Cross-exa-
mination—
continued.

Q. No, no, I mean the stage play?—*A.* Yes, I saw the stage play; I don't recall "Smiling Through," the song, in it. It may have been; that is quite a while ago.

Q. "Smiling Through" was first on the legitimate stage, wasn't it?—

A. Well I saw the play about fifteen years ago.

Q. On the stage—I am calling it the legitimate stage to distinguish it from a motion picture?—*A.* Yes. And I think after that there was a motion picture.

Q. And afterwards it was made into a motion picture?—*A.* Yes.

Q. And have you knowledge of the price that was paid for the title of the song for the purpose of the motion picture?—*A.* I would say in that case that would be to buy the play and not the title for the song. 10

Q. Have you knowledge of the price that was paid for the whole thing, play, picture and song?—*A.* No. But I think it would be a substantial sum.

Q. When you say you know it would be a very substantial price what have you in mind as substantial? \$50,000? \$75,000?—*A.* Well a substantial price would be anything from ten thousand to three hundred thousand, depending upon the work, the author.

Q. Now, Mr. Kilroe, I presume you have knowledge that in the United States there is an organization known as the Music Publishers' Protective Association?—*A.* Yes. 20

Q. And that is an organization which as part of its business deals on behalf of music publishers with film companies in negotiating the sales and purchases and price of titles, songs and so forth?—*A.* No, not quite that. There is a man known as the agent and trustee who does that and he happens to be an officer of the Music Publishers, but the Music Publishers' Protective Association as an association does not deal in rights.

Q. No, I know that as an association they do not deal in rights, but they are from time to time the agent, or rather the agent and trustee?—*A.* No. 30

Q. Is the agent in dealing with your company?—*A.* There is a man who is known—first it was Mills and then Paine and now it is Fox—designated as agent and trustee who acts on behalf of the music publishers that authorize him to do so, but that is distinct from the Music Publishers' Protective Association.

Q. I show you a copy of a letter addressed to you, Mr. Edwin P. Kilroe, Fox Film Corporation, dated October 8, 1935, from John G. Paine, Agent and Trustee. Was that letter received by you?—*A.* Yes. But before that letter came I had a conversation with Mr. Paine about it. 40

Q. Oh yes, that may be?—*A.* Yes, that letter was received by me.

EXHIBIT 26: Copy letter John G. Paine to witness, dated October 8, 1935.

Mr. LAWSON : This letter, my Lord, reads as follows :

“ Dear Mr. Kilroe :

“ I am advised by the firm of Shapiro Bernstein & Company that 20th Century Pictures are making a picture called, The Man Who Broke the Bank at Monte Carlo.

“ This is the exact title of a musical composition that has for a great many years enjoyed an enormous popularity. Undoubtedly 20th Century Pictures have chosen the title because of this popularity and because of the appeal which the wide exploitation of the song has given to the title.

“ While it is true that the composition is not a copyright in the United States, it is a valid copyright elsewhere throughout the world including the Dominion of Canada. The copyright is controlled by Francis, Day and Hunter, whose American representative in connection with this particular musical composition is Shapiro Bernstein & Company.

“ They have approached me on this matter and have asked me to file with you a protest against the use of this title in connection with the picture, and to advise you that it is their hope that some amicable arrangement can be made concerning the use of this property rather than to force them to take any unfriendly steps to protect what they conceive to be their rights. Very truly yours, John G. Paine, Agent and Trustee.”

Q. As a result of that letter and some conversation I believe there were some negotiations, Mr. Kilroe, for the purchase of the rights to the title which did not culminate in any agreement?—A. No, they took place before the letter came.

Q. Well I beg your pardon?—A. I had a conversation with Mr. Paine which grew out of the negotiations.

Q. Well, I am not concerned——?—A. Yes, but that is the history of it.

Q. And you did not come to an agreement?—A. Yes, that is correct.

Q. Then I show you now a copy of a letter, Mr. Kilroe, purporting to be a copy of a letter written by you, dated October 9, 1936, to Francis, Day & Hunter, Ltd., at London, England. Would you please identify that copy of an original letter written by you?—A. (After examining same) : Yes, that was a letter that I wrote to Mr. Day after I had received a letter from Mr. Bernstein.

Mr. THOMSON : Your Lordship, I hadn't appreciated before this letter is dated long after the commencement of this litigation ; I don't know for what purpose my friend is introducing it and it may have been written without prejudice, although it is not so expressed ; I don't know whether any negotiations were going on at that time, but I fail to see how a letter written at a date later than the date of the institution of this action can have a bearing upon the rights of the parties.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

—
No. 12.
Edwin P.
Kilroe.
Cross-exa-
mination—
continued.

10

20

30

40

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence.

No. 12.
Edwin P.
Kilroe.
Cross-exa-
mination—
continued.

Mr. LAWSON : I don't think its date, my Lord, makes any difference ; one of the prices my friend must pay for calling Mr. Kilroe as a witness is to be confronted with Mr. Kilroe's own letter when he identifies it.

Mr. THOMSON : Relevant letters, yes. That does not make them evidence, Your Lordship, if they are not relevant.

Mr. LAWSON : If his Lordship decides this letter is not relevant after hearing it I will not say another word about it.

Mr. THOMSON : The document is now being tendered as an exhibit and it is to the acceptance of that exhibit that I am objecting. Of course, Your Lordship must know what the letter is before you can rule on it. 10

Mr. LAWSON : Letter from Mr. Kilroe to Francis, Day & Hunter, Ltd., of London, England, dated October 9, 1936, headed " Legal Department " :

" My dear Mr. Day : I am enclosing a copy of a letter dated September 14, 1936, which I received from Mr. Louis Bernstein on ' The Man Who Broke the Bank at Monte Carlo. '

" A few days ago, I talked with Mr. Bernstein on the telephone and explained my part in the transaction as follows :

" I had a discussion with you or Mr. Abbott or probably both on ' The Man Who Broke the Bank at Monte Carlo ' ; I told you at luncheon with Mr. Abeles and perhaps I repeated the same thing to Mr. Abbott that we desired to record the song in the picture for worldwide use but that Mr. Bernstein had asked \$5000·00 for its use ; this was considered exorbitant by our West Coast Studio and it was decided to record the song in the picture for use only in the United States, where the number is in the public domain, and to delete the number for use in territories outside of the United States. 20

" I reviewed the transactions yesterday with Mr. Joseph H. Moskowitz who has charge in New York of production matters. Mr. Moskowitz assures me that he offered \$1000 to Mr. Bernstein for the worldwide use of the song in the picture. This offer was declined 30 by Mr. Bernstein. At that time, during my discussions with the personnel of our Production Department, it was stated that we might go as high as \$2000·00 for the worldwide use of the song in the picture if there was any prospect of clearance at that price ; this price, however, was not submitted to Mr. Bernstein.

" Mr. Bernstein informed me over the telephone that he did ask \$5000·00 for the worldwide use of the number ; he states positively that no counter-proposition had been submitted to him and that the sum of \$1000 was not discussed with him. In this, he is at variance with the statement made by Mr. Moskowitz. 40

" At no time after suit had been started in Canada was any offer of settlement made by us.

" I felt at the time that discussions were had for the clearance of the number (and I have no reason to change my mind on this

point) that we would have paid \$2000.00 at that time for the world-wide use of the number; . . .”

His LORDSHIP : That was the song ?

Mr. LAWSON : That was the song title and song, the whole business. (Continues reading letter) :

“ . . . however, matters, personal and social, crept into a purely business deal and since we seemed to arrive nowhere on the deal, we decided to stand on our legal rights, use the number in our picture in the United States and delete it from the picture for use outside.

40 Very sincerely yours, Edwin P. Kilroe.”

Mr. THOMSON : Your Lordship, you admit that ?

His LORDSHIP : I suppose it is for me to decide. Yes.

Mr. LAWSON : That is all, thank you.

EXHIBIT 27 : Copy letter, witness to Francis, Day & Hunter, Ltd., above quoted.

RE-EXAMINED BY MR. THOMSON :

Q. Just one question : You said in answer to a question by my friend Mr. Lawson that all the amounts listed in Exhibit 25 were paid for the use of title only ?—A. That is right.

20 Q. Did you intend by that to modify the statement I understood you to make to me that in the case of one of these numbers, “ One in a Million,” it was paid for something more than title only ?—A. Yes, there is a little modification there. There were some distributing rights too; in other words we were allowed to go into a territory with that title. I assume that that would be for the use of the title.

Mr. THOMSON : That is all, thank you, Mr. Kilroe.

That is the defence, Your Lordship.

Mr. LAWSON : No reply, my Lord.

His LORDSHIP : Do you wish to call Mr. Shapiro ?

30 Mr. THOMSON : Your Lordship, perhaps I misunderstood what Your Lordship said, but I understood I withdrew certain evidence I had tendered and I made that withdrawal because of my friend’s objection. Your Lordship intimated to me that I might have persisted in my tendering of that evidence, you would have allowed it in, but in return you would have allowed my friend Mr. Lawson to recall Mr. Shapiro, so I thought, under Your Lordship’s intimation, that my friend could not now recall Mr. Shapiro. But perhaps he does not wish to anyway.

Mr. LAWSON : I shall not press to call any reply.

Mr. THOMSON : No.

40 I was wondering, my Lord, if we might have a five minute adjournment, as Mr. Kilroe has to leave ?

In the
Supreme
Court of
Ontario.

Defendants’
Evidence.

No. 12.
Edwin P.
Kilroe.
Cross-exa-
mination—
continued.

Re-exa-
mination.

Defendants'
Evidence.

No. 12.
Edwin P.
Kilroe.
Re-exa-
mination—
continued.

His LORDSHIP : Or I would be glad if you could leave the argument till tomorrow morning; my Bankruptcy Court is not very long tomorrow.

Mr. LAWSON : I would like to go on this afternoon, for this reason, although I have my argument all available I am afraid I am going to be caught with another case tomorrow.

Mr. THOMSON : Then if I may have five minutes with Mr. Kilroe before he leaves.

No. 13.

No. 13.

Counsel's Arguments, 9th and 10th June, 1937.

(Not printed.)

10

No. 14.
Formal
Judgment,
23rd Nov-
ember,
1937.

No. 14.

Formal Judgment.

IN THE SUPREME COURT OF ONTARIO.

Tuesday the 23rd day of November A.D. 1937.

THE HONOURABLE MR. JUSTICE J. A. McEVOY.

Between :

FRANCIS, DAY & HUNTER LIMITED - - - - - Plaintiff.

and

TWENTIETH CENTURY-FOX CORPORATION LIMITED and
FAMOUS PLAYERS CANADIAN CORPORATION LIMITED - Defendants. 20

1. This action coming on for trial on the 25th day of May 1937 and the 9th and 10th days of June 1937 at the Sittings holden at Toronto for the trial of actions without a jury, in the presence of counsel for the plaintiff and for the defendants, upon hearing read the pleadings and hearing the evidence adduced and what was alleged by counsel aforesaid, this Court was pleased to direct this action to stand over for judgment, and the same coming on this day for judgment;

2. This Court doth Order and Adjudge that the plaintiff do recover from the defendants the sum of \$1,046.35;

3. And this Court doth further Order and Adjudge that the defendants do pay to the plaintiff its costs of this action forthwith after taxation thereof.

Judgment signed the 28th day of December 1937.

" D'ARCY HINDS "

Registrar,
S.C.O.

Seal
Entered J.B. 72 pages 11-12
December 28, 1937.
" H.F. "

No. 15.

Reasons for Judgment of McEvoy J.

Delivered November 23rd, 1937.

J. EARL LAWSON, K.C., for the *Plaintiff*.A. J. THOMSON, K.C., for the *Defendants*.

This action is brought by the Plaintiff against the defendants for :

“ 1. A declaration that it is the owner of copyright in the musical work (‘ The Man Who broke the Bank at Monte Carlo ’) including the sole right to perform the same in public throughout the Dominion of Canada.

10 2. A declaration that the defendants have infringed the plaintiff’s copyright in the said musical work by the performance thereof in public, or alternatively, by permitting the said theatre and the said motion picture to be used for the said performance for the defendants’ private profit, without the consent of the plaintiff.

3. Damages, and in addition thereto, such part of the profits which the defendants have made from such infringement as this Honourable Court may decide to be just and proper,” and

5. Such further and other relief as the nature of the case may require and to this Honourable Court may seem meet.”

20 At the trial counsel for the plaintiff stated that its claim in respect to copyright was whether or not there was copyright in the title “ The Man Who Broke the Bank at Monte Carlo ” and that it was also claiming damages against the defendants under the ordinary doctrine of passing off.

The plaintiff, Francis, Day & Hunter Limited are successors to Francis, Day & Hunter and carry on business in the City of London, England.

One, Fred Gilbert, a British subject, in or about the year 1892, composed and wrote a song entitled “ The Man Who Broke the Bank at Monte Carlo,” which song was first published in England by Francis, Day & Hunter, a partnership, the predecessors of the plaintiff, on the 22nd of April, 1892.

30 This song was written for Charles Coborn, a singer, who first sang the song after it was published.

Prior to the 11th day of April, 1892, the said Fred Gilbert, now deceased, assigned all copyright including the right of public performance and publication of the said song to Coborn, and on the said date Coborn assigned to Francis, Day & Hunter all his copyright and interest present or future in the said song, including the right of presenting or performing the same or causing the same or permitting the same to be presented or performed. The said song was first published by printing and distributing by the plaintiff on the 22nd day of April, 1892. The song was registered by Francis, Day
40 & Hunter in the public record office in London, England, on March 18th, 1893.

*In the
Supreme
Court of
Ontario.*

No. 15.
Reasons for
Judgment of
McEvoy J.

*In the
Supreme
Court of
Ontario.*

No. 15.
Reasons for
Judgment of
McEvoy J.
—continued.

Fred Gilbert, the composer, died on the 12th April, 1903, and his wife Emma Gilbert died on the 23rd day of April, 1905.

On the 29th day of May, 1936, Esther Howe, a daughter of the late Fred Gilbert and one of his and his wife's two only heirs, assigned to Francis, Day & Hunter Limited, its successors and assigns, a half interest in a certain title, song, words, music and musical work in the said song and the exclusive right to have and obtain copyright therein in its own name in Canada and all of the Canadian copyright therein. This assignment was registered on the 8th day of June, 1936, in the Patent and Copyright Office for the Dominion of Canada. 15

Francis, Day & Hunter assigned to Francis, Day & Hunter Limited, by assignment dated the 6th day of March, 1936, for all countries of the world, all its right, title and interest including the copyright thereof, in and to the musical composition. This assignment was registered in the Canadian Patent and Copyright Office on the 9th day of March, 1936. This assignment refers to a previously executed and delivered assignment between the same parties, dated April 8th, 1926.

At the trial of this action, by consent of counsel for both parties, there was filed the following admissions and agreement:—

1. There may be introduced in evidence, without formal proof, the following: 20

(a) Affidavit of Charles Coborn, dated November 3rd, 1936.

(b) Affidavit of Esther Howe dated November 3rd, 1936.

(c) Certificate of registration on 22nd April, 1892, by the firm of Francis, Day & Hunter of copyright in the musical work "The Man Who Broke the Bank at Monte Carlo."

(d) Duplicate original of assignment dated 16th March, 1936, from the firm of Francis, Day & Hunter to Francis, Day & Hunter Limited.

(e) Duplicate original of the assignment dated 29th May, 1936, from Esther Howe to Francis, Day & Hunter Limited. 30

2. That the motion picture titled "The Man Who Broke the Bank at Monte Carlo" has before and since the commencement of this action been distributed throughout Canada by Fox Films Corporation by leasing the same, in return for rentals, to exhibitors of motion picture theatres and was performed in public for private profit in the theatres, in the places, and on the dates set out in Schedule "A" hereto, and that the said picture has been performed in public for private profit in theatres owned, operated and controlled by the defendant Famous Players Canadian Corporation Limited at the theatres, in the places, and on the dates set out in Schedule "B" hereto. I have looked over the schedules referred to in the above paragraph and note that the dates when the musical play was exhibited at the different theatres mentioned in the above paragraph were from December, 1935, the year 1936 and part of the year 1937, and may be exhibited later in some other theatres. 40

3. That publication in printed form of the musical work "The Man Who Broke the Bank at Monte Carlo" prior to the alleged infringement of copyright complained of in this action may be proven by production of a printed copy of the same endorsed :

" Charles Coborn's famous song, ' The Man Who Broke the Bank at Monte Carlo '

Written and composed

by

Fred Gilbert

10 Copyright by Francis, Day and Hunter Ltd."

4. That the copyright in Canada in the said musical work would have expired at some date prior to the commencement of this action had the term of such copyright not been extended by the Canadian Copyright Act, which came into force on 1st January 1924.

5. That before the motion picture play entitled " The Man Who Broke the Bank at Monte Carlo " was written and produced there had been written and produced a comedy in three acts by Ilia Surgutchoff and Frederick Albert Swann entitled " The Gamble," also known as " The Man Who Broke the Bank," " Monsieur Alexandre," " Igra," " Le Jeu," and that the
20 text of such comedy may be proved by a printed copy endorsed with the notation :

" Copyright, 1935

Twentieth Century Pictures, Inc.

All rights throughout the world reserved."

6. That the continuity and dialogue of the motion picture play, " The Man Who Broke the Bank at Monte Carlo," may be proved by a mimeographed copy of the same endorsed :

" Copyrighted 1935 by

20th Century-Fox Film Corporation

All Rights Reserved

Certificate No. 1546."

30

7. That on none of the copies of the musical work " The Man Who Broke the Bank at Monte Carlo," published by the firm of Francis, Day & Hunter and by the plaintiff, Francis, Day & Hunter Limited was there printed a notice to the effect that the right of public representation and performance is reserved.

The defendant, Twentieth Century Fox Corporation Limited acquired from Twentieth Century Fox Film Corporation, New York, the right to rent and deal with a motion picture film entitled " The Man Who Broke the
40 Bank at Monte Carlo " based, as is stated in its advertisements, on a play by Ilia Surgutchoff and Frederick Albert Swann entitled " The Gamble," also known as " The Man Who Broke the Bank," " Monsieur Alexandre," " Igra," " Le Jeu." In all the advertisements of the motion picture are printed many times in large letters the words " The Man Who Broke the Bank at Monte Carlo." The motion picture is entitled, printed in large

*In the
Supreme
Court of
Ontario.*

No. 15.
Reasons for
Judgment of
McEvoy J.
—continued.

*In the
Supreme
Court of
Ontario.*
—
No. 15.
Reasons for
Judgment of
McEvoy J.
—continued.

letters, the same name whereas the play on which this picture is alleged to be based is printed in small letters, as follows :—

“ From the Play by
Ilia Surgutchoff
and
Frederick Albert Swann.”

I have carefully read the play and find that nowhere in the play are the words “ Monte Carlo ” used, but the words “ The Casino ” are used throughout.

The motion picture in question has been shown on the screen by the defendants, Famous Players Canadian Corporation Limited, owners of theatres in the Dominion of Canada, including the Imperial Theatre on Yonge Street in the City of Toronto, to which an admission fee is charged, and also in many other theatres throughout the said Dominion of Canada by the proprietors thereof to whom the said defendants Famous Players Canadian Corporation Limited rented the picture for use in their theatres to be shown to the public upon payment of an admission fee. 10

In the advertisement, Exhibit 14, the only mention of the word “ gamble ” which I could find is on page 10 thereof, where the words “ Lucky gamble sets Coleman on Love Trail ” are used, but in that advertisement the words “ The Man Who Broke the Bank at Monte Carlo ” are prominently used many times. My opinion is that the whole advertisement and the title of the picture are based, not on the play “ The Gamble ” but on the musical work, “ The Man Who Broke the Bank at Monte Carlo.” 20

I find from the evidence that the said words had become world wide known to the public and that the title and song has and had a public reputation in Canada and other Countries.

As I have stated, the plaintiff claims that the defendants were using the name of this musical work to deceive the public and so cause the public to understand that the motion picture was based on the title of the said musical work and thereby to obtain money from such representation—and that they therefore were under the doctrine of “ passing off ” liable to the plaintiff. 30

As to the doctrine of “ passing off ” I refer to *McIndoo v. Musson Book Co.*, 35 O.L.R. page 42, at page 44 where Masten J.A. states :

“ In order to succeed in such an action the plaintiff must show that his book has become known to the public and sought for under the title adopted by him ; to put it in another way, that it has acquired a public reputation under its title.

“ Secondly, the plaintiff, having thus acquired by user a prior right to the title, and having established a reputation by such user, must prove 40 that the defendant is so acting as to pass its book off as that of the plaintiff, by using a similar title. . . . Each case must be determined upon its own facts.”

The cases on this branch of the law are set forth in Copinger’s Law of Copyright, 7th Edn. 1936, pages 56 and 57 and 74 to 79.

The Twentieth Century Fox Film Corporation New York tried to buy the musical work and title "The Man Who Broke the Bank at Monte Carlo" from the New York agents of the plaintiff, and offered to pay one thousand dollars therefor, which the plaintiff would not accept. In my view it then deliberately used the title and permitted the defendants to use the same in the Dominion of Canada, to the injury of the plaintiff.

The plaintiff submitted that there is copyright in the title to this musical work and that the use of the title and the central idea and theme thereof formed the basis of the motion picture.

10 The Copyright Act was passed in 1921 but was not brought into force until the first day of January, 1924. The Copyright Act is now R.S.C. 1927, cap. 32, and amendments thereto.

Copyright is defined by R.S.C. 1927, cap. 32, sec. 3 :

"3. For the purposes of this Act, 'copyright' means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform . . . the work or any substantial part thereof in public. . . ."

20 "(d) in the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered; and to authorise any such acts as aforesaid."

and is further defined by 21-22 George V. (Dom) cap. 8, sec. 3 (e).

"(e) In the case of any literary, dramatic musical or artistic work, to reproduce, adapt and publicly present such work by cinematograph; provided that the author has given such work an original character; and provided also that if such original character is absent the cinematographic production shall be protected as a photograph."

Musical work is defined by R.S.C. 1927, cap 32, sec. 2 (p) as follows :

30 "(p) 'Musical work' means any combination of melody and harmony or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced."

By an amendment to the Copyright Act, being 21-22 George V. cap. 8, sec. 2 (1) (v), 'work' is defined to "include the title thereof when such title is original and distinctive."

By section 2, sub-section 3, of the said Amending Act, the word "performance" is defined :

40 "'performance' means any acoustic representation of a work or any visual representation of any dramatic action in a work, including a representation made by means of any mechanical instrument or by radio communication."

It is admitted by counsel that Canadian copyright legislation prior to January 1st, 1924, did protect copyright in musical works in so far as reproducing or printing copies, but did not protect performing rights. The defendants submit that the copyright of this musical work does not include performing rights because the plaintiff did not have under its copyright performing rights immediately before the first day of January, 1924, as

*In the
Supreme
Court of
Ontario.*

No. 15.
Reasons for
Judgment of
McEvoy J.
—continued.

*In the
Supreme
Court of
Ontario.*
—
No. 15.
Reasons for
Judgment of
McEvoy J.
—continued.

required under sec. 42 of The (Can.) Copyright Act, R.S.C. cap. 32. The defendants submit that this is so by reason of the English Copyright Act of 1842 and an Amending Act of 1882, under which Amending Act notice to the effect that the right of public representation and performance was reserved, was not printed on the musical work, Copyright (Musical Composition) Act (Eng.) 1882, cap. 40, sec. 1. The plaintiff submitted that this Act did not apply to Canada and that no such notice was required under the Copyright legislation then in force.

The English Copyright Acts are set forth in the schedule to Scrutton's Law of Copyright, 3rd. Edn. 10

I would refer to the reasons for judgment of Chief Justice Rose in *Canadian Performing Right Society Ltd. v. Famous Players Canadian Corporation*, 60 O.L.R. 280, at pages 283 to 286 and 287 to 291. In that case the learned Chief Justice, because of non-registration, dismissed the action of the plaintiff. It was agreed before me in the case at bar that registration does not enter into this case—the submission to me was as to whether the English Act of 1882 applied to Canada, and that although the plaintiff, in England under that Act might not be successful in his action because of his not printing on his musical work the notice required under the said Act of 1882, he could succeed in Canada. In my view if the plaintiff could not by reason of the Copyright of 1882 (Eng.) succeed against a defendant in England, he could not do so in Canada. 20

May I quote the words of the learned Chief Justice in that case, pages 290 and 291, as follows :

“ Having regard . . . to the fact that in 1882 there was a presumption that the Imperial Parliament did not intend its Acts to extend to the Dominions, I think that the Act of 1882 did not extend to Canada in the sense of being in force there so as to require an assignee of the sole right of performance in Canada, or a Canadian composer, for the purpose of preserving the sole right of performance in Canada, to print the notice upon every copy of the work published by him in Canada, but that, nevertheless, it had some effect in Canada, in the sense, for instance, that an English publisher, suing in Canada, might have had his action defeated by proof that in England he had failed to print the notice which the Imperial Act required him to print if he desired to retain his Empire-wide right. There is no authority that I know of for my opinion on this point, but my view does not seem to me to be opposed to anything that was decided or said in, e.g. *Graves v. Gorrie* (1900–02), 32, O.R. 266, 1 O.L.R. 309, 3 O.L.R. 697 (1903) A.C. 496, in which it was held that the Fine Arts Copyright Act, 1862, did not confer copyright in Canada, or *Black v. Imperial Book Co.*, 5 O.L.R. 184, in which sec. 152 of the Customs Laws Consolidated Act, 1876 (39 & 40 Vict. ch. 36) was held, because of the provisions of sec. 151, not to be in force in Canada.” 30

I am of opinion that as the plaintiff has not followed the Act of 1882 and published in England on its musical work the notice required by the (Eng.) Act of 1882, it has lost its rights as to performance within Canada. 40

In my view the plaintiff who could not succeed in England could not succeed in Ontario where it had failed to print the notice required by the said Act.

A further submission of the plaintiff is that under the Amendment to the Copyright Act (Dom.) 1931, because of the definition of the word "work" therein, it is entitled to its claim.

Heretofore I have given the definition of the word "work"—"work" shall include the title thereof when such title is original and distinctive. The word "original" has been considered in *Kentel v. Grant, Nisbit & Auld Ltd.* (1933), Ex. Rep. 94, at page 95, where Maclean J., discusses what constitutes originality. He says:—

"The word 'original' does not . . . mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with ideas or the originality of ideas—in which there is no copyright; it is the language in which the idea is expressed which is the only thing protected, and it is that to which 'original' in the Act relates; the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work—that it should originate from the author."

Now there has not been cited to me nor have I been able to find any case in which the word "distinctive" as mentioned in the Amendment to the Copyright Act, 21–22 Geo. V., cap. 8, sec. 2 (1) (v) is considered. What is "distinctive"? Should I refer to the Trade Marks Act?

In the Trade Marks Act, 1905 (England) the word "distinctive" is defined under sec. 9, sub-section 5 for the purposes of that section as meaning "adapted to distinguish the goods of the proprietor of the trade mark from those of other persons" and permits the Tribunal to "in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered."

I would refer to the following cases in which the word "distinctive," as defined in the said Act, has been considered: *In re Crossfield & Sons Limited* (1910), 1 Ch. 118 at pages 119 and 123; *In re Burford* (1919), 2 Ch. 28, and also to Kerly on Trade Marks, 5th Edn., pages 186 to 192.

In my opinion the words of the musical work in question come within the definition of "work" as being original and distinctive.

Although the defendants in their statement of defence did not plead—that Canadian Performing Right Society had granted licences to certain of the theatres which had shown the motion picture, to use the words and music of the song in question, Mr. Hutchon gave evidence with respect thereto. Canadian Performing Right Society is a subsidiary of a British Performing Right Society, and the American Performing Right Society, which societies obtained rights of public performances of copyrighted music throughout the world. The witness stated that Canadian Performing Right Society controlled in Canada the public performance of the words and music of the song in question, but that they had no right to give a licence to use the title of the song, merely the words and music.

*In the
Supreme
Court of
Ontario.*

No. 15.
Reasons for
Judgment of
McEvoy J.
—continued.

*In the
Supreme
Court of
Ontario.*

Counsel requested me to assess the damages instead of having a reference in respect thereof.

Section 7, sub-section 4 of the Act of 1931 relates to the assessment of damages where copyright has been infringed, and is as follows :—

No. 15.
Reasons for
Judgment of
McEvoy J.
—continued.

“ If any person shall infringe the copyright in any work which is protected under the provisions of this Act such person shall be liable to pay such damages to the owner of the right infringed as he may have suffered due to the infringement, and in addition thereto such part of the profits which the infringer shall have made from such infringement as the Court may decide to be just and proper; and in proving profits the plaintiff shall be required to prove only receipts or revenues derived from the publication, sale or other disposition of an infringing work, or from any unauthorised performance of the work in which copyright subsists; and the defendant shall be required to prove every element of cost which he claims.” 10

The evidence for the defendant, and Exhibit 25 gave purchase prices paid by Twentieth Century Fox Film Corporation for the title of musical works. The claim of the plaintiff is against the defendants for use within Canada of the title and theme of the musical work in question, and I would allow the sum of \$350 as damages, and the sum of \$1742.70 being the amount of profits from the picture made by the defendants. As the plaintiff is only entitled to a one-half interest in the copyright, there should be judgment in favour of the plaintiff against the defendants for the sum of \$1046.35. 20

*In the
Supreme
Court of
Ontario
(Appellate
Division).*

No. 16.

Notice of Appeal.

No. 16.
Notice of
Appeal,
10th Dec-
ember, 1937.

Take notice that the Defendants appeal to the Court of Appeal for Ontario from the judgment pronounced by the Honourable Mr. Justice McEvoy on the 23rd day of November 1937 and asks that the said judgment may be reversed and that judgment should be entered dismissing the action with costs upon the following, amongst other grounds : 30

1. The judgment is against law and evidence and weight of evidence.
2. The learned Judge erred in finding that the Defendants' advertising was based, not on the play "The Gamble," but on the musical work, "The Man Who Broke the Bank at Monte Carlo."

3. The learned Judge erred in finding the title of the said musical work to be "original and distinctive" within the meaning of paragraph (v) of section 2 of the Copyright Act and Amending Acts.

4. The learned Judge should have held that the 1933 amendment of the Copyright Act, by which "work" is defined to include the title thereof, when such title is original and distinctive, abrogated the common law as to passing off so far as it concerns the titles of musical works and that following such amendment the only right in the title of a musical work is its inclusion in copyright protection when the title is original and distinctive. 40

5. The learned Judge should have held that such theatres, as had acquired the right of public performance in Canada of the said musical work by licenses issued by the Canadian Performing Right Society Limited, to which the Plaintiff had granted the right to issue such licenses, were entitled to perform the same in public and use the title thereof. The revenue received by the Defendant, Twentieth Century-Fox Corporation Limited, from theatres not holding licenses from Canadian Performing Right Society Limited was comparatively small and would not justify the award of damages which has been made.

10 6. The damages awarded are excessive having regard to the fact that the infringement, if any, of the Plaintiff's copyright was slight, merely taking the title. There should have been no award, in addition to damages, of the Defendants' profits because such an award is in the nature of punitive damages and should be given only when there has been some dishonest, breach of copyright. Further the Defendants' profits were attributable to a very small extent if any, to the use of the title in question.

20 7. The learned Judge, having found that, by reason of non-compliance with the provisions of the Imperial Copyright Act of 1882, the plaintiff had lost the right of public performance in Canada in the said musical work before the coming into force of the present Canadian Copyright Act on 1st January 1924, should have found that the Plaintiff had also lost copyright protection for the title of the said musical work in connection with any motion picture play or other public performance.

8. The learned Judge should have held that the taking of the title of a musical work to apply to a motion picture play was not an infringement of the Plaintiff's copyright in a musical work.

30 9. The learned Judge should have held that, even if the title of the said musical work is entitled to copyright protection, the taking of such title was not the taking of "any substantial part" of the copyright within the meaning of subsection (a) of section 3 of the Copyright Act.

Dated this 10th day of December 1937.

TILLEY THOMSON & PARMENTER,

80, King Street West, Toronto,

Solicitors for the Defendants.

To Messrs. LAWSON, TREBILCOCK, STRATTON & ELLIOTT,
Solicitors for the Plaintiff.

*In the
Supreme
Court of
Ontario
(Appellate
Division).*

—
No. 16.
Notice of
Appeal,
10th Dec-
ember, 1937
—continued.

*In the
Supreme
Court of
Ontario
(Appellate
Division).*

No. 17.

Defendants' Statement of Points of Law and of Fact, 19th April, 1938.

(Not printed.)

No. 17.

No. 18.

No. 18.

Factum of Plaintiff, 9th May, 1938.

(Not printed.)

No. 19.
Formal
Judgment,
13th June,
1938.

No. 19.

Formal Judgment of Court of Appeal.

IN THE SUPREME COURT OF ONTARIO.

Monday, the 13th day of June, 1938.

10

THE HONOURABLE MR. JUSTICE MIDDLETON; THE HONOURABLE MR. JUSTICE MASTEN; THE HONOURABLE MR. JUSTICE HENDERSON.

Between.

FRANCIS, DAY & HUNTER LIMITED - - - - - Plaintiff.

and

**TWENTIETH CENTURY-FOX CORPORATION LIMITED and
FAMOUS PLAYERS CANADIAN CORPORATION LIMITED - Defendants.**

1. Upon motion made unto this Court on the 11th and 12th days of May, 1938, by Counsel on behalf of the Defendants in the presence of Counsel for the Plaintiff, by way of appeal from the judgment pronounced herein 20 by The Honourable Mr. Justice J. A. McEvoy on the 23rd day of November, 1937, upon hearing read the pleadings, the evidence adduced at the trial and the said judgment, and upon hearing Counsel aforesaid, this Court was pleased to direct that the said motion stand over for judgment, and the same coming on this day for judgment,

2. This Court doth Order that the said appeal be and the same is hereby allowed.

3. And this Court doth further Order that the said judgment be and the same is hereby varied, and as varied be as follows :

“ 2. This Court doth Order and Adjudge that this action be 30 and the same is hereby dismissed with costs to be paid by the Plaintiff to the Defendants, forthwith after taxation thereof.”

4. And this Court doth further Order that the Plaintiff do pay to the Defendants their costs of this appeal forthwith after taxation thereof.

J. R. CADWELL,
Assistant Registrar S.C.O.

No. 20.

Reasons for Judgment of Court of Appeal, delivered by Middleton J.A. (concurring in by Masten and Henderson JJ.A.).

Delivered June 13th, 1938.

A. H. THOMSON, K.C., for the defendant appellant.

T. N. PHELAN, K.C., for the plaintiff respondent.

*In the
Supreme
Court of
Ontario
(Appellate
Division).*

No. 20.
Reasons for
Judgment
of Court of
Appeal
delivered by
Middleton
J.A. (con-
curring in
by Masten
and Hender-
son JJ.A.),
13th June,
1938.

MIDDLETON J.A. : An appeal by the defendants from the judgment pronounced on the 23rd day of November, 1937, by the late Mr. Justice McEvoy, whereby he awarded to the plaintiff damages in the sum of \$1,046.35 for the infringement of the plaintiff's half interest in an alleged copyright of the musical work entitled "The Man Who Broke the Bank at Monte Carlo," the infringement being the use of this title for a motion picture which was distributed in Canada by the defendants, The Twentieth Century Fox Corporation Limited, and exhibited at theatres owned or controlled by the defendant Famous Players Canadian Corporation Limited and other theatres. The words and music of the song were not used.

The plaintiff is the successor of a firm which had acquired the English copyright in the musical work in question. He had not in any way complied with the conditions of the Canadian Act of 1906. Under the English Act of 1911, the plaintiff obtained substituted rights in England. The English Act provided that substituted rights should be conferred in lieu of existing rights. These were more generous to the owner of the copyright, and it was therefore provided that the additional rights should belong to the owner of the work, notwithstanding any previous assignment of the copyright which had been given to him. Gilbert, the original composer and owner of the copyright, had died, and the copyright vested in his two surviving next-of-kin. One of these conveyed to the plaintiff; the other, being a lunatic, was unable to convey.

The plaintiff's contention is that having rights in the Dominion by virtue of the earlier English Act, which applies to England and to the Dominion, its rights were preserved by the terms of the Canadian legislation.

The Canadian Act was passed in 1921 but did not come into force until January, 1924. All material legislation then in force was repealed, and copyright in Canada from 1924 is entirely governed by Canadian legislation.

By virtue of Section 42 of the Act of 1921, copyrights subsisting in Canada immediately prior to the 1st of January, 1924, were converted into copyright under the new Act providing more liberal rights. Everything turns upon the interpretation of this section. It deals with all subsisting rights on the 1st of January, 1924. Does this mean rights subsisting by virtue of the Canadian Act of 1906 or does it include rights existing under the English legislation prior to 1911, which was in force in Canada, and, while repealed in England, remained in force in the Dominions until repealed by Dominion legislation?

In the
Supreme
Court of
Ontario
(Appellate
Division).

No. 20.
Reasons for
Judgment of
Court of
Appeal
delivered by
Middleton
J.A. (con-
curred in
by Masten
and Hender-
son JJ.A.),
13th June,
1938—con-
tinued.

The Courts of Ontario in the case of *Mansell v. The Star Printing and Publishing Company of Toronto, Limited*, 1937 A.C. 842, had construed the Act as preserving only rights subsisting in Canada by virtue of Dominion legislation. The Act was passed in 1921, but did not come into force until 1924. During the intervening period all rights existing by virtue of Imperial legislation might have been converted into rights existing by virtue of Dominion legislation by complying with the Act of 1906. It was Canadian rights alone that were preserved. All inchoate rights existing by virtue of Imperial legislation came to an end. This view was adopted by the Judicial Committee when it held that the Canadian Act plainly intended to confer 10 a new Canadian copyright in place of a previous Canadian copyright. The plaintiff then therefore failed.

It was suggested on argument that this case is distinguishable because English rights existed from the writing of the song in 1895. The date of the publication of the pictures in question in *Mansell v. The Star* does not appear in the report. I have referred to the record and it was there admitted that the pictures were published prior to the English Act of 1911. The exact date of publication does not appear to have been material.

The plaintiff therefore entirely fails for this reason.

I would like, however, to draw attention to another aspect of this case 20 which appears to be of importance. The Canadian Act was amended in 1931, 21-22 George V Chapter 8, by the addition of two paragraphs to supplement the original Act—paragraphs (u) and (v).

Paragraph (v) provides that "work" shall include the title thereof when such title is original and descriptive. (u) is so enlarged as to make it plain that it undoubtedly includes musical works.

Assuming, but not deciding, that this "work" falls within the provisions of the Statute and that its title is included in the copyright existing, and that the title might be regarded as "original and descriptive," the real "work" was this song set to music, consisting of three stanzas and a chorus. 30 It is said that the production took with the public—why, I am at a loss to say. Its name certainly became well known. Here the defendant did not undertake to use the song, music or words in any way. It simply affixed to a play as a moving picture accompanied by words, a title which was appropriate to that play, but having no relation whatever to the words of the song. The play is said to have been suggested by a book or novel and concerns itself with the love adventures of a successful gambler. He made his fortune at Monte Carlo and lost it again at the same place. He fell in love during these adventures, and ultimately found that love is of greater value than wealth. This had no relation to the song. There, a young man 40 desiring "to raise his winter's rent" went to Monte Carlo "and patronized the tables of the Monte Carlo hell," had luck, made money, broke the bank and then was "a mass of money, linen, silk and starch," paraded himself through the "Bois Boolong" and enjoyed hearing "the girls declare he must be a millionaire."

The owner of the copyright in the song suffered no wrong by what was done. "The idea," if any, of the song, its words and its music, were not

taken. I do not think the inclusion of the title in the copyright would give to the owner of the song and music such an ownership in the name as would prevent its use in a totally different type of "work" such as this moving picture.

Another point requiring serious consideration is whether the Act of 1931 which first conferred a copyright in the title of a "work" is retrospective. Does it apply to existing copyrights? It is admitted that prior to this Act no such right existed.

10 Then it was said that there was here a holding out and that there is some right of action for damages at common law. I cannot follow this reasoning. Certainly the moving picture was not represented as the copyright song. No one could be misled or defrauded by what was here done. There was no passing off of the defendants' work as the work of the plaintiff, *Dick v. Yeates*, 18 C.D. 76.

The appeal in my opinion must be allowed, and the action dismissed.

HENDERSON J.A. : I agree.

20 MASTEN J.A. : The case of *Mansell v. The Star Publishing Company*, 1937 A.V. 842, makes it plain that the respondent or his predecessors in title acquired no extension of rights under the Dominion Copyright Act of 1921 unless prior to January 1st 1924 Canadian Copyright had been acquired in the song in question.

The respondent has failed to convince me that prior to January 1st, 1924, it had acquired such Canadian Copyright.

But even if it had and if its title to copyright in Canada were valid, I am of opinion that the act of the defendant in producing the dramatic work in the pleadings mentioned, under the name of "The Man That Broke the Bank at Monte Carlo" is not an infringement of the plaintiff's copyright.

30 Assuming that the respondent has established a title its copyright consists in an exclusive right to print, publish and sell its song and the exclusive right to its performance in public.

If the appellant had published a different song, under the title in question, or had given an oral performance of a different song to the public the Court might well have found infringement, but to say that the movie picture produced by the appellant is an infringement of the respondents' performing rights in a song which is not sung by appellant seems to me an impossibility.

I agree that the appeal should be allowed and the action dismissed both with costs.

*In the
Supreme
Court of
Ontario
(Appellate
Division).*

No. 20.
Reasons for
Judgment of
Court of
Appeal
delivered by
Middleton
J.A. (con-
curred in
by Masten
and Hender-
son J.J.A.),
13th June,
1938—con-
tinued.

*In the
Privy
Council.*

No. 21.
Order in
Council
granting
special
leave to
appeal to
His Majesty
in Council,
4th Novem-
ber, 1938.

No. 21.

Order in Council granting special leave to appeal to His Majesty in Council.

AT THE COURT AT BUCKINGHAM PALACE

The 4th day of November, 1938.

PRESENT

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT	MR. SECRETARY MACDONALD
LORD PRIVY SEAL	SIR FAIRFAX LUXMOORE
VISCOUNT FINLAY	SIR RAYNER GODDARD
LORD ATKIN	SIR HERBERT DU PARCQ

10

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 24th day of October 1938 in the words following, viz. :—

“ 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 Francis, Day & Hunter Limited in the matter of an Appeal from the Court of Appeal for Ontario between the Petitioners Appellants and Twentieth Century Fox Corporation Limited and Famous Players Canadian Corporation Limited Respondents setting forth (amongst 20 other matters) that by Writ dated the 27th February 1936 the Petitioners commenced an Action against the Respondents for (1) a declaration that the Petitioners were the owners of the copyright in a musical work entitled ‘ The Man Who Broke the Bank at Monte Carlo ’ including the sole right to perform the same in public throughout the Dominion of Canada (2) a declaration that the Respondents had infringed the Petitioners' copyright in the said musical work (3) damages and such parts of the profits that the Respondents had made from such infringement as the Honourable Court might decide to be just and proper and (4) damages for 30 passing off: that the Petitioners and their predecessors in title Francis, Day & Hunter relying upon the provisions of the Imperial Copyright Act 1842 had not (i) printed upon the title page of any published copy of the said musical work a notice to the effect that the right of public representation or performance was reserved in accordance with the provisions of the Copyright (Musical Compositions) Act 1882; (ii) complied with the provisions of Sections 6 and 11 of the Canadian Copyright Act 1906 relating to the printing and publishing of the said work and to the deposit of copies thereof at the Department of Agriculture: that the Respondents Twentieth 40 Century Fox Corporation Limited had leased to the Respondents

Famous Players Canadian Corporation Limited a film entitled 'The Man Who Broke the Bank at Monte Carlo' for the purposes of public performance throughout the Dominion of Canada and that the Respondents Famous Players Canadian Corporation Limited had publicly performed the film for profit at various theatres in the Dominion of Canada without the consent of the Petitioners: that in connection with the performance of the film the Respondents had printed and/or imported into the Dominion of Canada published and publicly exhibited advertisements of the film on which appeared the words 'The Man Who Broke the Bank at Monte Carlo' without the consent of the Petitioners: that save for the words 'The Man Who Broke the Bank at Monte Carlo' neither the film nor the advertisements contained any of the words or music of the musical work: that on the 23rd November 1937 the Supreme Court delivered judgment holding (i) that the title of the said musical work, 'The Man Who Broke the Bank at Monte Carlo' was original and distinctive and came within the definition of 'work' contained in Section 2 of the Canadian Copyright Act 1921 as amended by Section 2 (1) of the Canadian Act of 1931; (ii) that the performing right in the said musical work had determined owing to the failure of the Petitioners to comply with the provisions of the Copyright (Musical Compositions) Act 1882; (iii) that the said film and the said advertisements had infringed the copyright in the said title; (iv) that on the issue of passing off the said title had become world wide known to the public and had a public reputation in the Dominion of Canada and that the Respondents had deliberately used the same to the injury of the Petitioners; (v) that the Petitioners were entitled as damages and profits to the sum of \$1,045.35: that the Respondents appealed to the Court of Appeal for Ontario: that on the 13th June 1938 the Court of Appeal delivered judgment reversing the Order of the Supreme Court in which they held:—(i) that there was no copyright in Canada in a work published prior to the date at which the Canadian Copyright Act 1921 came into force viz. 1st January 1924 unless the provisions of the Canadian Copyright Act 1906 had been complied with; (ii) that any copyright in the said title would not be infringed by the said film; (iii) that any copyright in the said title would not be infringed by the use of the same title for a totally different type of work; (iv) that there was no passing off of the said film as the work of the Petitioners; (v) that the Appeal should be allowed and the Action dismissed: that this case raises the following questions of public importance extending beyond the interests of the present parties and affecting the rights of English owners of copyright and performing rights on the one hand and Canadian publishers and performers of musical and other copyright works on the other in respect of practically all English literary dramatic and musical works published prior to the 1st

*In the
Privy
Council.*

No. 21.
Order in
Council
granting
special
leave to
appeal to
His Majesty
in Council,
4th Novem-
ber, 1938—
continued.

10

20

30

40

*In the
Privy
Council.*

No. 21.
Order in
Council
granting
special
leave to
appeal to
His Majesty
in Council,
4th Novem-
ber, 1938—
continued.

January 1924 :—(i) Whether the Canadian Copyright Act of 1906 abrogated the Imperial Copyright Act of 1842 and rendered it obligatory for English authors and composers to comply with the provisions of the Copyright Act of 1906; (ii) Whether the provisions of the Copyright (Musical Compositions) Act of 1882 are limited to the United Kingdom and that failure to insert the requisite notice only defeats the performing right in England or whether failure to insert the requisite notice defeats the performing right throughout all countries in which copyright subsists; (iii) Whether the Canadian copyright in a title of a work can only be infringed by the use of such title in connection with a similar work : And humbly praying Your Majesty in Council to grant special leave to appeal from the Judgment of the Court of Appeal dated the 13th June 1938 or for such other Order as to Your Majesty in Council may seem fit :

“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 that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Court of Appeal for Ontario dated the 13th day of June 1938 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs :

“And Their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioners of the usual fees for the same.”

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.

Whereof the Lieutenant-Governor administering the Government of the Province of Ontario for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

RUPERT B. HOWORTH.

E X H I B I T S .

Exhibits.

21.—Photostatic copies "The Times" London Newspaper.

Extract from The Times, Monday, March 2, 1891.

Monte Carlo,
Nice, March 1.

21.
Photostatic
copies "The
Times"
London
Newspaper,
2nd March,
1891 to the
11th Janu-
ary, 1892.

An exciting scene was witnessed by the occupants of the gambling rooms at Monte Carlo yesterday. A visitor from London had extraordinary luck and won in succession 14 maximum stakes of 12,000f., in all nearly £7,000, at one of the trente-et-quarante tables. He thus accomplished the
10 feat known as breaking the bank, and when he had cleared the table and the croupiers were obliged to seek the cashier for more funds to pay the player the excitement was unbounded, the people round the table cheering heartily at this signal defeat of the enemy.—Our Correspondent.

Extract from The Times, Monday, March 9, 1891.

Gambling at Monte Carlo.

Nice, March 8.

A number of French papers which maintain a very friendly attitude towards the gambling society of Monte Carlo readily published translations of the telegram sent you a week ago, announcing the fact that an Englishman
20 had succeeded in breaking the bank, and the temporary good fortune of this gentleman resulted in some very high play. It is, therefore, well to give the sequel. The visitor from London has in the interim lost not only the amount of his 14 maximum stakes, but over £15,000 in addition.

A young English earl who, on Monday last, almost accomplished the feat of breaking another trente-et-quarante table by winning 165,000f. has since lost that and several thousand pounds also, and an Italian duke has left over 1,000,000f. during the past week or two in the coffers of the bank. This is but a repetition of the usual experience of gamblers at Monte Carlo. Play long enough and the bank is sure to get the best of the
30 game.—Our Correspondent.

Extract from The Times, Friday, March 13, 1891.

Gambling at Monte Carlo.

Nice, March 12.

The heavy gambling continues at Monte Carlo. The serious losses referred to in my last telegram have, as usual, simply led to renewed efforts on the part of the players to recoup themselves. To-day the latter certainly had their turn, and their extraordinary luck this afternoon at one of the

Exhibits.

21.

Photostatic
copies "The
Times"
London
Newspaper,
2nd March,
1891 to
11th Janu-
ary, 1892—
continued.

trente-et-quarante tables created another exciting scene. The feat of clearing the table of all its capital, or what is popularly, though very erroneously, termed "breaking the bank," was accomplished three times in succession. The Englishman already referred to won £4,000 with a successful series of 12,000f. stakes. Three or four other players putting down the maximum carried off the fresh capital of £3,000, and a third supply of a similar amount by the treasurer was also won by the players. Naturally a large audience collected round the table, and there were many manifestations of satisfaction.

The excitement of winning, however, resulted in the death a day or two ago of one player, a German doctor, who had raked in a great pile of gold and was gathering it up before leaving the table, when he was seized by a fit of apoplexy and expired immediately.—Our Correspondent. 10

Extract from The Times, Monday, March 16, 1891.

Gambling at Monte Carlo.

Monte Carlo, March 15.

For the first time for many years, the directors of the Casino at Monte Carlo are getting alarmed. The past week has been one of the most disastrous ever experienced by the bank, and to-day the heavy gamblers succeeded in carrying away over £20,000 more. This extraordinary and almost unprecedented amount of good luck on the part of the players is naturally causing much excitement in the rooms and crowding them to excess.—Our Correspondent. 20

Extract from The Times, Thursday, March 19, 1891.

Gambling at Monte Carlo.

Nice, March 18.

Great interest has been displayed in the accounts you have published of the gambling at Monte Carlo, and the Casino people and their friends have not failed to use these descriptions of the phenomenal good luck of some of the players for the purpose of making known the monetary advantage gained over the bank. The desired results are following this manœuvre, the rooms are kept filled, the interest and hopes of players are sustained. The Casino Company draws the greater proportion of its enormous profits from the crowds of smaller players; the rush to imitate in their little way the richer men who stake the maximum, and as their capital is limited the result is inevitable. A group came to grief to-day by following in this way the play of one of the recent large winners, for he had very bad luck, and almost all those round the table lost, too. 30

It occurred to me that it would be both interesting and useful to others to record the actual experience of the heavy gamblers whose extraordinary play has been the cause of so much excitement. The result of my conversation with them is that, although they have succeeded in breaking the bank 40

a dozen times in a week, they are by no means great winners upon the whole. In counting up the sums taken from the tables it is necessary to reckon the amount of previous losses. All these heroes of the hour at trente-et-quarante state, with one exception, that at the end of it all they are losers. The lucky one is a Greek, who, after having obtained an advantage over the bank of £4,000, had the good sense to leave Monte Carlo for his native country with the money in his pocket.

10 But take the experiences of the Englishman already referred, to they prove conclusively the utter impossibility of getting the better of these tables even with extraordinary good luck, no lack of courage, and plenty of capital. For 12 years he has been a regular player at Monte Carlo, he is an experienced gambler with a thorough knowledge of the game, and yet he has never left less than £10,000 per annum in the coffers of the bank. Sometimes his losses have reached £15,000 sometimes £20,000. Ten days ago he was the latter amount out of pocket upon this season's play, but the series of maximum stakes won last week have enabled him to recover it and about £1,000 in addition. Altogether, however, his losses at Monte Carlo during the past ten years amount to £125,000. He can therefore claim, as he remarked to me to-day, to have given the game a fair trial.

20 He intends to leave on Saturday and never to return. The others agree that even with good luck it is impossible to make money at Monte Carlo, except it be by appropriating the stakes of other people—a practice which is common enough, especially at the roulette tables. The odds against the players are too great, they are in reality much more than the one or two per cent. generally supposed, and the advice which these players give to visitors is, "If you are not prepared to lose, do not play."

30 The Englishman wishes me to make a protest on behalf of these heavy gamblers against the conduct of the managers of the Casino, who, he says, are annoyed, not so much at their absolute losses, as because the players have had the good fortune to get back something like two millions of francs which the bank had already counted upon as profits. He says they have been treated unfairly; upon two or three occasions there have been misdeals by the croupier, either intentionally or through nervousness, when large sums of money have been upon the table, and, further, that they have been watched and tracked like pickpockets by the police of the Casino. It has always been understood that everything is fair and above board, and that if gambling is authorized there is no cheating; but the allegations, made by these players do not tend to sustain the confidence hitherto placed in the bank at Monte Carlo by its patrons.—Our Correspondent.

40

Extract from The Times, Monday, March 23, 1891.

Monte Carlo.

Nice, March 22.

The fact of the mysterious disappearance of a German gentleman from Monte Carlo has just been made known. This morning the manager of the Hotel Metropole received a letter from Mr. Carl Grunwald, a leading

Exhibits.

21.

Photostatic
copies "The
Times"
London
Newspaper,
2nd March,
1891 to
11th Janu-
ary, 1892—
continued.

Exhibits.
 ———
 21.
 Photostatic
 copies "The
 Times"
 London
 Newspaper,
 2nd March
 1891 to
 11th Janu-
 ary, 1892—
continued.

citizen of Essen, in Prussia, stating that his brother, Mr. Albert Grunwald, had not been heard of since last October. He left in that month for Monte Carlo, intending to stay at the Hotel Metropole, but, the hotel not having opened at that time, he went to some other establishment. Mr. Carl Grunwald last heard from his brother at the end of October, the letter bearing the Monte Carlo postmark. He has written several letters to the Monaco authorities, to the police, and to the directors of the Casino without getting any satisfactory reply, and he now seeks private aid in tracing the missing man.

A final word upon the subject of gambling at Monte Carlo. All the heavy players have now left, but the effect of the recent doings at the Casino is still apparent there. The reports of the large sums of money won and of the breaking of the bank seems to have spread to every corner of Europe, and, in consequence, the rooms are much more crowded than they usually are at this season of the year, and more tables are at work. There can be no doubt that numbers of people have come to Monte Carlo within the last fortnight with the intention of imitating the exploits of these players in a smaller way. I have already pointed out the folly of players building up hopes of making money at Monte Carlo. One fact alone is sufficient to dispel all illusions upon this point. I have it from an official source that to-day, after all this excitement and the large sums of money paid out during the past two or three weeks, the receipts from the tables for the current half-year show thus far an excess of £80,000 over the same period last year. Up to the middle of January the receipts showed a falling off; since that time the profits have been above the average.—Our Correspondent.

Extract from The Times, Saturday, August 1, 1891.

Gambling at Monte Carlo.

Monte Carlo, July 31.

An Englishman named Wells, who is staying here, has just had a run of luck so extraordinary as to be the chief topic of the hour, not only with those who frequent the Casino, but among the residents of Monte Carlo generally. For the last three days this gentleman has played roulette incessantly, and during that time has won no less than £20,000. Each day at noon, the hour at which play begins, he was among the first to take his place at the roulette table, and there he remained, losing occasionally, but for the most part winning stake after stake until the closing of the establishment at 11 o'clock.

So engrossed was this fortunate gambler in the conduct of his operations that never once did he stir from his seat or partake of food during the 11 hours of play. He won several stakes of 26,000f., and twice consecutively backed the number one "en plein" successfully for 8,000f., the maximum amount allowed. He also frequently backed with similar good fortune the even chances—red, odd and even, "marque," and "passe"—and more than once won all these stakes at the same time. It is stated that he has

forwarded all his winnings to England so as to place himself beyond the temptation of losing them by further operations at the gaming tables.—Reuter's Special Service.

Exhibits.

21.

Photostatic
copies "The
Times"
London
Newspaper,
2nd March,
1891 to
11th Janu-
ary, 1892—
continued.

Extract from The Times, Monday, August 3, 1891.

Gambling at Monte Carlo.

Monte Carlo, Aug. 2.

Mr. Wells, the Englishman who had so extraordinary a run of luck last week at the gaming tables here, winning over £20,000 at roulette, continues to be favoured by the same good fortune. Finding the luck turning against
10 him, he had the prudence to quit the table at which he had been assiduously playing day after day from the opening of the Casino till its close. Before leaving the building, however, he risked a few stakes at another game, trente-et-quarante, and, winning each, continued to play till he had further increased his gains by the sum of 160,000f. or close upon £6,400. Mr. Wells at trente-et-quarante follows the same system that proved so successful in his case at roulette—the famous "coup des trois"—that is to say, following the luck till he has won thrice in succession, and then withdrawing the accumulated stake. People here and at Nice are talking of nothing but his marvellous success.—Reuter's Special Service.

20

Extract from The Times, Monday, January 11, 1892.

Gambling at Monte Carlo.

Nice, Jan. 10.

The return of Mr. Hill Wells to the gambling rooms of Monte Carlo is scarcely worthy of notice as an event of extraordinary import, because his case is simply the repetition of that of thousands of others who have had the good fortune to win large sums and then come back again to make a little more. This is only human nature, and particularly is it the nature of those under the insatiable influence of the gambling passion. He who wins wants more; he who loses is desperately anxious to get his money back again; but
30 many people believe Mr. Wells to be a myth and the story of his winnings pure fiction—an invention, in fact, for the purpose of promoting the interests of the Casino. Perhaps when they see the reverse of the picture they will be convinced that we are not all subventioned by the bank.

Mr. Hill Wells is not a very fascinating personage, but he is a bona fide player for all that, and one doing his best to beat the bank. He came to Monte Carlo in August last and again in December, and certainly won the large sums as telegraphed at the time. Now he has been foolish enough to tempt his good luck, and Dame Fortune has rebelled. Mr. Wells is another
40 example going to prove the truth of Pere Blanc's bon mot, that he who breaks the bank to-day will most surely return to-morrow and let the bank break him. For four days he has been doing his utmost to repeat his former feats; but notwithstanding his vaunted system and his coolness and

Exhibits.
 ———
 21.
 Photostatic
 copies "The
 Times"
 London
 Newspaper,
 2nd March,
 1891 to
 11th Janu-
 ary, 1892—
continued.

courage, the tables have beaten him continuously. The system, as I explained in a former telegram, is simply the very common plan of following up the coup; but, as Mr. Wells has now discovered, this is of no avail when the cards are running intermittently, or, in other words, when the luck is against him.

The past week has been one of serious losses, not only for Mr. Wells, but for scores of others, and quite a number of English people have been obliged to leave Monte Carlo abruptly in consequence. No more convincing evidence could be given that the bank is, as always, getting the best of it than the fact that the 500f. shares in the gambling concern which at the half-yearly meeting in October were quoted at 2,000f. cannot now be bought for less than 2,250f. Even at that price they will yield interest at the rate of 8 per cent. All the rooms are now in use, and this week another table has been added, making eight for roulette and three for trente-et-quarante. They are all crowded, though there is a remarkable falling-off in the social standing of the Englishmen who frequent the rooms, which seems to be declining year by year.—Our Correspondent.

5.
 Certificate of
 Registration
 of Copy-
 right by
 Francis,
 Day &
 Hunter,
 18th March,
 1893.

5.—Certificate of Registration of Copyright by Francis Day & Hunter.

PUBLIC RECORD OFFICE COPY.

(Pursuant to Statute 1 & 2 Vict. c. 94.)

Copyright Records Registry Books Vol. 37 Part 1.
 Books Literary. Original Entries 1892 to 1893 Page 231.

No.	Time of making the entry.	Title of Book.	Name of Publisher and Place of Publication.	Name and place of abode of the proprietor of the Copyright.	Date of first publication.
8309	Mar. 18, 1893	The Man that Broke the Bank at Monte Carlo Written and composed by Fred Gilbert. Sung by Charles Coborn.	Francis, Day & Hunter 195 Oxford Street London, W.	Francis, Day & Hunter 195 Oxford Street London, W.	22nd Apr. 1892.

I certify that the foregoing is a true and authentic copy.

" R. L. ATKINSON "

Assistant Keeper of the Public Records
 19 November 1935.

Stamps
 2s. 6d.

18.—(a) Assignment, Zittel to Bernstein.

Exhibits.

C. F. ZITTEL TO LOUIS BERNSTEIN.

18.

(a) Assign-
ment,
Zittel to
Bernstein,
6th Septem-
ber, 1923.

ASSIGNMENT

of one-half interest in copyright in and to motion picture photoplay entitled
“Yes, We Have No Bananas.”
September 6th, 1923.

House, Grossman & Vorhaus
Times Building,

Broadway & 42nd Street
New York.

10

In consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, to me in hand paid by LOUIS BERNSTEIN, of No. 1567 Broadway, Borough of Manhattan, City of New York, the receipt whereof is hereby acknowledged, I, the undersigned, C. F. ZITTEL, of No. 300 Central Park West, Borough of Manhattan, City of New York, being the owner of the copyright in and of a motion picture photoplay entitled “Yes, We Have No Bananas,” and being the author thereof, as the term “author” is defined in Section 62 of the Copyright Law of the United States, the scenario thereof having been written by Blanche Merrill;

20 and

Having made registration of my claim to said copyright for the term of twenty-eight (28) years in the Copyright office of the United States of America on August 14th, 1923, on which day the title and description of the said motion picture photoplay and eighty-three prints thereof were received at the said Copyright Office, and entry of said claim of copyright made under the designation Class L, XXc., No. 19305;

30 Do hereby assign, transfer and set over unto said LOUIS BERNSTEIN, his legal representatives and assigns, an undivided one-half ($\frac{1}{2}$) of the ownership of the said motion picture photoplay and of the copyright therein and thereto; also one-half ($\frac{1}{2}$) of any renewal or extension of the said copyright; also one-half ($\frac{1}{2}$) of any copyright in and to the said motion picture photoplay heretofore or hereafter obtained in any foreign country, and every renewal and extension of each of them.

In witness whereof, I have hereunto set my hand and seal this 6th day of September, 1923.

“C. F. ZITTEL.” (L.S.)

Witness: “S. S. Sanguinette”

“Leo P. J. Cyer.”

Exhibits.

A—COPYRIGHT OFFICE OF THE UNITED STATES OF AMERICA.

Library of Congress—Washington.

18.

(a) Assignment,
Zittel to
Bernstein,
6th September, 1923—
continued.

The foregoing assignment of copyright, dated September 6, 1923, and received for record in the Copyright Office on September 25, 1923, has been recorded in the Copyright Office, book 112, page 266, in conformity with the laws of the United States respecting copyrights.

In witness whereof, the seal of this Office has been hereto affixed this twenty-sixth day of September, 1923.

“ WM. L. BROWN ”

Assistant Register of Copyrights. 10

(Seal)

18.

(b) Assignment,
Bernstein to
Shapiro
Bernstein &
Company
Inc.,
3rd October, 1923.

18.—(b) Assignment, Bernstein to Shapiro Bernstein & Company Inc.

The following is an endorsement on the back :

New York, October 3rd, 1923.

For and in consideration of the sum of One Dollar to me in hand paid, receipt whereof is hereby acknowledged, I hereby transfer, set over and assign the enclosed assignment of the one half interest in and to the copyright of the motion picture photoplay “ Yes ! We Have No Bananas ” to Shapiro, Bernstein & Co. Inc., their successors and assigns.

“ LOUIS BERNSTEIN.” 20

Witness : “ Kathryn A. Burke.”

13.

Copy letter,
Shapiro
Bernstein &
Company
Inc. to
Twentieth
Century
Fox Film
Corporation,
12th July,
1935.

13.—Copy letter, Shapiro Bernstein & Company Inc. to Twentieth Century Fox Film Corporation.

July 12th, 1935.

Twentieth Century-Fox Film Corp.,
Hollywood, Calif.

Gentlemen :

We notice that amongst the first eight pictures which your company is to produce, you have one entitled “ The Man Who Broke the Bank at Monte Carlo.” Please take notice that while the song, “ The Man Who Broke the Bank at Monte Carlo ” is in the Public Domain in the United States, it is a valid copyright in all of Europe and in Canada.

Through our agreement with Messrs. Francis, Day & Hunter Ltd., the owners of the copyright, we have the sole and exclusive right to grant world licenses for this song and, of course, the use of this song as a title of a picture, as American Agents.

This letter is to advise you as to our rights in the matter, and also those of Messrs. Francis, Day & Hunter Ltd.

Sincerely yours,

SHAPIRO, BERNSTEIN & Co., INC. 40

ES : sb

By :

26.—Copy letter, John G. Paine to Edwin P. Kilroe.

MUSIC PUBLISHERS PROTECTIVE ASSOCIATION
 Paramount Building, 1501 Broadway
 New York City.

October 8th, 1935.

John G. Paine
 Chairman of the Board.
 Mr. Edwin P. Kilroe
 Fox Film Corporation
 10 444 West 56th Street
 New York City.

Exhibits.
 26.
 Copy letter,
 John G.
 Paine to
 Edwin P.
 Kilroe,
 8th Octo-
 ber, 1935.

Dear Mr. Kilroe :

I am advised by the firm of Shapiro Bernstein & Company that 20th Century Pictures are making a picture called, "The Man Who Broke the Bank at Monte Carlo."

This is the exact title of a musical composition that has for a great many years enjoyed an enormous popularity. Undoubtedly 20th Century Pictures have chosen the title because of this popularity and because of the appeal which the wide exploitation of the song has given to the title.

20 While it is true that the composition is not a copyright in the United States, it is a valid copyright elsewhere throughout the world including the Dominion of Canada. The copyright is controlled by Francis, Day & Hunter, whose American representative in connection with this particular musical composition is Shapiro Bernstein & Company.

30 They have approached me on this matter and have asked me to file with you a protest against the use of this title in connection with the picture, and to advise you that it is their hope that some amicable arrangement can be made concerning the use of this property rather than to force them to take any unfriendly steps to protect what they conceive to be their rights.

Very truly yours,

JOHN G. PAINE

Agent and Trustee.

Copy Shapiro Bernstein & Co. Inc.

Exhibits.

23.—Synopsis of Picture, "The Man Who Broke the Bank at Monte Carlo."

23.
Synopsis of
Picture
"The Man
Who Broke
the Bank at
Monte
Carlo,"
9th Decem-
ber, 1935.

Marjorie Braymer

December 9, 1935.

"THE MAN WHO BROKE THE BANK AT MONTE CARLO."

Synopsis of Picture :

Paul Gallard (Ronald Colman) is an exiled Russian prince working as a taxicab driver in Paris. The debonair Paul is liked and trusted by all the employees of the Cafe Russe in Paris, a restaurant staffed by Russian expatriates like himself. These friends pool their slender resources, present him with their savings and send him to Monte Carlo to gamble with the hope of skyrocketing their money and making them all rich. 10

Wonderful luck attends Paul at the baccarat table. Without batting an eyelash he runs a handful of francs into the millions. The bank is broken. The Casino directorate congratulates him and closes the play for the night. With the empty suitcase which he provided for himself now stuffed with currency, Paul prepares to return to Paris.

But the Casino management is angered when Paul publicly announces that he owes his success to nothing but fool's luck, and that anyone who tempts fate as he did is a sucker pure and simple.

Something, the management figures, must be done to lure him back to the tables. The tone of his comments and interviews is damaging their reputation. They try one trap after another. Four-leaf clovers and horseshoes fall at his feet wherever he moves. Hunchbacks, symbols of extraordinary luck, cross his path. But Paul is adamant. He is interested in nothing but the journey back to his friends . . . until, on the Paris express, he meets beautiful Helen Berkeley (Joan Bennett), a vaudeville singer. Paul discovers that she is en route to Switzerland. Instantly infatuated, Paul reaches Paris and distributes his winnings among his delighted friends. Then he leaves for a real vacation in Switzerland. His faithful valet, Ivan, goes with him. They are living in princely style. 20

The one cloud in the sky is the presence of a strange man with Helen. It evaporates when Paul finds that this man is Helen's brother, and not her husband, as he first feared. At Interlaken Paul's efforts to make Helen's acquaintance are persistent. She ignores him for a time. Then she is unwillingly responsive to his attentions . . . and at last they are friends.

Helen's wistfulness, he finally learns, is due to the fact that she is engaged to marry an elderly millionaire whom she does not love. This is because her brother is a spendthrift who is deeply in debt. She says that she can save him from disgrace only by marrying money. 40

But it is not long before she admits that she loves Paul when he confesses his own love for her. No, she cannot marry him; but she would

love nothing better than a romantic week with him at . . . say, Monte Carlo!

So many people have tried to entice him back to Monte Carlo that Paul is hardly suspicious of her motives. His valet Ivan hints that Helen might be a lovely lure in the employ of the Casino management. Paul ridicules the notion

No sooner have they completed plans for their romantic week together than Helen mysteriously disappears. Paul learns from her brother that she has run off to Monte Carlo. Still trusting her, Paul follows her there and determines to tempt fate with one more fling at the tables. He prays for success so that he can offer marriage to a rich man and save her from her unattractive old millionaire.

The play opens suspiciously. The directorate keeps tab on his operations and when the cards fall in Paul's favour, there is mad fear that he will break the bank again. But, dizzied with success, Paul stakes all on a single play—and loses. Lady Luck has turned her back on him, and he is cleaned out.

Before leaving the Casino he recognises Helen in the office of the directorate. His unspoken suspicion is confirmed. She is their hireling, and he has allowed himself to be duped, after all.

Jaunty as ever, he bids her and the directorate farewell, and starts back for Paris . . . and the wheel of his taxi once more.

But he misses a scene that might have renewed his hopes. When the Casino management presents Helen with a check for her services, she tears it up in shame and grief. She believes she has lost her beloved Paul for ever. Especially is she convinced of this when they run into each other in the French capital one night. Paul is civil but very cool to her. She is singing at a cafe where she is being featured. To salve his injured feelings Paul has dressed in his frayed best. He stays at the cafe long enough to see Helen and convey his disillusion and indifference to her with a few unhappy words.

But Helen runs after him as he leaves, to beg his forgiveness. She finds him in the driver's seat of his cab. The truth dawns on her. Pleading that she has never stopped loving him, she convinces Paul that she regrets her duplicity. As he takes her in his arms, she promises never to abandon or mislead him again.

That night a banquet is held at the Cafe Russe. Paul and his fiancee are the guests of honor. Time swings backward for the evening as the exiled prince and his princess-to-be join in old-time revels with their expatriated Russian friends.

Exhibits.

23.

Synopsis of
Picture
"The Man
Who Broke
the Bank at
Monte
Carlo,"
9th Decem-
ber, 1935—
continued.

Exhibits. 11.—(a) Copy letter, Messrs. Lawson, Trebilcock, Stratton & Elliott to Fox Film Corporation Limited.

11.

(a) Copy letter, Messrs. Lawson, Trebilcock, Stratton & Elliott to Fox Film Corporation Limited, 16th January, 1936.

January 16th 1936.

Messrs. Fox Film Corporation Limited,
110 Bond Street,
Toronto.

Dear Sirs :—

We are Canadian Solicitors for Messrs. Francis, Day & Hunter Limited of London, England, who are the owners and holders of the exclusive copyright, including performing rights, in the song "The Man That Broke the Bank at Monte Carlo." Our clients allege that you are distributing in Canada a moving picture made by Twentieth Century Fox Film Corporation of America captioned "The Man That Broke the Bank at Monte Carlo," which is an infringement of our clients' copyright and performing rights. We are informed that the picture has already been shown in certain of the the smaller centres in Canada. 10

We hereby notify you that it is our intention to institute proceedings on behalf of our clients for damages for infringement of their rights and in the event of any further attempt being made to exhibit the picture, to take such appropriate action as may be deemed advisable. 20

We remain,

Yours very truly,

LAWSON, TREBILCOCK, STRATTON & ELLIOTT.

Per :

JEL/HB

11.—(b) Letter, Twentieth Century Fox Corporation Limited per J. P. O’Loughlin to Exhibits.
Mr. J. Earl Lawson, K.C.

TWENTIETH CENTURY-FOX CORPORATION LIMITED.
110 Bond Street
Toronto, Ontario.
January the Seventeenth
1936

11.
(b) Letter,
Twentieth
Century Fox
Corporation
Limited per
J. P.
O’Loughlin
to Mr. J.
Earl
Lawson,,
K.C.,
17th Janu-
ary, 1936.

Mr. J. Earl Lawson, K.C.,
Lawson, Trebilcock, Stratton & Elliott,
10 Sterling Tower,
Toronto, Ont.

Dear Mr. Lawson :

I have your letter of the 16th instant claiming an infringement of your clients’ rights by our releasing in Canada the production entitled “ The Man Who Broke the Bank at Monte Carlo.”

I have referred this matter to our Legal Department in New York, and as soon as I receive their reply I will advise you further.

With very kind regards, I am,

Very truly yours,
“ J. P. O’LOGHLIN.”

20

12.—Copy letter, Messrs. Lawson, Trebilcock, Stratton & Elliott to Famous Players Canadian Corporation Limited.

January 16th, 1936.

Messrs. Famous Players Canadian Corp. Ltd.,
Royal Bank Building,
Toronto.

Dear Sirs :—

We are Canadian Solicitors for Messrs. Francis, Day & Hunter Limited of London, England, who are the owners of copyright, including performing rights, in a song captioned “ The Man That Broke the Bank at Monte Carlo.” We are informed that Fox Film Corporation Limited are endeavouring to distribute in Canada a motion picture called “ The Man That Broke the Bank at Monte Carlo,” the exhibition of which is an infringement of our clients’ copyright and performing rights. We are further informed that it is contemplated that such picture shall be exhibited at some of the theatres operated and controlled by you.

We hereby give you notice of our clients’ claim to infringement of copyright in respect of the picture and in the event of it being exhibited at any of your theatres we shall take appropriate action to protect our clients’ rights in the circumstances.

40

We remain,
Yours very truly,
LAWSON, TREBILCOCK, STRATTON & ELLIOTT.
Per :

12.
Copy
letter,
Messrs.
Lawson,
Trebilcock,
Stratton &
Elliott to
Famous
Players
Canadian
Corporation
Limited,
16th Janu-
ary, 1936.

JEL/HB

Exhibits.

6.—Assignment, Francis, Day & Hunter to Francis, Day & Hunter, Ltd.

6.
Assignment,
Francis,
Day &
Hunter to
Francis,
Day &
Hunter,
Ltd.,
6th March,
1936.

New York, N.Y., U.S.A.
March 6, 1936.

For and in consideration of the sum of One Pound, to us in hand paid, receipt whereof is hereby acknowledged, we hereby transfer, set over and assign unto Francis, Day & Hunter, Ltd., for all countries of the world, all our right, title and interest, including the copyright thereof, in and to the musical composition entitled :

“ The Man Who Broke the Bank at Monte Carlo ”

by Fred Gilbert, of which song we are the original publishers and owners 10
of the copyright. This assignment is executed confirmatory of a previously
executed and delivered assignment dated April 8th, 1926.

FRANCIS, DAY & HUNTER

By “ Frederick Day.”

Witness : “ Elliott Shapiro.”

RULES AND FORMS. THE COPYRIGHT ACT, 1921, AS AMENDED BY THE
COPYRIGHT AMENDMENTS ACT, 1923, DOMINION OF CANADA.
ASSIGNMENT OF CANADIAN COPYRIGHT.

FORMS FOR USE OF SUBSCRIBING WITNESSES.

Where the assignor is a partnership.

I, Elliott Shapiro, residing at New York City, in the City of New York,
State of New York, United States of America, am well acquainted with the
person who executed the annexed assignment, know him to be a partner
in the firm in whose behalf the same is executed, and saw him execute the
same on behalf of the said partnership, and that the signature purporting
to be his signature is in his handwriting.

ELLIOTT SHAPIRO,
Subscribing witness.

State of New York
County of New York
United States of America.

Before me, Thomas J. Hughes, a notary in and for the State and County
above named, on this day personally appeared Elliott Shapiro, known to me,
and known to me to be the person who executed the foregoing instrument,
and first being duly sworn deposes and says :

That he is the subscribing witness to the annexed assignment; that he is well acquainted with the person executing the assignment, and knows the said person to be a partner of the firm in whose behalf the same is executed, and saw the said person execute the same, and that the signature purporting to be his signature is in his handwriting.

Further deponent sayeth not.

Subscribed and sworn to before me this 6th day of March, 1936.

“ Thomas J, Hughes ” Notary Public
 Commisser of Deeds.

Exhibits.
 ———
 6.
 Assignment,
 Francis,
 Day &
 Hunter to
 Francis,
 Day &
 Hunter,
 Ltd.,
 6th March,
 1936—*con-
 tinued.*

10 Term expires Jan. 6-1938.

ASSIGNMENT OF COPYRIGHT.

No. 11702.

FRANCIS, DAY & HUNTER to FRANCIS, DAY & HUNTER, LTD.

Recorded in the Patent and Copyright Office at Ottawa, Canada, this 9th day of March, 1936, as witness the seal of the Patent and Copyright Office.

“ J. T. MITCHELL ”
 Commissioner of Patents.

Countersigned “ M. E. DUFF,”
 Assignment Clerk.

20

7.—Assignment, Esther Howe to Francis, Day & Hunter, Ltd.

ASSIGNMENT OF CANADIAN COPYRIGHT.

Know All Men by These Presents, That for and in consideration of the sum of one dollar and other good and valuable considerations received, of Francis, Day & Hunter, Ltd., of London, England, hereinafter called the Assignee, I/we, the undersigned, hereinafter called the Assignor(s), do hereby bargain, sell, assign, set over and transfer to and unto the said Assignee its/his successors and assigns, a certain title, song, words, music and musical work entitled :

7.
 Assignment,
 Esther
 Howe to
 Francis,
 Day &
 Hunter,
 Ltd.,
 29th May,
 1936.

30 “ The Man Who Broke the Bank at Monte Carlo ”

and the exclusive right to have and obtain copyright therein in its own name in Canada, and all of the Canadian copyright therein, subject, however, to the provisions of Section 11, Sub-section 2, of the Copyright Law of 1921, the author of said words being Fred Gilbert, Citizen (or Subject) of Great Britain when the aforesaid words were written and composed; the composer of the music being Fred Gilbert, Citizen (or Subject) of Great Britain when the aforesaid music was written and composed.

Exhibits.
 —
 7.
 Assignment,
 Esther
 Howe to
 Francis,
 Day &
 Hunter,
 Ltd.,
 29th May,
 1936—con-
 tinued.

In witness whereof, I have hereunto set my hand and seal this 29th day of May, 1936, at London, England.

Witness "David West." Author FRED GILBERT
 "Esther Howe"
 Heir.

Witness "David West." Composer FRED GILBERT
 "Esther Howe"
 Heir.

(Note.—To be made and executed in Duplicate, and Both Copies forwarded, with Fee of \$1, to Commissioner of Patents, Copyright Office, 10 Ottawa, Canada, for Registration.)

I, David West, residing at 15 Bury St., W.C.1, in the City of London, Country of Great Britain, am well acquainted with Mrs. Esther Howe, the person executing the within assignment, and saw him execute the same, and the signature thereto purporting to be his signature is in his handwriting and I, the undersigned, am the subscribing witness to the said assignment.

"DAVID WEST,"

Subscribing witness.

County of Great Britain.

Before me, Leonard George Crauford, a Commissioner for Oaths in 20 England, Great Britain, on this day personally appeared David West known to me and to me known to be the person who executed the foregoing instrument, who, after being duly sworn, deposes and says: That he is the subscribing witness to the within assignment, and saw the person execute the same, and that the signature purporting to be his signature is in his handwriting.

Further deponent sayeth not.

Subscribed and sworn to before me this 29th day of May, 1936.

"L. G. CRAUFORD,"

A Commissioner for Oaths in England. 30

COPYRIGHT ASSIGNMENT.

No. 11856.

HEIR OF FRED GILBERT to FRANCIS, DAY & HUNTER LTD.

Recorded in the Patent and Copyright Office at Ottawa, Canada, this 8th day of June, 1936, as witness the seal of the Patent and Copyright Office.

"J. T. MITCHELL,"

Commissioner of Patents.

Countersigned "A. C. FEMIE,"

Assignment Clerk.

27.—Copy letter, Edwin P. Kilroe to Francis, Day & Hunter, Ltd.

Exhibits.

Legal Department.

October 9, 1936.

Francis, Day & Hunter, Ltd.,
138-140 Charing Cross Road,
London, W.C.2, England.

Attention : Mr. Fred Day.

27.
Copy letter,
Edwin P.
Kilroe to
Francis,
Day &
Hunter,
Limited,
9th Octo-
ber, 1936.

My dear Mr. Day,

10 I am enclosing a copy of a letter dated September 14, 1936, which I received from Mr. Louis Bernstein on "The Man Who Broke the Bank at Monte Carlo."

A few days ago, I talked with Mr. Bernstein on the telephone and explained my part in the transaction as follows :

20 I had a discussion with you or Mr. Abbott or probably both on "The Man Who Broke the Bank at Monte Carlo"; I told you at luncheon with Mr. Abeles and perhaps I repeated the same thing to Mr. Abbott that we desired to record the song in the picture for worldwide use but that Mr. Bernstein had asked \$5,000.00 for its use; this was considered exorbitant by our West Coast Studio and it was decided to record the song in the picture for use only in the United States, where the number is in the public domain, and to delete the number for use in territories outside of the United States.

I reviewed the transactions yesterday with Mr. Joseph H. Moskowitz who has charge in New York of production matters. Mr. Moskowitz assures me that he offered \$1,000 to Mr. Bernstein for the worldwide use of the song in the picture. This offer was declined by Mr. Bernstein. At that time, during my discussions with the personnel of our Production Department, it was stated that we might go as high as \$2,000.00 for the worldwide use of the song in the picture if there was any prospect of clearance at that price; this price, however, was not submitted to Mr. Bernstein.

30 Mr. Bernstein informed me over the telephone that he did ask \$5,000.00 for the worldwide use of the number; he states positively that no counter-proposition had been submitted to him and that the sum of \$1000 was not discussed with him. In this, he is at variance with the statement made by Mr. Moskowitz.

At no time after suit had been started in Canada was any offer of settlement made by us.

40 I felt at the time that discussions were had for the clearance of the number (and I have no reason to change my mind on this point) that we would have paid \$2,000.00 at that time for the worldwide use of the number; however, matters, personal and social, crept into a purely business deal and since we seemed to arrive nowhere on the deal, we decided to stand on our legal rights, use the number in our picture in the United States and delete it from the picture for use outside.

Very sincerely yours,
EDWIN P. KILROE.

K.N. Enc.
c.c. Mr. Bernstein.

Exhibits.

2.—Affidavit of Charles Coborn.

2.
Affidavit of
Charles
Coborn,
3rd Novem-
ber, 1936.

In the matter of the Copyright, including performing right, in a song and musical composition known as "The Man Who Broke the Bank at Monte Carlo."

I, Charles Coborn, of 27 Elgin Mansions, London, W.9 England, make oath and say :—

1. That I was a performer on the musical stage in the United Kingdom.

2. That Fred Gilbert, who was a writer and composer of songs and music and well known to me, composed a song with music known as "The Man Who Broke the Bank at Monte Carlo." 10

3. That the said Gilbert assigned all copyright, including the right of public performance and publication of the said song, to me prior to the 11th day of April A.D. 1892.

4. That on the 11th day of April A.D. 1892 I assigned all my copyright and interest, present and future, including the right of presenting or performing the same or causing the same or permitting the same to be presented or performed to Messrs. Francis, Day & Hunter, Musical Publishers of Blenheim House, 195 Oxford Street, London, England.

5. That the said song was first published by printing and distributing the same by the said Francis, Day & Hunter on the 22nd of April 1892. 20

Sworn before me at Lincolns Inn in the County of London this 3rd day of November A.D. 1936.

" CHARLES COBORN."

" F. W. CHAMBERLAIN."

A Commissioner to administer Oaths for England and for the Province of Ontario.

3.—(a) Assignment, Charles Coborn to Francis, Day & Hunter.

Exhibits.

J279

3.

London April 11th 1892.

(a) Assign-
ment,
Charles
Coborn to
Francis,
Day &
Hunter,
11th April,
1892.

Received of Francis, Day & Hunter, Music Publishers, of Blenheim House, 195, Oxford Street Five pounds for the absolute sale of all my Copyright and Interest, present and future vested and contingent for this and all other countries, of and in the song entitled "The Man That Broke the Bank at Monte Carlo" words and music by Fred Gilbert together with the right of representing or performing the same or of causing or permitting
10 the same to be represented or performed, under condition of the payment to me of a royalty of One Guinea on each hundred copies sold, after allowing 200 copies for distribution as samples, the said Francis, Day & Hunter being entitled to use the melody in any separate musical publication that they may issue, free from any royalty or other consideration in respect of such use.

" CHARLES COBORN "

£5 : - : -

(stamp—one penny)

3.—(b) Receipt, Charles Coborn to Francis, Day & Hunter.

3.

In consideration of the sum of £2.2.0d. (Two Guineas) receipt of which
20 is hereby acknowledged, I hereby assign to Francis, Day & Hunter all my royalty interest in the song entitled "The Man That Broke the Bank at Monte Carlo" written and composed by Fred Gilbert.

(b) Receipt,
Charles
Coborn to
Francis,
Day &
Hunter,
21st July,
1924.

(Signed) " CHARLES COBORN "

Dated 21st July 1924.

(stamp—2 pence)

Exhibits.

4.—(a) Affidavit of Esther Howe.

4.
(a) Affidavit
of Esther
Howe,
3rd Novem-
ber, 1936.

In the Matter of the Copyright including Performing Right, in a song and musical composition known as "The Man Who Broke the Bank at Monte Carlo."

I, Esther Howe, of 28 Cecil Mansions Marins Road but formerly of the County of London, England, make oath and say :—

1. That I am a daughter of Fred Gilbert, author and composer of songs and musical works.

2. That the said Fred Gilbert composed the song "The Man Who Broke the Bank at Monte Carlo." 10

3. That the said Fred Gilbert was married to my mother Emma Hudson on the 21st of December, 1873 at St. John's Parish Church, Waterloo Road, S.E.1, London, England.

4. That my said father died in 1903, without a will, leaving him surviving only my mother, my sister Emma, who was born on the 4th day of April 1875, and me, who was born on the 22nd of April, 1877, who were my father's sole heirs at law.

5. My said mother died on the 23rd of April, 1905, without a will, leaving her surviving my said sister and me, who are my mother's only heirs at law, my said sister being alive at the date of this affidavit. 20

6. My said father sold outright the copyright and performing right in respect of the song "The Man Who Broke the Bank at Monte Carlo" to Charles Coborn.

7. That the said Fred Gilbert was at the date of the making of the said work a British subject and that the said work was first published in England within His Majesty's Dominions.

Sworn before me at Lincoln's Inn, in the County of London, this 3rd day of November A.D. 1936.

" Esther Howe."

" F. D. CHAMBERLAIN,"

A Commissioner for oaths for England and for the Province of Ontario. 30



4.—(b) Death Certificate of Frederick Young Gilbert.

CERTIFIED COPY OF AN ENTRY OF DEATH (6 & 7 WM. IV, CAP. 86).

Sec. 37 of the above Act enacts that "for every general search of the Indexes shall be paid the sum of twenty shillings, and "for every particular search the sum of one shilling and for every Certified Copy the sum of two shillings and sixpence"; exclusive of Inland Revenue Stamp (54 & 55 Vict. c. 39) of one penny. Where the application is made by post and the search is conducted by the staff of the General Register officer, the particular search fee is two shillings and sixpence.

Given at the General Register Office, Somerset House, London.

Application Number :—14153.

Registration District—Elham.

1903									
Death in the Sub-District of Folkestone in the County of Kent.									
No.	When and where died.	Name and Surname.	Sex.	Age.	Rank of Profession.	Cause of Death.	Signature Description and Residence of informant.	When registered.	Signature of Registrar.
127	Twelfth April 1903 23 Wilberforce Road Sandgate U.D.	Frederick Young Gilbert	Male	53 years.	Composer of Music.	Pulmonary tuberculosis. Many years. Haemoptysis ¼ hour certified by W. L. Chubb M.D.	Louisa Constantine Occupier Present at the death 23 Wilberforce, Sandgate.	Fifteenth April 1903.	John Andrew Registrar.

CERTIFIED to be a true copy of an entry in the certified copy of a Register of Deaths in the District above mentioned.
Given at the General Register Office, Somerset House, London, under the seal of the said office, the 6th day of November, 1936.

This certificate is issued in pursuance of and subject to the following Acts : 6 & 7 Will, IV. c. 86, sec. 38; 24 & 25 Vict. c. 98, sec. 36; 1 & 2 Geo. V. c. 6, sec. 4; 3 & 4 Geo. V. c. 27, sec. 3, 5 & 6.

The Acts 6 & 7 Will. IV. c. 86, sec. 38, enacts "That all certified copies of entries, purporting to be sealed or stamped with the seal of the General Register office, shall be received as evidence of the birth, death or marriage to which the same relates, without any further or other proof of such entry; and no certified copy purporting to be given in the said office shall be of any force or effect which is not sealed or stamped as aforesaid."

16377

Any person who (1) falsifies any of the particulars on this Certificate, or (2) uses a falsified certificate as true, knowing it to be false, is liable to prosecution.

Stamp
One penny
" ? "
6.11.36

Notarial seal.

Exhibits.
—
4.
(b) Death Certificate of Frederick Young Gilbert, 15th April, 1903.

Exhibits.
—
4.
(c) Death Certificate of Emma Gilbert, Widow of Frederick Gilbert, 25th April, 1905.

4.—(c) Death Certificate of Emma Gilbert, widow of Frederick Gilbert.

CERTIFIED COPY OF AN ENTRY OF DEATH (6 & 7 WM. IV., CAP. 86).

Sec. 37 of the above Act enacts that "for every general search of the Indexes shall be paid the sum of twenty shillings, and for every particular search the sum of one shilling and for every Certified copy the sum of two shillings and sixpence"; exclusive of Inland Revenue Stamp (54 & 55 Vict. c. 39) of one penny. Where the application is made by post and the search is conducted by the staff of the General Register Office, the particular search fee is two shillings and sixpence.

Given at the General Register Office, Somerset House, London.

Application Number :—10381.

Registration District—Lambeth.

1905 Death in the Sub-District of Kennington 2nd in the County of London.									
No.	When and where died.	Name and Surname.	Sex.	Age.	Rank of Profession.	Cause of Death.	Signature Description and Residence of informant.	When registered.	Signature of Registrar.
472	Twenty third April 1905 8 Glenshaw Mansions.	Emma Gilbert	Female	50 years.	Widow of Frederick Gilbert Song writer.	Morbus Cordis Anasarea Syncope Certified by T. Nesbitt Wright M.R.C.S.	E. Gilbert Daughter Present at death 8 Glenshaw Mansions Brixton Road.	Twenty fifth April 1905.	Geo. J. Tear Registrar.

CERTIFIED to be a true copy of an entry in the certified copy of a Register of Deaths in the District above mentioned.

Given at the General Register Office, Somerset House, London, under the Seal of the said Office, the 27th day of August 1936.

This Certificate is issued in pursuance of and subject to the following Acts : 6 & 7 Will. IV. c. 86, sec. 38; 24 & 25 Vict. c. 98, sec. 36; 1 & 2 Geo. V., c. 6, sec. 4; 3 & 4 Geo. V. c. 27, sec. 3, 5 & 6.

14253 The Acts 6 & 7 Will. IV. c. 86, sec. 38, enacts "That all certified copies of entries, purporting to be sealed or stamped with the seal of the General Register Office, shall be received as evidence of the Birth, Death or Marriage to which the same relates, without any further or other proof of such entry; and no certified copy purporting to be given in the said Office shall be of any force or effect which is not sealed or stamped as aforesaid."

Any person who (1) falsifies any of the particulars on this Certificate, or (2) uses a falsified certificate as true, knowing it to be false, is liable to prosecution.

Stamp
One penny
Reg'd
" E. H."
27.8.36.

Notarial seal.

1.—Admissions of Counsel.

Exhibits.

For the purpose of the trial of this action the parties by their respective Counsel make the following admissions and agreement :

I.
Admissions
of Counsel,
21st May,
1937.

1. There may be introduced in evidence, without formal proof, the following :

(a) Affidavit of Charles Coborn dated November 3rd 1936 ;

(b) Affidavit of Esther Howe dated November 3rd 1936 ;

(c) Certificate of registration on 22nd April 1892 by the firm of Francis Day & Hunter of copyright in the musical work " The Man Who Broke the Bank at Monte Carlo." 10

(d) Duplicate original of assignment dated 16th March 1936 from the firm of Francis, Day & Hunter to Francis, Day & Hunter Limited ;

(e) Duplicate original of the assignment dated 29th May 1936 from Esther Howe to Francis, Day & Hunter Limited.

2. That the motion picture entitled " The Man who Broke the Bank at Monte Carlo " has before and since the commencement of this action been distributed throughout Canada by Fox Films Corporation by leasing the same, in return for rentals, to exhibitors of motion picture theatres and was performed in public for private profit in the theatres, in the places, and on the dates set out in Schedule " A " hereto, and that the said picture has been performed in public for private profit in theatres owned, operated and controlled by the defendant Famous Players Canadian Corporation Limited at the theatres, in the places, and on the dates set out in Schedule " B " hereto. 20

3. That publication in printed form of the musical work " The Man Who Broke the Bank at Monte Carlo " prior to the alleged infringement of copyright complained of in this action may be proven by production of a printed copy of the same endorsed

30 " Charles Coborn's famous song
' The Man Who Broke the Bank at Monte Carlo '
Written and Composed
by
Fred Gilbert
Copyright by Francis, Day & Hunter Ltd."

4. That the copyright in Canada in the said musical work would have expired at some date prior to the commencement of this action had the term of such copyright not been extended by the Canadian Copyright Act, which came into force on 1st January 1924.

40 5. That before the motion picture play entitled " The Man Who Broke the Bank at Monte Carlo " was written and produced there had been written and produced a comedy in three Acts by Ilia Surgutchoff and Frederick Albert Swann entitled " The Gamble " also known as " The Man

Exhibits.
—
1.
Admissions
of Counsel,
21st May,
1937—*con-
tinued.*

Who Broke the Bank," " Monsieur Alexandre," " Igra," " Le Jeu " and that the text of such Comedy may be proved by a printed copy endorsed with the notation—

" Copyright, 1935
Twentieth Century Pictures, Inc.
All rights throughout the world reserved."

6. That the continuity and dialogue of the motion picture play, " The Man Who Broke the Bank at Monte Carlo " may be proved by a mimeographed copy of the same endorsed,

" Copyrighted 1935 by
20th Century-Fox Film Corporation
All rights reserved
Certificate No. 1546."

10

7. That on none of the copies of the musical work " The Man Who Broke the Bank at Monte Carlo " published by the firm of Francis, Day & Hunter and by the Plaintiff, Francis, Day & Hunter Limited was there printed a notice to the effect that the right of public representation and performance is reserved.

Dated May 21st, 1937.

" J. Earl Lawson " 20
Counsel for the Plaintiffs.
" A. J. Thomson " 20
Counsel for the Defendants.

[SCHEDULE " A "]

TWENTIETH CENTURY FOX CORPORATION LIMITED

LIST OF THEATRES AT WHICH

" THE MAN WHO BROKE THE BANK AT MONTE CARLO " 20
HAS BEEN EXHIBITED.

MONTREAL BRANCH.

<i>Town</i>	<i>Theatre.</i>	<i>Playdate.</i>	30
Quebec, Que.	Capitol	Dec. 29-31/35	
Asbestos, Que.	Club House	Jan. 2-4/36	
Granby, Que.	Cartier	Jan. 9-11/36	
Lucerne, Chambly, Bedford	Mason & Prevost	Jan. 17-20/36	
Temiskaming, Que.	Crescent	Jan. 29-30/36	
Ste Agathe, Que.	Roxy	Feb. 8-10/36	
Noranda, Que.	Noranda	Feb. 13-15/36	
Cowansville, Que.	Princess	Feb. 23/36	
Quebec, Que.	Cartier	Feb. 29-3/3/36	
Three Rivers, Que.	Capitol	Mar. 13-14/36	40
Brownsburg, Que.	Princess	Mar. 26-28/36	

	<i>Town.</i>	<i>Theatre.</i>	<i>Playdate.</i>	<i>Exhibits.</i>
	Montreal, Que.	Loew's	Apr. 10-16/36	I Admissions of Counsel, 21st May, 1937— <i>con-</i> <i>tinued.</i>
	Shawinigan Falls, Que.	Auditorium	Apr. 29-30/36	
	Sherbrooke, Que.	Granada	May 6/9/36	
	Lachine, Que.	Royal Alexandra	May 13-16/36	
	St. Lambert, Que.	Victoria	May 17-20/36	
	Montreal, Que.	Francais	May 23-26/36	
	Montreal, Que.	Strand	May 23-26/36	
	Montreal, Que.	Rialto	May 27-30/36	
10	Verdun, Que.	Park	May 31-6/2/36	
	Montreal, Que.	Granada	June 3-6/36	
	Montreal, Que.	Regent	June 3-6/36	
	Montreal, Que.	Rivoli	June 6-9/36	
	Montreal, Que.	Amherst	June 10-12/36	
	Montreal, Que.	Plaza	June 13-15/36	
	Montreal, Que.	Corona	June 17-20/36	
	Montreal, Que.	Papineau	June 17-19/36	
	Montreal, Que.	Belmont	June 21-23/36	
	Montreal, Que.	Westmount	June 21-23/36	
20	Montreal, Que.	Seville	June 24-27/36	
	Montreal, Que.	Rosemount	June 27-30/36	
	Montreal, Que.	Monkland	June 28-30/36	
	Valleyfield, Que.	Royal	July 2-4/36	
	Montreal, Que.	Mount Royal	July 5-7/36	
	Montreal, Que.	Napoleon Palace	July 8-11/36	
	Montreal, Que.	Century	July 12-14/36	
	Montreal, Que.	Hollywood	July 12-15/36	
	Montreal, Que.	Canada	July 17-19/36	
	Montreal, Que.	Orpheum	July 18-21/36	
30	Hull, Que.	Laurier	July 19-21/36	
	Montreal, Que.	Mayfair	July 22-24/36	
	Montreal, Que.	Stella	July 23-25/36	
	Montreal, Que.	Rex	July 30-8/1/36	
	Montreal, Que.	Fairyland	July 31-8/1/36	
	Montreal, Que.	Centre Palace	Aug. 2-3/36	
	Grand 'Mere, Que.	National	Aug. 4-5/36	
	Montreal, Que.	Star	Aug. 15-17/36	
	St. Johns, Que.	Imperial	Aug. 19-22/36	
	Montreal, Que.	Broadway	Aug. 23-26/36	
40	Montreal, Que.	Starland	Sep. 2-4/36	
	Waterloo, Que.	Starland	Sep. 6-7/36	
	Beauharnois, Que.	Ideal	Sep. 24-26/36	
	Montreal, Que.	Passe Temps	Sep. 29-30/36	
	Thetford Mines	Elite	Oct. 11-30/36	
	East Angus Circuit	Wm. Hall	Oct. 20-21-24-26-27/36	
	Montreal	Canadian	Oct. 31-11/3/36	
	Quebec	Princess	Nov. 14-17/36	

Exhibits.	Town.	Theatre.	Playdate.	
1. Admissions of Counsel, 21st May, 1937—con- tinued.	Val D'Or	Palace	Nov. 29-30/36	
	Montreal	Rialto	May 11/37	
	Lachine	Royal Alexandra	May 22/37	
WINNIPEG BRANCH.				
	Saskatoon, Sask.	Capitol	Dec. 25-27 1935	
	Viriden, Man.	Auditorium	Feb. 6-8 1936	
	Souris, Man.	Avalon	Feb. 13-15 1936	
	Prince Albert, Sask.	Strand	Feb. 24-25 1936	
	Fort William, Ont.	Orpheum	Mar. 3-4 1936	10
	Moose Jaw, Sask.	Capitol	Mar. 9-10 1936	
	Regina, Sask.	Capitol	Mar. 11-13 1936	
	Flin Flon, Man.	Rex	Mar. 20-21 1936	
	The Pas, Man.	Roxy	Mar. 23-24 1936	
	Rainy River, Ont.	Gaiety	Mar. 30-31-1 1936	
	Estevan, Sask.	Orpheum	Apr. 6-7 1936	
	Winnipeg, Man.	Capitol	Apr. 10-16 1936	
	Watrous, Sask.	Little Manitou	Apr. 27-29 1936	
	Weyburn, Sask.	Hi-Art	May 6-7 1936	
	Brandon, Man.	Strand	May 13-14 1936	20
	Winnipeg, Man.	Tivoli	May 21-23 1936	
	Transcona, Man.	Transcona	May 26-27 1936	
	Winnipeg, Man.	Osborne	May 28-30 1936	
	Nipewin, Sask.	Orpheum	June 5-8 1936	
	Deloraine, Man.	Jubilee	June 12-13 1936	
	Morse, Sask.	Morse	June 26-27 1936	
	Regina, Sask.	Grand	July 1-3 1936	
	Winnipeg, Man.	Arlington	July 7-9 1936	
	Winnipeg, Man.	Crescent	July 15-17 1936	
	Killarney, Man.	Lyceum	July 23-25 1936	30
	Winnipeg, Man.	Wonderland	July 28-30 1936	
	Winnipeg, Man.	Fox	Aug. 1-7 1936	
	Winnipeg, Man.	Furby	Aug. 12-14 1936	
	Winnipeg, Man.	King's	Aug. 17-19 1936	
	Winnipeg, Man.	Baddow	Aug. 24-26 1936	
	Winnipeg	Leyland	Aug. 29-1 1936	
	Fort Frances, Ont.	Royal	Sep. 4 1936	
	Portage la Prairie, Man.	Playhouse	Sep. 8-9 1936	
	Winnipeg, Man.	Regent	Sep. 11-13 1936	
	Dryden, Ont.	Strand	Sep. 17-19 1936	40
	To Calgary Branch		Sep. 22 1936	
	From Calgary Branch		Sep. 28 1936	
	Winnipeg, Man.	Corona	Sep. 28-30 1936	
	Melita, Manitoba	Melita	Oct. 1-3 1936	
	Winnipeg, Man.	Elm	Oct. 14-16, 1936	
	Winnipeg, Man.	College	Oct. 19-21 1936	

	<i>Town.</i>	<i>Theatre.</i>	<i>Playdate.</i>	<i>Exhibits.</i>	
	Winnipeg, Man.	Mac's	Oct. 26-28 1936	1. Admissions of Counsel, 21st May, 1937— <i>con-</i> <i>tinued.</i>	
	Moosomin, Sask.	Lyric	Oct. 29-31 1936		
	Winnipeg, Man.	Park	Nov. 2-4 1936		
	Lemberg, Sask.	Lemberg	Nov. 19 & 21 1936		
	Winnipeg, Man.	Bijou	Nov. 27, 28 & 30 1936		
	North Battleford, Sask.	Mental Hospital	Dec. 2nd 1936		
	Saskatoon, Sask.	Roxy	Dec. 9-11 1936		
	Great Falls, Man.	Recreation Club	Dec. 26th 1936		
10	Regina, Sask.	Roxy	Jan. 11-13 1937		
	Winnipeg, Man.	Times	Jan. 30-Feb. 1-2/37		
	Willow Bunch, Sask.	Palace	Feb. 5-6 1937		
	Brandon, Man.	Oak	Mar. 1-2 1937		
	Melville, Sask.	Princess	Mar. 15-17 1937		
	Bienfait, Sask.	Legion	Apr. 2-3 1937		
	Gladstone, Man.	Revilo	Apr. 22-24 1937		
	St. Vital, Man.	Onyx	May 1 & 3-4 1937		
TORONTO OFFICE.					
	Ft. Erie N.	Bellard	12/9-10/35		
20	Kirkland Lake	Uptown	12/9-11/35		
	Cobalt	Classic	12/25-26/35		
	St. Catherines	Capitol	12/28-31/35		
	Windsor	Capitol	12/28-31/35		
	Belleville	Belle	12/28-31/35		
	Brockville	Capitol	12/30-31/35		
	Cobourg	Capitol	1/1-2/36		
	Woodstock	Capitol	1/1-2/36		
	Peterboro	Capitol	1/1-2/36		
	Kingston	Capitol	1/1-3/36		
30	Smiths Falls	Capitol	1/8-9/36		
	S.S. Marie	Algoma	1/10-11/36		
	Windsor	Tivoli	1/10-11/36		
	London	Capitol	1/11-14/36		
	Stratford	Majestic	1/13-15/36		
	Strathroy	King	1/16-18/36		
	Picton	Regent	1/17-18/36		
	North Bay	Capitol	1/20-21/36		
	Delhi	Capitol	1/20-22/36		
	East Windsor	Temple	1/27-28/36		
40	Kitchener	Capitol	2/10-12/36		
	Windsor	Regent	2/12-13/36		
	Port Colborne	Strand	2/14-15/36		
	Trenton	Trent	2/17-18/36		
	Barrie	Roxy	2/24-26/36		
	Welland	Capitol	2/26-27/36		
	Toronto	Imperial	2/21-27/36		

Exhibits.	Town.	Theatre.	Playdate.	
1. Admissions of Counsel, 21st May, 1937—con- tinued.	Dunnville	Hollywood	3/2-4/36	
	Owen Sound	Classic	3/4-5/36	
	Brantford	Capitol	3/4-6/36	
	St. Thomas	Capitol	3/2-3/36	
	London	Palace	3/4-5/36	
	Leamington	Capitol	3/9-10/36	
	Midland	Capitol	3/9-10/36	
	Kincardine	Bluewater	3/9-11/36	
	Guelph	Capitol	3/9-11/36	10
	Aurora	Royal	3/18-19/36	
	Niagara Falls	Capitol	3/18-19/36	
	Sarnia	Imperial	3/18-19/36	
	Hamilton	Palace	3/27-4/2/36	
	Toronto	Parkdale	3/30-31/36	
	Parry Sound	Royal	4/3-4/36	
	Oshawa	Regent	4/1-2/36	
	Ottawa	Regent	4/2-8/36	
	Galt	Capitol	4/6-7/36	
	Toronto	Palace	4/8-9/36	20
	Burlington	Hume	4/9-11/36	
	Petrolia	Iroquois	4/13-15/36	
	Toronto	Runnymede	4/15-16/36	
	Toronto	Oakwood	4/13-15/36	
	Toronto	Bloor	4/17-23/36	
	Toronto	College	4/22-23/36	
	New Toronto	Capitol	4/15-16/36	
	Ingersoll	Maitland	4/20-22/36	
	Carlton Place	Star	4/21-23/36	
	Cornwall	Capitol	4/29-30/36	30
	Toronto	Beach	5/1-2/36	
	Toronto	Eglinton	5/4-6/36	
	Preston	Park	5/4-5/36	
	Hamilton	Strand	5/8-9/36	
	Toronto	Kum C	5/7-9/36	
	Toronto	Century	5/11-12/36	
Toronto	Christie	5/13-14/36		
Toronto	Prince Wales	5/15-16/36		
Chatham	Capitol	5/11-12/36		
Orillia	Opera House	5/13-14/36	40	
Hamilton	Kenilworth	5/14-16/36		
Hamilton	Kenmore	5/18-20/36		
Toronto	Beaver	5/20-21/36		
Toronto	Hollywood	5/21-23/36		
Toronto	La Plaza	5/27-28/36		
Toronto	Carlton	5/27-28/36		
Ottawa	Rideau	5/25-27/36		

	<i>Town.</i>	<i>Theatre.</i>	<i>Playdate.</i>	<i>Exhibits.</i>
	Toronto	Capitol	6/1-3/36	<p style="text-align: center;">1.</p> Admissions of Counsel, 21st May, 1937— <i>con-</i> <i>tinued.</i>
	Campbelford	Hollywood	6/1-3/36	
	Hamilton	Lyceum	6/12-13/36	
	Mimico	Rex	6/11-13/36	
	Toronto	Belsize	6/8-9/36	
	Toronto	Photodrome	6/10-11/36	
	Toronto	Hillcrest	6/12-13/36	
	Toronto	Eastwood	6/22-24/36	
10	Toronto	Cameo	6/25-27/36	
	Hamilton	Gregory	6/18-20/36	
	Lindsay	Academy	6/17-18/36	
	Wallaceburg	Capitol	6/29-30/36	
	Long Branch	Royal	6/29-30/36	
	Toronto	Iola	7/2-4/36	
	Toronto	Allenby	7/2-4/36	
	Toronto	M. Rogers Rd.	7/3-4/36	
	Toronto	Academy	7/6-8/36	
	Toronto	M. St. Clair	7/6-7/36	
20	Toronto	Parliament	7/6-8/36	
	Hamilton	Westdale	7/9-11/36	
	Ottawa	Victoria	7/9-11/36	
	S.S. Marie	Princess	7/9-11/36	
	Tilbury	Plaza	7/13-14/36	
	Toronto	Royce	7/15-16/36	
	Toronto	Embassy	7/15-16/36	
	Toronto	Mayfair	7/16-18/36	
	Toronto	Bonita	7/16-18/36	
	Toronto	Duchess	7/20-22/36	
30	Timmins	Palace	7/20-22/36	
	Acton	Wonderland	7/20/36	
	Georgetown	Gregory	7/21/36	
	Toronto	Kenwood	7/23-25/36	
	Toronto	Avelon	7/23-25/36	
	Schumacher	Mascioli	7/24-25/36	
	South Porcupine	Empire	7/27-28/36	
	Toronto	Oriole	7/27-29/36	
	Mt. Dennis	Mt. Dennis	7/29-30/36	
	Toronto	Rialto	7/30-8/1/36	
40	Ansenville	New Empire	7/30-8/1/36	
	Toronto	King	7/30-8/1/36	
	Toronto	Crescent-Palace	8/3-5/36	
	New Liskeard	Empire	8/3-5/36	
	Toronto	Grant	8/3-5/36	
	Toronto	Kingswood	8/3-5/36	
	Toronto	Crown	8/6-8/36	
	Toronto	National	8/6-8/36	

Exhibits.	Town.	Theatre.	Playdate.	
1. Admissions of Counsel, 21st May, 1937—con- tinued.	Toronto	Bloordale	8/10-12/36	
	Toronto	Classic	8/13-15/36	
	Toronto	Kitchener	8/10-12/36	
	Toronto	Rex	8/13-15/36	
	Toronto	Liberty	8/10-12/36	
	Weston	Weston	8/12-13/36	
	Toronto	Lyndhurst	8/17-19/36	
	Toronto	Chateau	8/17-19/36	
	Paris	Capitol	8/17-19/36	10
	Hamilton	Regent	8/20-22/36	
	Toronto	Queens	8/24-26/36	
	Toronto	Brook	8/27-29/36	
	Milton	Princess	8/25-26/36	
	Sudbury	Regent	8/24-26/36	
	Kingsville	Roxy	8/24-25/36	
	Bowmanville	Royal	8/27-29/36	
	Windsor	Royal	9/4-5/36	
	Creighton Mines	Regent	9/9-10/36	
	Toronto	Royal George	9/7-8/36	20
	Toronto	Kings Playhouse	9/14-16/36	
	Tillsonburg	Capitol	9/14-16/36	
	Toronto	Ideal	9/21-22/36	
	Toronto	Hudson	9/24-26/36	
	Toronto	Revue	9/24-26/36	
	Simcoe	Capital	9/28-30/36	
	Perth	Perth	10/2-3/36	
	Orangeville	Uptown	10/5-7/36	
	Morrisburg	Cameo	10/7-8/36	
	Dresden	Majestic	10/12-14/36	30
	Ridgetown	Palace	10/15-17/36	
	Hamilton	Royal	10/19-21/36	
	Toronto	Brighton	11/9-11/36	
	Newmarket	Palace	11/9-10/36	
	Sturgeon Falls	Regent	11/23-24/36	
	Ottawa	Rialto	11/28-12/1/36	
	Toronto	Paramount	11/30-12/2/36	
	Kapuskasing	Community Club	12/14-15/36	
	London	Palace	Dec. 23 (revival)	
	Pembroke	O'Briens	Jan. 11/12/37	40
	Renfrew	O'Briens	Jan. 13-14/37	
Arnprior	O'Briens	Jan. 18-19/37		
Almonte	O'Briens	Jan. 20-21/37		
Toronto	Oakwood	Feb. 26 (Revival)		
Oshawa	Regent	Feb. 27 (Revival)		
Gananoque	Delaney's	Mar. 31-Apr. 1/37		
Hornepayne	Lyric	Apr. 30-May 1/37		

ST. JOHN BRANCH.

Exhibits.

	<i>Place.</i>	<i>Name of Theatre.</i>	<i>Dates Played.</i>	I. Admissions of Counsel, 21st May, 1937— <i>con-</i> <i>tinued.</i>
	Edmundston, N.B.	Star	12/23-25 1935	
	New Glasgow, N.S.	Roseland	1/1-2 1936	
	Moncton, N.B.	Capitol	1/8-10 1936	
	Fredericton, N.B.	Gaiety	1/22-23 1936	
	McAdam, N.B.	Opera House	2/3-4 1936	
	Yarmouth, N.S.	Majestic	2/12-13 1936	
	Windsor, N.S.	Imperial	2/19-20 1936	
10	Sussex, N.B.	Strand	2/24-25 1936	
	Glace Bay, N.S.	Russell	3/4-5 1936	
	St. Andrews, N.B.	Marina	3/13-14 1936	
	Halifax, N.S.	Casino	3/28-31 1936	
	Sydney, N.S.	Capitol	4/8-9 1936	
	St. John's, Nfld.	Star Movie	4/13-15 1936	
	Stellarton, N.S.	Jubilee	6/18-20 1936	
	Halifax, N.S.	Garrick	6/11-13 1936	
	Chester, N.S.	Strand	7/1-12 1936	
	Minto, N.B.	Gaiety	7/6-7 1936	
20	Bridgetown, N.S.	Strand	8/5-6 1936	
	Saint John, N.B.	Capitol	8/19-20 1936	
	Charlottetown, P.E.I.	Prince Edward	8/27-29 1936	
	Whitney Pier, N.S.	Casino	9/2-3 1936	
	Amherst, N.S.	Capitol	9/23-24 1936	
	Liverpool, N.S.	Astor	9/28-29 1936	
	Saint John, N.B.	Mayfair	10/5-6 1936	
	Westville, N.S.	Roxy	10/12-14 1936	
	Sydney Mines, N.S.	Strand	11/9-10 1936	
	Dartmouth, N.S.	Dundas	11/30-2 1936	
30	Halifax, N.S.	Family	12/7-6 1936	
	Halifax, N.S.	Community	12/14-15 1936	
	Saint John, N.B.	Regent	12/21-22 1936	
	Truro, N.S.	Capitol	12/30-31 1936	
	West Saint John, N.B.	Community	1/25-26 1937	

VANCOUVER BRANCH.

	<i>Theatre.</i>	<i>Town.</i>	<i>Play Date.</i>
	Kerrisdale	Vancouver	Dec. 19th (preview) 1935
	Dominion	Victoria	Dec. 27-28-30th 1935
	Columbia	New West'r, B.C.	Dec. 31st (preview) 1935
40	Orpheum	Vancouver, B.C.	May 1-7th 1936
	Columbia	New West'r, B.C.	May 11-12th 1936
	Playhouse	Victoria, B.C.	May 14-16th 1936
	Empress	Kelowna, B.C.	May 20-21st 1936
	Empress	Vernon, B.C.	May 22-23rd 1936

Exhibits.	Theatre.	Town.	Playdate.	
1. Admissions of Counsel, 21st May, 1937— <i>con- tinued.</i>	Empress	Penticton, B.C.	May 29-30th 1936	
	Capitol	Nelson, B.C.	June 1-2nd 1936	
	Kerrisdale	Vancouver, B.C.	June 8-9th 1936	
	Broadway	Vancouver, B.C.	June 10-11th 1936	
	Kitsilano	Vancouver, B.C.	June 12-13th 1936	
	Alma	Vancouver, B.C.	June 15-16th 1936	
	White Rock	White Rock, B.C.	July 1-2nd 1936	
	Windsor	Vancouver, B.C.	July 3-4th 1936	
	Capitol	Nanaimo, B.C.	July 8-9th 1936	10
	Grandview	Vancouver, B.C.	July 15-16th 1936	
	Victoria	Vancouver, B.C.	July 17-18th 1936	
	Regent	Vancouver, B.C.	July 20-21st 1936	
	Strand	Chilliwack, B.C.	July 27-28th 1936	
	Capitol	Rossland, B.C.	July 31-1st 1936	
	Liberty	Trail, B.C.	Aug. 3-4th 1936	
	Lonsdale	North Vancouver, B.C.	Aug. 6-8th 1936	
	Capitol	Kamloops, B.C.	Aug. 10-11th 1936	
	Rex	Vancouver, B.C.	Aug. 13-15th 1936	20
	Colonial	Vancouver, B.C.	Aug. 20-22nd 1936	
	Fraser	Vancouver, B.C.	Aug. 24-25th 1936	
	Dunbar	Vancouver, B.C.	Aug. 27-29th 1936	
	Olympia	Vancouver, B.C.	Aug. 31-1st 1936	
	Kingsway	Vancouver, B.C.	Sep. 3-5th 1936	
	Hollywood	Vancouver, B.C.	Sep. 7-9th 1936	
	Music Box	Vancouver, B.C.	Sep. 11-12th 1936	
	Marpole	Vancouver, B.C.	Sep. 14-16th 1936	
	Fairview	Vancouver, B.C.	Sep. 17-19th 1936	
	Hollyburn	W. Vancouver, B.C.	Sep. 22-23rd 1936	30
	Langley	Langley Prairie	Sep. 25-26th 1936	
	Lyric	Vancouver, B.C.	Sep. 28-29th 1936	
	Rialto	Ladysmith, B.C.	Oct. 1-3rd 1936	
	Port	Port Alberni	Oct. 5-7th 1936	
	Victory	Mission	Oct. 9-10th 1936	
	Globe	Vancouver	Oct. 12-13th 1936	
	Province	Revelstoke	Oct. 16-17th 1936	
Bickle	Courtenay	Oct. 19-21st 1936		
Capitol	Prince Rupert	Oct. 26-27th 1936		
Patricia	Powell River	Nov. 5-7th 1936	40	
Sunset	Wells	Nov. 13-14th 1936		
Rex	Quesnel	Dec. 3-4th 1936		
Barbara	Britannia Beach	Dec. 18-19th 1936		
Capitol	Smithers	Feb. 26-27th 1937		
Royal	Vancouver	Mar. 15-16th 1937		
Stewart	Stewart	Apr. 10th 1937		

<i>Theatre.</i> Dated.	<i>Town.</i>	<i>Playdate.</i>	<i>Exhibits.</i>
Haney	Haney	May 29th 1937	1.
Princess	Vancouver	Admissions of Counsel, 21st May, 1937— <i>con- tinued.</i>

CALGARY BRANCH.

<i>Town and Province.</i>	<i>Theatre.</i>	<i>Date Played.</i>
Lethbridge, Alberta	Capitol	Dec. 25-26 1935
Cranbrook, B.C.	Star	Jan. 2-4 1936
10 Wetaskiwin, Alta.	Audien	Jan. 13-15 1936
Kimberley, B.C.	Orpheum	Jan. 21-23 1936
Coleman, Alta.	Palace	Jan. 25-28 1936
Natal, B.C.	Natal	Feb. 1-4 1936
Gravelbourg, Sask.	Legion Hall	Feb. 13-15 1936
Calgary, Alta.	Capitol	Feb. 25-27 1936
Edson, Alta.	New Edson	Feb. 26-28 1936
Swift Current, Sask.	Lyric	Mar. 9-11 1936
Trochu, Alta.	Sharp's	Mar. 16 1936
Delburne, Alta.	"	Mar. 17 1936
20 Alix, Alta.	"	Mar. 18 1936
Carben, Alta.	"	Mar. 19 1936
Three Hills, Alta.	"	Mar. 20-21 1936
High River, Alta.	Wales	Mar. 26-28 1936
Acme, Alta.	Sharp's	Apr. 1 1936
Turner Valley, Alta.	"	Apr. 2-3 1936
Gleichen, Alta.	"	Apr. 4 1936
Outlook, Sask.	Lyric	Apr. 10-11 1936
Wilkie, Sask.	Marnel	Apr. 16-18 1936
Foremost, Alta.	Midland	Apr. 24 1936
30 Banff, Alta.	Lux	Apr. 29-30 1936
Elrose, Sask.	Elrose	May 12 1936
Edmonton, Alta.	Strand	May 16-19 1936
MacLeod, Alta.	Empress	May 25-27 1936
Big Valley, Alta.	Lyceum	June 5-6 1936
Climax, Sask.	Climax	July 4-6 1936
Kindersley, Sask.	Rex	July 25-28 1936
Unity, Sask	Star	Aug. 1-4 1936
Vegreville, Alta.	Vimy	Aug. 8/11 1936
St. Paul, Alta.	Elite	Aug. 18-19 1936
40 Drumheller, Alta.	Napier	Sept. 3-5 1936
Blairmore, Alta.	Orpheum	Sept. 24-26 1936
Edmonton, Alta.	Princess	Sept. 24-26 1936
Edmonton, Alta.	Dreamland	Oct. 1-3 1936
Riverhurst, Alta.	Hollywood	Oct. 30 Nov. 1 1936
Calgary, Alta.	Strand	Nov. 26-28 1936

Exhibits.	Town and Province.	Theatre.	Date Played.
1.	Edmonton, Alta.	Avenue	Dec. 5-8 1936
Admissions of Counsel, 21st May, 1937—con- tinued.	Dawson Creek, B.C.	Carlsonia	Dec. 18-21 1936
	Calgary, Alta.	Kinema	Jan. 9-12 1937
	Saskatoon, Sask.	Ritz	Jan. 25-27 1937
	Calgary, Alta.	Crescent	Feb. 24-26 1937
	No dates during March, April and May.		
	Raymond, Alta.	Capitol	June 14-16 1937
	Hanna, Alta.	Capitol	June 24-26 1937
	Medicine Hat, Alta.	Monarch	July 5-7 1937
	Rosetown, Sask.	Unique	Sept. 16-18 1937

10

SCHEDULE " B. "

FAMOUS PLAYERS CANADIAN CORPORATION LIMITED.

LIST OF THEATRES AT WHICH
" THE MAN WHO BROKE THE BANK AT MONTE CARLO "
HAS BEEN EXHIBITED.
EASTERN THEATRES.

Name of Theatre.	City or Town.	Play Dates.	No. of days Exhibited.
Belle	Belleville, Ont.	Dec. 28-30 1935	2
Capitol	Chatham, Ont.	May 11-12 1936	2
*Capitol	Cornwall, Ont.	Apr. 29-30 1936	2
Capitol	Galt, Ont.	Apr. 6-7 1936	2
Capitol	Halifax, N.S.	Mar. 28-31 1936	3
*Palace	Hamilton, Ont.	Mar. 27-Apr. 2 1936	6
Capitol	Kingston, Ont.	Jan. 1-3 1936	3
Capitol	London, Ont.	Jan. 11-14 1936	3
*Capitol	Moncton, N.B.	Jan. 8-10 1936	3
Capitol	North Bay, Ont.	Jan. 20-21 1936	2
*Regent	Ottawa, Ont.	Apr. 2-8 1936	6
Capitol	Port Hope, Ont.	Jan. 3-4 1936	2
Algoma	Sault Ste. Marie, Ont.	Jan. 10-11 1936	2
Capitol	St. Catharines, Ont.	Dec. 28-31 1936	3
Capitol	St. Thomas, Ont.	Mar. 2-3 1936	2
*Capitol	Sydney, N.S.	Apr. 8-9 1936	2
*Capitol	Three Rivers, Que.	Mar. 13-14 1936	2
Beach	Toronto, Ont.	May 1-2 1936	2
Belsize	Toronto, Ont.	June 8-9 1936	2
*Capitol	Toronto, Ont.	June 1-3 1936	3
College	Toronto, Ont.	Apr. 22-23 1936	2
*Eglinton	Toronto, Ont.	May 4-6 1936	3
Palace	Toronto, Ont.	Apr. 8-9 1936	2
Parkdale	Toronto, Ont.	Mar. 30-31 1936	2
Runnymede	Toronto, Ont.	Apr. 15-16 1936	2
Capitol	Welland, Ont.	(Midnight Dec. 31 1935)	
Capitol	Welland, Ont.	Feb. 6-7 1936	2

40

WESTERN THEATRES.

				Exhibits.	
				1.	
<i>Name of Theatre.</i>	<i>City or Town.</i>	<i>Play Dates.</i>	<i>No. of days Exhibited.</i>	Admissions of Counsel, 21st May, 1937— <i>continued.</i>	
	Capitol	Calgary, Alta.	Feb. 25-27 1936	3	
	Strand	Chilliwack, B.C.	July 27-28 1936	2	
	Capitol	Kamloops, B.C.	Aug. 10-11 1936	2	
	Empress	Kelowna, B.C.	May 20-21 1936	2	
	*Capitol	Lethbridge, Alta.	Dec. 25-26 1935	2	
	Columbia	New Westminster, B.C.	(Midnight Dec. 31 1935)		
10	Columbia	New Westminster, B.C.	May 11-12 1936	2	
	Empress	Penticton, B.C.	May 29-30 1936	2	
	Capitol	Regina, Sask.	Mar. 11-13 1936	3	
	*Grand	Regina, Sask.	July 1-3 1936	3	
	*Capitol	Roseland, B.C.	July 31-Aug 1 1936	2	
	*Liberty	Trail, B.C.	Aug. 3-4 1936	2	
	Alma	Vancouver, B.C.	June 15-16 1936	2	
	Grandview	Vancouver, B.C.	July 15-16 1936	2	
	Kerrisdale	Vancouver, B.C.	(Midnight Dec. 19 1935)		
	Kerrisdale	Vancouver, B.C.	June 8-9 1936	2	
20	Kitsilano	Vancouver, B.C.	June 12-13 1936	2	
	*Orpheum	Vancouver, B.C.	May 1-7 1936	6	
	Regent	Vancouver, B.C.	July 20-21 1936	2	
	Victoria	Vancouver, B.C.	July 17-18 1936	2	
	Windsor	Vancouver, B.C.	July 3-4 1936	2	
	Empress	Vernon, B.C.	May 22-23 1936	2	
	Hi-Art	Weyburn, Sask.	May 6-7 1936	2	

* Denotes situations in which Famous Players Canadian Corporation Limited, participate in the operations along with individuals or corporations.

Exhibits. 1A.—Statement of theatres without license at which “The Man Who Broke the Bank at Monte Carlo” was exhibited.

1A.

Statement of Theatres without license at which “The Man Who Broke the Bank at Monte Carlo” was exhibited.

MONTREAL BRANCH.				
Rental.	Town.	Theatre.	Playdate.	
\$17.50	Lucerne, Chambly, Bedford	Mason & Prevost	Jan. 17-20/36	
22.50	Temiskaming, Que.	Crescent	Jan. 29-30/36	
17.50	Ste Agathe, Que.	Roxy	Feb. 8-10/36	
12.50	Brownsburg, Que.	Princess	Mar. 26-28/36	
50.00	Valleyfield, Que.	Royal	July 2-4/36	
7.50	Beauharnois, Que.	Ideal	Sep. 24-26/36	
15.00	East Angus Circuit	Wm. Hall	Oct. 20-21-24/36	10
35.00	Quebec	Princess	Nov. 14-17/36	
17.50	Val D'Or	Palace	Nov. 29-30/36	
WINNIPEG BRANCH.				
35.00	Flin Flon, Man.	Rex	Mar. 20-21/36	
15.00	The Pas, Man.	Roxy	Mar. 23-24/36	
12.50	Watrous, Sask.	Little Manitou	Apr. 27-29/36	
15.00	Nipawin, Sask.	Orpheum	June 5-8/36	
12.50	Deloraine, Man.	Jubilee	June 12-13/36	
15.00	Morse, Sask.	Morse	June 26-27/36	20
16.00	Fort Frances, Ont.	Royal	Sep. 4/36	
15.00	Dryden, Ont.	Strand	Sep. 17-19/36	
10.00	Melita, Manitoba	Melita	Oct. 1-3/36	
12.50	Lemberg, Sask.	Lemberg	Nov. 19 & 21/36	
6.50	North Battleford, Sask.	Mental Hospital	Dec. 2nd 1936	
6.50	Great Falls, Man.	Recreation Club	Dec. 26th 1936	
22.50	Winnipeg, Man.	Times	Jan. 30-Feb. 1-2/1937	
10.00	Willow Bunch, Sask.	Palace	Feb. 5-6 1937	
10.00	Bienfait, Sask.	Legion	Apr. 2-3 1937	
12.50	Gladstone, Man.	Revilo	Apr. 22-24 1937	30
TORONTO BRANCH.				
20.00	Strathroy	King	Jan. 16-18/36	
20.00	Kincardine	Bluewater	Mar. 9-11/36	
39.93	Toronto	Photodrome	June 10-11/36	
15.00	Toronto	Hillcrest	June 12-13/36	
12.50	Long Branch	Royal	June 29-30/36	
30.00	Toronto	Iola	July 2-4/36	
17.50	Toronto	Lyndhurst	Aug. 17-19/36	
15.00	Toronto	Queens	Aug. 24-26/36	
54.16	Perth	Perth	Oct. 2-3/36	
12.50	Hornepayne	Lyric	Apr. 30-May 1/37	40
25.00	St. Andrews, N.B.	Marina	Mar. 13-14/36	
750.00	St. John's, Nfd.	Star Movie	Apr. 13-15/36	
22.50	Stellarton, N.S.	Jubilee	June 18-20/36	
15.00	Chester, N.S.	Strand	July 1-12/36	
17.50	Whitney Pier, N.S.	Casino	Sep. 2-3/36	
17.50	Westville, N.S.	Roxy	Oct. 12-14/36	
17.50	West Saint John N.B.	Community	Jan. 25-26/37	

VANCOUVER BRANCH.					Exhibits.
Rental.	Town.	Theatre.	Playdate.		—
75·00	Victoria, B.C.	Playhouse (now Plaza)	May 14-16/36		1A.
15·00	White Rock, B.C.	White Rock	July 1-2nd/36		Statement
37·50	Vancouver, B.C.	Dunbar	Aug. 27-29/36.		of Theatres
35·00	Vancouver, B.C.	Kingsway	Sep. 3-5/36		without
17·50	Vancouver, B.C.	Fairview	Sep. 17-19/36		license at
15·00	Langley Prairie	Langley	Sept. 25-26/36		which "The
10 30·00	Revelstoke	Province	Oct. 16-17/36		Man Who
15·00	Wells	Sunset	Nov. 13-14/36		Broke the
12·50	Britannia Beach	Barbara	Dec. 18-19/36.		Bank at
12·50	Smithers	Capitol	Feb. 26-27/37		Monte
15·00	Stewart	Stewart	Apr. 10th/37		Carlo" was
	Haney	Haney	May 29th 1937		exhibited—
					<i>continued.</i>
CALGARY BRANCH.					
20·00	Wetaskiwin, Alta	Audien	Jan. 13-15/36		
27·50	Coleman, Alta	Palace	Jan. 25-28/36		
12·50	Natal, B.C.	Natal	Feb. 1-4/36		
20 10·00	Gravelbourg, Sask.	Legion Hall	Feb. 13-15/36		
15·00	Edson, Alta	New Edson	Feb. 26-28/36		
8·50	Trochu, Alta	Sharp's	Mar. 16/36		
8·50	Delburne, Alta	"	Mar. 17/36		
8·50	Alix, Alta	"	Mar. 18/36		
8·50	Carbon, Alta	"	Mar. 19/36		
8·50	Three Hills, Alta	"	Mar. 20-21/36		
15·00	High River, Alta	Wales	Mar. 26-28/36		
8·50	Acme, Alta	Sharp's	Apr. 1/36		
12·50	Turner Valley, Alta	"	Apr. 2-3/36		
30 8·50	Gleichen, Alta	"	Apr. 4/36		
12·50	Outlook, Sask.	Lyric	Apr. 10-11/36		
15·00	Wilkie, Sask.	Marnel	Apr. 16-18/36		
10·00	Foremost, Alta	Midland	Apr. 24/36		
	Banff, Alta	Lux	Apr. 29-30/36		
10·00	Elrose, Sask.	Elrose	May 12/36		
15·00	MacLeod, Alta	Empress	May 25-27/36		
15·00	Big Valley, Alta	Lyceum	June 5-6/36		
11·50	Climax, Sask.	Climax	July 4-6/36		
22·50	Kindersley, Sask.	Rex	July 25-28/36		
40 22·50	Unity, Sask.	Star	Aug. 1-4/36		
20·00	Vegreville, Alta	Vimy	Aug. 8-11/36		
17·50	St. Paul, Alta	Elite	Aug. 18-19/36		
60·00	Drumheller, Alta	Napier	Sep. 3-5/36		
27·50	Blairmore, Alta	Orpheum	Sep. 24-26/36		
10·00	Riverhurst, Alta	Hollywood	Oct. 30-Nov. 1 1936		
15·00	Edmonton, Alta	Avenue	Dec. 5-8/36		
20·00	Saskatoon, Sask.	Ritz	Jan. 25-27/37		
17·50	Calgary, Alta	Crescent	Feb. 24-26/37		
	Raymond, Alta	Capitol	June 14-16/37		
50	Hanna, Alta	Capitol	June 24-26/37		
	Medicine Hat, Alta	Monarch	July 5-7/37		
	Rosetown, Sask.	Unique	Sep. 16-18/37		

Exhibits. 15.—Admitted copy of material screened when “The Man Who Broke the Bank at Monte Carlo” is run.

15.
Admitted copy of material screened when “The Man Who Broke the Bank at Monte Carlo” is run.

a.

20TH
CENTURY
FOX

b.

RONALD COLMAN
in
THE MAN WHO
BROKE THE BANK AT
MONTE CARLO

10

c.

with
JOAN BENNETT
COLIN CLIVE
NIGEL BRUCE

d.

A
DARRYL F. ZANUCK
Twentieth Century
Production
Presented by
JOSEPH M. SCHENCK

20

e.

Directed by
STEPHEN ROBERTS

f.

Associate Producer
NUNNALLY JOHNSON
Screen Play by
HOWARD ELLIS SMITH
and
NUNNALLY JOHNSON
From the Play by
ILIA SURGUTCHÖFF
and
FREDERICK ALBERT SWANN.

30

g. Photography—ERNEST PALMER, A.S.C.
 Art Direction—WILLIAM DARLING
 Film Editor—HAROLD SCHUSTER
 Costumes—GWEN WAKELING
 Sound—{ JOSEPH AIKEN
 ROGER HEMAN
 Musical Direction—OSCAR BRADLEY
 Western Electric Noiseless Recording.

Exhibits.

15.
 Admitted
 copy of
 material
 screened
 when "The
 Man Who
 Broke the
 Bank at
 Monte
 Carlo" is
 run—con-
 tinued.

Copyright MCMXXXV by Twentieth Century-Fox Film Corporation.

10 Approved All Rights Reserved.
 Certificate No. 1546.

CAST.

NOTE: THIS CAST Paul Gallard - - RONALD COLMAN
 OF CHARACTERS Helen Berkeley - JOAN BENNETT
 CARD APPEARS AT Bertrand Berkeley - COLIN CLIVE
 END OF PICTURE Ivan - - - NIGEL BRUCE
 ONLY. Director - - - MONTAGU LOVE
 2nd Asst. Director - FRANK REICHER
 3rd Asst. Director - LIONEL PAPE
 20 Office Man - - FERDINAND GOTTSCHALK
 Dealer - - - ANDRE CHERON

Screen Credits on "THE MAN WHO BROKE THE BANK AT MONTE CARLO".
 Roberts 2—American dialogue production—SHIPPED: Nov. 2, 1935.

Exhibits. 24.—List of foreign countries where “The Man Who Broke the Bank at Monte Carlo” exhibited, with foreign titles and English translations.

List of foreign countries where “The Man Who Broke the Bank at Monte Carlo” exhibited with foreign titles and English translations.	Country.	Foreign Titles.	English Translations.
		THE MAN WHO BROKE THE BANK AT MONTE CARLO	
	Cuba	Desbanque Monte Carlo	The Bank of Monte Carlo.
	Latvia	Monte Carlo	Monte Carlo.
	Poland	Czlowick Ktory Rozbil Bankw Monte Carlo	The Man Who Broke the Bank at Monte Carlo.
	Argentina	Desbanque Monte Carlo	The Bank of Monte Carlo.
	Austria	Der Mann Der Die Bank Von Monte Carlo Sprengte	The Man Who Broke the Bank at Monte Carlo. 10
	Dutch East Indies	De Bank v Monte-Carlo Is Gesprongen	The Bank of Monte Carlo is Broken.
	Hungary	Aki A Monte Carloi Bankot Felrobbantotta	Who Broke the Bank at Monte Carlo.
	Italy	L’Uomo Che Sbanco’ Monte Carlo	The Man Who Broke the Bank at Monte Carlo.
	Norway	Monte Carlo	Monte Carlo.
	Panama	Dasbanque Monte Carlo	The Bank of Monte Carlo.
	Spain	Desbanque Monte Carlo	The Bank of Monte Carlo. 20
	Sweden	Mannen Som Sprangde Banken I Monte Carlo	The Man Who Broke the Bank at Monte Carlo.
	Brazil	O Homem Que Dasbancou Monte Carlo	The Man Who Broke the Bank at Monte Carlo.
	Chile	Dasbanque Monte Carlo	The Bank of Monte Carlo.
	Czechoslovakia	Muz, Jenz, Rozbil Bank v. Monta Carlu	The Man Who Broke the Bank at Monte Carlo.
	Denmark	Manden, der Spraengte Van-ken I Monte Carlo	The Man Who Broke the Bank at Monte Carlo.
	Finland	Mannen Som Sprangde Banken I Monte Carlo	The Man Who Broke the Bank at Monte Carlo. 30
	Mexico	Desbanque Montecarlo	The Bank of Monte Carlo.
	Peru	Desbanque Monte Carlo	The Bank of Monte Carlo.
	Phillipine Islands	El Hombre Que Desbanco A Monte Carlo	The Man Who Broke the Bank at Monte Carlo.
	Venezuela	Desbanque Monte Carlo	The Bank of Monte Carlo.
	Japan	Monte Carlo No Ginko Yaburi	Monte Carlo’s Bank Broken.
	Roumania	Omul Care A Spart Banca La Monte-Carlo	The Man Who Broke the Bank at Monte Carlo. 40
	Porto Rico	Desbanque Monte Carlo	The Bank of Monte Carlo.

Country.	Foreign Titles.	English Translations.	Exhibits.
Jugoslavia	Covjek Koji Je Razbio Banku U Monte Carlo	The Man Who Broke the Bank at Monte Carlo.	21. List of foreign countries where "The Man Who Broke the Bank at Monte Carlo" exhibited with foreign titles and English translations
Turkey	Montekarlo Kirale	The King of Monte Carlo.	—continued.
Colombia	Desbanque Monte Carlo	The Bank of Monte Carlo.	
Greece	Ghoissa Tou Monte Carlo	The Fascination of Monte Carlo.	
Bulgaria	Prelastitelkata Ot Monte Carlo	The Lady Seducer of Monte Carlo.	
10 Portugal	O Homem Que Desbancou Monte Carlo	The Man Who Broke the Bank at Monte Carlo.	

22.—"Monte Carlo" titles as listed in the "Film Daily Year Book 1937."

Picture.	Producer.	Release Date.	Players.	22. "Monte Carlo" titles as listed in the "Film Daily Year Book, 1937."
"Mr. Grex of Monte Carlo"	Paramount	December 16, 1915		
"Foolish Monte Carlo"	Film Booking Offices	1922		
"Monte Carlo"	Metro-Goldwyn-Mayer	March 28, 1926		
"Prodigals of Monte Carlo"	Zakoro	1928		
20 "Monte Carlo"	Paramount	August 31, 1930	Jeannette MacDonald, Jack Buchanan, Zasu Pitts.	
"Woman from Monte Carlo"	First National	January 3, 1932	Lil Dagover, Walter Huston, Warren William.	
"Monte Carlo Madness"	First Division	June 5, 1932	Sari Maritza, Hans Albers, Charles Redgi	
30 "Revenge at Monte Carlo"	Mayfair	April 26, 1933	June Collyer, Jose Crespo, Wheeler Oakman.	
"Monte Carlo Nights"	Monogram	April 26, 1934	Mary Brian, John Darrow, Kate Campbell.	
"Man Who Broke the Bank at Monte Carlo."	Twentieth Century-Fox.	November 29, 1935	Ronald Colman, Joan Bennett, Colin Clive.	
"The Widow from Monte Carlo."	Warner Brothers	December 9, 1935	Warren William, Delores Del Rio, Louise Fazenda.	
40 "The Man that Broke the Bank at Monte Carlo." Episode 4 of the serial "Around the World in Eighteen Days."	Universal	November 25, 1922		

Exhibits. 25.—List showing purchase prices paid by Twentieth Century Fox Film Corporation for titles from November 1927 to March 1937.

25. List showing purchase prices paid by Twentieth Century Fox Film Corporation for titles from November, 1927 to March, 1937.	Title.	To whom paid.	Date.	Amount.	
	Sunrise	George L. Miller, Willard Mack, Benjamin Verschleiser and James P. Sinnott.	November 29, 1927	\$600·00	
	The Veiled Woman	Herman Bernstein	November 15, 1928	250·00	
	Men Without Women	Ernest Hemingway (author) and Charles Scribner's Sons (publisher)	February 14, 1930	500·00	10
	The Part Time Wife	Consolidated Film Industries, Inc.	December 3, 1930	500·00	
	Skylines	Doubleday, Doran & Co., Inc. (publisher) and R. T. Townsend (author).	March 19, 1931	200·00	
	The Painted Woman	Frederick Arnold Kummer	November 18, 1932	375·00	
	After the Ball	Cora L. Harris	February 1, 1933	1000·00	
	The Best of Enemies	Courtney Ryley Cooper	June 8, 1933	250·00	
	Devil Tiger	Douglas Newton	December 4, 1933	150·00	
	Coming Out Party	Alice Duer Miller	January 6, 1934	500·00	
	Heart Song	Frank A. Munsey Co.	May 4, 1934	100·00	20
	Servant's Entrance	Simon & Schuster, Inc.	May 17, 1934	500·00	
	Under Pressure	James Wood Morrison	January 14, 1935	250·00	
	It's a Small World	Virginia Rice, agent for Walter Bodin and Burnet Hershey.	February 14, 1935	400·00	
	Champagne Charlie	Guy Gilpatric (author) and The Curtis Publishing Co. (publisher).	February 27, 1935	150·00	
	Spring Tonic	T. L. Sappington	March 8, 1935	250·00	
	Our Little Girl	Robert A. Simon (author) and Liveright Publishing Co. (publisher).	March 18, 1935	250·00	30
	Steamboat Bill	Paull-Pioneer Music Corp.	June 3, 1935	500·00	
	Navy Wife	F. M. Holley, agent for Whitman Chambers (author).	September 20, 1935	100·00	
	Back to Nature	Pauline Crawford	August 3, 1936	50·00	
	One in a Million	Alliance Films Corp. B.I.P. Export Ltd. & British International Pictures, Inc.	October 9, 1936	2500·00	
	Career Woman	Sanford Greenburger (agent) for Theresa McLaughlin Hurst.	January 6, 1937	750·00	
	One Mile from Heaven	The Frank A. Munsey Co.	March 2, 1937	100·00	40

25A.—File of documents evidencing the purchase of various titles.

Exhibits.

WESTERN UNION CABLEGRAM.

1935 Feb. 27 AM 5 45.

EPS 109 JR.

Cannes 19 27/950.

Lc HOLLYHOCK

NYK

Miss Flora M. Holly
156 Fifth Ave.

25A.
File of
documents
evidencing
the purchase
of various
titles.

I authorize you to sign for me release of title Champagne Charley
10 to Fox Films.

GILPATRIC.

The undersigned, Guy Gilpatric, author of a short story entitled "Champagne Charlie" published in the Saturday Evening Post, issue of January 19, 1935, and Curtis Publishing Company, for and in consideration of the sum of One hundred fifty dollars, receipt whereof is hereby acknowledged, do hereby give and grant to Fox Film Corporation, the irrevocable right and license throughout the world to use the phrase "Champagne Charlie" as a title for motion picture photoplays.

It is understood, however, that the right to use the name of Guy
20 Gilpatric or of The Saturday Evening Post in any manner in connection with the production, advertising or distribution of the said motion picture photoplays is not granted,

February 27, 1935.

"GUY GILPATRIC"

F. M. Holly Atty in fact.

Curtis Publishing Company

By "Frank Lorimer."

March 8, 1935.

Fox Film Corporation,
New York, N.Y.

30 Gentlemen :

Please be advised that the undersigned, T. L. Sappington, author of a story entitled "Spring Tonic" published in Everybody's Magazine, issue of June, 1923, for and in consideration of the sum of Two hundred fifty (\$250) dollars, receipt whereof is hereby acknowledged, hereby gives and grants to the Fox Film Corporation, its successors and assigns forever, the irrevocable right and license, throughout the world, to use the phrase "Spring Tonic" as the title for motion picture photoplays.

Exhibits.
 —
 25A.
 File of
 documents
 evidencing
 the purchase
 of various
 titles—con-
 tinued.

It is understood, however, that the right to use the name of T. L. Sappington or Everybody's Magazine in any manner in connection with the production, advertising or distribution of the said motion picture photoplays is not granted.

It is also understood that no rights are granted to use any of the material or characters in the story "Spring Tonic".

Very respectfully yours,

"T. L. SAPPINGTON".

March 2, 1937.

Twentieth Century-Fox Film Corporation
 444 West 56th Street
 New York, New York.

10

Dear Sirs :

Please be advised that the undersigned, The Frank A. Munsey Company, publisher of All-Story Magazine, for and in consideration of the sum of One hundred (\$100.00) Dollars, receipt whereof is hereby acknowledged, hereby gives and grants to Twentieth Century-Fox Film Corporation, its successors and assigns forever, the irrevocable right and license, throughout the world, to use the phrase "One Mile From Heaven" as the title of motion picture photoplays.

20

"One Mile From Heaven" is the title of a story written by Mary Frances Morgan and published in All-Story Magazine, issue of May 23, 1936.

It is understood, however, that the right to use the name of Mary Frances Morgan in any manner in connection with the production, advertising or distribution of the said motion picture photoplays is not granted and that no rights are granted to use any of the material or characters in the said story "One Mile From Heaven."

The undersigned represents that it has the right and authority to grant this licence.

Very respectfully yours,

30

THE FRANK A. MUNSEY COMPANY

By "T. A. Proehl"

Asst. Treasurer.

May 18, 1937.

Twentieth Century-Fox Film Corporation,
 444 West 56th Street,
 New York, New York.

Dear Sirs :—

Please be advised that the undersigned, Standard Magazines, Inc., publisher of Thrilling Love Magazine, for and in consideration of the sum 40

of One hundred (\$100.00) Dollars, receipt whereof is hereby acknowledged, hereby gives and grants to Twentieth Century-Fox Film Corporation, its successors and assigns forever, the irrevocable right and license, throughout the world, to use the phrase "Love and Hisses" as the title of motion picture photoplays.

"Love and Hisses" is the title of a story written by Beatrice Norton and published in Thrilling Love Magazine, issue of June 1935.

10 It is understood, however, that the right to use the name of Beatrice Norton, Thrilling Love Magazine or Standard Magazines, Inc. in any manner in connection with the production, advertising or distribution of the said motion picture photoplays is not granted and that no rights are granted to use any of the material or characters in the said story "Love and Hisses".

The undersigned represents that it has the right and authority to grant this license.

Very respectfully yours,

STANDARD MAGAZINES, INC.

"Ned Pines" Treas.

Exhibits.
—
25A.
File of documents evidencing the purchase of various titles—*continued.*

20.—Specimen form of license issued by Canadian Performing Right Society Limited.

20

No. T. A.

CANADIAN PERFORMING RIGHT SOCIETY, LIMITED
1704 ROYAL BANK BUILDING, TORONTO, CANADA.

LICENSE

Granted by

CANADIAN PERFORMING RIGHT SOCIETY LIMITED

(hereinafter styled the Society) to

(hereinafter styled the Licensee) as follows :

1. The Society grants and the Licensee accepts for the period from
to

30 and thereafter from year to year until terminated as hereinafter set out a license publicly to perform at

non-dramatic renderings of any and every musical work for the time being in the repertoire of this Society and in the repertoires of, and of which the right to license public performance has been conveyed to this Society by, the American Society of Composers, Authors and Publishers, The Performing Right Society, Limited, of England, the Societies in France, Germany, Austria, Italy, Spain, Sweden, Denmark, Hungary, Poland, Czechoslovakia, Roumania, Switzerland, Portugal, Brazil, Norway, Finland, Holland and Belgium affiliated with the British Society for the Dominion of Canada,

20.
Specimen form of license issued by Canadian Performing Right Society Limited.

Exhibits.
—
20.
Specimen
form of
license
issued by
Canadian
Performing
Right
Society
Limited—
continued.

and any other societies that may become so affiliated for the Dominion of Canada.

2. This license is limited strictly to the Licensee and to the licensed premises above named. It shall not be assigned or transferred by the Licensee without the previous consent of the Society in writing, and the Society shall be paid a fee of One Dollar for its consent to such transfer.

3. This license shall not extend to or be deemed to authorize :

(a) The performance in their entirety of Oratorios, Choral Works, Operas, Musical Plays, Revues or Pantomimes (in so far as such Operas, etc., consist of words and music written expressly therefor); nor of excerpts from such Operas, etc., accompanied by the words or any visual representation of the same work; nor of ballets if accompanied by any visual representation thereof. 10

(b) Any work (or part thereof) whereof the stage presentation and singing rights are reserved.

(c) The broadcasting or other transmission of any performance or the public audition of such performance, beyond the precincts of the premises hereby licensed.

4. The Society reserves the right at any time to withdraw any musical work from the operation of this license and/or limit or restrict the use of any musical work, and upon any such withdrawal, limitation or restriction the Licensee may immediately cancel this license and receive pro rata refund of any license fees in the hands of the Society, applicable to the then unexpired part of the license period. 20

5. The Licensee shall, for the duration of this license, supply to the Society or its authorized agent, monthly by post, on the forms which may be obtained from the Society without charge, a list signed by or on behalf of the Licensee, of the titles of all sound films exhibited and of all musical works performed vocally, instrumentally or mechanically at the premises hereby licensed, with the name of the producing company and all identification numbers of each such film and the names of the author, composer, arranger and publisher of each such work and the number of times each such film or work has been exhibited or performed during the month. 30

6. For the purpose of verifying the warranties and representations on which the license fee is fixed, the Society, by its duly authorized Agent, shall at all reasonable times, be entitled to enter upon the licensed premises and to examine the same and any records kept by the Licensee in connection with the operation thereof, providing that the Society, or its Agent, shall in no way interfere with the Licensee's performance. 40

7. If the premises hereby licensed shall be temporarily or permanently used by the Licensee for any performance or class of entertainment different from the class of entertainment being given thereat on the grant of this license, this license shall not be taken to extend to or authorize such different entertainment without the previous written sanction of the Society.

Exhibits.

20.

Specimen
form of
license
issued by
Canadian
Performing
Right
Society
Limited—
continued.

8. If the Licensee shall commit any breach of the provisions or conditions hereof or of the provisions or agreements contained in the Application Form (a copy of which is attached hereto and forms part hereof) or fail to make any payment herein provided or to comply with any other of the terms of this license, or of the terms of such Application Form, on the day named or thereafter within seven days from the date of any demand for payment or compliance, the Society may, notwithstanding anything in this license expressed to the contrary, forthwith terminate this license by written notice sent by registered post to the Licensee at the address given herein, and thereupon this license shall determine, save as to the right of the Society to recover any moneys previously due hereunder. Upon such termination, the Licensee shall forfeit any licence fees in the hands of the Society.

9. The Licensee has warranted and represented to the Society that the particulars of performance are as shown in the attached Application Form on which warranties and representations the license fee herein provided is fixed. If any change takes place in the seating capacity or other particulars of performance as warranted and represented in the Application Form, the Licensee shall at once inform the Society of the necessary correction and the amount of the license fee shall be increased in accordance with such change.

10. This license may be terminated on the _____ day of _____ in any year by either party giving to the other notice in writing of such termination by registered post at least one month prior to that date.

11. The following license fees are payable in advance to the Society for the license hereby granted:

(a) \$ _____ immediately on the signing hereof for the period from

(b)

For and on behalf of

CANADIAN PERFORMING RIGHT SOCIETY LIMITED.

Manager, Licensing Department.

Dated _____

N.B.—All fees are payable in advance and in full. No refund of fee will be made on account of reduction in seating capacity or where performances are given for less than the full period for which the fee has been paid. Written notice of any change of address of the Licensee or of the name of the licensed premises should immediately be given to the Society.

Exhibits.

16.
Statement
re Damages.

16.—Statement re damages.

THEATRES OWNED AND OPERATED DIRECTLY BY FAMOUS PLAYERS
CANADIAN CORPORATION LTD."The Man Who Broke the Bank at
Monte Carlo."Red—Loss
Black—Profit
☉—No Loss
No profit

EAST		Receipts.	Film Rental.	General House Expense Less sub rents.	Gross P. or L.	F.P.C.C. Share.	
Theatre	Town						
Belle	Belleville	453	54	369	☉	—	
Capitol	Chatham	353	65	416	128	128	
Capitol	*Cornwall	381	69	311	1	—	
Capitol	Galt	337	60	330	53	53	
Casino	Halifax	774	140	588	46	23	
Palace	*Hamilton	2418	541	1697	180	135	
Capitol	Kingston	1241	221	624	396	396	
Capitol	London	1446	258	825	363	363	20
Capitol	*Moncton	400	74	316	10	5	
Capitol	North Bay	313	55	482	224	224	
Regent	*Ottawa	2778	620	1224	934	700	
Capitol	Port Hope	172	39	125	8	8	
Algoma	Soo	579	104	371	104	104	
Capitol	St. Kitts	997	178	589	230	230	
Capitol	St. Thomas	208	47	207	46	46	
Capitol	*Sydney	333	75	190	68	34	
Capitol	Three Rivers	133	31	143	41	20	
Beach	Toronto	721	128	333	260	260	30
Belsize	"	165	30	233	98	98	
Capitol	*"	177	65	241	129	65	
College	"	313	57	278	22	22	
Eglinton	*"	1230	218	580	432	216	
Palace	"	450	100	336	14	14	
Parkdale	"	362	82	222	58	58	
Runnymede	"	366	83	293	10	10	
Capitol	Welland (mid)	464	90	280	94	94	
		17564	3514	11603	2447	1974	
WEST							
Capitol	Calgary	853	156	1082	385	385	40
Strand	Chilliwack	143	34	97	12	12	
Capitol	Kamloops	202	45	168	11	11	
Empress	Kelowna	167	32	150	15	15	
Capitol	*Lethbridge	661	146	221	294	147	
Columbia (N.Y.E.)	New Westminster	245	49	100	96	96	
"	"	232	36	346	150	150	
Empress	Penticton "	184	42	109	33	33	
Capitol	Regina	787	142	948	303	303	
Grand	*Regina	590	105	298	187	93	
Capitol	*Rossland	117	26	79	12	6	50

Theatre.	Town.	Receipts.	Film Rental.	General House Expense less sub Rents.	Gross P. or L.	F.P.C.C. Share.	Exhibits. 16. Statement re Damages. —continued.
Liberty	*Trail	184	42	124	18	9	
Alma	Vancouver	191	44	146	1	1	
Grandview	"	143	34	149			
Kerrisdale	" 1 day Thurs.	252	51	111	90	90	
10 Kerrisdale	"	172	32	173			
Kitsilano	"	240	54	144	42	42	
Orpheum	* "	3745	831	2694	220	165	
Regent	"	90	20	119			
Victoria	"	131	30	141			
Windsor	"	246	55	184	7	7	
Empress	Vernon	304	54	179	71	71	
Hi-Art	Weyburn	124	23	95	6	3	
		10003	2083	7857	63	291	
Total		27567	5597	19460	2510	1723	

20 THEATRES OWNED OR OPERATED INDIRECTLY BY FAMOUS PLAYERS
CANADIAN CORPORATION LTD.

"The Man Who Broke the Bank at
Monte Carlo."

Red—Loss
Black—Profit
Φ—No Loss
No Profit

EAST						
Capitol	Windsor	1028	229	647	152	85
"	Woodstock	350	62	224	64	64
30 "	Coburg	195	35	156	4	4
"	Peterboro	740	132	404	204	199
"	Brookville	254	48	229		
"	Quebec	844	189	943		
Tivoli	Windsor	281	52	140	89	50
Trent	Trenton	175	41	148		
Imperial	Toronto	6092	1086	6722	171	161
Palace	London	247	44	189	14	14
Classic	Owen Sound	192	44	164		
Capitol	Brantford	854	156	753		
Imperial	Sarnia	392	70	256	66	66
40 Capitol	Guelph	407	91	247	69	69
Capitol	Niagara Falls	218	49	178		
Regent	Oshawa	311	68	243	Φ	Φ
Oakwood	Toronto	772	139	462	171	171
Loews	Montreal	5524	767	4874	117	117
Bloor	Toronto	1310	235	611	464	464
Strand	Hamilton	186	33	226		
Garrick	Halifax	390	88	199	103	51
Bedford	Toronto	172	32	185		
Capitol	St. John	563	126	377	60	30

Exhibits.
16.
Statement
re Damages
—continued.

Theatre.	Town.	Receipts.	Film Rental.	General House Expense less sub Rents.	Gross P. or L.	F.P.C.C. Share.	
Mayfair	St. John	171	40	190	59	15	
Dundas	Darmouth	91	25	124	58	15	
Community	Halifax	102	22	180	100	25	
Family	"	87	23	96	32	8	
Regent	St. John	62	17	126	81	20	10
		22010	3943	19293	1226	946	
WEST							
Capitol	Saskatoon	1232	220	758	254	127	
Dominion	Victoria	1022	228	554	240	240	
Orpheum	Fort William	383	70	347	34	34	
Colonial	Fort Arthur	293	67	269	43	43	
Capital	Moose Jaw	275	51	293	69	66	
Capitol	Winnipeg	3199	712	2591	104	52	
Strand	Brandon	193	36	202	45	45	
Tivoli	Winnipeg	491	110	210	171	86	20
Strand	Edmonton	1086	194	472	420	210	
Osborne	Winnipeg	220	50	212	42	21	
Capitol	Nelson	219	49	220	50	25	
Broadway	Vancouver	328	74	223	31	23	
Capitol	Nanaimo	230	52	155	23	12	
Princess	Edmonton	454	82	229	143	71	
Dreamland	"	437	97	196	144	72	
Capitol	Prince Rupert	155	41	162	48	48	
Strand	Calgary	750	191	472	87	41	
		10967	2324	7565	1078	548	30
Total		32977	6267	26858	148	398	

17.—Statement of rentals received by Twentieth Century Fox Corporation Limited.

Exhibits.

17.

Statement of Rentals received by Twentieth Century Fox Corporation Limited.

“THE MAN WHO BROKE THE BANK AT MONTE CARLO.”

	Town.	Theatre.	Play Date.	Rental.
	Fort Erie, Ont.	Bellard	Dec. 9-10/35	35.00
	Kirkland Lake, Ont.	Uptown	Dec. 9-10	90.19
	Cobalt, Ont.	Classic	Dec. 25-26	27.62
	St. Catharines, Ont.	Capitol	Dec. 28-31	199.45
	Windsor, Ont.	Capitol	Dec. 28-31	256.98
10	Belleville, Ont.	Belle	Dec. 28-31	90.53
	Brockville, Ont.	Capitol	Dec. 30-31	50.84
	Welland, Ont.	Capitol	Dec. 31 (Midnight)	61.40
	Trenton, Ont.	Trent	Dec. 31 (")	27.32
	Cobourg, Ont.	Capitol	Jan. 1-2/36	39.04
	Woodstock, Ont.	Capitol	Jan. 1-2	70.05
	Peterboro, Ont.	Capitol	Jan. 1-2	148.03
	Kingston, Ont.	Capitol	Jan. 1-2	248.21
	Port Hope, Ont.	Capitol	Jan. 3-4	43.02
	Smith Falls, Ont.	Capitol	Jan. 8-9	18.39
20	Sault Ste. Marie, Ont.	Algoma	Jan. 10-11	115.87
	Windsor, Ont.	Tivoli	Jan. 10-11	50.00
	London, Ont.	Capitol	Jan. 11-14	289.10
	Stratford, Ont.	Majestic	Jan. 13-15	56.19
	Strathroy	King	Jan. 16-18	20.00
	Picton, Ont.	Regent	Jan. 17-18	40.00
	North Bay, Ont.	Capitol	Jan. 20-21	62.54
	Delhi, Ont.	Capitol	Jan. 20-22	25.00
	East Windsor, Ont.	Temple	Jan. 27-28	30.00
	Kitchener, Ont.	Capitol	Feb. 10-12	68.19
30	Windsor, Ont.	Regent	Feb. 12-13	40.00
	Port Colborne, Ont.	Strand	Feb. 14-15	27.50
	Trenton, Ont.	Trent	Feb. 17-18	15.25
	Barrie, Ont.	Roxy	Feb. 24-26	30.30
	Welland, Ont.	Capitol	Feb. 26-27	39.05
	Toronto, Ont.	Imperial	Feb. 21-27	1,218.42
	Dunnville, Ont.	Hollywood	March 3-4	25.00
	Owen Sound, Ont.	Classic	March 4-5	47.96
	Brantford, Ont.	Capitol	March 4-6	170.68
	St. Thomas, Ont.	Capitol	March 2-3	52.03
40	London, Ont.	Palace	March 4-5	49.40
	Leamington, Ont.	Capitol	March 9-10	21.38
	Midland, Ont.	Capitol	March 9-10	40.00
	Kincardine, Ont.	Blue Water	March 9-11	20.00
	Guelph, Ont.	Capitol	March 9-11	101.67

Exhibits.	Town.	Theatre.	Play Date.	Rental.
17. Statement of Rentals received by Twentieth Century Fox Cor- poration Limited— continued.	Aurora, Ont.	Royal	March 18-19	35·00
	Niagara Falls, Ont.	Capitol	March 18-19	54·38
	Sarnia, Ont.	Imperial	March 18-19	78·36
	Hamilton, Ont.	Palace	March 27-April 2	604·60
	Toronto, Ont.	Parkdale	March 30-31	90·56
	Parry Sound, Ont.	Royal	April 3-4	20·00
	Ottawa, Ont.	Regent	April 2-8	694·53
	Oshawa, Ont.	Regent	April 1-2	77·80
	Toronto, Ont.	Palace	April 8-9	112·57 ¹⁰
	Burlington, Ont.	Hume	April 10-11	30·00
	Toronto, Ont.	Oakwood	April 13-15	154·34
	Petrolia, Ont.	Iroquois	April 13-15	25·00
	Toronto, Ont.	Runnymede	April 15-16	91·66
	New Toronto, Ont.	Capitol	April 15-16	55·42
	Toronto, Ont.	Bloor	April 17-23	262·07
	Ingersoll, Ont.	Maitland	April 20-22	35·00
	Carleton Place, Ont.	Star	April 21-23	35·00
	Toronto, Ont.	College	April 22-23	62·54
	Cornwall, Ont.	Capitol	April 29-30	76·24 ²⁰
	Toronto, Ont.	Beach	May 1-2	144·13
	Preston, Ont.	Park	May 4-5	19·76
	Toronto, Ont.	Eglinton	May 4-6	246·03
	Hamilton, Ont.	Strand	May 8-9	37·10
	Toronto, Ont.	Kum-C	May 7-9	50·00
	Orillia, Ont.	Opera House	May 13-14	65·00
	Chatham, Ont.	Capitol	May 11-12	70·45
	Toronto, Ont.	Century	May 11-12	72·18
	Toronto, Ont.	Christie	May 13-14	56·66
	Toronto, Ont.	Prince of Wales	May 15-16	123·16 ³⁰
	Hamilton, Ont.	Kenilworth	May 14-16	82·72
	Hamilton, Ont.	Kenmore	May 18-20	43·64
	Toronto, Ont.	Beaver	May 20-21	51·57
	Toronto, Ont.	Hollywood	May 21-23	100·00
	Niagara Falls, Ont.	Hollywood	May 24 (Midnight)	27·50
	Ottawa, Ont.	Rideau	May 25-27	100·00
	Toronto, Ont.	Carleton	May 27-28	55·94
	Toronto, Ont.	La Plaza	May 27-28	37·58
	Toronto, Ont.	Capitol	June 1-2-3	70·76
	Campbellford, Ont.	Hollywood	June 1-2-3	30·00 ⁴⁰
	Toronto, Ont.	York	June 5-6	52·03
Toronto, Ont.	Belsize	June 8-9	32·97	
Toronto, Ont.	Photodrome	June 10-11	39·93	
Toronto, Ont.	Hillcrest	June 12-13	15·00	
Hamilton, Ont.	Lyceum	June 12-13	15·00	
Mimico, Ont.	Rex	June 11-13	30·00	
Hamilton, Ont.	Playhouse	June 15-16	40·00	

	Town.	Theatre.	Play Date.	Rental.	Exhibits.
	Hamilton, Ont.	Gregory	June 18-20	25.00	—
	Lindsay, Ont.	Academy	June 17-18	50.00	17.
	Ottawa, Ont.	Mayfair	June 18-20	175.00	Statement of Rentals
	Toronto, Ont.	Eastwood	June 23-24	59.16	received by
	Toronto, Ont.	Cameo	June 25-27	25.00	Twentieth
	Toronto, Ont.	Bedford	June 24-25	34.41	Century
	Wallaceburg, Ont.	Capitol	June 29-30	17.65	Fox Cor- poration
	Long Branch, Ont.	Royal	June 29-30	12.50	Limited—
10	Chapleau, Ont.	Regent	June 29-30	12.50	<i>continued.</i>
	Toronto, Ont.	Iola	July 2-4	30.00	
	Toronto, Ont.	Allenby	July 2-4	35.00	
	Toronto, Ont.	Major Rogers Rd.	July 3-4	30.00	
	Toronto, Ont.	Academy	July 6-8	33.20	
	Toronto, Ont.	Major St. Clair	July 6-7	21.65	
	Toronto, Ont.	Parliament	July 6-8	25.00	
	Hamilton, Ont.	Westdale	July 9-11	20.00	
	Ottawa, Ont.	Victoria	July 9-11	60.00	
	Sault Ste. Marie, Ont.	Princess	July 9-11	15.00	
20	Tilbury, Ont.	Plaza	July 13-14	25.00	
	Toronto, Ont.	Royce	July 15-16	13.60	
	Toronto, Ont.	Embassy	July 15-16	35.00	
	Toronto, Ont.	Mayfair	July 16-18	30.00	
	Toronto, Ont.	Bonita	July 16-18	60.00	
	Toronto, Ont.	Duchess	July 20-22	82.22	
	Timmins, Ont.	Palace	July 20-22	250.00	
	Acton, Ont.	Wonderland	July 20	15.00	
	Georgetown, Ont.	Gregory	July 21	15.00	
	Toronto, Ont.	Kenwood	July 23-25	60.00	
30	Toronto, Ont.	Avelon	July 23-25	17.50	
	Schumacher, Ont.	Mascioli	July 24-25	25.00	
	South Porcupine, Ont.	Empire	July 27-28	25.00	
	Toronto, Ont.	Oriole	July 27-29	35.00	
	Mount Dennis, Ont.	Mount Dennis	July 29-30	17.85	
	Toronto, Ont.	Rialto	July 30-Aug. 1	30.00	
	Ansonville, Ont.	Empire	July 30-Aug. 1	25.00	
	Toronto, Ont.	King	July 30-Aug. 1	32.50	
	Toronto, Ont.	Crescent Palace	Aug. 3-5	20.00	
	New Liskeard, Ont.	Empire	Aug. 3-5	25.00	
40	Toronto, Ont.	Grant	Aug. 3-5	30.00	
	Toronto, Ont.	Kingswood	Aug. 3-5	25.00	
	Toronto, Ont.	Crown	Aug. 6-8	35.00	
	Toronto, Ont.	National	Aug. 6-8	17.50	
	Toronto, Ont.	Bloordale	Aug. 10-12	75.00	
	Toronto, Ont.	Kitchener	Aug. 10-12	15.00	
	Toronto, Ont.	Liberty	Aug. 10-12	30.00	
	Toronto, Ont.	Classic	Aug. 13-15	40.00	

Exhibits.	Town.	Theatre.	Play Date.	Rental.
17. Statement of Rentals received by Twentieth Century Fox Cor- poration Limited— <i>continued.</i>	Toronto, Ont.	Rex	Aug. 13-15	20·00
	Weston, Ont.	Weston	Aug. 12-13	25·00
	Toronto, Ont.	Lyndhurst	Aug. 17-19	17·50
	Toronto, Ont.	Chateau	Aug. 17-19	25·00
	Paris, Ont.	Capitol	Aug. 17-19	30·00
	Hamilton, Ont.	Regent	Aug. 20-22	31·80
	Toronto, Ont.	Queens	Aug. 24-26	15·00
	Sudbury, Ont.	Regent	Aug. 24-26	15·00
	Milton, Ont.	Princess	Aug. 25-26	15·00
	Kingsville, Ont.	Roxy	Aug. 24-25	20·00
	Toronto, Ont.	Brock	Aug. 27-29	35·00
	Bowmanville, Ont.	Royal	Aug. 27-29	27·50
	Windsor, Ont.	Royal	Sept. 4-5	12·50
	Toronto, Ont.	Royal George	Sept. 7-9	35·00
	Creighton Mines, Ont.	Regent	Sept. 9-10	10·00
	Toronto, Ont.	King's Playhouse	Sept. 14-16	25·00
	Tillsonburg, Ont.	Capitol	Sept. 14-16	50·00
	Toronto, Ont.	Ideal	Sept. 21-22	17·50
	Toronto, Ont.	Hudson	Sept. 24-26	15·00
	Toronto, Ont.	Revue	Sept. 24-26	25·00
	Simcoe, Ont.	Capitol	Sept. 28-30	100·00
	Perth, Ont.	Perth	Oct. 2-3	54·16
	Orangeville, Ont.	Uptown	Oct. 5-7	30·00
	Morrisburg, Ont.	Cameo	Oct. 7-8	40·00
	Dresden, Ont.	Majestic	Oct. 12-14	15·00
	Ridgetown, Ont.	Palace	Oct. 15-17	15·00
	Hamilton, Ont.	Royal	Oct. 19-21	25·00
	St. Thomas, Ont.	Capitol	Oct. 30 (Revival)	12·50
	Toronto, Ont.	Aster	Nov. 5-7	20·00
	Sarnia, Ont.	Imperial	Nov. 5/36 (Revival)	12·50
	Woodstock, Ont.	Capitol	Nov. 5 (Revival)	10·00
	Toronto, Ont.	Brighton	Nov. 9-11	12·50
	Newmarket, Ont.	Palace	Nov. 9-10	17·50
	Oakville, Ont.	Gregory	Nov. 12-14	50·00
	Chatham, Ont.	Capitol	Nov. 12 (Revival)	10·00
	Brockville, Ont.	Capitol	Nov. 13 (Revival)	10·00
	Galt, Ont.	Capitol	Nov. 13 (Revival)	10·00
	Welland, Ont.	Capitol	Nov. 20 (Revival)	10·00
	Guelph, Ont.	Capitol	Nov. 20 (Revival)	17·50
	Kingston, Ont.	Capitol	Nov. 20 (Revival)	15·00
Toronto, Ont.	Bloor	Nov. 20 (Revival)	15·00	
Brantford, Ont.	Capitol	Nov. 24 (Revival)	15·00	
Sudbury, Ont.	Capitol	Nov. 27 (Revival)	12·50	
St. Catharines, Ont.	Capitol	Nov. 27 (Revival)	12·50	
Sturgeon Falls, Ont.	Regent	Nov. 23-25	15·00	
Ottawa, Ont.	Rialto	Nov. 28-Dec. 1	30·00	

10

20

30

40

	Town.	Theatre.	Play Date.	Rental.	Exhibits.
	Toronto, Ont.	Paramount	Nov. 30-Dec. 2	25·00	17.
	Kapuskasing, Ont.	Community	Dec. 14-15	30·00	Statement
	London, Ont.	Palace	Dec. 23 (Revival)	10·00	of Rentals
	Pembroke, Ont.	O'Briens	Jan. 11-12/37		received by
	Renfrew, Ont.	O'Briens	Jan. 13-14		Twentieth
	Arnprior, Ont.	O'Briens	Jan. 18-19		Century
	Almonte, Ont.	O'Briens	Jan. 20-21	110·00	Fox Cor-
	Toronto, Ont.	Oakwood	Feb. 26 (Revival)	15·00	poration
10	Oshawa, Ont.	Regent	Feb. 26 (Revival)	15·00	Limited—
	Gananoque, Ont.	Delaney's	March 31-April 1	15·00	<i>continued.</i>
	Hornepayne, Ont.	Lyric	April 30-May 1	12·50	
	Edmunston, N.B.	Star	Dec. 23-25/35	40·00	
	New Glasgow, N.S.	Roseland	Jan. 1-2/36	85·00	
	Moncton, N.B.	Capitol	Jan. 8-10	79·95	
	Fredericton, N.B.	Gaiety	Jan. 22-23	75·28	
	McAdam, N.B.	Opera House	Feb. 3-4	25·00	
	Yarmouth, N.S.	Majestic	Feb. 12-13	50·00	
	Sussex, N.B.	Strand	Feb. 24-25	25·00	
20	Glace Bay, N.S.	Russell	March 4-5	125·00	
	St. Andrews, N.B.	Marina	March 12-13	25·00	
	Halifax, N.S.	Casino	March 28-31	154·91	
	Sydney, N.S.	Capitol	April 8-9	83·17	
	St. John's, Nfld.	Star Movie	April 13-15	750·00	
	Halifax, N.S.	Garrick	June 11-13	97·35	
	Stellarton, N.S.	Jubilee	June 18-20	22·50	
	Chester, N.S.	Strand	July 1-2	15·00	
	Minto, N.B.	Gaiety	July 6-7	17·50	
	Bridgetown, N.S.	Strand	Aug. 5-6	37·50	
30	Saint John, N.B.	Capitol	Aug. 19-20	140·80	
	Charlottetown, P.E.I.	Prince Edward	Aug. 27-28	55·00	
	Whitney Pier, N.S.	Casino	Sept. 2-3	17·50	
	Amherst, N.S.	Capitol	Sept. 23-24	27·50	
	Liverpool, N.S.	Astor	Sept. 28-29	22·50	
	St. John, N.B.	Mayfair	Oct. 5-6	213·92	
	Westville, N.S.	Roxy	Oct. 12-14	17·50	
	Digby, N.S.	Bijou	Oct. 28-29	27·50	
	Newcastle, N.B.	Royal	Nov. 16-18	35·00	
	Dartmouth, N.S.	Dundas	Nov. 30-Dec. 1	22·86	
40	Halifax, N.S.	Family	Dec. 7-8	21·71	
	Halifax, N. S.	Community	Dec. 14-15	20·36	
	St. John, N.B.	Regent	Dec. 21-22	15·61	
	Truro, N.S.	Capitol	Dec. 30-31	37·50	
	West St. John, N.B.	Community	Jan. 25-26/37	17·50	
	Quebec, Que.	Capitol	Dec. 29-31/35	210·94	
	Asbestos, Que.	Club House	Jan. 2-4/36	30·00	
	Granby, Que.	Cartier	Jan. 9-11	60·00	

Exhibits.	Town.	Theatre.	Play Date.	Rental.	
17. Statement of Rentals received by Twentieth Century Fox Cor- poration Limited— <i>continued.</i>	Huntingdon, Que.	O'Connor's Hall	Jan. 12-13	15.00	
	Bedford, Lucerne & Chambly, Que.	Mason & Prevost	Jan. 17-20	17.50	
	Temiskaming, Que.	Crescent	Jan. 29-30	22.50	
	St. Agathe, Que.	Roxy	Feb. 8-10	17.50	
	Noranda, Que.	Noranda	Feb. 13-15	150.00	
	Cowansville, Que.	Princess	Feb. 23	20.00	
	St. Anne de Bellevue, Que.	Rex	Feb. 28-March 2	25.00	
	Quebec, Que.	Cartier	Feb. 29-March 3	50.00	10
	Three Rivers, Que.	Capitol	March 13-14	16.54	
	Brownsburg, Que.	Princess	March 26-28	12.50	
	Montreal, Que.	Loew's	April 10-16	750.00	
	Shawinigan Falls, Que.	Auditorium	April 29-30	32.73	
	Sherbrooke, Que	Granada	May 6-9	157.50	
	Lachine, Que.	Empress	May 13-16	49.00	
	St. Lambert, Que.	Victoria	May 17-20	40.00	
	Montreal, Que.	Francais	May 23-26	247.50	
	Montreal, Que.	Strand	May 23-26	117.50	20
	Montreal, Que.	Rialto	May 27-30	227.50	
	Verdun, Que.	Park	May 31-June 2	200.00	
	Montreal, Que.	Granada	June 3-6	130.50	
	Montreal, Que.	Regent	June 3-6	57.50	
	Montreal, Que.	Rivoli	June 6-9	117.50	
	Montreal, Que.	Amherst	June 10-12	136.00	
	Montreal, Que.	Plaza	June 13-15	42.50	
	Montreal, Que.	Papineau	June 17-19	187.50	
	Montreal, Que.	Corona	June 17-20	183.00	
	Montreal, Que.	Belmont	June 21-23	49.50	30
	Montreal, Que.	Westmount	June 21-23	127.50	
	Montreal, Que.	Seville	June 24-27	67.50	
	Montreal, Que.	Rosemount	June 27-30	47.50	
	Montreal, Que.	Monkland	June 28-30	52.50	
	Valleyfield, Que.	Royal	July 2-4	50.00	
	Montreal, Que.	Mt. Royal	July 5-7	22.50	
	Montreal, Que.	Napoleon Palace	July 8-11	32.00	
	Montreal, Que.	Hollywood	July 12-15	50.00	
Montreal, Que.	Century	July 12-14	55.00		
Montreal, Que.	Canada	July 17-18	17.50	40	
Montreal, Que.	Orpheum	July 18-21	50.00		
Hull, Que.	Laurier	July 19-21	50.00		
Hull, Que.	Mayfair	July 22-24	27.50		
Hull, Que.	Stella	July 23-25	17.50		
Hull, Que.	Rex	July 30-Aug. 1	30.00		
Hull, Que.	Fairyland	July 30-Aug. 1	12.50		
Hull, Que.	Centre Palace	Aug. 2-3	15.00		

	Town.	Theatre.	Play Date.	Rental.	Exhibits.
	Grand Mere, Que.	National	Aug. 4-5	22.50	—
	Montreal, Que.	Star	Aug. 15-17	20.00	17.
	St. Johns, Que.	Imperial	Aug. 19-22	65.00	Statement
	Montreal, Que.	Broadway	Aug. 23-26	15.00	of Rentals
	Montreal, Que.	Starland	Sept. 2-4	30.00	received by
	Waterloo, Que.	Starland	Sept. 6-7	12.50	Twentieth
	Beauharnois, Que.	Ideal	Sept. 24-26	7.50	Century
	Montreal, Que.	Passe Temps	Sept. 29-30	25.00	Fox Cor-
10	Thetford Mines, Que.	Elite	Oct. 11-13	20.00	poration
	East Angus Circuit	William Hall	Oct. 20-27	15.00	Limited—
	Montreal, Que.	Canadian	Oct. 31-Nov. 3	40.00	<i>continued.</i>
	Quebec, Que.	Princess	Nov. 14-17	35.00	
	Val d'Or, Que.	Palace	Nov. 29-30	17.50	
	Montreal, Que.	Rialto	May 11/37	9.50	
	Lachine, Que.	Royal Alexandra	May 22/37	9.50	
	Saskatoon, Sask.	Capitol	Dec. 25-27/35	246.55	
	Viriden, Man.	Auditorium	Feb. 6-8/36	17.50	
	Souris, Man.	Avalon	Feb. 13-15	12.50	
20	Prince Albert, Sask.	Strand	Feb. 24-25	75.00	
	Fort William, Ont.	Orpheum	March 3-4	76.59	
	Moose Jaw, Sask.	Capitol	March 9-10	55.11	
	Regina, Sask.	Capitol	March 11-13	157.54	
	Port Arthur, Ont.	Colonial	March 19-20	73.27	
	Flin Flon, Man.	Rex	March 20-21	35.00	
	The Pas, Man.	Roxy	March 23-24	15.00	
	Rainy River, Ont.	Gaiety	March 30-Apr. 1	20.00	
	Estevan, Sask.	Orpheum	Apr. 6-7	25.00	
	Winnipeg, Man.	Capitol	April 10-16	799.80	
30	Watrous, Sask.	Little Manitou	April 27-29	12.50	
	Wayburn, Sask.	Hi-Art	May 6-7	24.73	
	Brandon, Man.	Strand	May 13-14	38.65	
	Winnipeg, Man.	Tivoli	May 21-23	122.83	
	Transcona, Man.	Transcona	May 26-27	12.50	
	Winnipeg, Man.	Osborne	May 28-30	54.94	
	Nipawin, Sask.	Orpheum	June 5-8	15.00	
	Deloraine, Man.	Jubilee	June 12-13	12.50	
	Morse, Sask.	Morse	June 26-27	15.00	
	Regina, Sask.	Grand	July 1-3	118.10	
40	Winnipeg, Man.	Arlington	July 7-9	22.33	
	Winnipeg, Man.	Crescent	July 15-17	23.99	
	Killarney, Man.	Lyceum	July 23-25	12.50	
	Winnipeg, Man.	Wonderland	July 28-30	34.52	
	Winnipeg, Man.	Fox	Aug. 1-7	100.00	
	Winnipeg, Man.	Furby	Aug. 12-14	35.00	
	Winnipeg, Man.	King's	Aug. 17-19	20.00	
	Winnipeg, Man.	Baddow	Aug. 24-26	35.00	

Exhibits.	Town.	Theatre.	Play Date.	Rental.
17. Statement of Rentals received by Twentieth Century Fox Cor- poration Limited— <i>continued.</i>	Winnipeg, Man.	Leland	Aug. 29–Sept. 1	20·00
	Fort Frances, Ont.	Royal	Sept. 4	16·00
	Portage la Prairie, Man.	Playhouse	Sept. 8–9	30·00
	Winnipeg, Man.	Regent	Sept. 11–14	45·00
	Dryden, Ont.	Strand	Sept. 17–19	15·00
	Winnipeg, Man.	Corona	Sept. 28–30	15·00
	Melita, Man.	Melita	Oct. 1–3	10·00
	Winnipeg, Man.	Elm	Oct. 14–16	10·00
	Winnipeg, Man.	College	Oct. 19–21	25·00 10
	Winnipeg, Man.	Mac's	Oct. 26–28	15·00
	Moosomin, Sask.	Lyric	Oct. 29–31	15·00
	Winnipeg, Man.	Park	Nov. 2–4	15·00
	Lemberg, Sask.	Lemberg	Nov. 19–21	12·50
	Winnipeg, Man.	Bijou	Nov. 27–30	25·00
	North Battleford, Sask.	Mental Hospital	Dec. 2	6·50
	Saskatoon, Sask.	Roxy	Dec. 9–11	40·00
	Great Falls, Man.	Recreation Club	Dec. 26/36	6·50
	Regina, Sask.	Roxy	Jan. 11–13/37	20·00
	Saskatoon, Sask.	Ritz	Jan. 25–27	20·00 20
	Winnipeg, Man.	Times	Jan. 30–Feb. 2	22·50
	Willowbunch, Sask.	Palace	Feb. 5–6	10·00
	Brandon, Man.	Oak	March 1–2	Gratis
	Melville, Sask.	Princess	March 15–17	17·50
	Bienfait, Sask.	Legion	April 2–3	10·00
	Gladstone, Man.	Revalo	April 22–24	12·50
	St. Vital, Man.	Onyx	May 1–4	12·50
	Lethbridge, Alta.	Capitol	Dec. 25–26/35	165·25
	Cranbrook, B.C.	Star	Jan. 2–4/36	70·00
	Wetaskiwin, Alta.	Audien	Jan. 13–15	20·00
	Kimberley, B.C.	Orpheum	Jan. 21–23	20·00 30
	Coleman, Alta.	Palace	Jan. 25–28	27·50
	Natal, B.C.	Natal	Feb. 1–4	12·50
	Gravelbourg, Sask.	Legion	Feb. 13–15	10·00
	Edston, Alta.	Edson	Feb. 26–28	15·00
	Calgary, Alta.	Capitol	Feb. 25–27	170·67
	Swift Current, Sask.	Lyric	March 9–11	40·00
	Trochu, Alta.	Sharp's	March 16	8·50
	Delburne, Alta.	Sharp's	March 17	8·50
	Alix, Alta.	Sharp's	March 18	8·50
	Carbon, Alta.	Sharp's	March 19	8·50 40
Three Hills, Alta.	Sharp's	March 20–21	8·50	
High River, Alta.	Wales	March 26–28	15·00	
Acme, Alta.	Sharp's	April 1	8·50	
Turner Valley, Alta.	Sharp's	April 2–3	12·50	
Gleichen, Alta.	Sharp's	April 4	8·50	

	Town.	Theatre.	Play Date.	Rental.	Exhibits.
	Outlook, Sask.	Lyric	April 10-11	12.50	—
	Wilkie, Sask.	Marnel	April 16-18	15.00	17.
	Foremost, Alta.	Midland	April 24	10.00	Statement
	Elrose, Sask.	Elrose	May 12	10.00	of Rentals
	Edmonton, Alta.	Strand	May 16-19	217.11	received by
	MacLeod, Alta.	Empress	May 25-27	15.00	Twentieth
	Big Valley, Alta.	Lyceum	June 5-6	15.00	Century
	Climax, Sask.	Sharp's	July 4-5	11.50	Fox Cor-
10	Kindersley, Sask.	Rex	July 25-28	22.50	poration
	Unity, Sask.	Star	Aug. 1-4	22.50	Limited—
	Vegreville, Alta.	Vimy	Aug. 8-11	20.00	<i>continued.</i>
	St. Paul, Alta.	Elite	Aug. 18-19	17.50	
	Drumheller, Alta.	Napier	Sept. 3-4	60.00	
	Blairmore, Alta.	Orpheum	Sept. 24-26	27.50	
	Edmonton, Alta.	Princess	Sept. 24-26	90.82	
	Edmonton, Alta.	Dreamland	Oct. 1-3	109.14	
	Riverhurst, Alta.	Hollywood	Oct. 30-Nov. 1	10.00	
	Calgary, Alta.	Strand	Nov. 26-28	187.50	
20	Edmonton, Alta.	Avenue	Dec. 5-8	15.00	
	Dawson Creek, B.C.	Carlsonia	Dec. 18-21	12.50	
	Calgary, Alta.	Kinema	Jan. 9-12/37	17.50	
	Calgary, Alta.	Crescent	Feb. 24-26	17.50	
	Vancouver, B.C.	Kerrisdale	Dec. 19/35 (Preview)	50.38	
	Victoria, B.C.	Dominion	Dec. 27-30	259.44	
	New Westminster, B.C.	Columbia	Dec. 31 (Preview)	49.06	
	Vancouver, B.C.	Orpheum	May 1-6/36	936.13	
	New Westminster, B.C.	Columbia	May 11-12	46.58	
	Victoria, B.C.	Plaza	May 14-16	75.00	
30	Kelowna, B.C.	Empress	May 20-21	33.34	
	Vernon, B.C.	Empress	May 22-23	60.82	
	Penticton, B.C.	Empress	May 29-30	46.05	
	Nelson, B.C.	Capitol	June 1-2	54.75	
	Vancouver, B.C.	Merrisdale	June 8-9	43.08	
	Vancouver, B.C.	Broadway	June 10-11	82.10	
	Vancouver, B.C.	Kitsilano	June 12-13	59.95	
	Vancouver, B.C.	Alma	June 15-16	47.80	
	White Rock	White Rock	July 1-2	15.00	
	Vancouver, B.C.	Windsor	July 3-4	61.50	
40	Nanaimo, B.C.	Capitol	July 8-9	57.41	
	Vancouver, B.C.	Grandview	July 15-16	35.53	
	Vancouver, B.C.	Victoria	July 17-18	32.73	
	Vancouver, B.C.	Regent	July 20-21	22.60	
	Chilliwack, B.C.	Strand	July 27-28	35.88	
	Rossland, B.C.	Capitol	July 31-Aug. 1	29.24	
	Trail, B.C.	Liberty	Aug. 3-4	45.98	
	North Vancouver, B.C.	Lonsdale	Aug. 6-8	50.00	

Exhibits.	Town.	Theatre.	Play Date.	Rental.		
17. Statement of Rentals received by Twentieth Century Fox Cor- poration Limited— <i>continued.</i>	Kamloops, B.C.	Capitol	Aug. 10-11	50·30		
	Vancouver, B.C.	Rex	Aug. 13-15	100·00		
	Vancouver, B.C.	Colonial	Aug. 20-22	80·00		
	Vancouver, B.C.	Fraser	Aug. 24-25	37·50		
	Vancouver, B.C.	Dunbar	Aug. 27-29	37·50		
	Vancouver, B.C.	Olympia	Aug. 31-Sept. 1	45·00		
	Vancouver, B.C.	Kingsway	Sept. 3-5	35·00		
	Vancouver, B.C.	Hollywood	Sept. 7-9/36	27·50		
	Vancouver, B.C.	Music Box	Sept. 11-12	25·00	10	
	Vancouver, B.C.	Marpole	Sept. 14-16	30·00		
	Vancouver, B.C.	Fairview	Sept. 17-19	17·50		
	West Vancouver, B.C.	Hollyburn	Sept. 22-23	25·00		
	Langley Prairie, B.C.	Langley	Sept. 25-26	15·00		
	Vancouver, B.C.	Lyric	Sept. 28-29	45·00		
	Port Alberni, B.C.	Port	Oct. 5-7	40·00		
	Ladysmith, B.C.	Rialto	Oct. 1-3	17·50		
	Mission, B.C.	Victory	Oct. 9-10	25·00		
	Vancouver, B.C.	Globe	Oct. 12-13	17·50		
	Revelstoke, B.C.	Province	Oct. 16-17	30·00	20	
	Courtenay, B.C.	Bickle	Oct. 19-21	35·00		
	Prince Rupert, B.C.	Capitol	Oct. 26-27	54·20		
	Powell River, B.C.	Patricia	Nov. 5-7	40·00		
	Wells, B.C.	Sunset	Nov. 13-14	15·00		
	Quesnel, B.C.	Rex	Dec. 3-4	20·00		
	Britannia Beach	Barbara	Dec. 18-19	12·50		
	Smithers, B.C.	Capitol	Feb. 26-27/37	12·50		
	Vancouver, B.C.	Royal	March 15-16	30·00		
	Stewart, B.C.	Stewart	April 10	15·00		
					25,816·00	30
	Less Credit to Famous Players Canadian Corpn.				1,500·04	
				<u>\$24,315·96</u>		

19.—Statement of profit to Canadian Company on "The Man Who Broke the Bank at Monte Carlo."		Exhibits,
		19.
	Gross income (Canada) being 2·74% of worldwide gross	\$24,806·00
	Negative—2·74% of total negative costs	\$14,898·01
	Positive—For Associated Screen News, Ltd. Invoice dated December 9th, 1935, 9 prints—6,268 feet each, 36,412 feet at \$·035 per foot	1,974·42
	Exchange expenses : 20·1% of Canadian gross on "Man Who Broke the Bank at Monte Carlo" \$24,806.	4,986·01
10	Based upon ratio of total operating expense to gross income of Canadian company for year 1936 per Touche, Niven & Co., report on accounts for year 1936	
	Sales overhead expense : 6·22217% of gross on picture in Canada \$24,806·00.	1,523·47
	Based upon ratio of total sales overhead expense to gross income United States and Canada.	
	Administrative overhead expense : 5·18% of producer's share of gross on picture in Canada \$14,883·60	770·97
20	Based upon ratio of total administrative expense to gross income of producer	
		<hr/> \$24,152·88 <hr/>
	Net Profit	\$613·12
	Profit on basis of—*sic \$2,517·67 to cost of operations	

TWENTIETH CENTURY-FOX CORPORATION, LTD. (CANADA)

Report on Financial Statements Year (52 weeks) ended December 26, 1936.

TOUCHE, NIVEN & Co.,
Public Accountants.

Letterhead of Touche, Niven & Co.

New York,
March 16, 1937.

TO THE PRESIDENT AND BOARD OF DIRECTORS,

TWENTIETH CENTURY-FOX CORPORATION, LTD. (CANADA).

We have made an examination of the balance sheet of Twentieth Century Fox Corporation, Ltd. (Canada) as at December 26, 1936 and of the statement of profit and loss for the year (52 weeks) then ended. In connection therewith we examined or tested accounting records of the Corporation and other supporting evidence in a manner and to the extent which we considered appropriate in view of the system of internal control.

40 We also obtained information and explanations from officers and employees

Exhibits.
—
19.
Statement
of profit to
Canadian
Company on
"The Man
Who Broke
the Bank at
Monte
Carlo"—
continued.

and made a general review of the operating and income accounts for the year, but we did not make a detailed audit of all transactions.

In our opinion, based upon the foregoing, the accompanying balance sheet of Twentieth Century-Fox Corporation, Ltd. (Canada) and relative statement of profit and loss, fairly present, in accordance with accepted principles of accounting consistently maintained during the year under review, its financial position as at December 26, 1936 and the results of its operations for the year (52 weeks) then ended.

TOUCHE, NIVEN & Co.

TWENTIETH CENTURY-FOX CORPORATION LTD. (CANADA) 10
Balance Sheet, December 26, 1936 (Canadian Funds)

ASSETS.		
Cash		\$22,790·43
Accounts receivable	\$21,140·46	
Less reserve for doubtful accounts	3,138·63	
	18,001·83	
Inventories :		
Film	\$31,269·49	
Advertising accessories	2,500·00	
	33,769·49	20
Prepaid expense		722·15
Due from Twentieth Century-Fox Corporation		188,671·98
Furniture and fixtures	\$39,326·45	
Less reserve for depreciation	23,522·56	
	15,803·89	
		\$279,759·77
LIABILITIES, CAPITAL STOCK AND SURPLUS.		
Reserve for Dominion of Canada income tax		\$15,500·00
Accounts payable and accrued expenses		34,204·94
Film rentals received in advance		1,478·08
Capital stock and surplus :		30
Capital stock :		
Authorised, 400 shares of a par value of \$100·00 each		
Issued and outstanding, 100 shares	\$10,000·00	
Earned surplus :		
Balance, December 28, 1935	\$131,440·87	
Net profit for the year (52 weeks) ended December 26, 1936, per accompany- ing statement	\$87,135·88	40
Balance, December 26, 1936	218,576·75	228,576·75
		\$279,759·77

TWENTIETH CENTURY-FOX CORPORATION, LTD. (CANADA)

Profit and Loss Year (52 weeks) ended December 26, 1936 (Canadian funds).

Exhibits.

19.
Statement
of profit to
Canadian
Company on
"The Man
Who Broke
the Bank at
Monte
Carlo"—
continued.

Income :			
	Gross income from sales and rentals of film and literature	\$1,184,472·63	
	Other income	858·44	
		<hr/>	\$1,185,331·07
Expenses :			
	Amortization of film and literature costs	\$166,896·06	
10	Participation in film rentals	676,425·24	
	Operating expenses of exchanges :		
	Salaries and wages	\$118,678·43	
	Rents	15,689·64	
	Travelling	17,147·36	
	Censorship	22,900·86	
	Express and parcel post	16,856·34	
	Taxes	6,825·12	
	Insurance	1,472·89	
	Stationery and printing	2,992·19	
20	Telephone and telegraph	5,862·73	
	Postage	3,244·27	
	Film Board dues	3,112·40	
	Sundry	8,586·15	
		<hr/>	223,368·38
	Publicity and advertising	973·35	
	Adsales department expense	3,282·00	
	Legal expenses	6,646·59	
	Depreciation of furniture and fixtures	4,157·24	
		<hr/>	1,081,748·86
30	Profit before Provision for Dominion of Canada income tax		103,582·21
	Provision for Dominion of Canada income tax		16,446·33
			<hr/>
	Net Profit, carried to balance sheet		\$87,135·88
			<hr/>

Exhibits.

8.
Printed
copy of the
song "The
Man Who
Broke the
Bank at
Monte
Carlo."

8.—Printed copy of the song "The Man Who Broke the Bank at Monte Carlo."
(*Separate document.*)

9.
Printed
Script of
the Play
"The
Gamble"
also known
as "The
Man Who
Broke the
Bank,"
"Monsieur
Alexandre,"
"Igra,"
"Le Jeu."

9.—Printed script of the play "The Gamble," also known as "The Man Who Broke the Bank," "Monsieur Alexandre," "Igra," "Le Jeu."
(*Separate document.*)

10.
Continuity
and dia-
logue taken
from the
Screen of
the Motion
Picture
"The Man
Who Broke
the Bank at
Monte
Carlo."

10.—Continuity and dialogue taken from the screen of the motion picture "The Man Who Broke the Bank at Monte Carlo."
(*Separate document.*)

14.
Advertising
Matter re
"The Man
Who Broke
the Bank at
Monte
Carlo."

14.—Advertising matter re "The Man Who Broke the Bank at Monte Carlo."
(*Separate document.*)

In the Privy Council.

No. 94 of 1938.

ON APPEAL FROM THE SUPREME COURT
OF ONTARIO (APPELLATE DIVISION).

BETWEEN

FRANCIS, DAY & HUNTER LIMITED

(Plaintiffs) Appellants

AND

TWENTIETH CENTURY FOX CORPORA-
TION LIMITED AND FAMOUS PLAYERS
CANADIAN CORPORATION LIMITED

(Defendants) Respondents.

RECORD OF PROCEEDINGS.

SYRETT & SONS,

2, John Street,

Bedford Row, W.C.1.

Solicitors for the Appellants.

BLAKE & REDDEN,

17, Victoria Street, S.W.

Solicitors for the Respondents.