

**In the Privy Council**

No. **68** of 1944.

ON APPEAL FROM THE COURT OF KING'S BENCH FOR THE  
PROVINCE OF QUEBEC (APPEAL SIDE)  
CANADA

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BETWEEN

ETHEL QUINLAN (Wife of John Kelly),

(PLAINTIFF) APPELLANT,

and

ANGUS WILLIAM ROBERTSON,  
CAPITAL TRUST CORPORATION LIMITED,  
and GENERAL TRUST OF CANADA,

(DEFENDANT) RESPONDENTS,

and BETWEEN

KATHERINE KELLY (Wife of Raymond Shaughnessy),

(INTERVENANT) APPELLANT,

and

ANGUS WILLIAM ROBERTSON,  
CAPITAL TRUST CORPORATION LIMITED,  
and GENERAL TRUST OF CANADA,

(CONTESTANT) RESPONDENTS.

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& INTERLOCUTORY JUDGMENTS AND EXHIBITS

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BLAKE & REDDEN,  
for Appellants.

LAWRENCE JONES & COMPANY,  
for Respondent Robertson,

CHARLES RUSSELL & COMPANY,  
for Respondents Capital Trust  
Corporation Limited, and  
General Trust of Canada.

UNIVERSITY OF LONDON  
W.C. 1  
26 OCT 1955  
INSTITUTE OF ADVANCED  
SOCIAL STUDIES

44909

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# In the Privy Council

No. of 1944

10 ON APPEAL FROM THE COURT OF KING'S BENCH FOR THE  
PROVINCE OF QUEBEC (APPEAL SIDE)  
CANADA

---

BETWEEN

ETHEL QUINLAN (Wife of John Kelly),

(PLAINTIFF) APPELLANT,

and

20

ANGUS WILLIAM ROBERTSON,  
CAPITAL TRUST CORPORATION LIMITED,  
and GENERAL TRUST OF CANADA,

(DEFENDANT) RESPONDENTS,

and BETWEEN

30 KATHERINE KELLY (Wife of Raymond Shaughnessy),

(INTERVENANT) APPELLANT,

and

ANGUS WILLIAM ROBERTSON,  
CAPITAL TRUST CORPORATION LIMITED,  
and GENERAL TRUST OF CANADA,

(CONTESTANT) RESPONDENTS.

40

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## RECORD OF PROCEEDINGS

VOL. IX. — JUDGMENT SUPREME COURT OF CANADA, PLEADINGS,  
& INTERLOCUTORY JUDGMENTS AND EXHIBITS

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Nos 1916 - 1915 - 1935 - 1930

Canada  
Province de  
Québec  
District de  
Montréal

# Cour du Banc du Roi

(EN APPEL)

10 En appel d'un Jugement de la Cour Supérieure, rendu par l'Honorable Juge  
Gibson, le 26 avril 1940.

**A. W. ROBERTSON,**  
entrepreneur général, de la cité de Westmount, district de Montréal,  
(Défendeur en Cour Inférieure),

APPELANT,

— vs —

20 **DAME ETHEL QUINLAN & vir,**  
de la cité de Westmount, district de Montréal, épouse commune en biens de John Thomas Kelly, gérant  
général, du même lieu, et le dit John Thomas Kelly, partie aux présentes pour autoriser sa dite épouse,

INTIMÉS,

— et —

**CAPITAL TRUST CORPORATION LIMITED & al,**

une corporation légalement constituée, ayant son principal bureau d'affaires dans la cité d'Ottawa,  
province d'Ontario tant personnellement qu'en sa qualité de fiduciaire et d'exécutrice testamentaire  
de feu Hugh Quinlan, en son vivant entrepreneur général, de la cité de Westmount, district de Montréal,  
aux termes du testament de ce dernier, passé devant M<sup>re</sup> Eugène Poirier, notaire, le 14 avril 1926,

MIS-EN-CAUSE,

— et —

30 **WILLIAM QUINLAN et al,**  
gérant général, de la cité de Westmount, district de Montréal; **KATHLEEN QUINLAN,** de la cité de  
Westmount, district de Montréal, épouse séparée de biens de **ERNEST LEDOUX,** du même lieu,  
comptable, et le dit Ernest Ledoux, partie aux présentes pour autoriser son épouse; **ANN QUINLAN,**  
fille majeure et usant de ses droits; **EDWARD QUINLAN,** entrepreneur général; **HELEN QUINLAN,**  
fille majeure et usant de ses droits; tous trois de la dite cité de Westmount, district de Montréal;  
**THERESE QUINLAN,** de la cité de Westmount, district de Montréal, épouse commune en biens, par  
contrat de mariage, de **HARRY DUNLOP,** courtier, du même lieu, et le dit Harry Dunlop, partie aux  
présentes, pour autoriser son épouse; **QUINLAN ROBERTSON & JANIN LIMITED** une corporation  
incorporée par lettres patentes, le 21 mars 1925, ayant son principal siège d'affaires en la cité de  
Montréal, district de Montréal, maintenant connue sous le nom de **ROBERTSON & JANIN LIMITED,**  
en vertu de lettres patentes supplémentaires émises le 18 février 1928; **ONTARIO AMESITE LI-**  
**MITED,** une corporation légalement constituée, ayant sa principale place d'affaires dans la cité de  
Toronto, province d'Ontario; **FULLEE GRAVEL COMPANY LIMITED,** une corporation légalement  
constituée, ayant son principal bureau d'affaires dans la ville d'Ivanhoe, province d'Ontario;

(Mise-en-cause en Cour Inférieure),

MIS-EN-CAUSE,

40 — et —

**CAPITAL TRUST CORPORATION LIMITED & al,**

une corporation ci-dessus décrite, et **TRUST GENERAL DU CANADA,** une corporation ayant son  
principal siège d'affaires dans la cité de Montréal, district de Montréal, toutes deux agissant en leur  
qualité de fiduciaires (trustees) et d'exécutrices testamentaires, en vertu du testament de feu Hugh  
Quinlan, en son vivant entrepreneur général, de la cité de Westmount, district de Montréal,

(Intervenantes devant la Cour Suprême),

MISES-EN-CAUSE,

— et —

**DAME MARGARET QUINLAN & vir et al,**

de la cité et du district de Montréal, épouse séparée de biens de **JACQUES DESAULNIERS,** avocat  
et conseil du Roi, du même lieu, et le dit Jacques Desaulniers, tant personnellement que pour autoriser  
sa dite épouse aux présentes; — **WILLIAM A. QUINLAN,** gérant de la cité de Westmount, district

de Montréal; KATHLEEN VERONICA QUINLAN, épouse séparée de biens de ERNEST LEDOUX, tous deux de la cité de Westmount, district de Montréal, et le dit Ernest Ledoux, partie aux présentes pour autoriser sa dite épouse à toutes fins que de droit; — ANNE AUGUSTA QUINLAN, fille majeure et usant de ses droits, de la cité de Montréal, district de Montréal; MARY THERESA QUINLAN, épouse commune en biens de JOHN HENRY DUNLOP, tous deux de la cité de Westmount, district de Montréal, et le dit John Henry Dunlop, comme chef de la communauté de biens et pour autoriser sa dite épouse, à toutes fins que de droit; — EDWARD HUGH QUINLAN de la cité de Montréal, district de Montréal; HELEN HILDA QUINLAN, de la cité de Montréal, dit district et le dit JOHN HENRY DUNLOP, en sa qualité de tuteur, à son enfant mineur, John Stuart Dunlop, et le dit ERNEST LEDOUX, en sa qualité de tuteur de ses enfants mineurs: Francis, David et Mary Thérèse Ledoux, et HUGH CHS LEDOUX, de la cité de Westmount, district de Montréal; — CAPITAL TRUST CORPORATION LIMITED, une corporation ayant son principal siège d'affaires, pour la province de Québec, dans la cité de Montréal, district de Montréal, et TRUST GENERAL DU CANADA, une corporation ayant son principal siège d'affaires dans la dite cité de Montréal, dit district; ces deux dernières en leur qualité d'exécutrices testamentaires et de fiduciaires (trustees) en vertu du testament de feu Hugh Quinlan; — KATHERINE KELLY, de la cité de Montréal, district de Montréal, épouse séparée de biens de Raymond Shaughnessy, du même lieu, et ce dernier partie aux présentes, pour autoriser sa dite épouse; EDOUARD MASSON, avocat, de la cité et du district de Montréal — HENRI MASSON-LORANGER, avocat, de la dite cité de Montréal; AGENOR H. TANNER, avocat et Conseil du Roi, de la cité de Montréal, district de Montréal; — et L'HONORABLE J. L. ST-JACQUES, de la cité d'Outremont, district de Montréal, l'un des honorables juges de la Cour du Banc du Roi, de la province de Québec.

(Défendeurs additionnels  
en Cour Inférieure),

MIS-EN-CAUSE,

**A. W. ROBERTSON,**

entrepreneur général, de la cité de Westmount, district de Montréal,

(Défendeur sur l'action principale et  
contestant sur l'intervention),

APPELANT,

— et —

**DAME CATHERINE KELLY & VIR,**

de la cité de Montréal-Ouest, district de Montréal, épouse séparée de biens de Raymond Shaughnessy, du même lieu, et ce dernier partie aux présentes, pour autoriser sa dite épouse,

(Intervenante en Cour inférieure),

INTIMÉE,

— et —

**DAME ETHEL QUINLAN & vir,**

de la cité de Westmount, district de Montréal, épouse commune en biens de John Thomas Kelly, gérant général, du même lieu, et le dit John Thomas Kelly, partie aux présentes pour autoriser sa dite épouse,

(Demanderesse en Cour inférieure),

MISE-EN-CAUSE,

— et —

**CAPITAL TRUST CORPORATION LIMITED,**

une corporation légalement constituée, ayant son principal bureau d'affaires tant personnellement qu'en sa qualité de fiduciaire et d'exécutrice testamentaire de feu Hugh Quinlan, en son vivant entrepreneur général, de la cité de Westmount, district de Montréal, aux termes du testament de ce dernier, passé devant M<sup>re</sup> Eugène Poirier, notaire, le 14 avril 1926,

(Défenderesses en Cour Inférieure),

MISES-EN-CAUSE,

40

— et —

**WILLIAM QUINLAN et al,**

gérant général, de la cité de Westmount, district de Montréal, KATHLEEN QUINLAN, des cité et district de Montréal, épouse séparée de biens de ERNEST LEDOUX, du même lieu, comptable, et le dit Ernest Ledoux, partie aux présentes, pour autoriser son épouse; ANN QUINLAN, fille majeure et usant de ses droits; EDWARD QUINLAN, entrepreneur général; HELEN QUINLAN, fille majeure et usant de ses droits; tous trois de la dite cité de Westmount, district de Montréal; THERESE QUINLAN, de la cité et du district de Montréal, épouse commune en biens par contrat de mariage, de HARRY DUNLOP, courtier, du même lieu et le dit Harry Dunlop, partie aux présentes, pour autoriser son épouse; QUINLAN ROBERTSON & JANIN LIMITED, une corporation incorporée par lettres patentes, le 21 mars 1925, ayant son principal siège d'affaires en la cité de Montréal, district de Montréal, maintenant connue sous le nom de ROBERTSON & JANIN LIMITED, en vertu de lettres patentes supplémentaires émises le 18 février 1928; ONTARIO AMESITE LIMITED, une corporation légalement constituée, ayant sa principale place d'affaires dans la cité de Toronto, province d'Ontario; FULLER GRAVEL LIMITED, une corporation légalement constituée, ayant son principal bureau d'affaires dans la ville d'Ivanhoe, province d'Ontario,

(Mis-en-cause en Cour Inférieure),

MISE-EN-CAUSE,

— et —

**CAPITAL TRUST CORPORATION LIMITED & al,**

une corporation ci-dessus décrite et TRUST GENERAL DU CANADA, une corporation ayant son principal siège d'affaires dans la cité de Montréal, district de Montréal, toutes deux agissant en leur qualité de fiduciaires (trustees) et d'exécutrices testamentaires, en vertu du testament de feu Hugh Quinlan, en son vivant entrepreneur général, de la cité de Westmount, district de Montréal,

(Intervenantes devant la Cour Suprême),

MISES-EN-CAUSE,

— et —

**DAME MARGARET QUINLAN & vir et al,**

10 de la cité et du district de Montréal, épouse séparée de biens de JACQUES DESAULNIERS, avocat et conseil du Roi, du même lieu, et le dit Jacques Desaulniers, tant personnellement que pour autoriser sa dite épouse aux présentes; — WILLIAM A. QUINLAN, gérant de la cité de Westmount, district de Montréal; KATHLEEN VERONICA QUINLAN, épouse séparée de biens de ERNEST LEDOUX, tous deux de la cité de Montréal, district de Montréal, et le dit Ernest Ledoux, partie aux présentes pour autoriser sa dite épouse à toutes fins que de droit; — ANNE AUGUSTA QUINLAN, fille majeure et usant de ses droits, de la cité de Montréal, district de Montréal; MARY THERESA QUINLAN, épouse commune en biens de JOHN HENRY DUNLOP, tous deux de la cité de Westmount, district de Montréal, et le dit John Henry Dunlop, comme chef de la communauté de biens et pour autoriser sa dite épouse, à toutes fins que de droit; — EDWARD HUGH QUINLAN de la cité de Montréal, district de Montréal; HELEN HILDA QUINLAN, de la cité de Montréal, dit district; et le dit JOHN HENRY DUNLOP, en sa qualité de tuteur, à son enfant mineur, John Stuart-Dunlop; et le dit ERNEST LEDOUX, en sa qualité de tuteur à ses enfants mineurs: Francis, David et Mary Theresa Ledoux, et HUGH CHS. LEDOUX, de la cité de Montréal, dit district; CAPITAL TRUST CORPORATION LIMITED, une corporation ayant son principal siège d'affaires pour la province de Québec, dans la cité de Montréal, district de Montréal, et TRUST GENERAL DU CANADA, une corporation ayant son principal siège d'affaires dans la cité de Montréal, dit district; ces deux dernières en leur qualité d'exécutrices testamentaires et de fiduciaires (trustees) en vertu du testament de feu Hugh Quinlan; KATHERINE KELLY, de la cité de Montréal-Ouest, district de Montréal, épouse séparée de biens de Raymond Shaughnessy, du même lieu, et ce dernier partie aux présentes, pour autoriser sa dite épouse; EDOUARD MASSON, avocat, de la cité et du district de Montréal; HENRI MASSON-LORANGER, avocat, de la dite cité de Montréal; AGENOR H. TANNEE, avocat et Conseil du Roi, de la cité de Montréal, district de Montréal; et L'HONORABLE JUGE J. L. ST-JACQUES, de la cité d'Outremont, district de Montréal, l'un des honorables juges de la Cour du Banc du Roi de la province de Québec,

(Défendeurs additionnels  
en Cour Inférieure),

MIS-EN-CAUSE,

**DAME ETHEL QUINLAN & vir,**

of the City of Westmount, District of Montreal, wife common as to property of JOHN THOMAS KELLY, General Manager, of the same place, and the said John Thomas Kelly to authorize his said wife for all legal purposes,

(Demanderesse en Cour inférieure),

APPELANTE,

— et —

**A. W. ROBERTSON,**

General Contractor of the City of Westmount, District of Montreal,

(Défendeur en Cour Inférieure),

INTIMÉ,

— et —

**CAPITAL TRUST CORPORATION LIMITED,**

40 a body politic and corporate, having its head office and chief place of business in the City of Ottawa, in the Province of Ontario, and also having its principal place of business for the Province of Quebec in the city of Montreal, and GENERAL TRUST OF CANADA, a body politic and corporate, having its head office and chief place of business in the City and District of Montreal, acting herein both personally as well as in their quality of testamentary executors and trustees under the Last Will and Testament of the late Hugh Quinlan, in his lifetime General Contractor, of the City of Westmount, in the District of Montreal, in accordance with the terms of the said Will received before Me. Eugene Poirier, N.P. and colleague on the 14th of April, 1926.

(Défendeesse en Cour Inférieure),

MISE-EN-CAUSE,

— et —

**QUINLAN ROBERTSON & JANIN LIMITED & al,**

a body politic and incorporated by Letters Patent of the 21st. of March, 1925, having its principal place of business in the City and District of Montreal, now known under the name ROBERTSON & JANIN LIMITED by virtue of Supplementary Letters Patent granted on the 18th. of February, 1928; ONTARIO AMIESITE LIMITED, a body politic and corporate having its principal place of business

in the City of Toronto, in the Province of Ontario; FULLER GRAVEL COMPANY, LIMITED, a body politic and corporate having its principal place of business in the Town of Ivanhoe, in the Province of Ontario; WILLIAM A. QUINLAN, Manager, of the City of Westmount, district of Montreal; KATHLEEN VERONICA QUINLAN, wife separate as to property of Ernest Ledoux, both of the City of Montreal, and the said ERNEST LEDOUX for the purpose of authorizing his said wife for all legal purposes; ANN AUGUSTA QUINLAN, Spinster, of the said City and District of Montreal; MARY THERESA QUINLAN, wife common as to property of JOHN HENRY DUNLOP, both of the city of Westmount, district of Montreal, and the said John Henry Dunlop as head of the said community of property and to authorize his said wife for all legal purposes; EDWARD HUGH QUINLAN, of the said City and District of Montreal; HELEN HILDA QUINLAN, of the said City and District of Montreal; and the said JOHN HENRY DUNLOP in his quality of tutor to his minor child John Stuart Dunlop; and the said ERNEST LEDOUX in his quality of tutor to his minor children Frances, David and Mary Theresa Ledoux, and HUGH CHARLES LEDOUX, of the City and District of Montreal,

MISES-EN-CAUSE,

— et —

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**DAME MARGARET QUINLAN & vir et al,**

of the City and District of Montreal, wife separate as to property of JACQUES DESAULNIERS, Advocate and King's Counsel, of the same place, and the said Jacques Desaulniers as well personally as to authorize his said wife for all legal purposes; WILLIAM A. QUINLAN, Manager, of the City of Westmount, District of Montreal; KATHLEEN VERONICA QUINLAN, wife separate as to property of ERNEST LEDOUX, both of the City of Montreal, and the said Ernest Ledoux for the purpose of authorizing his said wife for all legal purposes; ANN AUGUSTA QUINLAN, Spinster, of the said City and District of Montreal; MARY THERESA QUINLAN, wife common as to property of JOHN HENRY DUNLOP, both of the City of Westmount, District of Montreal, and the said John Henry Dunlop as head of the said community of property and to authorize his said wife for all legal purposes; EDWARD HUGH QUINLAN, of the said City and District of Montreal; HELEN HILDA QUINLAN, of the said City and District of Montreal; and the said JOHN HENRY DUNLOP in his quality of tutor to his minor child John Stuart Dunlop; and the said ERNEST LEDOUX in his quality of tutor to his minor children Frances, David and Mary Theresa Ledoux; and HUGH CHARLES LEDOUX, of the City and District of Montreal; KATHERINE KELLY, of the City of Montreal West, District of Montreal, wife separate as to property of Raymond Shaughnessy, of the same place, and the latter to authorize his said wife to these presents; EDOUARD MASSON, Advocate of the City and District of Montreal; HENRI MASSON-LORANGER, Advocate, of the said City of Montreal; AGENOR H. TANNER, Advocate and King's Counsel, of the City of Montreal, District, of Montreal, and the HONOURABLE J. L. SAINT-JACQUES, of the City of Montreal, District of Montreal, one of the Honourable Justices of the Court of King's Bench of the Province of Quebec,

(Parties additionnelles  
en Cour Supérieure),

MIS-EN-CAUSE,

— et —

**CAPITAL TRUST CORPORATION LIMITED & al,**

a body politic and corporate, having its head office and chief place of business in the City of Ottawa, in the Province of Ontario, and also having its principal place of business for the Province of Quebec in the City of Montreal, acting herein personally as well as in its quality of testamentary executor and trustee under the Last Will and Testament of the late Hugh Quinlan, in his lifetime General Contractor, of the City of Westmount, in the district of Montreal, in accordance with the terms of the said Will received before Me. Eugene Poirier, N.P., and colleague on the 14th of April, 1926,

(Intervenantes devant la Cour Suprême  
et défendeurs additionnels),

MISES-EN-CAUSE,

**CAPITAL TRUST CORPORATION LIMITED & al,**

a body politic and corporate, having its head office and chief place of business in the City of Ottawa, in the Province of Ontario, and also having its principal place of business for the Province of Quebec in the city of Montreal, and GENERAL TRUST OF CANADA, a body politic and corporate, having its head office and chief place of business in the City and District of Montreal, acting herein both personally as well as in their quality of testamentary executors and trustees under the Last Will and Testament of the late Hugh Quinlan, in his lifetime General Contractor, of the City of Westmount, in the District of Montreal, in accordance with the terms of the said Will received before Me. Eugene Poirier, N.P. and colleague on the 14th of April, 1926.

(Contestantes sur l'intervention  
en Cour Supérieure),

APPELANTES,

— et —

**DAME CATHERINE KELLY & VIR,**

of the City of Montreal West, in the District of Montreal, wife separate as to property of RAYMOND SHAUGHNESSY, of the same place, and the latter to authorize his wife for all legal purposes,

(Intervenante par reprise d'instance  
en Cour Supérieure),

INTIMÉE,

— et —

**DAME ETHEL QUINLAN & vir,**

of the City of Westmount, District of Montreal, wife common as to property of JOHN THOMAS KELLY, General Manager, of the same place, and the said John Thomas Kelly to authorize his said wife for all legal purposes,

(Demanderesse et demanderesse  
incidente en Cour Supérieure),

MISE-EN-CAUSE,

— et —

**A. W. ROBERTSON,**

General Contractor of the City of Westmount, District of Montreal,

(Défendeur sur l'action principale et  
contestant sur l'intervention),

MIS-EN-CAUSE,

— et —

**QUINLAN ROBERTSON & JANIN LIMITED & al,**

a body politic and incorporated by Letters Patent of the 21st. of March, 1925, having its principal place of business in the City and District of Montreal, now known under the name ROBERTSON & JANIN LIMITED by virtue of Supplementary Letters Patent granted on the 18th. of February, 1928; ONTARIO AMIESITE LIMITED, a body politic and corporate having its principal place of business in the City of Toronto, in the Province of Ontario; FULLER GRAVEL COMPANY, LIMITED, a body politic and corporate having its principal place of business in the Town of Ivanhoe, in the Province of Ontario,

(Mis-en-cause en Cour Supérieure),

MIS-EN-CAUSE,

— et —

**DAME MARGARET QUINLAN & vir et al,**

of the City and District of Montreal, wife separate as to property of JACQUES DESAULNIERS, Advocate and King's Counsel, of the same place, and the said Jacques Desaulniers as well personally as to authorize his said wife for all legal purposes; WILLIAM A. QUINLAN, Manager, of the City of Westmount, District of Montreal; KATHLEEN VERONICA QUINLAN, wife separate as to property of ERNEST LEDOUX, both of the City of Montreal, and the said Ernest Ledoux for the purpose of authorizing his said wife for all legal purposes; ANN AUGUSTA QUINLAN, Spinster, of the said City and District of Montreal; MARY THERESA QUINLAN, wife common as to property of JOHN HENRY DUNLOP, both of the City of Westmount, District of Montreal, and the said John Henry Dunlop as head of the said community of property and to authorize his said wife for all legal purposes; EDWARD HUGH QUINLAN, of the said City and District of Montreal; HELEN HILDA QUINLAN, of the said City and District of Montreal; and the said JOHN HENRY DUNLOP in his quality of tutor to his minor child John Stuart Dunlop; and the said ERNEST LEDOUX in his quality of tutor to his minor children Frances, David and Mary Theresa Ledoux; and HUGH CHARLES LEDOUX, of the City and District of Montreal; KATHERINE KELLY, of the City of Montreal West, District of Montreal, wife separate as to property of Raymond Shaughnessy, of the same place, and the latter to authorize his said wife to these presents; EDOUARD MASSON, Advocate of the City and District of Montreal; HENRI MASSON-LORANGER, Advocate, of the said City of Montreal; AGENOR H. TANNER, Advocate and King's Counsel, of the City of Montreal, District, of Montreal, and the HONOURABLE J. L. SAINT-JACQUES, of the City of Montreal, District of Montreal, one of the Honourable Justices of the Court of King's Bench of the Province of Quebec,

(Parties additionnelles  
devant la Cour Supérieure),

MIS-EN-CAUSE,

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**DOSSIER CONJOINT**

VOL. V — 2ème PARTIE

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JUDGMENT IN THE SUPREME COURT OF CANADA  
TUESDAY, THE 6th., DAY OF JUNE, A.D., 1934.

PRESENT:

10

THE RIGHT HONOURABLE SIR LYMAN P. DUFF,  
K.C.M.G., CHIEF JUSTICE.  
THE HONOURABLE MR. JUSTICE LAMONT.  
THE HONOURABLE MR. JUSTICE CANNON.  
THE HONOURABLE MR. JUSTICE CROCKET.  
THE HONOURABLE MR. JUSTICE HUGHES.  
THE HONOURABLE MR. JUSTICE LAMONT being absent,  
his judgment was announced by the Right Honourable the Chief  
Justice pursuant to the Statute in that behalf.

20

BETWEEN:

ANGUS WILLIAM ROBERTSON,  
APPELLANT,

—and—

ETHEL QUINLAN, et vir, et al.,  
RESPONDENTS,

30

—and—

CAPITAL TRUST CORPORATION LIMITED  
& DAME CATHERINE RYAN, et al.,  
MIS-EN-CAUSE,

—and—

CAPITAL TRUST CORPORATION LIMITED,  
PETITIONERS IN  
INTERVENTION.

40

The appeal of the above named appellant from the judgment of the Court of King's Bench, for the Province of Quebec (Appeal Side) pronounced in the above cause on the 30th., day of December, in the year of Our Lord one thousand nine hundred and thirty-two, affirming with certain modifications the judgment of the Superior Court for the Province of Quebec sitting in and for the District of Montreal, rendered in the said cause on the sixth day of February, in the year of Our Lord one thousand

nine hundred and thirty-one, having come on to be heard before this Court on the 4th., and 5th., days of December A.D. 1933 and on the 6th., 7th., and 8th., days of February A.D., 1934, and on the 15th., and 26th., days of March A.D. 1934, in the presence of counsels as well for the appellant as the respondents, mis-en-cause and the petitioner in intervention, whereupon and upon hearing what  
10 was alleged by counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment,

THIS COURT DID ORDER AND ADJUDGE:—

1. THAT the said appeal should be, and the same was, allowed, that the said judgment of the Court of King's Bench, for the Province of Quebec (appeal side) should be, and the same was, reversed and set aside;  
20

2. THAT the judgment of the Superior Court be, and the same was, quashed in part as well as certain rulings made by the trial judge refusing the admission of oral evidence of the facts and circumstances hereinafter mentioned.

3. THAT, as to the proposed settlement (the agreement of settlement passed before R. Papineau-Couture, Notary Public, on the 31st day of January, 1934, and now part of the record of this case, this Court sees no reason why it should not declare that the  
30 said settlement forms part of the record of this case, and it grants *acte* thereof, without passing upon the validity, or the binding character of the agreement in question, nor deciding whether or not the intervenants acted within their powers and the officers of the intervenants within their authority,—and this Court accordingly does so declare within those limits.

4. THIS COURT DOTH FURTHER DECLARE, as a fact, that, as far as appellant Angus William Robertson and respondent  
40 Margaret Quinlan are concerned, they have settled their differences and have ended this litigation.

5. THIS COURT DOTH FURTHER DECLARE that, seeing the acquiescence of the respondent Ethel Quinlan thereto and the acceptance thereof by the testamentary executors and trustees, it does not, and cannot, disturb that part of the judgment of the Superior Court dismissing part of the respondent's conclusions, to wit:—



“10—The prayer that the appellant A. W. Robertson and the Capital Trust Company be removed from office —

20—The prayer that they be condemned to render an account—

10 30—The prayer that the inventory be annulled:

40—The various allegations of fraud against the appellant, as well as the allegation that the late Hugh Quinlan was not of sound mind when the letter of the 20th of June 1927 was read to him,—

and that the said judgment of the Superior Court in respect to the dismissal of the above mentioned conclusion, is now “res judicata” between the parties.

20 6.— AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the remaining parties be sent back to the Superior Court to complete the evidence already taken by a further enquête, and then secured a new adjudication on the merits of the issues herein shown as remaining to be decided as between the respondent Dame Ethel Quinlan (Mrs. Kelly) and the appellant Robertson personally, and that oral evidence be admitted, as such further enquête, of the following facts and circumstances, to wit:—

30 A—The answer given by the late Hugh Quinlan when the letter of June 20th, 1927, was read to him: including, of course, the conduct, statements, communications and declarations of the persons present when the letter was so read, and of the late Hugh Quinlan himself, and generally, all relevant circumstances relating thereto;

B—All the facts, circumstances, statements and communications relating to the drafting of the said letter of June 20th, 1927, including the conduct of all those who shared in the drafting  
40 of the said letter; and the whereabouts and safekeeping of said letter;

C—All the facts, circumstances, statements and communications relating to the visits of the Honourable J. L. Perron and of the present appellant to the late Hugh Quinlan, during the month of May, 1927, or thereabout, and to the endorsement of the four certificates of shares filed as exhibits P-9, P-10, P-26 and P-27; also to the Memorandum of the 21st of May, 1927, P-66; including the conduct of all the participants in these various events;

D.—Generally, all facts, conditions and circumstances tending to show that the late Hugh Quinlan agreed, or disagreed, as the case may be, to the contents of the letter of June the 20th 1937—

10 The respondent would also bring new evidence of all facts, declarations and statements which might tend to rebut the evidence to be afforded as aforesaid by the appellant.—

7.— THIS COURT DOTH FURTHER DECLARE that respondent Ethel Quinlan, to the extent that she is entitled to a variable share in the net revenue of the estate of her father, has a sufficient interest and status” to preserve intact the “Corpus” of the estate;

20 8.— AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the said respondents should and do pay to the said appellant the costs incurred by the said appellant as well in the Court of King’s Bench for the Province of Quebec as in this Court; reserving to the Superior Court the right to adjudge upon the costs incurred and to be incurred in the said Superior Court.

9.— AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the costs of printing the Appeal Case be comprised in, and form part of, appellant’s costs herein, in this Court.

30 (SGD) J. F. SMELLIE  
Registrar.

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MOTION DE L’APPELANT A. W. ROBERTSON

40 1o—ATTENDU que le présent appellant, A. W. Robertson, a interjeté appel devant cette Honorable Cour, à l’encontre du jugement final rendu le 26 avril 1940, par la Cour Supérieure, présidée par l’honorable juge Gibsone, et siégeant à Montréal, lequel jugement a maintenu l’action principale instituée par l’intimée Dame Ethel Quinlan, jusqu’à concurrence de la somme de \$119,841.00, avec intérêts et dépens, et a maintenu, en même temps, la demande incidente produite par la même intimée;

2o—ATTENDU que l’intimée dame Ethel Quinlan a également interjeté appel, devant cette Honorable Cour, à l’encontre du même jugement, prétendant que la condamnation devrait être augmentée;

30—ATTENDU que l'appelant, A. W. Robertson, a interjeté un autre appel à l'encontre du jugement rendu le même jour, par le même juge, lequel a maintenu une intervention produite par dame Katherine Kelly & vir ;

10 40—ATTENDU qu'un autre appel a été interjeté par "Capital Trust Corporation Limited", et "Trust Général du Canada", en leur qualité d'exécutrices testamentaires et fiduciaires de feu Hugh Quinlan, en son vivant entrepreneur général de la cité de Westmount, district de Montréal, à l'encontre du jugement rendu le même jour par le même juge, maintenant avec dépens une intervention produite par dame Catherine Kelly & vir ;

20 50—ATTENDU que les quatre instances ci-dessus faisant l'objet des appels sus-mentionnés, ont été instruites en même temps et jugées sur la même preuve, laquelle a été déclarée commune à toutes les parties ;

60—ATTENDU que la preuve ainsi faite en commun est extrêmement volumineuse ;

70—ATTENDU que, pour éviter à frais, il y aurait lieu de faire un seul dossier-conjoint, qui sera commun à tous les appelants ;

30 80—ATTENDU que les parties ont convenu qu'il serait fait 8 copies seulement du dossier-conjoint, pour la raison qu'il ne reste que ce nombre de copies d'un dossier-conjoint antérieur, contenant la plus grande partie de la preuve qui a été déclarée commune, comme susdit ;

90—ATTENDU que les frais à encourir, pour la préparation de ce dossier-conjoint devraient être répartis entre les trois appelants, en ayant égard au volume de la preuve que chacun des appelants devra invoquer, à l'appui de son appel ;

40 100—ATTENDU que l'appel des appelantes "Capital Trust Corporation Limited" et "Trust Général du Canada" reposent presque exclusivement sur la preuve documentaire ;

110—ATTENDU qu'au contraire, les deux appelants A. W. Robertson et dame Ethel Quinlan devront invoquer l'ensemble de la preuve, à l'appui de leur appel respectif ;

120—ATTENDU que, dans les circonstances, il paraît équitable que les frais à encourir sur le dossier-conjoint soient répar-

tis dans la proportion suivante, savoir:—1/5 quant aux appelantes “Capital Trust Corporation Limited” et “Trust Général du Canada”, et 2/5 quant à chacun des deux autres appelants;

10 QU’IL PLAISE à cette Honorable Cour ordonner qu’il ne soit fait qu’un seul dossier-conjoint, lequel sera commun à tous les appels susdits; et qu’il ne sera nécessaire de préparer que 8 copies de ce dossier-conjoint, dont 5 copies pour la Cour et une copie pour les procureurs respectifs des appelants A. W. Robertson, Dame Ethel Quinlan et “Capital Trust Corporation Limited” et al; le tout aux conditions qui plairont à cette honorable Cour de fixer.

Montréal, le 10 octobre 1940.

20 Beaulieu, Gouin, Bourdon,  
Beaulieu & Montpetit,  
Procureurs de l’appelant.

JUGEMENT DE LA COUR DU BANC DU ROI, EN APPEL  
SUR LA MOTION

Montréal, 22 octobre 1940.

30 P. O. de consentement. Motion accordée frais à suivre.  
J. M. Tellier,  
J.C.P.Q.

P & L, G. (Tel - Riv - Walsh - St. Jac. - Francoeur

Note: La dernière partie de la motion a été retranchée à l’audience de consentement.

P & L, G.

40 INSCRIPTION EN APPEL (Cause No 1916)

L’appelant ci-dessus désigné inscrit, par les présentes, cette cause en appel, devant la Cour du Banc du Roi, siégeant en appel, à Montréal, du jugement final rendu par la Cour Supérieure, siégeant à Montréal, dans et pour le district de Montréal, le 26 avril 1940, tant sur la demande dite demande incidente que sur l’action principale et (a) maintenant la dite demande incidente et déclarant nul et sans effet, quant à la demanderesse-intimée, l’acte du 31 janvier 1934, avec dépens contre le défendeur-appelant; et (b) déclarant nulles et illégales l’acquisition de certaines actions et la vente de certaines autres actions, faites par

le défendeur-appelant, et condamnant le défendeur-appelant à payer à la succession de feu Hugh Quinlan, représentée par les exécuteurs testamentaires ci-dessus mentionnés, mis-en-cause, la somme de \$119,841.00, avec intérêts depuis la signification de l'action, sur une somme de \$169,841.00, et avec intérêts sur la somme de \$119,841.00, à partir du 19 décembre 1934; le tout avec  
10 dépens, tels que répartis au dit jugement, et l'appelant donne avis à Mtre Chs. Holdstock, procureur de l'intimée et des défendeurs additionnels Katherine Kelly et Raymond Shaughnessy; à Mtres Campbell, McMaster, Couture, Kerry et Bruneau, avocats de Capital Trust Corporation Limited et du Trust Général du Canada, intervenantes et défenderesses; à Mtre Jacques Désaulniers, avocat des défendeurs additionnels dame Margaret Quinlan et Jacques Désaulniers; à Mtres Hyde, Ahern, Perron, Puddicombe & Smith, avocats des défendeurs additionnels William A. Quinlan; Kathleen Veronica Quinlan et Ernest Ledoux;  
20 Augusta Quinlan; Mary Theresa Quinlan et John Henry Dunlop; Edward H. Quinlan et Helen Quinlan; — à Mtre Edouard Masson, avocat du défendeur additionnel Edouard Masson; à Mtre Agénor H. Tanner, avocat du défendeur additionnel Agénor H. Tanner; — à Mtre Jacques P. St-Jacques, avocat du défendeur additionnel l'Honorable juge J. L. St-Jacques; — à Mtres Monty et Loranger, avocats du défendeur additionnel H. Masson-Loranger; — à Mtres Harold & Long, avocats du défendeur additionnel Hugh Chs. Ledoux; — et à Mtre Arthur Vallée, avocat du mis-en-cause Ontario Amiesite Limited; que la présente inscription a été produite ce jour, au greffe de la Cour Supérieure, et que le onzième jour de mai 1940, à 11 heures de l'avant-midi, devant le protonotaire de la dite Cour Supérieure, pour le district de Montréal, à son bureau, au palais de justice, à Montréal, le dit appelant donnera bonne et suffisante caution qu'il poursuivra effectivement le dit appel et qu'il satisfera à la condamnation et paiera tous dépens et dommages qui seront adjugés, au cas où le jugement, soit sur la dite demande incidente, soit sur la demande principale, serait confirmé, et que la caution qu'il  
30 offrira là et alors sera "Canadian General Insurance Company" une compagnie d'assurance ayant son principal bureau d'affaires pour la province de Québec, dans la cité de Montréal, district de Montréal, et autorisée à fournir tel cautionnement; le tout conformément à la loi.

Montréal, le 8 mai 1940.

Beaulieu, Gouin, Bourdon, Beaulieu & Montpetit,  
Procureurs de l'Appelant.

INSCRIPTION EN APPEL (Cause No 1915)

L'appelant ci-dessus désigné inscrit, par les présentes cette cause en appel, devant la Cour du Banc du Roi, siégeant en appel, à Montréal, du jugement final rendu par la Cour Supérieure, siégeant à Montréal, dans et pour le district de Montréal, 10 le 26 avril 1940, maintenant l'intervention de l'Intimée; déclarant nul et sans effet, quant à la succession Quinlan, et quant à l'Intimée, l'acte du 31 janvier 1934, et rejetant avec dépens la contestation de la dite intervention, par l'appelant; et l'appelant donne avis à Mtre Chs. Holdstock, procureur de l'Intimée, de Dame Ethel Quinlan et de leur mari respectif; à Mtres Campbell, McMaster, Couture, Kerry & Bruncau, procureurs de Capital Trust Corporation Limited et du Trust Général du Canada, intervenantes et défenderesses et contestantes sur l'intervention; 20 à Mtre Jacques Desaulniers, avocat de Dame Margaret Quinlan et de Jacques Désaulniers, défendeurs additionnels et contestants sur l'intervention; à Mtres Hyde Ahern, Perron, Puddicombe & Smith, avocats des défendeurs additionnels William A. Quinlan; Kathleen Veronica Quinlan et Ernest Ledoux; Augusta Quinlan; Mary Theresa Quinlan et John Henry Dunlop; Edward H. Quinlan et Helen Quinlan; à Mtre Edouard Masson, avocat du défendeur additionnel Edouard Masson; à Mtre Agéonor H. Tanner, avocat du défendeur additionnel Agéonor H. Tanner; à Mtre Jacques P. St. Jacques, avocat du défendeur additionnel 30 l'Honorable Juge J. L. St. Jacques; à Mtres Monty & Loranger, avocats du défendeur additionnel H. Masson-Loranger; à Mtres Harold & Long, avocats du défendeur additionnel Hugh Chs. Ledoux; et à Mtre Arthur Vallée, avocat du mis-en-cause Ontario Amicsite Limited; que la présente inscription a été produite ce jour, au greffe de la Cour Supérieure, et que le onzième jour de mai 1940, à 11 heures de l'avant-midi, devant le protonotaire de la Cour Supérieure, pour le district de Montréal, à son bureau, au Palais de Justice, à Montréal, le dit appelant donnera bonne et 40 suffisante caution qu'il poursuivra effectivement le dit appel et qu'il satisfera à la condamnation et paiera tous dépens et dommages qui seront adjugés, au cas où le jugement sur l'Intervention de l'Intimée serait confirmé, quant au défendeur-appelant, et que la caution qu'il offrira là et alors sera "Canadian General Insurance Company", une compagnie d'assurance ayant son principal bureau d'affaires, pour la province de Québec, dans la cité de Montréal, district de Montréal, et autorisée à fournir tel cautionnement; le tout conformément à la loi.

Montréal, le 8 mai 1940.

(Signé) Beaulieu, Gouin, Bourdon,  
Beaulieu & Montpetit,  
Procureurs de l'Appelant.

INSCRIPTION IN (CROSS) APPEAL (Cause No. 1935)

Appellant, as hereinabove described, hereby inscribe this case in appeal before the Court of King's Bench, sitting in appeal at Montreal, from the final judgment rendered by the Superior Court (Gibson, J.), sitting at Montreal in and for the district of Montreal, on the 26th of April, 1940, on the main action which ordered the defendant to pay the sum of \$169,841.00 to the estate Hugh Quinlan as and for certain shares of the estate, and appellant gives notice of the present inscription in (Cross) appeal to Messrs. Beaulieu, Gouin, Bourdon Beaulieu & Montpetit, and or Bcaulieu, Gouin, Mercier & Tellier, attorneys for defendant and contestant Robertson; to Mr. Jacques Desaulniers, attorneys for Dame Margaret Quinlan, and Jacques Desaulniers, additional defendants; to Messrs. Hyde, Ahern, Perron, Puddicombe & Smith, attorneys for additional parties William A. Quinlan, Kathleen Veronica Quinlan and Ernest Ledoux; Augusta Quinlan, Mary Theresa Quinlan and John Henry Dunlop; Edward H. Quinlan and Helen Quinlan; To Mr. Edouard Masson, K.C., attorney for additional defendant Edouard Masson; to Mr. Agenor H. Tanner, K.C., attorney for additional defendant Agenor H. Tanner; to Mr. Jacques L. Saint-Jacques, attorney for the additional defendant the Honourable Mr. Justice J. L. Saint-Jacques; to Messrs. Monty & Loranger, attorneys for additional defendant H. Masson-Loranger; and to Messrs. Harold & Long, attorneys for additional defendant in continuance of suit Hugh Charles Ledoux; and to Mr. Arthur Vallée, K.C., attorney for Ontario Amiesite Limited, Robertson & Janin Limited and Fuller Gravel Limited; to Messrs. Campbell, McMaster, Couture, Kerry & Bruneau and or Campbell, Weldon, Kerry & Bruneau, attorneys for Capital Trust Corporation Limited and General Trust of Canada, intervenants and defendants; and to C. Holdstock atty. for Katherine Kelly & Raymond Shaughnessy, additional defendants.

And further gives notice that the present inscription in (Cross) Appeal has been filed this day in the Prothonotary's office of the Superior Court and that on the 29th day of May, 1940, at 11 o'clock in the forenoon, before the Prothonotary of the Superior Court for the District of Montreal at his office, the Court House, in Montreal, said appellant will give good and sufficient security that she will effectively prosecute the said appeal and will satisfy the condemnation and will pay all costs and damages which may be awarded in the event of judgment on that part of the judgment affected by said cross-appeal being confirmed, and that

appellant will then and there offer as surety Toronto General Insurance Company, an insurance company having its chief place of business for the Province of Quebec in the said City and District of Montreal, and authorized according to law to furnish such security.

10 Montreal, May 25th, 1940.

(Sgd) C. Holdstock,  
Attorney for Appellant.

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INSCRIPTION IN APPEAL (Cause No. 1930)

20 Appellants, as hereinabove described, hereby inscribe this case in appeal before the Court of King's Bench, sitting in appeal at Montreal, from the final judgment rendered by the Superior Court (Gibson, J.), sitting at Montreal in and for the District of Montreal, on the 26th. of April, 1940, maintaining the intervention of Respondent, and dismissing with costs the contestation by Appellants of said intervention, with the said costs awarded against Appellants personally; and Appellants give notice of the present inscription in appeal to Me. C. Holdstock, attorney for Intervenant-Respondent and for Dame Ethel Quinlan and their respective husbands; to Mes. Beaulieu, Gouin, Bourdon, Beaulieu & Montpetit, attorneys for Defendant and Contestant Robertson; to Me. Jacques Desaulniers, attorney for Dame Margaret Quinlan, and Jacques Desaulniers, Additional Defendants and Contestants on intervention; to Mes. Hyde, Ahern, Perron, Puddicombe & Smith, attorneys for Additional Parties William A. Quinlan; Kathleen Veronica Quinlan and Ernest Ledoux; Augusta Quinlan; Mary Theresa Quinlan and John Henry Dunlop; Edward H. Quinlan and Helen Quinlan; to Me. Edouard Masson, K.C., attorney for Additional Defendant Edouard Masson; to Me. Agenor H. Tanner, K.C., attorney for 30 Additional Defendant Agenor H. Tanner; to Me. Jacques P. Saint-Jacques, attorney for the Additional Defendant the Honourable Mr. Justice J. L. Saint-Jacques; to Mes. Monty & Loranger, attorneys for Additional Defendant H. Masson-Loranger; and to Mes. Harold & Long, attorneys for Additional Defendant in continuance of suit Hugh Charles Ledoux; and to Me. Arthur Vallée, K.C., attorney for Ontario Amiesite Limited, Robertson & Janin Limited and Fuller Gravel Limited.

40 And further give notice that the present inscription has been filed this day in the Prothonotary's office of the Superior



10 Court and that on the 27th day of May, 1940, at 11 o'clock in the forenoon, before the Prothonotary of the Superior Court for the District of Montreal at his office, the Court House, in Montreal, said Appellants will give good and sufficient security that they will effectively prosecute the said appeal and will satisfy the condemnation and will pay all costs and damages which may be awarded in the event of judgment on the Appellants' contestation of Respondent's intervention being confirmed, as regards Contestants-Appellants, and that Appellants will then and there offer as surety the United States Fidelity & Guaranty Co. an Insurance Company having its chief place of business at Baltimore in the State of Maryland, one of the United States of America, and a head office for the Province of Quebec, in the said City and District of Montreal, and authorized according to law to furnish such security.

20 Montreal, May 22nd, 1940.

(Sgd.) Campbell, Weldon, Kerry & Bruneau,  
Attorneys for Appellants.

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Part I — PLEADINGS &c.

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10 MOTION OF THE DEFENDANT A. W. ROBERTSON,  
FOR LEAVE TO FYLE A SUPPLEMENTARY  
DEFENCE.

20 10—WHEREAS the Plaintiff, dame Ethel Quinlan, by the present action, prays that the Defendant A. W. Robertson be condemned to return to the Estate of Hugh Quinlan, her father, certain shares of the Capital Stock of the following companies, to wit: Quinlan, Robertson & Janin Ltd, Ontario Amiesite Asphalt Ltd, Amiesite Asphalt Ltd, and Fuller Gravel Co. Ltd; or to pay the value thereof;

20—WHEREAS since issue was joined, to wit: since the 31st of January 1934, by deed passed before Mtre R. Papineau-Couture, N.P. the said Defendant has, amongst other things, purchased and repurchased, so far as might be necessary, from the Estate of the late Hugh Quinlan, all the various shares above mentioned;

30 30—WHEREAS, by judgment delivered on the 6th day of June 1934, the Supreme Court of Canada has declared that the above deed of agreement forms part of the record, in the present case and has granted acte thereof;

40—WHEREAS the above facts are material facts which have arisen since issue was joined, in the present case;

40 WHEREFORE the said Defendant A. W. Robertson prays that he be allowed to set out the above facts by way of supplementary defence, or “*puis darrein continuance*” and to fyle to that effect the supplementary plea hereto annexed; the whole under such conditions as the court may think proper;

Montreal, 11th of January 1935.

Beaulieu, Gouin, Mercier & Tellier,  
Attorneys for the Defendant A. W. Robertson.

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AFFIDAVIT

I, Louis Emery Beaulieu, barrister, residing and domiciled at number 36 Roskilde avenue, Outremont, district of Montreal, being duly sworn before the Holy Evangelists, do declare and say:—

10 1o—I am one of the Defendant Angus W. Robertson's attorneys, in the above matter;

2o—That the facts mentioned in the motion are true, to my personal knowledge;

20 AND I HAVE SIGNED:

L. E. Beaulieu

Sworn before me, a Montreal,  
district of Montreal, this 11th  
day of January 1935.

Léo Limoges,  
Commissioner for the Superior  
30 Court for the district of Montreal.

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SUPPLEMENTARY PLEA OF THE DEFENDANT  
A. W. ROBERTSON

40 For supplementary plea to the present action, the defendant A. W. Robertson says:—

1o—Since issue was joined, in the present case, to wit: on the 31st of January 1934, by deed of agreement passed before Mtre R. Papineau-Couture, N.P., the Defendant A. W. Robertson has purchased and re-purchased, so far as may be necessary, from the then testamentary executors and trustees of the Estate of the late Hugh Quinlan, to wit: The Capital Trust Corporation Ltā and the General Trust of Canada, all the shares which he was ordered to return to the Estate of the said late Hugh Quinlan, or whose value he was ordered to pay to the said estate, un-

der the judgments rendered in the present case, both by the Superior Court of this province and by the Court of King's Bench, appeal side;

20—The shares which the Defendant now pleading has purchased and re-purchased, so far as may be necessary, from the said testamentary executors and trustees, are the following:—

1151 shares of Quinlan, Robertson & Janin Ltd—  
250 “ “ Amiesite Asphalt Ltd—  
200 “ “ Ontario Amiesite Asphalt Ltd—  
and 400 “ “ Fuller Gravel Co. Ltd—

30—Moreover, under the above deed of agreement, the said testamentary executors and trustees have desisted from the judgments delivered in the present case, both by the Superior Court of this province and by the Court of King's Bench, appeal side, and have abandoned all the rights, claims and pretensions of whatever nature or description, which might have belonged to them, under the said judgments, or which might be vested in them, under the same judgments;

40—Always under the above agreement, the said testamentary executors and trustees have renounced to all and every right, claim, action and pretension of whatever nature or description, which may have belonged to them, or be vested in them, against the Defendant now pleading, and arising from any of the facts disclosed in the evidence adduced in the present case, or from the administration or management of the Estate of the late Hugh Quinlan, by the said A. W. Robertson, as testamentary executor or trustee, or from the dealings, connections or operations of the said A. W. Robertson, with the said late Hugh Quinlan, as co-partner, co-shareholder, co-associate or otherwise, or from the dealings, connections, or operations of the Defendant now pleading, acting jointly with the said late Hugh Quinlan, with third parties, or from the personal acts or deed of the Defendant now pleading, in whatever capacity, circumstances, or time;

50—In connection with the foregoing, the Defendant A. W. Robertson agreed to pay, in addition to the sum of \$270,000.00 which he had already paid, a sum of \$50,000.00, and further all the taxable Court costs, extra-judicial costs, disbursements and counsels' fees, due to the various barristers, attorneys or solicitors who had represented the then Plaintiffs, including \$4,025.00 to Mr. A. H. Tanner, K.C., of Montreal;

6o—The above mentioned agreement was entered into while the present case was pending before the Supreme Court of Canada, and its coming into force was subject to the conditions that the said Supreme Court of Canada should see no objection to the testamentary executors and trustees of the Estate of the late Hugh Quinlan carrying it into effect, or that the said Supreme Court of Canada should grant acte thereof;

10

7o—By a judgment delivered on the 6th of June 1934, the Supreme Court of Canada adjudged that it saw no reason why it should not declare that the above mentioned settlement should form part of the record, in the present case, and the said Supreme Court of Canada granted acte thereof;

8o—In fact, the Defendant now pleading has paid the full consideration stipulated in the said agreement of the 31st of January 1934, to wit: the sum of \$50,000.00 — to the testamentary executors and trustees of the said estate and also all the costs, which he undertook to pay, under the said agreement;

20

9o—The testamentary executors and trustees of the Estate of the late Hugh Quinlan had full power and authority to sell and re-sell to the Defendant now pleading all the shares above mentioned, as well as to enter into all the agreements, renunciations and desistments and generally into all the covenants contained in the said deed of the 31st of January 1934;

30

10o—The said deed of the 31st of January 1934, as well as all the agreements, renunciations, desistments and covenants therein contained were and are binding upon the Estate of the late Hugh Quinlan, as well as upon all the heirs and legatees of the said Hugh Quinlan, including the present Plaintiff, dame Ethel Quinlan;

11o—The said agreement of the 31st of January 1934 was assented to, accepted, confirmed and ratified by all the heirs and legatees of the said late Hugh Quinlan, with the sole exception of the present Plaintiff, dame Ethel Quinlan;

40

12o—In view of the foregoing, and without prejudice to the plea already fyled, the present action is unfounded in fact and in law and should be dismissed;

WHEREFORE the Defendant A. W. Robertson, without prejudice to the plea already fyled, prays for the dismissal of the present action, so far as he is concerned; the whole with costs.

Montreal, the 11th of January 1935.

Beaulieu, Gouin, Mercier & Tellier,  
Attorneys for the Defendant A. W. Robertson.

PLAINTIFFS' ANSWER TO SUPPLEMENTARY PLEA  
OF THE DEFENDANT A. W. ROBERTSON

10 For answer to the Supplementary Plea of the defendant,  
A. W. Robertson, the Plaintiff, Ethel Quinlan, duly authorised  
by her husband says:—

20 (1) As to paragraphs 1, 2, 3, 4 and 5 of the said Supplementa-  
ry Plea, the Plaintiff admits the existence of the document there-  
in mentioned, but denies that the defendant Robertson thereunder  
purchased or repurchased the shares which he was ordered to  
return to the Estate of the late Hugh Quinlan. The Plaintiff fur-  
ther denies the right, power and authority of Capital Trust Cor-  
poration Limited and General Trust of Canada and of the said  
A. W. Robertson to enter into the said agreement at the time the  
same was executed by the several parties thereto, and subject to  
the admission aforesaid of the existence of the said document,  
Plaintiff denies each, all and every the allegations of the said  
paragraphs.

30 (2) As to paragraph 6 of the said Supplementary Plea, Plain-  
tiff admits that the said agreement was executed while the pre-  
sent case was pending before the Supreme Court of Canada, and  
also admits the existence of a clause in the said agreement sub-  
jecting the coming into force of the said agreement to the con-  
ditions mentioned in said paragraph 6, but the Plaintiff avers  
that the said clause was and is absolutely null and void, and Plain-  
tiff also denies the allegations of the said paragraph insofar as  
the same are not herein specifically admitted.

(3) As to paragraph 7 of the said Supplementary Plea, the  
judgment of the Supreme Court therein referred to will speak  
for itself.

40 (4) Plaintiff is ignorant of the allegations of Paragraph 8 of  
the said plea and in any event, the facts alleged therein are irre-  
levant and even if true, are not binding upon nor can they affect  
in any way or prejudice the rights of the Plaintiff sought to be  
exercised by the present action.

(5) The allegations of paragraph 9 of the said supplementary  
plea are denied.

(6) The allegations of paragraphs 10, 11 and 12 of the Supplementary Plea are denied.

*AND THE Plaintiff further says:*

10 (7) All the rights, powers and authority of the testamentary executors and trustees of the Estate of the late Hugh Quinlan to sell or otherwise deal with the shares in question were suspended by the institution of the present action and remained suspended while the present suit is pending and were and are subject to such orders and directions of this Honourable court as shall be contained in the final judgment to be rendered in this cause.

20 (8) That the judgment of the Supreme Court of Canada referred to in the Supplementary Plea, although it granted acts of the said agreement and although it declared the said agreement formed part of the record in this case and the present litigation settled insofar as the defendant A W. Robertson and one of the original Plaintiffs, Margaret Quinlan, are concerned, the said Margaret Quinlan having become a party to the said agreement, the said judgment ordered the remaining parties, to wit, inter alia the Plaintiff, Ethel Quinlan, who had not become a party to the said agreement, to be sent back to this Honorable Court to complete the evidence already taken by a further enquete and to then secure a new adjudication on the merits of the issues shown in the  
30 said judgment of the Supreme Court of Canada as remaining to be decided between the Plaintiff, Ethel Quinlan and the defendant A. W. Robertson.

(9) That the judgment in this cause rendered by this Honorable Court on the 6th February 1931 was quashed by the Supreme Court in part only and the case was returned to this Honorable Court for the taking of further evidence in respect to certain matters only, which are specified in the judgment of the Supreme Court of Canada and the Supreme Court judgment did  
40 not permit of the trial of any other issue and more especially did not permit of the trial of any issue in respect to the validity effect, or otherwise, of the agreement alleged in paragraph 1 of the Supplementary Plea.

(10) That, moreover, the said judgment of the Supreme Court of Canada declared that the Plaintiff, Ethel Quinlan, has sufficient interest and status to preserve intact the corpus of the Estate of the late Hugh Quinlan.

(11) That it appears from the allegations of paragraphs 5 and 8 of the said Supplementary Plea that the price which the said Trustees of the Estate Hugh Quinlan were prepared to accept for the said shares was the sum of \$320,000.

10 (12) That the value of the said shares was fixed by this Honorable Court in its judgment of the 6th February 1931, at \$408,928. and by the Court of King's Bench at \$415,956.25.

20 (13) That while the appeal in this cause to the Supreme Court of Canada was pending, the Trustees and executors of the Estate of the late Hugh Quinlan, Capital Trust Corporation Limited and General Trust of Canada, gave written notice under date of the 6th September 1933, to all parties interested in this litigation, in their quality of executors of the Estate of the late Hugh Quinlan, that insofar as may be useful or necessary, they have accepted on behalf of the Estate of the said late Hugh Quinlan all benefits and advantages accruing to the said Estate under the judgments rendered in this cause by this Honorable Court and by the Court of King's Bench sitting in appeal for the District of Montreal.

30 (14) That in addition to fixing the value of the said shares as hereinabove mentioned, the judgment of this Honorable Court and of the Court of King's Bench declared that all bonuses and dividends paid since the death of the late Hugh Quinlan in respect to the said shares, belonged to his succession and although no accounting has yet been had as to these bonuses and dividends, the Plaintiff avers without in any way limiting her right to establish a greater amount, that the said bonuses are at least \$36,565.84.

40 (15) That, moreover, the consent of Dame Margaret Quinlan, who was originally a co-Plaintiff with the present Plaintiff, to the alleged agreement of the 31st January, 1934, which agreement is referred to in paragraph 1 of said Supplementary Plea was obtained on the payment to her husband of a sum of \$27,500. which said sum and the payment thereof in no way benefited the estate of the late Hugh Quinlan, and the other heirs assenting to said agreement were constrained to give such assent hurriedly, without a proper opportunity of examining the document, communication whereof was denied to them and their assent was obtained by misrepresentation, that is it was represented to them that if the defendant Robertson returned the shares to the estate, the latter would be obliged to repay the \$250,000. with interest and that no one would buy the shares except the defendant Ro-



April 30/47

bad faith of trustees

2nd East Dulwich Bldg

Society [1899] h.T. vol 68

Chancery

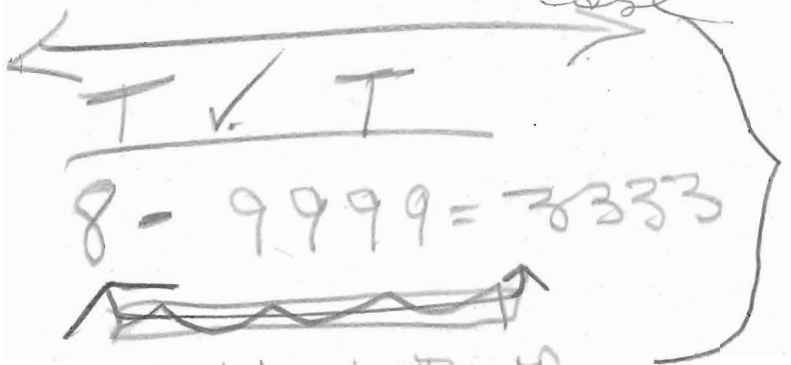
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Transaction

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bertson and there would be a reduction in income of one third, and at the same time concealed from the heirs the fact that defendant Robertson was unable to return the shares, having sold them.

10 (16) That, moreover, it appears by the evidence taken in this cause that the defendant Robertson, just prior to the institution of the present action, had sold all the issued capital stock of Amiesite Asphalt Limited, being one of the lot of shares mentioned in said paragraph 2 of the supplementary plea, for the sum of \$750,000.

(17) That the interest of the Estate of the late Hugh Quinlan in the said Amiesite Asphalt shares was one quarter representing in money \$187,500.

20 (18) That since the institution of the present action and prior to the judgment of this Honorable Court, which was rendered on the 6th of February, 1931, the defendant Robertson sold also all the other shares which he was ordered to return to the said Estate, to wit:—1151 shares of Quinlan, Robertson & Janin Ltd.

200 shares Ontario Amiesite Asphalt,  
400 shares Fuller Gravel Company Limited

30 (19) That the defendant Robertson and Capital Trust Corporation Limited and General Trust of Canada, knew at the date of the alleged settlement agreement referred to in paragraph (1) of said Supplementary Plea, and long prior thereto; that the defendant Robertson was unable to return the shares mentioned in paragraph (2) of said Supplementary Plea, the defendant Robertson having sold and disposed of the same.

40 (20) That the defendant, Robertson, and the said Trustees knew also at the date of the alleged settlement agreement aforesaid, and long prior thereto, that the defendant Robertson had sold the shares of Amiesite Asphalt Limited belonging to the Estate of the late Hugh Quinlan and the shares of Fuller Gravel Limited belonging to the said Estate for the sums respectively of \$187,500, and \$36,000., and that the shares belonging to the said Estate of Quinlan, Robertson & Janin Limited were worth at the very least \$275,000, and that there was at least \$36,565.84 due to the Estate in the way of bonuses and dividends, in all a total of \$535,065.84.

10 (21) That the defendant Robertson and the said Trustees knew at the said date and long prior thereto, that the Estate of the late Hugh Quinlan had various other claims against the defendant Robertson, all of which were made known to them in a notification and protest bearing date the 17th October, 1933, signified upon them by N. Picard, Notary Public of Montreal.

(22) That notwithstanding the foregoing facts, the alleged settlement agreement contains covenants which, if valid and binding would give the defendant Robertson a complete discharge of every claim and demand the estate of the late Hugh Quinlan might have upon or against him.

20 (23) That the execution of the alleged agreement of the 31st January, 1934, by the officers of the Trustees and executors of the Estate of the late Hugh Quinlan, to wit, the officers of the Capital Trust Corporation Limited and General Trust of Canada, was and is illegal, null and void, inasmuch as said officers were not authorised thereto by their respective companies and an agreement such as that of the 31st January, 1934, did not fall within the scope of their duties or powers as such officers.

30 (24) The Plaintiff, Ethel Quinlan, respectfully excepts to the judgment permitting the filing of defendant's supplementary plea and reserves her right to renew her objections thereto at the trial of this cause.

Wherefore the Plaintiff, Ethel Quinlan, prays that the alleged settlement agreement set forth in paragraph (1) of said Supplementary plea be declared null and void and be set aside, at all events insofar as the said Plaintiff is concerned and that the said Supplementary plea be dismissed with costs.

Montreal, February 8th. 1935.

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Sgd. Charles Holdstock,  
Attorney for Plaintiff.

True Copy

Charles Holdstock,  
Atty for Plaintiff.

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### EXCEPTION TO JUDGMENT

The Plaintiff, Ethel Quinlan, hereby respectfully excepts  
10 to the judgment rendered in this cause granting the motion of  
defendant Robertson to be allowed to file a supplementary plea,  
which judgment was rendered on the 30th of January, 1935.

Feb. 12th 1935.

Charles Holdstock,  
Attorney for Plaintiff.

20

### MOTION POUR DETAILS

1o—ATTENDU que la nature de cette action, intentée par  
la demanderesse, est une action en destitution des exécuteurs tes-  
tamentaires de la succession de feu Hugh Quinlan, et pour l'an-  
nullation de transports de certaines parts et actions—;

2o—ATTENDU que, dans le 15ème paragraphe de la ré-  
30 ponse au plaidoyer supplémentaire du défendeur A. W. Robert-  
son, la demanderesse allègue:—

“... communication whereof was denied to them, and their  
“assent was obtained by misrepresentation, that is, it was repre-  
“sented to them that if the defendant Robertson returned the  
“shares to the estate, the latter would be obliged to repay the  
“\$250,000, with interest and that no one would buy the shares  
“except the defendant Robertson and there would be a reduction  
“in income of one third, and at the same time concealed from  
40 “the heirs the fact that defendant Robertson was unable to re-  
“turn the shares, having sold them”—.

3o—ATTENDU que le défendeur A. W. Robertson ne sau-  
rait répliquer à cette dite réponse, sans s'exposer à la surprise, à  
moins que des détails ne soient fournis;

QU'IL SOIT ordonné à la demanderesse de fournir et pro-  
duire, sous tel délai qu'il plaira à cette Honorable Cour de fixer,  
les détails suivants; à sa réponse, à savoir:— au paragraphe 15

de sa réponse, dire et préciser dans les détails quand les fausses représentations ont été faites et si ces fausses représentations ont été faites verbalement ou par écrit; si elles ont été faites par écrit,

10 la teneur de ces fausses représentations écrites, au cas échéant; où à quel endroit elles ont été faites et, si elles ont été faites en présence de certaines personnes, dire et préciser dans les détails en présence de qui elles ont été faites; et qu'à défaut par la demanderesse de produire les détails ordonnés dans les délais qui seront fixés par cette honorable Cour, qu'il soit ordonné que les allégations susdites, pour lesquelles tels détails seront ordonnés, soient retranchés de la réponse; le tout avec dépens.

Montréal, le 18 Février 1935.

20 Beaulieu, Gouin, Mercier & Tellier,  
Procureurs du défendeur A. W. Robertson.

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AFFIDAVIT

Je, Henri Beaulieu, avocat, demeurant au No 5787 rue Dé-  
om, dans la cité de Montréal, district de Montréal, étant asser-  
menté sur les Saints Evangiles, dépose et dis:

30 1o—Je suis l'un des avocats du défendeur A. W. Robert-  
son, en cette cause;

2o—Tous les faits mentionnés en la motion ci-dessus sont  
vrais;

ET J'AI SIGNE:

Henri Beaulieu.

40 Asserment devant moi, )  
à Montréal, ce 18ème )  
jour de février 1935. )

Léo Limoges,  
Commissaire de la Cour Supérieure,  
pour le district de Montréal.

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JUGEMENT DE LA COUR SUPERIEURE  
ACCORDANT MOTION.

Ce 25ième jour du mois de février 1935.

PRESENT: L'HONORABLE JUGE F. J. CURRAN

10

LA COUR, après avoir entendu les parties par procureur sur la motion du défendeur A. W. ROBERTSON pour détails; après avoir examiné la procédure et délibéré;

20

ACCORDE ladite motion; ORDONNE à la demanderesse de fournir auxdits défendeurs les détails demandés par sa motion dans un délai de quinze jours d'hui et, à défaut par la demanderesse de produire lesdits détails dans ledit délai; ORDONNE que les allégations pour lesquelles tels détails sont ordonnés, soient retranchés de la réponse; dépens à suivre.

RP/JG

F. J. CURRAN,  
J. C. S. M.

30

PARTICULARS OF PARAGRAPH 15 OF THE ANSWER  
TO THE SUPPLEMENTARY PLEA FURNISHED BY  
THE PLAINTIFF ETHEL QUINLAN IN COM-  
PLIANCE WITH JUDGMENT RENDERED  
ON THE 25h OF FEBRUARY, 1935.

The said Plaintiff says hat the misrepresentations alleged in paragraph 15 of her said answer to the Supplementary Plea were:—

40

- (1) made on the 31st of January, 1934,
- (2) verbally
- (3) at the office of Messrs Campbell, McMaster, Couure, Kerry & Bruneau, 275 St. James St. W., Montreal.
- (4) before Mr. and Mrs. Harry Dunlop; Mr. and Mrs. E. Ledoux, Mr. W. Quinlan; Mr. E. Quinlan, Mr. L. Desaulniers, Mr. H. Ledoux, Mr. René Morin, Mr. A. C. P. Couture, K.C., and Mr. R. Couture, Notary.

Montreal, February 27th. 1935.

Charles Holdstock,  
Attorney for Plaintiffs.

## REPLIQUE

Pour réplique à la réponse produite par la demanderesse Ethel Quinlan, à l'encontre du plaidoyer supplémentaire du défendeur A. W. Robertson, le dit défendeur A. W. Robertson dit et allègue:—

10 1o—Il demande acte des admissions contenues aux paragraphes 1 et 2 de la dite réponse et nie les dits paragraphes, quant au surplus;

2o—Le défendeur A. W. Robertson nie les paragraphes 4 et 7 de la dite réponse;

20 3o—En réponse aux paragraphes 8, 9 et 10 de la dite réponse, le défendeur A. W. Robertson s'en rapporte à la teneur du jugement de la Cour Suprême auquel il réfère dans son plaidoyer supplémentaire; il nie les dits paragraphes, en autant qu'ils ne concordent pas avec la teneur de ce jugement;

30 4o—En réponse au paragraphe 11 de la dite réponse, le défendeur A. W. Robertson s'en rapporte aux allégations contenues dans les paragraphes de son plaidoyer supplémentaire, mais il nie le dit paragraphe 11 de la présente réponse en autant que ce paragraphe ne concorde pas avec les allégations de son plaidoyer supplémentaire;

5o—En réponse au paragraphe 12 de la dite réponse, le défendeur A. W. Robertson s'en rapporte à la teneur des jugements rendus, tant par la Cour Supérieure que par la Cour du Banc du Roi, et nie le dit paragraphe, quant au reste;

40 6o—Le défendeur A. W. Robertson nie le paragraphe 13 de la dite réponse, comme étant faux en fait et mal fondé en droit;

7o—En réponse au paragraphe 14 de la dite réponse, le défendeur A. W. Robertson déclare qu'il s'en rapporte à la teneur des jugements rendus tant par la Cour Supérieure que par la Cour du Banc du Roi, dans la présente instance; il nie le paragraphe 14 susdit, quant au reste;

8o—Le défendeur A. W. Robertson nie le paragraphe 15 de la dite réponse, comme étant faux en fait et mal fondé en droit;



9o—En réponse au paragraphe 16 de la dite réponse, le dit défendeur Robertson déclare qu'il s'en rapporte à la preuve déjà faite dans la présente cause; il nie le reste du dit paragraphe et nie spécialement que les actions de la Amiesite Asphalt Limited aient été vendus pour le prix de \$750,000.00;

10 10o—Le défendeur A. W. Robertson nie les paragraphes 17, 18, 19, 20 et 21 de la dite réponse, comme étant faux en fait et mal fondés en droit;

11o—En réponse au paragraphe 22 de la dite réponse, le défendeur A. W. Robertson déclare qu'il s'en rapporte aux termes du contrat intervenu le 31 janvier 1934, devant Mtre R. Papineau-Couture, N.P., et il nie le dit paragraphe, quant au reste;

20 2o—Le défendeur A. W. Robertson nie les paragraphes 23 et 24 de la dite réponse, comme étant faux en fait et mal fondés en droit;

13o—Le dit défendeur A. W. Robertson nie particulièrement les détails fournis par la demanderesse E. Quinlan, en rapport avec le paragraphe 15 de sa réponse, comme étant faux en fait et mal fondés en droit;

30 POURQUOI le dit défendeur A. W. Robertson, persistant dans toutes et chacune des allégations de son plaidoyer supplémentaire, conclut au maintien de ce dit plaidoyer supplémentaire et au rejet de l'action, avec dépens.

Montréal, le 28 mai 1935.

Beaulieu, Gouin, Mercier & Tellier,  
Procureurs du défendeur A. W. Robertson.

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40 MOTION ON BEHALF OF PLAINTIFF, ETHEL QUINLAN, TO JOIN NEW DEFENDANTS IN THIS ACTION.

Whereas the present case has by judgment of the Supreme Court of Canada, rendered the 6th of June, 1934, been referred back to the Superior Court for the District of Montreal, to take evidence and to secure a new adjudication on issues therein specified.

Whereas on or about the 14th January 1935, the defendant A. W. Robertson, with the permission of this Honorable Court,

filed a supplementary plea to the Plaintiff's action setting up the deed of settlement of the present litigation.

Whereas the Plaintiff in her answer to such supplementary plea has prayed for reasons set forth in the said answer that the said deed of settlement be set aside, at all events in so far as  
10 the said Plaintiff is concerned.

Whereas the present cause was fixed for trial on the 4th of June, 1935, before his Lordship the Honorable Mr. Justice Philippe Demers, one of the Honorable Judges of this Court and after this case had been called and the issues partially explained to the Court by Counsel for the defendant Robertson, the Plaintiff, Margaret Quinlan, by attorney, raised an objection that the said Plaintiff, Margaret Quinlan, was no longer a party to this  
20 cause, inasmuch as the Supreme Court of Canada had declared that she had settled with the defendant Robertson and that the litigation, so far as she was concerned, was at an end, and the defendants, Capital Trust Corporation Limited and General Trust of Canada also appeared by attorneys and claimed that they were no longer parties to the suit, inasmuch as the action had been dismissed by the Superior Court in so far as they were concerned.

Whereas the Honorable Judge presiding expressed the view that the objections were well founded and thereupon the  
30 case was adjourned to the month of October to afford the present Plaintiff an opportunity of joining all the parties to the aforesaid deed of settlement in the present suit.

Whereas the said deed of settlement was made between the said Margaret Quinlan, Party of the First Part, William A. Quinlan, Kathleen Veronica Quinlan, Augusta Quinlan, Mary Theresa Quinlan, John Henry Dunlop, Edward Hugh Quinlan, Helen Hilda Quinlan, John Henry Dunlop in his quality of tutor to his minor child, Joan Stuart Dunlop, Ernest Ledoux in his  
40 quality of tutor to his minor children, Hugh, Francis, David and Mary Theresa Ledoux, the parties of the Second Part, and Capital Trust Corporation Limited and General Trust of Canada, in their quality of executors and Trustees of the Estate of the late Hugh Quinlan, parties of the third part and the defendant Angus William Robertson, Party of the Fourth Part.

Whereas certain stipulations as to the payment of moneys were made in the said deed of settlement in favor of Jacques Desaulniers, King's Counsel, Edouard Masson, advocate, Henri Masson Loranger, advocate, and Agenor H. Tanner, King's Counsel and the Honorable J. L. St. Jacques.

10 THAT the Plaintiff, Ethel Quinlan, be permitted and authorised to join in the present action the parties to the said deed of settlement and also the parties aforesaid who appear to have an interest therein and thereunder, to wit, Dame Margaret Quinlan of the City of Montreal, wife separate as to property of Jacques Desaulniers, advocate and King's Counsel, of the same place and the said Jacques Desaulniers as well personally as for the purpose of authorising his said wife for all legal purposes; William A. Quinlan, manager, of the City of Westmount, Kathleen Veronica Quinlan, wife separate as to property of Ernest Ledoux, both of the said City of Montreal, and the said Ernest Ledoux for the purpose of authorising his said wife for all legal purposes; Augusta Quinlan, spinster of the said City of Montreal, Mary Theresa Quinlan, wife common as to property of John Henry Dunlop of the City of Westmount and the said John Henry Dunlop as head of the said community of property and to authorise his said wife for all legal purposes; Edward Hugh Quinlan of the said City of Montreal, Helen Hilda Quinlan of the said City of Montreal, and the said John Henry Dunlop in his quality of tutor to his minor child John Stuart Dunlop, and the said Ernest Ledoux in his quality of tutor to his minor children, Hugh, Francis, David and Mary Theresa Ledoux; Capital Trust Corporation Limited, a body corporate having its principal place of business for the Province of Quebec, in the City of Montreal and General Trust of Canada a body corporate having its principal place of business in the said City of Montreal, said Capital Trust Corporation Limited and General Trust of Canada in their quality of Executors and Trustees under the last will and testament of the late Hugh Quinlan, — the whole with costs to follow the event of the suit.

Montreal, June 18th. 1935.

Charles Holdstock,  
Attorney for Plaintiff Ethel Quinlan.

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AFFIDAVIT

I, John T. Kelly, salesman, residing a Number 14 Hudson Avenue, in the City of Westmount, being duly sworn make oath and say:—

(1) That I am the husband of the Plaintiff in this cause, Dame Ethel Quinlan and have a knowledge of the matters and things

alleged in the foregoing motion and said matters and things are true.

And I have signed.

John T. Kelly.

Sworn to before me at )  
Montreal, this 19th )  
10 day of June, 1935. )

Rolland Langlois,  
A commissioner of the  
Superior Court for the  
District of Montreal.

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20 JUDGMENT GRANTING MOTION TO JOIN NEW  
DEFENDANTS IN THIS ACTION.  
SUPERIOR COURT

On this 26th day of June 1935.

PRESENT: THE HON. MR. JUSTICE FOREST.

30 THE COURT, having heard the parties by counsel on the motion of Plaintiff Ethel Quinlan, praying, for the reasons therein set forth, that she be permitted to join in the present action the parties to the deed of settlement mentioned in the supplementary plea of Defendant A. W. Robertson and also the parties mentioned in the said motion who appear to have an interest therein and thereunder, to wit:—Dame Margaret Quinlan of the City of Montreal, wife separate as to property of Jacques Desaulniers, advocate and King's Counsel, of the same place and the said Jacques Desaulniers as well personally as for the purpose of authorizing his said wife for all legal purposes; William A. Quinlan, Manager, of the City of Westmount, Kathleen Veronica Quinlan, wife separate as  
40 to property of Ernest Ledoux, both of the City of Montreal, and the said Ernest Ledoux for the purpose of authorizing his said wife for all legal purposes; Augusta Quinlan, spinster of the said City of Montreal, Mary Theresa Quinlan, wife common as to property of John Henry Dunlop of the City of Westmount, and said John-Henry Dunlop as head of the said community of property and to authorize his said wife for all legal purposes; Edward Hugh Quinlan of the said City of Montreal, Helen Hilda Quinlan of the said City of Montreal, and the said John Henry Dunlop in his quality of tutor to his minor child John

Stewart Dunlop, and the said Ernest Ledoux in his quality of tutor to his minor children, Hugh, Francis, David and Mary Theresa Ledoux; Capital Trust Corporation Limited, a body corporate having its principal place of business for the Province of Quebec, in the City of Montreal and General Trust of Canada a body corporate having its principal place of business  
10 in the said City of Montreal, said Capital Trust Corporation Limited and General Trust of Canada in their quality of Executors and Trustees under the last will and testament of the late Hugh Quinlan;

DOTH GRANT the said motion, costs to follow; DOTH PERMIT and AUTHORIZE the said Plaintiff to, within a delay of ten days, join in the present action the said parties, as prayed.

20 JOM/TG Alfred Forest,  
J. S. C. M.

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FIAT FOR ALIAS WRIT OF SUMMONS

I appear for the Plaintiff, Ethel Quinlan, and require on her behalf and alias writ of summons returnable within legal delays addressed to a bailiff of the Superior Court against defendants above mentioned joined to action by judgment of the Hon-  
30 orable Mr. Justice Forest under date of 26th June 1935 to answer the demand contained in the Answer of the Plaintiff, Ethel Quinlan, to the Supplementary Plea of the defendant A. W. Robertson.

Montreal, July 3rd 1935.

C. Holdstock,  
Attorney for Plaintiff Ethel Quinlan.

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40 MOTION DE LA DEFENDERESSE ADDITIONNELLE  
DAME MARGARET QUINLAN, POUR FAIRE METTRE  
EN CAUSE KATHERINE KELLY

ATTENDU que les procédures signifiées à la dite défenderesse dame Margaret Quinlan, mettent en cause, pour en démontrer l'annulation, le règlement fait au nom de la succession et pour elle par ses exécuteurs-testamentaires et fiduciaires, ayant pour effet entre autres, de vendre un ensemble d'actions de ladite

succession Quinlan pour un prix total de trois cent vingt mille dollars (\$320,000), lequel prix a été payé à la succession et appartient en conséquence à l'ensemble de tous les héritiers suivant leurs droits;

10 ATTENDU que la demanderesse ne saurait faire annuler ledit règlement comme elle demande, sans affecter les droits de tous les héritiers, et en conséquence, procéder à leur mise en cause;

ATTENDU que la fiducie créée audit testament n'est pas encore ouverte et que le corps de la succession doit être conservé comme un tout jusqu'au décès du dernier des huit enfants du défunt;

20 ATTENDU que dans l'intervalle, les intérêts actifs de la succession ne peuvent être scindés, ni divisés, ni gouvernés de façon différente et que le maintien ou l'annulation de la dite vente desdites parts doit être prononcé pour tous les héritiers;

ATTENDU qu'une héritière, savoir: mademoiselle Katherine Kelly, fille mineure de la demanderesse, n'a pas été mise en cause et n'est pas représentée, et que c'est la seule à n'être pas ainsi représentée;

30 ATTENDU que la présente défenderesse additionnelle dame Margaret Quinlan a intérêt à ce qu'il ne soit pas prononcé un jugement sur la valeur dudit règlement, à moins que tous les intéressés, y compris ladite demoiselle Katherine Kelly, ne soient liés par tel jugement;

ATTENDU que c'est la demanderesse dame Ethel Quinlan qui procède présentement à démontrer l'annulation dudit jugement, et que la mise en cause de tous les intéressés doit être à sa charge;

40 QU'IL SOIT ORDONNE à la demanderesse Dame Ethel Quinlan de mettre en cause, suivant la loi, ladite demoiselle mineure Katherine Kelly, sa propre fille, dans les délais et aux conditions que cette cour déterminera; et que toutes procédures de ladite demanderesse contre la présente défenderesse soient suspendues jusqu'à ce que telle mise-en-cause ait été faite suivant la loi, le tout avec dépens.

Montréal, 27 août 1935.

Jacques Désaulniers,  
Procureur de la défenderesse additionnelle  
dame Margaret Quinlan.

AFFIDAVIT

Je soussigné, JACQUES DESAULNIERS, avocat au  
Barreau de Montréal, et conseil du Roi, demeurant au numéro  
10 3490 Cote des Neiges, dans la cité de Montréal, étant dûment as-  
sermenté sur les Saints-Evangiles, dépose et dis:—

1o. Je suis l'époux et le procureur au dossier de la défen-  
deresse dame Margaret Quinlan;

2o. Les faits allégués dans la motion ci-dessus sont vrais  
à ma connaissance;

20 ET J'AI SIGNE A MONTREAL, ce 27e JOUR DE AOUT  
1935:—

Jacques Desaulniers

Assermenté devant moi  
à Montréal, ce 27e jour  
d'août 1935.

J. P. L. Brien,  
Commissaire de la cour  
supérieure pour le district  
30 de Montréal.

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MOTION DE LA DEFENDERESSE ADDITIONNELLE  
DAME MARGARET QUINLAN POUR  
PARTICULARITES

ATTENDU qu'au paragraphe quinze de la réponse de la  
demanderesse Ethel Quinlan au plaidoyer supplémentaire du  
défendeur A. W. Robertson, il est allégué que le consentement  
40 donné par les signataires de ladite transaction a été vicié et que  
ledit consentement n'a été obtenu que par de fausses représenta-  
tions, ainsi que l'indiquent les mots suivants à ladite allégation  
quinze:—

“.....were constrained to give such assent hurriedly,  
without a proper opportunity of examining the document,  
communication whereof was denied to them and their as-  
sent was obtained by misrepresentation, that is, it was re-  
presented to them that if the defendant Robertson return-  
ed the shares to the estate, the latter would be obliged to

repay the \$250,000 with interest and that no one would buy the shares except the defendant Robertson and there would be a reduction in income of one third, and at the same time concealed from the heirs the fact that defendant Robertson was unable to return the shares, having sold them.”

10

ATTENDU que la défenderesse dame Margaret Quinlan ne peut plaider sans que des détails lui soient fournis au sujet desdites manoeuvres frauduleuses;

QU'IL SOIT ORDONNE à la demanderesse de fournir et produire, sous tel délai qu'il plaira à cette honorable cour de fixer, les détails suivants sur lesdites représentations, savoir:—

10. Quand elles ont été faites?
- 20 20. Si elles ont été faites verbalement?
30. Si elles ont été faites par écrit, la teneur desdits écrits?
  - o. Où elles ont été faites?
  - 5o. En présence de qui elles ont été faites?

A DEFAUT par la demanderesse de fournir et produire lesdites particularités dans le délai fixé par cette honorable cour, que les mots suivants:—

30

“.....were constrained to give such assent hurriedly, without a proper opportunity of examining the document, communication whereof was denied to them and their assent was obtained by misrepresentation, that is, it was represented to them that if the defendant Robertson returned the shares to the estate, the latter would be obliged to repay the \$250,000 with interest and that no one would buy the shares except the defendant Robertson and there would be a reduction in income of one third, and at the same time concealed from the heirs the fact that defendant Robertson was unable to return the shares, having sold them.”

40

du paragraphe quinze, soient retranchés du dossier, le tout avec dépens;

Montréal, 27 août 1935.

Jacques Désaulniers,  
Procureur de la défenderesse-additionnelle  
dame Margaret Quinlan.



AFFIDAVIT

Je soussigné, JACQUES DESAULNIERS, avocat du  
Barreau de Montréal, et conseil du Roi, demeurant au numéro  
10 3490 Côte des Neiges, dans la cité de Montréal, étant dûment as-  
sermenté sur les Saints-Evangiles, dépose et dis:—

1o. Je suis l'époux et le procureur au dossier de la défen-  
deresse dame Margaret Quinlan;

2o. Les faits allégués dans la motion ci-dessus sont vrais  
à ma connaissance;

ET J'AI SIGNE A MONTREAL, CE 27<sup>e</sup> JOUR D'AOUT  
1935:

20

Jacques Désaulniers

Assermenté devant moi  
à Montréal, ce 27<sup>e</sup>  
jour d'août 1935.

J. P. L. Brien,  
Commissaire de la cour  
supérieure pour le  
district de Montréal.

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JUGEMENT DE LA COUR SUPERIEURE ORDONNANT  
A LA DEMANDERESSE DE FOURNIR  
PARTICULARITES

Le dixième jour de septembre 1935.

PRESENT: L'HON. JUGE FOREST.

40

LA COUR, ayant entendu les parties sur la motion de la  
demanderesse additionnelle, Margaret Quinlan, pour détails,  
après avoir examiné la procédure et délibéré;

ACCORDE la motion; ORDONNE à la demanderesse de  
fournir et produire les particularités demandées dans la motion,  
dans un délai de dix jours.

LP/RC

Alfred Forest,  
J. C. S.

MOTION ON BEHALF OF PLAINTIFF, ETHEL QUINLAN

10 (1) WHEREAS, by Judgment rendered in this cause on the 26th of June 1935 by this Honourable Court, the plaintiff Ethel Quinlan was authorized to join in the present action the parties to the Deed of Settlement, mentioned in the Supplementary Plea of defendant, A. W. Robertson, made and filed in his cause, and also the parties, mentioned in the Motion of the said plaintiff, upon which the said Judgment of the 26th of June 1935 was rendered, who appeared to have an interest in the said deed of settlement;

20 (2) WHEREAS in the said Motion, after asking to be permitted to join the parties to the said Deed of Settlement, as well as the parties mentioned in the said Motion who appeared to have an interest therein, the parties to be added were named and described;

(3) WHEREAS the names and descriptions of the parties only to the Deed of Settlement were given and the names of the other parties, who appeared to be interested in the Deed of Settlement, were omitted by error;

30 (4) WHEREAS the names and description of the parties who were thus omitted by error are:

Edouard Masson, Advocate, of the City and District of Montreal; Henri-Masson-Loranger, Advocate of the City and District of Hull; Agenor H. Tanner, Advocate and King's Counsel of the said City of Montreal; and the Honorable J. L. St-Jacques of the City of Outremont, one of the Honorable Judges of the Court of King's Bench of the Province of Quebec.

40 THAT by judgment to be rendered hereon the Plaintiff, Ethel Quinlan, be permitted and authorized to add to the present action, within a delay of six days, the said Edouard Masson, Henri Masson-Loranger, Agenor H. Tanner and the Honorable J. L. St. Jacques, in addition to the parties named and described in the aforesaid judgment of the 26th June 1935.

Montreal, August 30th, 1935.

C. Holdstock,  
Attorney for Plaintiff Ethel Quinlan.

AFFIDAVIT

I, JOHN T. KELLY, salesman, residing at number 14  
Hudson Avenue, in the City of Westmount, being duly sworn,  
10 make oath and say:—

(1) That I am the husband of the plaintiff in this cause,  
Dame Ethel Quinlan, and have a knowledge of the matters and  
things alleged in the foregoing motion and the said matters and  
things are true.

AND I HAVE SIGNED.

J. T. Kelly.

20 Sworn to before me at the )  
City of Montreal this 30th )  
day of August 1935. )

Rolland Langlois,  
A Commissioner of the Superior  
Court, District of Montreal.

30

JUDGMENT OF THE SUPERIOR COURT  
GRANTING MOTION TO AMEND

Judgment this tenth day of September 1935.

PRESENT: THE HONORABLE JUSTICE FOREST

THE COURT, having heard the parties, by counsel, on the  
second motion of Plaintiff, Dame Ethel Quinlan to amend, by ad-  
40 ding to the present action, within a delay of six days, the names  
of Edouard Masson, Henri Masson Loranger, Agenor H. Tanner  
and the Honorable J. L. St. Jacques in addition to the parties  
named and described in the judgment rendered in this cause on  
the 26th of June 1935, whereby the Plaintiff Ethel Quinlan was  
authorized to join in the present action the parties to the Deed  
of Settlement mentioned in the Supplementary Plea of the De-  
fendant A. W. Robertson made and filed in this cause, and also  
the parties mentioned in the motion of the said Plaintiff upon  
which the said judgment of the 26th of June 1935 was rendered,  
who appeared to have an interest in the said Deed of Settlement,  
having examined the proceedings and deliberated:

SEEING the affidavit in support of said motion;

DOTH GRANT said motion and DOTH AUTHORIZE said Plaintiff, Ethel Quinlan, to add to the present action, within a delay of ten days, the said Edouard Masson, Henri Masson-Loranger, Agenor H. Tanner and the Honorable J. L. St. Jacques  
10 in addition to the parties named and described in the aforesaid judgment of the 26th of June 1935 the whole with costs to follow suit.

V.de C-N L.L.

Alfred Forest,  
J. S. C.

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FIAT FOR SECOND ALIAS WRIT OF SUMMONS.

20 I appear for the plaintiff, ETHEL QUINLAN, and require on her behalf a second alias writ of summons returnable within the legal delays, addressed to a bailiff of the Superior Court for the district of Montreal, against the defendants above-mentioned joined to action by judgment of the Honorable Mr. Justice Forest under date of September 10th 1935, to answer the demand contained in the supplementary plea and answer and reply thereto.

Montreal, September 10th 1935.

30

C. Holdstock,  
Attorney for Plaintiff Ethel Quinlan.

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MOTION OF PLAINTIFF ETHEL QUINLAN TO BE RELIEVED OF DEFAULT TO ADD PARTY.

40 1o. On the 10th day of September 1935 judgment was rendered ordering plaintiff to place en cause her minor daughter Miss Katherine Kelly within a delay of fifteen days;

2o. Plaintiff took the necessary proceedings to have a tutor named and was not until the 26th day of September 1935, that the tutor was so named;

3o. That the plaintiff has made all diligence under the circumstances and should in the interest of justice be relieved from default;

40. That she is now ready to immediately take such proceedings as is contemplated by the said judgment;

WHEREFORE plaintiff prays that she be relieved from default under the judgment of the 10th September 1935, and that she be allowed to take proceedings as contemplated by said judgment instanter, and she be allowed to amend by adding said party, the whole with costs to follow;

Montreal, 15th November 1935.

C. Holdstock,  
Attorney for plaintiff Ethel Quinlan Kelly.

20

AFFIDAVIT

I, John T. Kelly, salesman, residing at number 14 Hudson Avenue, in the city of Westmount, being duly sworn, make oath and say:—

(1) That I am the husband of the plaintiff in this cause, Dame Ethel Quinlan, and have a knowledge of the matters and things alleged in the foregoing motion and the said matters and things are true.

AND I HAVE SIGNED.

J. T. Kelly.

Sworn to before me at the  
City of Montreal, this 16th  
day of November 1935.

Rolland Langlois,  
Commissioner of the Superior Court  
for the district of Montreal.

40

JUDGMENT OF THE SUPERIOR COURT GRANTING  
MOTION TO BE RELIEVED OF DEFAULT

On the 20th day of November 1935

PRESENT: THE HONOURABLE MR. JUSTICE CURRAN

THE COURT, having heard the parties on the motion of Plaintiff Ethel Quinlan Kelly praying, for the reasons therein

set forth, that she be relieved from default under the judgment of the 10th September 1935 and that she be allowed to take proceedings as contemplated by said judgment instanter, and she be allowed to amend by adding the tutor of her minor daughter;

DOTH GRANT the said motion as prayed, costs to follow.

10

M/GH

F. J. Curran,

J. S. C.

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DEFENSE DES DEFENDEURS DAME MARGARET QUINLAN ET JACQUES DESAULNIERS, A L'ACTION ET INSTANCE PRISES CONTRE EUX PAR SUITE DE LA REPOSE DE LA DEMANDERESSE AU PLAIDOYER SUPPLEMENTAIRE DU DEFENDEUR ROBERTSON.

20

Pour défense à l'action et instance prises contre eux par la demanderesse par suite et en vertu de la réponse de la demanderesse au plaidoyer supplémentaire du défendeur Robertson, et en conséquence, comme défense aux moyens allégués contre eux par la demanderesse dans sadite réponse, les défendeurs Margaret Quinlan et Jacques Désaulniers, disent:—

1. Les défendeurs susdits sont assignés pour répondre à la demande de la demanderesse contenue dans sa réponse au plaidoyer supplémentaire du défendeur Robertson;

2. Comme il appert à ladite réponse, la demanderesse y attaque une convention de règlement en date du 31 janvier 1934, reçue par acte authentique par Me N. Papineau-Couture, N.P., et à laquelle lesdits présents défendeurs étaient parties;

3. Par cette convention de règlement, les exécuteurs-testamentaires de la succession Hugh Quinlan ont, en vertu des pouvoirs à eux conférés par le testament, vendu au défendeur Robertson toutes les actions provenant dudit Hugh Quinlan dans un certain nombre de compagnies industrielles et que ledit défendeur Robertson prétendait avoir acquises antérieurement du défunt lui-même en des circonstances qui ont fait l'objet en partie de l'action principale en cette cause;

4. Lesdites actions sont les suivantes:—

1151 actions de la compagnie Quinlan, Robertson et Janin Ltd;  
250 actions de la compagnie Amiesite Asphalt Ltd;  
200 actions de la compagnie Ontario Amiesite Ltd;  
400 actions de la compagnie Fuller Gravel Co. Ltd;

5. Ledit défendeur Robertson avait déjà payé la somme de deux cent soixante-dix mille dollars (\$270,000) à ladite succession Hugh Quinlan et pour son bénéficiaire, en vertu de l'achat qu'il prétendait avoir fait desdites actions du vivant même dudit Hugh Quinlan;

10 6. Par la convention de règlement ci-haut mentionnée du 31 janvier 1934, ledit défendeur Robertson consentit à payer, et les exécuteurs-testamentaires de ladite succession consentirent à vendre lesdites actions pour un prix total de trois cent vingt mille dollars (\$320,000), soit cinquante mille dollars (\$50,000) de plus que le prix porté dans la première prétendue vente alors attaquée devant les tribunaux, et ledit défendeur Robertson, par suite de cette convention de règlement ci-haut mentionnée, a payé le surplus de prix, savoir: la somme de cinquante mille dollars  
20 (\$50,000) à la succession;

7. Cette convention de règlement du 31 janvier 1934 a été faite pendant que la présente action principale était mue en appel devant la cour suprême du Canada et alors que la présente défenderesse Margaret Quinlan était dans la cause demanderesse conjointe avec la présente demanderesse dame Ethel Quinlan et que le présent défendeur Jacques Désaulniers était dans la cause le procureur au dossier de ladite Margaret Quinlan;

30 8. La présente cause sur l'action principale était alors à la cour suprême en appel du jugement unanime de la cour du banc du roi à Montréal, lequel avait maintenu le jugement de la cour supérieure prononcé par l'honorable juge Martineau et qui avait pour effet, entre autres, de ne pas reconnaître et d'annuler le prétendu achat que le défendeur Robertson prétendait avoir fait desdites actions dudit Hugh Quinlan en son vivant;

40 9. Lors du procès devant la cour supérieure sur l'instance principale, ledit défendeur Robertson avait tenté de faire une preuve testimoniale de diverses circonstances à l'effet de prouver son prétendu achat desdites parts et, sur objection des demanderesse, ladite preuve testimoniale avait été empêchée et déclarée illégale et la même objection à la preuve testimoniale avait été maintenue par la cour du banc du roi;

10. Lorsque ladite convention de règlement du 31 janvier 1934 a été passée, l'appel devant la cour suprême avait été plaidé en partie oralement par les procureurs au dossier et, comme il arrive, au cours de l'argument, des honorables membres du

tribunal avaient eu l'occasion de faire des remarques et en particulier le juge en chef Sir Lyman Duff, avait fait des remarques qui étaient de nature à laisser prévoir qu'il était possible que la cour suprême permît la preuve testimoniale ci-haut mentionnée au sujet des circonstances du prétendu achat par le défendeur Robertson desdites parts, et qu'en conséquence, les demanderes-  
10 ses fussent renvoyées devant la cour supérieure pour que cette preuve fût recue, ce qui en outre, pouvait laisser prévoir que la preuve une fois faite, le sentiment, à tout le moins de la cour suprême, pourrait être favorable à la reconnaissance de ladite vente si la preuve testimoniale apportée par le défendeur Robertson pouvait paraître suffisante;

11. C'est dans ces circonstances que la présente défenderesse, dame Margaret Quinlan, alors demanderesse sur l'instance principale, et son époux, le présent défendeur Jacques Désaulniers, alors le procureur de ladite Margaret Quinlan, décidèrent qu'ils avaient intérêt à concourir dans une transaction quant à eux au sujet du litige, et dans l'application quant à eux, d'une vente définitive et ferme qui serait faite par écrit audit défendeur Robertson desdites actions par les exécuteurs-testamentaires en vertu des pouvoirs à eux conférés et pour un prix qui a alors paru raisonnable;

12. Au reste, cette cause, sur l'instance principale qui  
30 était très sérieuse, n'avait pas manqué, même avant les remarques de la cour suprême, de provoquer des pourparlers de règlement de temps à autre, auxquels les présents défendeurs avaient pris part;

13. Lorsque ledit règlement fut définitivement consenti et que les présents défendeurs agréèrent la vente des parts aux conditions qui y sont déterminées, les présents défendeurs avaient envisagé en outre la situation qui serait faite à la succession dont la défenderesse Margaret Quinlan est l'une des légataires univ-  
40 selles, du fait que si même le prétendu achat du défendeur Robertson restait annulé définitivement et qu'il eût à retourner lesdites actions à la succession Hugh Quinlan, celle-ci serait restée, du fait de ces actions, actionnaire minoritaire dans toutes les compagnies intéressées, lesquelles étaient et avaient chance de demeurer contrôlées par ledit défendeur Robertson, seul ou avec le concours d'associés, ce qui aurait pu en pratique, contribuer à laisser auxdites actions des revenus plus que douteux parce que sujets à des déclarations de dividendes non contrôlées par la succession, et, en définitive, à diminuer grandement au point de vue pratique la valeur desdites actions;



14. Sous les circonstances, les présents défendeurs Margaret Quinlan et Jacques Désaulniers ont cru qu'il était à la fois de l'intérêt de la succession, et dans tous les cas, de l'intérêt de ladite Margaret Quinlan, de mettre fin audit litige quant à elle, et d'approuver en outre la vente ferme desdites parts au prix de trois cent vingt mille dollars (\$320,000) qui a été fixé, et en exigeant toutefois que les frais des divers avocats qui jusque-là  
10 avaient représenté la demande fussent payés, ce qui fut finalement consenti par ladite convention de règlement;

15. Il s'est trouvé que seule la demanderesse, dame Ethel Quinlan, a refusé, comme elle en avait le droit, de transiger sur le litige ou d'acquiescer à la vente desdites actions, et les présents défendeurs Margaret Quinlan et Jacques Désaulniers, tout en ne désirant pas entraver les recours que la demanderesse Ethel  
20 Quinlan, entend continuer, sont intéressés à demander au moins quant à eux, une déclaration de validité de ladite convention de règlement et le renvoi de la présente instance prise contre eux à cet égard;

16. La participation des présents défendeurs à ladite convention de règlements a été en outre approuvée et recommandée par les autres avocats et conseils que les présents défendeurs ont alors consultés;

17. Aux termes du testament dudit feu Hugh Quinlan, ses exécuteurs-testamentaires avaient toute autorité pour faire la vente desdites actions et consentir à tout ce à quoi ils ont consenti à ladite convention de règlement du 31 janvier 1934;  
30

18. Le consentement desdits exécuteurs-testamentaires à la convention de règlement du 31 janvier 1934 a été fait de bonne foi et sans fraude et dans l'intérêt de la succession;

19. De même, le consentement des présents défendeurs à  
40 ladite convention de règlement a été fait de bonne foi et sans fraude et dans leur intérêt légitime, et en outre, ladite convention était dans l'intérêt de la succession;

20. En se rapportant aux allégations ci-dessus, les présents défendeurs Margaret Quinlan et Jacques Désaulniers nient en faits et en droit toutes les allégations de ladite réponse et des particularités fournies, qui ne seraient pas conformes aux allégations ci-dessus;

21. Les présents défendeurs demandent acte des admissions contenues aux articles 1 et 2 de ladite réponse;

10 POURQUOI, les défendeurs Margaret Quinlan et Jacques Désaulniers, se réservant tous recours à raison des allégations diffamatoires contenues dans la réponse de la demanderesse au plaidoyer supplémentaire du défendeur Robertson, concluent à ce que la convention de règlement intervenue le 31 janvier 1934, devant Me Papineau-Couture, N.P., et qui est attaquée par ladite réponse de la demanderesse au plaidoyer supplémentaire du défendeur Robertson, soit déclarée valide et légale à toutes fins que de droit, et, dans tous les cas, autant que lesdits défendeurs Margaret Quinlan et Jacques Désaulniers sont concernés, et à ce que ladite convention de règlement soit maintenue quant auxdits défendeurs Margaret Quinlan et Jacques Désaulniers, et à ce que, 20 à leur égard, ladite réponse de la demanderesse au plaidoyer supplémentaire du défendeur Robertson, et l'action et instance prises par ladite demanderesse contre lesdits défendeurs Margaret Quinlan et Jacques Désaulniers, en vertu et par suite de ladite réponse, soient rejetées quant auxdits défendeurs Margaret Quinlan et Jacques Désaulniers, avec dépens distraits aux procureurs desdits défendeurs.

Montréal, 28 novembre 1935.

30 Jacques Désaulniers,  
Procureur desdits défendeurs Dame Margaret  
Quinlan et Jacques Désaulniers.

JD/BC

40 ANSWER OF THE PLAINTIFFS TO THE DEFENCE OF  
DEFENDANTS DAME MARGARET QUINLAN AND  
JACQUES DESAULNIERS TO THE ACTION TA-  
KEN AGAINST THEM FOLLOWING THE AN-  
SWER OF PLAINTIFF TO THE SUPPLE-  
MENTARY PLEA OF DEFENDANT  
ROBERTSON.

1. Paragraphs 1 and 2 are admitted;

2. Paragraph 3 is denied and for further answer plaintiffs re-iterate the allegations of the answer to the supplementary plea of defendant A. W. Robertson, attacking the validity of said agreement;

3. Paragraph 4 is denied as drawn said list does not refer to all the shares mentioned in the so-called agreement and especially were the Fuller Gravel shares not acquired from the late Hugh Quinlan as alleged;

4. The plaintiffs deny the allegations mentioned in paragraphs 5 and 6;

10

5. As to paragraphs 7, 8 and 9 plaintiffs state that the record will speak for itself;

6 Paragraphs 10 and 11 are denied and are irrelevant;

7. The plaintiffs are ignorant of the allegations contained in paragraph 12 but if true plaintiffs had no part in same;

20

8. Paragraph 13 is denied, defendant A. W. Robertson having sold and parted with said shares to the knowledge of defendants Dame Margaret Quinlan and Jacques Desaulniers, said A. W. Robertson could not return them to the estate and in any case the allegations of said paragraph do not constitute a defence to plaintiffs' demand;

30

9. Paragraph 14 is denied as drawn, plaintiffs say that the consent of the defendants Margaret Quinlan and Jacques Desaulniers was obtained through the sums paid to Jacques Desaulniers, mentioned in the supplementary plea;

10. Paragraphs 15, 16, 17, 18 and 19 are denied;

11. The plaintiffs join issue with the denials contained in paragraphs 20 and 21;

12. The defence of the defendants Dame Margaret Quinlan and Jacques Desaulniers is unfounded in law and in fact;

40

WHEREFORE the plaintiffs pray re-iterating the allegations and conclusions of the answer of plaintiffs to the supplementary plea of defendant Robertson, and the conclusions taken against said Margaret Quinlan and Jacques Desaulniers that same be maintained with costs and that the defence of the defendants Dame Margaret Quinlan and Jacques Desaulniers be dismissed with costs;

Montreal, October 5th, 1937.

C. Holdstock,  
Attorney for Plaintiffs.

REPLIQUE DES DEFENDEURS MARGARET QUINLAN  
ET JACQUES DESAULNIERS A LA REPOSE  
DES DEMANDEURS.

10 1.—Ils demandent acte des admissions contenues au para-  
graphe 1 de ladite réponse.

2.—Ils lient contestation sur le paragraphe 2.

3.—Ils lient contestation sur le paragraphe 3.

4.—Ils lient contestation sur le paragraphe 4

5.—Ils lient contestation sur le paragraphe 5.

6.—Ils lient contestation sur le paragraphe 6.

20 7.—Ils lient contestation sur le paragraphe 7.

8.—Ils nient le paragraphe 8.

9.—Ils nient le paragraphe 9 et réitèrent les allégations  
et les conclusions de leur défense.

10.—Ils lient contestation sur le paragraphe 10.

11.—Ils lient contestation sur le paragraphe 11.

12.—Ils nient le paragraphe 12.

30 POURQUOI, les défendeurs, MARGARET QUINLAN  
et JACQUES DESAULNIERS, concluent à ce que ladite ré-  
ponse et l'action et conclusions des demandeurs soient rejetées, le  
tout avec dépens.

Montréal, 14 avril 1938.

Jacques Désaulniers,  
Procureur des défendeurs Margaret  
Quinlan et Jacques Désaulniers.

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INTERVENTION BY JOHN THOMAS KELLY IN HIS  
QUALITY AS TUTOR TO HIS MINOR DAUGHTER  
KATHERINE KELLY

The intervenant John Thomas Kelly, in his said quality,  
having been summoned to appear in this case, hereby intervenes  
and declares, in his said quality:—

1.—That Katherine Kelly, a minor, for whom the intervenant appears in his quality as tutor, having been appointed as such by one of the Honorable Judges of the Superior Court in and for the District of Montreal, on the 26th September, 1935, is a grand-daughter of the late Hugh Quinlan who died at the City of Westmount on the 26th of June 1927, leaving a last will and testament in authentic form bearing date the 14th of April 1926, already produced in this cause as Plaintiff's Exhibit P-1, and one of the grand children referred to in sub-clause (e) Article V of the said last will and testament and one of the residuary legatees of the property bequeathed under the said Will.

2.—That he opposes in his said quality the Deed of Settlement of date the 31st of January 1934, passed before Mtre. R. Papineau Couture, notary, being the deed referred to in the Supplementary Plea filed in this cause by the defendant A. W. Robertson, and asks that the said Deed of Settlement be declared illegal, null and void and that it be cancelled, on the following grounds:—

a) That the said deed purports to record a sale, by the trustees and executors of the estate of the said late Hugh Quinlan to the defendant Robertson, of 1151 shares of Quinlan, Robertson & Janin Ltd., 250 shares of Amiesite Asphalt Ltd., 200 shares of Ontario Amiesite Asphalt Ltd., and 400 shares of Fuller Gravel Co., Ltd., for the sum of \$320,000., that is to say, \$50,000. in addition to \$270,000. already paid, plus the costs of Margaret Quinlan who was one of the original plaintiffs in this case, notwithstanding that by the judgment of this honorable Court rendered on the 6th of February 1931, the value of the said shares was fixed at \$408,928.00 and as a matter of fact are worth much more as will appear hereafter;

b) That it was stipulated in the deed, not only that the title to the shares aforesaid should be vested in the said defendant Robertson, but that the trustees and executors of the estate of the late Hugh Quinlan and the heirs thereof should renounce, give up and abandon all the rights, claims and pretensions of whatever nature or description, which might belong to them under the aforesaid judgment of the 6th of February 1931 and under the judgment of the Court of Appeals of the 30th of December 1932, which confirmed the Superior Court judgment, and to all and every right, claim, action, contention of whatever nature or description which might belong to the said trustees and heirs or be vested in them or in any one of them against the

said defendant Robertson, from whatever source, origin or cause now existing and especially from any and every right, claim, action, contention of whatever nature or description which might belong to them or be vested in them against the said defendant, arising from any of the facts disclosed in the evidence adduced in this present case, or from the administration or management of the estate of the late Hugh Quinlan by the said defendant  
10 as executor or trustee, or from the dealings, connections or operations of the said defendant with the late Hugh Quinlan as co-partner, co-shareholder, co-associate or otherwise, or from the dealings, connections or operations of the said Robertson acting jointly with the said late Hugh Quinlan with third parties, or from the personal acts or deeds of the said defendant in whatever capacity, circumstance or time;

20 c) That the present intervenant was not a party to the said deed of settlement nor was the said Katherine Kelly represented otherwise;

d) That the trustees and executors of the said late Hugh Quinlan and the heirs of the said estate, who were parties to the said agreement, knew, when they entered into the same, that the said defendant Robertson owed the estate of the late Hugh Quinlan and was accountable thereto for, among other things,

30 (1) At least the sum of \$16,000. for the Fuller Gravel Co., Ltd., shares which were not included in the price of \$250,000.

(2) At least the sum of \$28,315.84 for dividends, together with interest thereon, in respect to the shares of Quinlan, Robertson & Janin Ltd.

(3) At least the sum of \$8,250. with interest thereon as dividends on the said shares of Amiesite Asphalt Ltd.

40 (4) At least the sum of \$19,746.26 with interest thereon as dividends upon the shares of Macurban Asphalt Ltd.

(5) At least the sum of \$87,500. as the interest of the said estate in the sale, by the defendant Robertson, of the said Macurban & Amiesite Asphalt shares;

(6) One half of the sum of \$25,000. with interest, which the defendant Robertson had received from P. Lyall & Sons Ltd., in October 1927;

(7) One half of \$48,720.75 which accrued to A. W. Robertson Limited on the sale of 186 $\frac{3}{4}$  Preferred and 1308 Common shares of National Sand & Material Co., Ltd., in February

1929, said sum not having been carried to profit and loss account or to any other account from which the shareholders could benefit;

10 (8) One quater of 9,999 shares of Common stock of Canadian Amiesite Ltd., and one quarter of 1,000 shares of Common stock of Amiesite Asphalt Co., of America, which were retained by the defendant Robertson when he hold the shares of Amiesite Asphalt Ltd., and one third of all issued shares of International Amiesite, Limited;

(9) One third of all profits made by Quinlan, Robertson & Janin, Limited, out of the organization, operations and sale of Quinlan, Robertson & Janin (London).

20 e) That the said trustees and executors knew also at the said time, that there were very large claims against the said defendant Robertson in respect to —

1o. Certain plant and equipment belonging to A. W. Robertson Ltd., on which the late Hugh Quinlan was half owner, which plant and equipment was taken, used and retained in ownership by Quinlan, Robertson & Janin Ltd.;

30 2o. One third of the profits made by the said defendant and Alban Janin in a contract in connection with the construction of the Taschereau Boulevard between the Harbour Bridge and LaPrairie; and

3o. By way of damages for the loss suffered by the said Estate through the sale of the entire issued share capital of Amiesite Asphalt Ltd., and Macurban Asphalt, Ltd, negotiated and consumated by the defendant in the months of August or September 1928;

40 f) That the said trustees and executors knew also at the said time that there was a claim against the said defendant Robertson of at least \$50,000. arising out of the division which took place about the 19th of July 1930, between the estate of the late Hugh Quinlan and defendant Robertson of certain assets of A. W. Robertson Ltd., in which said company, the defendant Robertson and the said late Hugh Quinlan were joint and equal owners; the particulars of this claim will appear hereafter;

g) Because the said Deed of Settlement deprives the heirs of the late Hugh Quinlan of all right to —

10 10. Verify the legality or validity of a withdrawal by the said defendant of government bonds of a value of about \$20,000. from the assets of said A. W. Robertson, Ltd., in the month of July 1927, to equalize, as the said defendant claimed, his position with that of the late Hugh Quinlan. The said Capital Trust Corp., consented to such withdrawal without verification and yet failed to include in the liabilities of the said Estate any sum whatever as a debt to said A. W. Robertson Ltd.;

20 20. Recover from the said defendant any loss the said Estate may suffer by reason of the trustees and executors while said defendant held such office investing funds of the said Estate, contrary to the terms of the Will of the late Hugh Quinlan, in hypotheses upon the real estate;

20 30. Have from the defendant Robertson a true and proper inventory of the assets of the late Hugh Quinlan at the time of his death the necessity for same being amply demonstrated by the foregoing allegations;

30 40. Verify a charge against the estate by the Trustees thereof, during the period while the defendant Robertson was a Trustee, of \$9,635.08 for special repairs to the Quinlan home; it being apparent that no such sum was expended in repairing the house;

30 h) Because to the knowledge of the trustees and executors the consent of the Plaintiff, Margaret Quinlan, to the said agreement was obtained by payment to her husband by the said defendant of a sum of \$27,500. which sum was part of a sum of \$44,000 paid by the defendant to certain attorneys, but in respect to the husband of Margaret Quinlan, the amount paid to him was far beyond a fair compensation for his services;

40 i) Because the consent of the other heirs to the said agreement was obtained through the representation of the Trust Companies, the said Trustees to the said heirs, that if they refused their consent the revenue of the Estate would be diminished and consequently each of them would suffer. This representation was based on the further representation that the said defendant was in a position to return the said shares to the estate and demand from the Estate the return of \$270,000. and that the shares in the hands of the Estate would be practically worthless. These representations were untrue because the Trustees knew that the said Defendant had resold all the said shares. The trustees further re-



presented that their legal attorney had approved the settlement but failed to inform the heirs that they, the Trustees, had not instructed their legal attorney that defendant Robertson was unable to return the shares or that such approval was based upon, among other things, the representation by the Trustees to their legal attorney that  $\frac{7}{8}$  of the heirs and the Trustees desired the settlement, or that the legal attorney had advised them that if  
10 Robertson was unable to return the shares and the judgment was confirmed, the settlement would be disadvantageous;

j) That under date of the 6th of September 1933, the said Trustees gave notice to all interested parties that they accepted, on behalf of the estate of the said late Hugh Quinlan, all benefits and advantages accruing to the said estate under the judgment rendered in this cause by this Honorable Court and by the Court of King's Bench sitting in and for the District of Montreal. This notice was given while the appeal of the defendant  
20 from the said judgments was pending before the Supreme Court of Canada, and the said judgments which the trustees thus accepted were the very judgments to which they purported to have renounced in the said agreement of the 31st of January 1934;

k) That the Capital Trust Corp., Ltd., who was the manager of the said estate and engaged to attend to all the details of the administration thereof including the keeping of the books of account knew or should have known the facts hereinbefore  
30 alleged and the other Trustee and Executor, General Trust of Canada, was informed of said facts together with the Capital Trust Corporation by notarial protest on the 29th of September 1933, and in consenting to the said agreement of the 31st of January 1934 violated the duties and trusts imposed upon them by the said Will;

l) That the said Capital Trust Corp., Ltd., has, throughout the administration of the said estate, favored the defendant Robertson, and has shown its willingness to acquiesce in all the  
40 said defendant's pretensions and has consistently failed and neglected to make any demand upon the said defendant in respect to any of the claims of the estate hereinabove set forth, or to protect the estate in any way in respect to the said claims;

m) That the learned trial judge, the late Hon. Justice Martineau, in rendering the judgment of the Superior Court on the principal action in this cause, on the 6th of February 1931, recommended that defendant Robertson, if he appealed from said judgment, should resign and appoint in his place an independent Trustee who would combat the defendant's claims;

9773  
10 n) That the defendant Robertson did resign before appealing, but he failed to comply with the other recommendation, in that he appointed as his substitute General Trust of Canada of which his attorney in this cause was a director and since its appointment as such Trustee, the General Trust of Canada has neglected to uphold the rights and pretensions of the Estate and joined in the settlement agreement under which the defendant Robertson was given a blanket release and confirmed in his ownership of the shares;

20 o) Because the execution of the alleged agreement of the 31st of January 1934, by the officers of the Trustees and executors of the Estate of the late Hugh Quinlan, to wit; the officers of the Capital Trust Corporation Limited and General Trust of Canada, was and is illegal, null and void, inasmuch as said officers were not authorized thereto by their respective companies and an agreement such as that of the 31st January 1934, did not fall within the scope of their ordinary duties or powers as such officers;

p) That if the aforesaid agreement of the 31st January 1934 were allowed to have effect, it would cause the estate of the late Hugh Quinlan great and irreparable injury;

30 q) That the said Capital Trust Corporation Ltd. was unable to exercise the power to compromise given in the Will of the late Hugh Quinlan to the Executors and Trustees of his estate, because it was personally involved in the alleged purchase by the defendant Robertson from the estate of the late Hugh Quinlan of the shares mentioned in the aforesaid letter of the 20th June 1927 (Exhibit D.R.1) in that, having ascertained on or about the 24th August 1927, that the document upon which the defendant Robertson relied as giving him a right to sell the shares mentioned in the aforesaid letter of the 20th of June 1927, (Exhibit D.R.1) did not emanate from the late Hugh Quinlan, but from Robertson himself, to wit: the said letter, D.R.1, without any apparent acceptance by the said Hugh Quinlan, the said corporation accepted the purchase price of \$250,000. mentioned in the said letter, and it accepted said sum without informing itself of the name or identity of the purchaser or of the terms and conditions of the sale which defendant Robertson represented he had made and without obtaining a written legal opinion as to its rights in the premises, although it knew that the shares in question were worth a great deal more than \$250,000.

r) That the validity of the said alleged purchase of the said shares by the defendant Robertson was, on and before the

31st January 1934, and still is before the Courts of law having jurisdiction in such matters and the Trustees and executors of the estate of the late Hugh Quinlan having submitted themselves to justice were unable to exercise the power given to them in the will of the late Hugh Quinlan to compromise claims of and against the said estate, in respect to the ownership of the said shares.

10

3.—That by reason of the foregoing premises, the said deed of the 31st of January 1934, was not made in good faith and the consideration was unlawful being contrary to good morals and public order.

AND THE INTERVENANT IN HIS AFORESAID QUALITY FURTHER DECLARES:—

20 4.—That the defendant Robertson alleged in his defence filed in this cause and in the particulars thereof that 1151 shares of Quinlan, Robertson & Janin Limited,

250 shares of Amiesite Asphalt Limited, and  
200 shares of Ontario Amiesite Asphalt Limited,

30 the property of the late Hugh Quinlan were transferred and delivered to him on the 20th of June, 1927 under a written agreement signed by the defendant Robertson and delivered by him to the late Hugh Quinlan who in turn delivered to the said defendant Robertson in his certificate for the said shares endorsed in blank; that the written agreement in question was the letter bearing date Montreal, June 20th, 1927, already filed in this cause as Exhibit D.R.1 and that not being able to find a purchaser for the said shares he paid the purchase price to the estate of the late Hugh Quinlan as he was obliged and entitled to do and retained the said shares at the price of \$250,000., which price he paid in two instalments of \$125,000. each, one on the 31st December 1927, and the other on the 30th June 1928;

40 5. That the intervenant in his said quality denies and contests the allegations of the defendant Robertson in respect to the said shares and declares:—

(a) That the written agreement signed by the defendant Robertson being the letter of the 20th of June 1927, (D.R.1) was never delivered to the said late Hugh Quinlan.

(b) That the certificates for the said shares were not delivered to the defendant Robertson on the 20th of June 1927 in turn for the delivery to the said Hugh Quinlan, of the said letter Exhibit D.R.1.

(c) That as a matter of fact the said Hugh Quinlan on the 20th of June 1927 was incapable mentally and physically of transacting any business or of giving a valid consent to any agreement or contract.

10 (d) That as a matter of fact the defendant Robertson never saw or spoke to the said Hugh Quinlan on the 20th of June 1927, or any time thereafter prior to Hugh Quinlan's death.

(e) That the declaration of assets and liabilities of the estate of the late Hugh Quinlan made to the Succession Duty Department of the Government of the Province of Quebec, which declaration was made and filed while the defendant Robertson was a Trustee and an executor of the said Estate, listed the aforesaid 1151 shares of Quinlan, Robertson & Janin Limited among the  
20 assets of the said Estate.

(f) That the defendant Robertson assisted in the negotiations which took place with the officials of said succession duty department as a result of which the value of the said 1151 shares was fixed for succession duty purposes at \$212,935.

(g) That even under the terms of the Exhibit D.R.1 the defendant Robertson did not acquire any right to purchase the said shares, either before or after the death of the said Hugh Quinlan;  
30

(h) That at no time prior to the filing of his plea in this cause to the principal action did the defendant Robertson ever pretend that he had a right to purchase the said shares from the said estate, but on the contrary he pretended that he had, under the terms of the alleged letter of the 20th of June 1927 (D.R.1) a right to sell and did sell the said shares, and it only transpired when he filed this said plea that he was the purchaser.

40 (i) That the said Capital Trust Corporation Ltd., was induced to accept the said sums by the representations of the defendant Robertson, that he had a right to sell the shares for the price of \$250,000., and that he had done so.

(j) That the defendant Robertson was a Trustee and Executor of the Estate of the late Hugh Quinlan on the 31st December 1927 and on the 30th June 1928 and as a matter of fact from the death of Hugh Quinlan until the month of February 1931, and any sale of the said shares to the said defendant Robertson, while he

held the office of Trustee and executor of the estate of the late Hugh Quinlan, was and is illegal null and void and should be so declared.

10 (k) That the defendant Robertson illegally and without right and to the loss and detriment of the said Estate and to his own great benefit, resold all the shares mentioned in the said alleged letter (Exhibit D.R.1) and is now unable to return the said shares to the said Estate and is bound to make good to the said Estate the loss and damage the estate has thereby suffered.

(l) That the said shares had increased steadily in value year by year since the year 1922.

20 (m) That such loss and damage consists in the value of the said shares, less the said sum of \$250,000. and the value of the said shares is at least as follows:—

1151 shares of Quinlan, Robertson & Janin Ltd. ....	\$575,000.
250 shares of Amiesite Asphalt Ltd. ....	\$250,000.
200 shares of Ontario Amiesite Asphalt Ltd.,	\$ 50,000.

30 6.—That prior to the death of the said late Hugh Quinlan, he and the defendant Robertson owned in equal shares, all the capital stock of a company known as Fuller Gravel Ltd., the issued capital of which consisted of 2,000 Preferred and 1,000 Common shares;

7.—That in the month of August 1927 the defendant Robertson recommended to his co-executor, Capital Trust Corp., the sale of the 1,000 preferred and 500 common shares of the said Fuller Gravel Ltd., owned by the estate of the late Hugh Quinlan for the sum of \$50,000. if a purchaser or purchasers could be found;

40 8.—That the said Capital Trust Corp., agreed with this recommendation and the defendant Robertson was to find a purchaser or purchasers;

9.—That the defendant Robertson reported to his co-executor and co-trustee that he had found two purchasers of 200 shares of Preferred stock each, carrying a bonus of 100 Common each, and a third purchaser, one W. E. Tummon, of 600 shares of Preferred with a bonus of 300 Common, all at \$50.00 per share for the Preferred;

10.—That it transpired that the said Tummon intended to buy only 50 of the said Preferred shares with a Common bonus of 25 shares and that he was a prete nom for the said defendant in respect of 550 Preferred with 275 Common;

10 11.—That in the month of May 1928, the defendant Robert-  
so sold the entire capital stock of said Fuller Gravel Ltd., and  
received therefor \$180,000. and it further transpired that the  
550 Preferred with 275 Common which the said Tummon had  
agreed to purchase, had been transferred to the defendant Ro-  
bertson who included them in the sale which he made in May 1928,  
and the defendant Robertson retained the price of \$90.00 per  
share for the said 550 Preferred shares with a bonus of 275 Com-  
mon, to wit; \$49,500. and failed and neglected to advise his  
co-executor that he had received the said shares from Tummon or  
that he had sold them with his own shares;

20

12.—That the defendant Robertson is indebted to the estate of the late Hugh Quinlan in the said sum of \$49,500. less \$27,500. which he paid to the said estate at the rate of \$50.00 per Preferred share;

13.—That the said defendant Robertson, with the late Hugh Quinlan and one, Alban Janin, were for some years prior to the year 1922, in partnership as contractors under the firm name of Quinlan, Robertson & Janin, one branch of the partnership business being the construction and repairing of roads; the business was originally started by Hugh Quinlan who later made Robertson and later still Janin, partners;

30

14.—That in or about the year 1922 the said parties converted the partnership into a joint stock Company under the name of Quinlan, Robertson & Janin Limited, in which each of the said parties owned an equal number of shares and were at all times the directors of the said Company;

40

15.—That during the year 1923, the said parties formed a joint stock Company under the name of Amiesite Asphalt Limited for the purpose of constructing and repairing roads under patent licenses, with an issued capital stock of one thousand (1000) shares of the par value of \$100.00 each, whereof two hundred and fifty shares were owned by the late Hugh Quinlan and a like number by the said Robertson and a like number by Alban Janin and all three formed the board of directors of the Company;

16.—That thereafter the road repair and construction branch of Quinlan, Robertson & Janin Limited was carried on through and by the said Amiesite Asphalt Limited;

10 17.—That during the month of April 1927, while the said late Hugh Quinlan was ill in bed and unable to attend to his affairs or the affairs of the Companies in which he was interested, the defendant Robertson and the said Alban Janin caused to be incorporated a Company known as Macurban Asphalt Limited and appropriated to themselves the entire capital stock of said last named Company and thereafter the road construction and repair work which had been theretofore carried on by and through Amiesite Asphalt Limited was carried on by and through Macurban Asphalt Limited;

20 18.—That the late Hugh Quinlan took ill in or about the month of December 1926 and thereafter was unable to attend to his business or to the affairs of the Companies in which he was interested and the entire management of Amiesite Asphalt Limited was in the hands of the said defendant, Robertson, and the said Alban Janin, they being the two active directors of the said Company, and after the month of April 1927 and while they had complete control of the business of Amiesite Asphalt Limited they deliberately used their influence and position to divert for road construction and repair contracts from Amiesite Asphalt to Macurban Asphalt Limited;

30

19.—That the defendant Robertson and the said Alban Janin used the funds and moneys of Amiesite Asphalt Limited for the purpose of incorporating Macurban Asphalt Limited and for supplying the said last named Company with working capital and moreover used the plant and equipment of Amiesite Asphalt Limited for the purpose of carrying out the contracts which they had diverted from Amiesite Asphalt Limited to Macurban Asphalt Limited and thereby caused the said late Hugh Quinlan and his estate loss and damage;

40

20.—That in or about the months of September or October 1928, the defendant Robertson sold both Amiesite Asphalt Limited and Macurban Asphalt Limited for a lump sum of \$750,000., which said sum was paid to the said defendant who failed to pay any part thereof to the estate of the late Hugh Quinlan;

21.—That the portion of the said price of \$750,000. attributable to the business and assets of Macurban Asphalt Limited, was \$350,000.;

22.—That during the operations of the Macurban Asphalt Limited prior to its sale in September or October 1928, the said Company paid in dividends a sum of \$78,985.05;

10 23.—That the interest of the said Hugh Quinlan and his estate in the profits, business and assets of Macurban Asphalt Limited was one quarter, and the said defendant Robertson, by reason of his aforesaid acts in respect to the organization, operations and sale of said Macurban Asphalt Limited, has caused loss and damage to the estate of the late Hugh Quinlan in the sum of \$107,326.35;

20 24.—That after the death of the late Hugh Quinlan and prior to the sale of Amiesite Asphalt Ltd., by the defendant as aforesaid, the said company paid in dividends the sum of \$33,000. which said sum was received by the said defendant to the loss and damage of the Estate of the late Hugh Quinlan;

30 25.—That prior to the death of the late Hugh Quinlan, to wit, on the 31st of March 1925, the said Quinlan, Robertson & Janin Ltd., declared a dividend amounting to \$159,947.54 of which only \$75,000. was actually paid prior to the death of Hugh Quinlan and, since his death, the said Company has paid the balance of the said dividend, to wit \$84,947.54 of which the late Hugh Quinlan's share was \$28,315.84 which said last mentioned sum was paid to and received by the said defendant Robertson to the loss and detriment of the estate of the late Hugh Quinlan;

26.—That on or about the 3rd of October 1927, the defendant Robertson received from P. Lyall & Sons Ltd., a sum of \$25,000., half of which sum belonged to the estate of the late Hugh Quinlan in virtue of an agreement made between the said Defendant Robertson and the said late Hugh Quinlan, bearing date the 2nd of July 1926 already produced in this case as plaintiff's Exhibit P-73 at enquete;

40 27.—That the defendant Robertson retained the entire amount of \$25,000, and failed and neglected to pay one half thereof to the said Hugh Quinlan or to his estate, and the trustee and executor the said Capital Trust Corp., has failed and neglected, although duly requested, to compel the said defendant Robertson to pay the said half to the said estate, and has failed to verify whether or not the late Hugh Quinlan received the said half before his death as pretended by the said defendant Robertson, although the said trust company has been in possession of the books of accounts, documents and papers of the late Hugh Quinlan from the time of his death;



28.—That as stated above, in the months of August or September 1928, the defendant Robertson sold the Amiesite Asphalt Ltd., together with the Macurban Asphalt Ltd., for \$750,000. Among the assets of Amiesite Asphalt Ltd. at the time of said sale, there were 9,999 shares of a company known as Canadian Amiesite Ltd., and 1,000 common shares of a company known as  
10 Amiesite Asphalt Co., of America;

29.—That the shares, that is to say, 9,999 shares of Canadian Amiesite Ltd., and 1,000 common shares of Amiesite Asphalt Co., of America, were not delivered to the purchaser but were retained by the defendant Robertson and the latter failed and neglected to deliver to the estate of the late Hugh Quinlan any part or portion of the said shares, although the said estate was entitled to 2,499 shares of Canadian Amiesite Ltd., and 250 shares of the Amiesite Asphalt Company of America;  
20

30.—That Quinlan, Robertson & Janin Ltd., caused to be incorporated a company known as Quinlan, Robertson & Janin (London) and by and through this company carried on a contracting business in England and, some time after the death of the late Hugh Quinlan, the defendant Robertson sold the business of Quinlan, Robertson & Janin (London) and has never accounted to the estate of the late Hugh Quinlan for the proceeds of such sale nor for the profits made by the company during its  
30 existence;

31.—That after the death of the late Hugh Quinlan certain plant and equipment belonging to A. W. Robertson Ltd., of which the defendant and the late Hugh Quinlan were joint equal owners, was taken, used and retained in ownership by Quinlan, Robertson & Janin Ltd., in which the late Hugh Quinlan was a one third owner;

40 32.—That the defendant Robertson never accounted to the estate of the late Hugh Quinlan for the plant and equipment thus taken from A. W. Robertson Ltd., or for the interest of the estate therein;

33.—That in the year 1930 a contract for the construction of the Taschereau Boulevard extending between the Harbour Bridge at Longueuil to the Village of La Prairie, was obtained by the defendant Robertson and the aforesaid Alban Janin by using their influence and position as Directors of and in full control of the affairs of Quinlan, Robertson & Janin, Ltd., and of Amiesite Asphalt Ltd., which said contract was thus illegally diverted from Quinlan, Robertson & Janin Ltd., or Amiesite Asphalt Ltd.;

34.—That considerable profits were made in carrying out the said contract for the construction of the said Taschereau Boulevard, which profits were retained by the defendant Robertson and the said Alban Janin without any payment in respect thereto being made to the said companies or to the estate of the late Hugh Quinlan;

10

35.—That a meeting of the shareholders of A. W. Robertson Ltd., held on the 19th of July 1930, certain property belonging to the said company was made up into two lots and divided between the estate of the late Hugh Quinlan and the defendant Robertson;

36.—That lot number “one” consisted of — certain properties known as Crookston Quarries which was valued at \$4,500., two lots in Ville LaSalle valued at \$8,000., vacant lots in Campbellford valued at \$400. and cash \$12,100. making a total for lot number “one” of \$25,000;

20

37.—That in lot number “two” there was the Dredging Plant and equipment at Fort Stanley, Ontario, consisting of a Dredge King Edward, official registry No. 122482, Tug Ethel Q., official registry No. 134349, and one wooden dump scow. The total value given to lot number “two” is \$25,000;

38.—That it appears by the minutes that instead of drawing the lots, the estate of the late Hugh Quinlan was given the first choice of the two lots and a representative of the trustee and executor, Capital Trust Corp., Ltd., chose lot number “one” for the estate of the late Hugh Quinlan and, thereupon, the assets of lot number “one” were transferred to the estate of the late Hugh Quinlan and the assets of lot number “two” were transferred to the defendant Robertson;

30

39.—That, as a matter of fact, the said Dredge known as King Edward was a very valuable dredge and was worth at least \$100,000, and the Tug Ethel Q. was worth at least \$25,000;

40

40.—That, as a matter of fact, the said Capital Trust Corp., Ltd., knew that the best offer that had been received for the Crookston Quarries properties was \$2,500. and they had agreed with their co-executor the defendant Robertson, to sell the said quarries for \$3,500. if this amount could be obtained, notwithstanding these facts the Crookston properties were valued in lot number “one” at \$4,500;

41.—That the two lots in Ville LaSalle, which were valued in lot number “one” at \$8,000., were not worth anything approaching that sum, were vacant and unsaleable to the knowledge of the said Capital Trust Corp., and still remain unsold;

10 42.—That the Capital Trust Corp., knew or should have known the value of the Dredge King Edward and of the Tug Ethel Q.

43.—That the defendant Robertson knew the value of the said dredge and tug and also the value of the properties comprised in lot number “one”, and as a co-executor with Capital Trust Corp., of the estate of the late Hugh Quinlan, he was obliged to protect the interest of the said estate;

20 44.—That, as a result of the division of the said properties comprised in the said lots numbers “one” and “two” which is reported in the minutes of the said A. W. Robertson Ltd., on the 19th of July 1930, the defendant Robertson benefited, at the expense of the estate of the late Hugh Quinlan, in at least the sum of \$100,000., one half thereof rightfully belonging to the said estate;

30 45.—That the entire issued capital of the said A. W. Robertson Ltd., belongs in equal shares to the estate of the said Hugh Quinlan and to the said defendant Robertson, and this said company owned a block of shares in the capital stock of National Sand & Materials Co., Ltd., that is to say, 186 $\frac{3}{4}$  Preferred and 1308 Common shares;

40 46.—That on or about the 2nd of February 1929, the said defendant sold the said preferred and common shares to Standard Paving & Materials Ltd., for a price of \$150,533.25 of which price of sum of \$145,301.22 was paid to the defendant Robertson and was deposited in his account in the Head Office of the Bank of Toronto, at Toronto, on or about the 2nd of February 1929;

47.—That the defendant Robertson in turn paid to said A. W. Robertson Ltd., the sum of \$96,580.47 being the value at which the said shares of National Sand & Materials Co., Ltd., were carried on the books of said A. W. Robertson Ltd., and the said defendant retained the difference, to wit : a sum of \$48,720.75 and thus caused a loss to the estate of Hugh Quinlan of one half of the last mentioned sum, to wit: \$24,360.37;

48.—That in virtue of the foregoing premises and by the acts of the defendant Robertson hereinbefore recited, the estate of the late Hugh Quinlan has suffered loss and damage and is entitled to have and receive from the said defendant the following sum forming together a total sum of \$1,128,752.56 —

- 10           (a) \$575,500.00 in respect to 1151 shares of Quinlan, Robertson & Janin Ltd.,
- (b) \$250,000.00 in respect to 250 shares of Amiesite Asphalt Ltd.,
- (c) \$ 50,000.00 in respect to 200 shares of Ontario Amiesite Asphalt Ltd.,
- 20           (d) \$107,326.35 in respect to the profits, business and assets of Macurban Asphalt Ltd.,
- (e) \$ 22,500.00 in respect to the shares of Fuller Gravel Ltd.,
- (f) \$ 8,250.00 as the interests of the estate in the dividends of Amiesite Asphalt Ltd.,
- 30           (g) \$ 28,315.84 as the interest of the estate in the dividends of Quinlan, Robertson & Janin Ltd.,
- (h) \$ 12,500.00 being the payment by Peter Lyall & Sons Ltd.,
- (i) \$ 50,000.00 as the loss of the estate in the division of certain property of A. W. Robertson Ltd.,
- (j) \$ 24,360.37 in respect to the sale of shares of National Sand & Materials Co., Ltd.,
- 40

and for the same reasons the Estate of the late Hugh Quinlan is entitled to receive from the said defendant two thousand six hundred and sixty six and one third (2,666 $\frac{1}{3}$ ;) shares of Canadian Amiesite Limited and two hundred and fifty (250) shares of Amiesite Asphalt Limited of America, or their value, to wit, the sum of \$51,666.66;

49.—That the defendant Robertson is entitled to credit on the said sum of \$1,128,752.56 of two payments made by him to the said estate, to wit:—

\$250,000.00 in respect to the share of Quinlan, Robertson  
& Janin Limited, Amiesite Asphalt Limited  
and Ontario Amiesite Limited,  
\$ 50,000.00 in respect to the deed of settlement,

10 \$300,000.00 leaving a balance due to the estate of \$828,-  
752.56;

WHEREFORE the Intervenant es qualite prays:—

(1) That the deed of settlement passed before Maitre R.  
Papineau Couture, N.P., on the 31st January 1934, and made be-  
tween Dame Margaret Quinlan et vir of the First Part, William  
Quinlan et al of the second part, Capital Trust Corporation of the  
Third Part and Angus William Robertson of the Fourth Part,  
20 be declared illegal, null and void and that the said deed of settle-  
men be cancelled, annulled and set aside;

(2) That the said defendant Robertson be condemned to  
pay the Trustees and executors of the Estate of the late Hugh  
Quinlan the sum of \$828,752.56;

(3) That the said defendant, Robertson, be condemned to  
deliver within fifteen days of the date of the judgment to be ren-  
derd herein, to the Trustees of the Estate of the late Hugh Quin-  
lan, the aforesaid 2666 $\frac{1}{2}$  shares of Canadian Amiesite Limited  
30 and 250 shares of Amiesite Asphalt Limited of America, or, in  
default of such delivery, to pay the value thereof to the said  
trustees, to wit: the sum of \$51,666.66, and the intervenant reserves  
his rights in his quality as tutor to his minor daughter, Katherine  
Kelly, to demand an accounting of the said defendant Robertson  
and from all others whom it may concern of the profits accruing  
from the contract in connection with the construction of the  
Taschereau Boulevard, also of the plant and equipment taken by  
Quinlan, Robertson & Janin Ltd., from A. W. Robertson Ltd., one  
40 third of the shares of International Amiesite Limited, and of the  
profits from the operations of Quinlan, Robertson & Janin (Lon-  
don) and of the sale thereof, and under reserve of all other rights  
of the said minor including the right to recover any greater loss  
and damage which may be proved in this cause; with interest on the  
aforesaid sums from the date of service of the present intervention  
and costs against the defendant Robertson in any event and against  
any other party who may contest the present intervention.

Montreal, November 28th, 1935.

(Sgd) Charles Holdstock,  
Attorney for Intervenant.

CONTESTATION OF INTERVENTION BY CAPITAL  
TRUST CORPORATION, LIMITED,  
ET AL., ES-QUAL.

10       The Mis-en-cause, Capital Trust Corporation, Limited, and General Trust of Canada, in their quality of Executors and Trustees of the Estate of the late Hugh Quinlan by virtue of his Last Will and Testament dated April 14th, 1926, executed before Edouard Biron & Colleague, Notaries, hereby declare that they contest the Intervention in this cause by John Thomas Kelly in his quality of tutor to his minor daughter, Katherine Kelly, and for reasons in support of their contestation, said Mis-en-cause say:—

- 20           1. They are ignorant of the truth of Paragraph 1.
2. The document referred to in Paragraphs 2 (a) and 2 (b) must be interpreted by its terms otherwise the allegations of said paragraphs are denied.
3. It is true, as alleged in Paragraph 2 (c), that the Intervenant was not a party to said Deed, nor was the said Katherine Kelly represented therein, but Contestants say that all other  
30 parties interested in the Estate of the late Hugh Quinlan were parties to and content with the terms of said Agreement of Settlement.
4. Paragraph 2 (d) and subdivisions thereof are denied.
5. Paragraphs 2 (e) and 2 (f) are denied.
6. Paragraph 2 (g) and the subdivisions thereof are de-  
nied.
- 40           7. Paragraph 2 (h) is denied.
8. The allegations of Paragraph 2 (i) are false and malicious, and are denied.
9. The document referred to in Paragraph 2 (j) must be interpreted by its terms; otherwise said paragraph is denied.
10. The notarial protest referred to in Paragraph 2 (k) must be interpreted by its terms; otherwise, the allegations of said paragraph are denied.

11. Paragraph 2 (l) is false and malicious, and is denied.

12. The judgment of the Honourable Mr. Justice Martineau referred to in Paragraph 2 (m) must be interpreted by its terms.

10 *cf.* 13. Paragraph 2 (n), as alleged, is false and malicious, and is denied.

14. Paragraph 2 (o) is denied. Moreover, the said Deed of Agreement was formally ratified and confirmed by the Directors of said Capital Trust Corporation, Limited, and General Trust of Canada, previous to effect being given to its terms, as appears from Exhibits C-1 and C-2 herewith produced.

20 15. Paragraphs 2 (p), (q) and (r) are denied.

16. Paragraph 3 is denied.

17. The documents referred to in Paragraph 4 must be interpreted by their terms; otherwise, the allegations of said paragraph are denied.

30 18. Paragraph 5 and its subdivisions are denied and the Contestants, in further answer, reiterate the allegations of the Defence originally filed in this cause by Capital Trust Corporation, Limited, then Defendant.

19. Paragraph 6 is admitted.

20. The documents referred to in Paragraphs 7, 8 and 9 must be interpreted by their terms.

21. Paragraphs 10 and 11 are ignored.

40 22. Paragraph 12 is denied.

23. Paragraphs 13, 14, 15, 16 and 17 are ignored.

24. Paragraphs 18 and 19 are denied.

25. Paragraphs 20, 21 and 22 are ignored.

26. Paragraph 23 is denied.

27. Paragraphs 24, 25 and 26 are ignored.

28. Paragraph 27 is denied.

29. Paragraphs 28, 29, 30, 31, 32, 33 and 34 are denied.

30. The Minutes of the Meeting of Shareholders referred  
10 to in Paragraphs 35, 36, 37 and 38 must be interpreted according  
to their terms.

31. Paragraphs 39, 40, 41 and 42 are denied.

32. Paragraph 43 is ignored.

33. Paragraph 44 is denied.

34. Paragraphs 45, 46 and 47 are ignored.

20 35. Paragraphs 48 and 49 are denied.

AND SAID CONTESTANTS FURTHER ANSWER:

36. The Agreement of Settlement dated January 31st,  
1934, and passed before R. Papineau-Couture, Notary, referred  
to in Paragraph 2 of said Intervention, was executed by the pre-  
sent Contestants in good faith and in the honest belief and well-  
founded conviction that the settlement therein provided for, in  
30 view of all considerations, was in the interest of the Succession  
and Estate of the late Hugh Quinlan, and that view was shared  
and concurred in by all parties interested in said Estate other  
than the Intervenant and those whom he represents.

37. Moreover, the said Agreement, according to its terms,  
was only to come into effect and become binding after the same  
had been submitted to the Supreme Court of Canada and provid-  
ed that said Court saw no objection to the present Contestants  
carrying it into effect or granting acte thereof and, in fact, said  
40 Court did so declare on or about the 6th of June, 1934, as appears  
on reference to the terms of the Judgment of said Supreme Court  
of Canada forming part of the record in this cause.

38. Contestants specially reserve their recourse against  
the Intervenant in respect of the false, libellous and defamatory  
allegations made by him in regard to the Contestants in the course  
of his Declaration of Intervention.



WHEREFORE Contestants pray that the first conclusion of the Intervenant's Intervention be dismissed, and as to the other conclusions, the present Contestants submit themselves to justice; the whole with costs against said Intervenant.

10 Montreal, March 27th, 1936.

Campbell, McMaster, Couture, Kerry & Bruneau,  
Attorneys for Contestants.

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ANSWER OF INTERVENANT TO CONTESTATION  
BY CAPITAL TRUST CORPORATION & ALS.

20 1. Intervenant joins issue with denials of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35;

2. Intervenant prays acte of admission contained in paragraph 19;

3. Paragraph 14 is denied and it is especially denied that there was any legal confirmation of the acts of the officers of the companies who pretended to execute said documents, said pretended ratification not being done in useful time, nor within  
30 the powers of the contestants and at all events same cannot affect the issues in this case;

4. Paragraph 36 is denied;

5. Paragraph 37 is denied the contract and record will speak for themselves and the intervenant adds that the Supreme Court especially stated that it did not pass upon the validity or binding character of said deed nor upon the question whether the trust companies acted within their powers or the officers within their authority;

40 6. The conclusions of the contestation are contradictory and are unfounded in law;

7. Contestation is unfounded in law and in fact;

WHEREFORE intervenant prays for dismissal of contestation and the maintenance of his intervention with costs.

Montreal, October 5th, 1937.

C. Holdstock,  
Attorney for Intervenant.

REPLICATION OF CONTESTANTS, CAPITAL TRUST  
CORPORATION, LIMITED ET AL TO ANSWER  
OF INTERVENANT.

10       1. The affirmative allegations of Paragraph 3 are denied  
in fact and in law; otherwise the issue is joined on said paragraph.

      2. The affirmative allegations of Paragraph 5 are de-  
nied in fact and in law; otherwise issue is joined on said para-  
graph.

      3 Paragraphs 6 and 7 are denied in fact and in law.

20       WHEREFORE Contestants pray for the dismissal of In-  
tervenant's Answer and Intervention with costs.

                                  Campbell, Kerry & Bruneau,  
  Attorneys for Contestants.

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MOTION DE LA NATURE D'UNE EXCEPTION  
A LA FORME DE LA PART DU DEFENDEUR  
A. W. ROBERTSON

30

      1. ATTENDU que John Thomas Kelly, en sa qualité de  
tuteur à son enfant mineure Katherine, déclare se porter inter-  
venant et produit une prétendue intervention dans la présente  
action;

      2. ATTENDU qu'à l'appui de sa prétendue intervention  
l'intervenant es-qualité allègue une série de faits nouveaux dif-  
férents de ceux sur lesquels est basée la demande originaire, et  
40 étrangers à la contestation liée sur icelle;

      3. ATTENDU que les conclusions de la dite prétendue  
intervention sont dans les termes suivants:

      "WHEREFORE the Intervenant es-qualité prays:

      "(1) That the deed of settlement passed before Maitre  
"R. Papineau Couture, N.P., on the 31st January 1934, and made  
"between Dame Margaret Quinlan et vir of the First Part, Wil-

William Quinlan et al of the Second Part, Capital Trust Corporation of the Third Part and Angus William Robertson, of the Fourth Part, be declared illegal, null and void and that the said deed of settlement be cancelled, annulled and set aside;

“(2) That the said defendant Robertson be condemned  
10 “to pay the Trustees and executors of the Estate of the late  
“Hugh Quinlan the sum of \$828,752.56;

“(3) That the said defendant, Robertson, be condemned  
“to deliver within fifteen days of the date of the judgment to be  
“rendered herein, to the Trustees of the Estate of the late Hugh  
“Quinlan, the aforesaid 2666 $\frac{1}{3}$  shares of Canadian Amiesite  
“Limited and 250 shares of Amiesite Asphalt Limited of Ame-  
“rica, or, in default of such delivery, to pay the value thereof  
“to the said trustees, to wit: the sum of \$51,666.66, and the in-  
20 “tervenant reserves his rights in his quality as tutor to his minor  
“daughter, Katherine Kelly, to demand an accounting of the  
“said defendant Robertson and from all others whom it may con-  
“cern of the profits accruing from the contract in connection  
“with the construction of the Taschereau Boulevard, also of the  
“plant and equipment taken by Quinlan, Robertson & Janin  
“Ltd., from A. W. Robertson Ltd, one third of the shares of  
“International Amiesite Limited, and of the profits from the  
“operations of Quinlan, Robertson & Janin (London) and of the  
30 “sale thereof, and under reserve of all other rights of the said  
“minor including the right to recover any greater loss and damage  
“which may be proved in this cause; with interest on the afore-  
“said sums from the date of service of the present intervention  
“and costs against the defendant Robertson in any event and  
“against any other party who may contest the present inter-  
“vention.”

4. ATTENDU que les conclusions ci-dessus sont, elles  
aussi, nouvelles et différentes de celles que comporte la demande  
40 originaire et qu'elles sont même incompatibles et contradictoires  
avec les conclusions prises sur la demande originaire;

5. ATTENDU que l'intervenant es-qualité met de nou-  
veau en question des choses qui ont déjà été décidées par juge-  
ment passé en force de chose jugée, quant aux parties, au procès  
originaire;

6. ATTENDU que la prétendue intervention produite  
par l'intervenant es-qualité est étrangère à l'objet de la demande

originaires; qu'elle tend à des fins autres que celles auxquelles tend la dite demande originaire, et qu'elle constitue une instance et une demande nouvelle, distincte de l'instance et de la demande originaire et d'une nature différente de cette dernière;

10 7. ATTENDU qu'une pareille demande ne peut se produire sous forme d'intervention au présent procès; mais qu'elle ne peut se produire que sous forme d'action principale;

8. ATTENDU que l'instance ou la demande que comporte la prétendue intervention de l'intervenant es-qualité ne peut être portée, exercée et poursuivie qu'au moyen d'un bref d'assignation au nom du Souverain;

20 9. ATTENDU que l'intervenant es-qualité n'a ni l'intérêt, ni le pouvoir, ni la capacité requise pour pouvoir exercer la demande contenue dans sa prétendue intervention;

10. ATTENDU que la dite prétendue intervention est irrégulière, illégale, irrégulièrement produite et nulle et que le défendeur A. W. Robertson en souffre préjudice;

QUE la dite prétendue intervention soit déclarée illégale, irrégulière, illégalement produite et nulle, et qu'elle soit rejetée et renvoyée, avec dépens, sauf à se pourvoir.

30 Montréal, le 5 décembre 1935.

(Signé) Beaulieu, Gouin, Mercier & Tellier,  
Procureurs du défendeur A. W. Robertson.

CANADA  
PROVINCE OF QUEBEC  
No. 1190

JUDGMENT OF THE COURT OF KING'S BENCH  
(Appeal Side)

10                    MAINTAINING THE EXCEPTION

MONTREAL, Friday, the twenty-sixth day of June, one thousand  
nine hundred and thirty-six (1936) ;

PRESENT:

Sir MATHIAS TELLIER, Chief Justice of the Province  
of Quebec,

The Honourable Mr. Justice BERNIER,

20                    “                    “                    “                    HALL,  
                      “                    “                    “                    BOND,  
                      “                    “                    “                    GALIPEAULT.

ANGUS WILLIAM ROBERTSON,  
(Petitioner in the Superior Court),

APPELLANT,

— & —

JOHN THOMAS KELLY, *es qualité*

(Mis-en-cause & Intervenant in the Superior Court),

30                    RESPONDENT,

— & —

Dame ETHEL QUINLAN *et vir*

(Plaintiff in the Superior Court),

MIS-EN-CAUSE.

— & —

40                    CAPITAL TRUST CORPORATION, *et al*

(Defendants in the Superior Court),

MIS-EN-CAUSE,

— & —

Dame CATHERINE RYAN *et al*

(Mise-en-cause in the Superior Court),

MIS-EN-CAUSE,

THE COURT having heard the parties by their respective  
Counsel upon the merits of the present appeal, examined the re-  
cord and proceeding in the Court below, and deliberated:

WHEREAS Dame Ethel Quinlan and Dame Margaret Quinlan, two of the children of the late Hugh Quinlan, instituted proceedings against the appellant Robertson, and others, praying for the removal of the executors, trustees and administrators of the estate of the late Hugh Quinlan, that the executors be adjudged and condemned to render an account, that certain transactions that  
10 had occurred be declared null and void, that the inventory prepared by the executors of the said estate be set aside as false and fraudulent, together with a number of other conclusions, including a prayer for a pecuniary condemnation;

WHEREAS the defendants in the said action contested the same, which was heard in the Superior Court, and on appeal before this Court, and subsequently in the Supreme Court of Canada;

20 WHEREAS pending the appeal before the Supreme Court of Canada an agreement was entered into between the present appellant and the said Dame Margaret Quinlan settling the differences between the said parties;

WHEREAS by the judgment of the Supreme Court of Canada it was ordered and declared, in part, as follows:

30 "... this Court sees no reason why it should not declare that the said settlement forms part of the record of this case, and it grants *acte* thereof, without passing upon the validity, or the binding character of the agreement in question, nor deciding whether or not the intervenants acted within their powers and the officers of the intervenants within their authority, and this Court accordingly does so declare within those limits.

x x x x x x

40 5. THIS COURT DOTH FURTHER DECLARE that, seeing the acquiescence of the respondent ETHEL QUINLAN THERETO and the acceptance thereof by the testamentary executors and trustees, it does not, and cannot, disturb that part of the judgment of the Superior Court dismissing part of the respondent's conclusions, to wit:—

'10. The prayer that the appellant A. W. Robertson and the Capital Trust Company be removed from office.

‘2. The prayer that they be condemned to render an account.

‘3. The prayer that the inventory be annulled.

10 ‘4. The various allegations of fraud against the appellant, as well as the allegation that the late Hugh Quinlan was not of sound mind when the letter of the 20th of June 1927 was read to him.’

and that the said judgment of the Superior Court in respect to the dismissal of the above mentioned conclusions, is now “*res judicata*” between the parties.

20 6. AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the remaining parties be sent back to the Superior Court to complete the evidence already taken by a further enquête, and then secure a new adjudication on the merits of the issues herein shown as remaining to be decided as between the respondent Ethel Quinlan (Mrs. Kelly) and the appellant Robertson personally, and that oral evidence be admitted, at such further enquête, of the following facts and circumstances, to wit:—

30 A. The answer given by the late Hugh Quinlan when the letter of June 20th, 1927, was read to him, including, of course, the conduct, statements, communications and declarations of the persons present when the letter was so read and of the late Hugh Quinlan himself, and, generally, all relevant circumstances relating thereto;

40 B. All the facts, circumstances, statements and communications relating to the drafting of the said letter of June 20th 1927, including the conduct of all those who shared in the drafting of the said letter; and the whereabouts and safekeeping of said letter;

C. All the facts, circumstances, statements and communications relating to the visits of the Honourable J. L. Perron and of the present appellant to the late Hugh Quinlan, during the month of May 1927, or thereabout, and to the endorsements of the four certificates of shares filed as exhibits P-9, P-10, P-26 and P-27; also to the Memorandum of the 21st of May 1927, P-66; including the conduct of all the participants in these various events;

D. Generally, all facts, conditions and circumstances tending to show that the late Hugh Quinlan agreed, or disagreed, as the case may be, to the contents of the letter of June the 20th, 1927;

10           The respondent would also bring new evidence of all facts, declarations and statements which might tend to rebut the evidence to be afforded as aforesaid by the appellant.”

WHEREAS the former defendant (now the appellant) invoked before the said Superior Court the terms of the said agreement by means of a supplementary Plea;

20           WHEREAS the plaintiff, Dame Ethel Quinlan, contesting the validity of the said agreement by a supplementary Answer to Plea, the former plaintiff, Dame Margaret Quinlan, being made an “additional defendant”;

WHEREAS the said Dame Margaret Quinlan required that the minor child of the said Dame Ethel Quinlan should be called in and made a party to the case; and it was ordered that the said minor should be joined as a party (Mis-en-cause);

30           WHEREAS the said minor was duly made a party as a Mis-en-cause, and appeared by her tutor, the present respondent, and filed an Intervention;

WHEREAS the appellant produced a Motion by way of Exception to the Form to the said Intervention, on the ground that the same was irregular and illegal, inasmuch as it attempted to revive issues already decided to be *res judicata* in the then existing proceedings, and also purported to introduce novel issues in part conflicting with the issues then joined;

40           CONSIDERING that by an Intervention the Intervenant intervenes in a pending case, as presently existing, and presented for adjudication, without the right to reopen points already decided, or to introduce new grounds foreign to the original demand. (GARSONNET—*Traité de Procédure* — vol. 3, sec. 931, p. 210, and also sec. 930 p. 208);

/           CONSIDERING that the present Intervention is, for the greater part, irregular and illegal as seeking to revive issues finally determined between the parties prior to such Intervention, and, moreover, seeks to introduce new issues which are not part of the cause in its present state;



CONSIDERING that while such issues may give rise to an independent action on the part of the Intervenant he cannot justify the present Intervention;

10 CONSIDERING that the said Intervention is irregular and illegal except as to the following paragraphs thereof, namely, paragraphs 1, 2, 2a, 2b, 2c, 2h, 2i, 2L, 2o, 2p, 2q, and 2r, paragraphs 3, 4, 5a, 5b, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, and 5L, and also the conclusions 1 and that part of paragraph 3 reading as follows: “costs against the defendant Robertson in any event and against any other party who may contest the present Intervention;”

20 CONSIDERING that there is error in the judgment of the Superior Court, to wit, that rendered on the twentieth day of March one thousand nine hundred and thirty-six (1936) dismissing the Exception to the Form;

CONSIDERING that such Exception to the Form should have been maintained except as to the paragraphs above mentioned, (Perlo & Roessel, & Co., 32 Q.P.R. 174);

DOTH MAINTAIN the present appeal, with costs;

DOTH CANCEL and ANNUL the said judgment of the Superior Court;

30 AND proceeding to render the judgment which should have been rendered by the said Superior Court,

DOTH MAINTAIN the said Exception to the Form except as to the following paragraphs of the said Intervention, namely, paragraphs 1, 2, 2a, 2b, 2c, 2h, 2i, 2L, 2o, 2p, 2q and 2r, paragraphs 3, 4, 5a, 5b, 5d, 5e, 5f, 5g, 5i, 5j, 5k, and 5L, and also the conclusions 1, and that part of paragraph 3 reading as follows: “costs against the defendant Robertson in any event and against any other party  
40 who may contest the present intervention”, and,

DOTH CONDEMN the respondent to pay the costs on such Exception to the Form.

(Sir Mathias Tellier, C.J. dissenting).

(Signé) W. L. Bond,  
J.K.B.

EXCEPTION TO JUDGMENT OF JUNE 26th, 1936.

The Intervenant respectfully excepts from the judgment  
of the Court of King's Bench under date of 26th of June 1936,  
10 striking out certain paragraphs of his Intervention.

Montreal, 15 October, 1936.

C. Holdstock,  
Attorney for Intervenant.

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20 CONTESTATION FYLED BY A. W ROBERTSON, OF THE  
INTERVENTION FYLED BY J. T. KELLY AND  
CONTINUED BY KATHERINE KELLY.

The Defendant A. W. Robertson hereby declares that he  
contests the intervention originally fyled by J. T. Kelly, in his  
capacity of tutor to his minor child, Katherine, and continued  
by the latter, by reprise d'instance; in respect of such portion of  
said intervention which was not dismissed under and in virtue of  
a judgment of the Court of King's Bench, appeal side, deliver-  
ed on the 26th day of June 1936, and maintaining an exception to  
30 the form, fyled by the present defendant, except as to the para-  
graphs and conclusions now being contested.

And, in support of said contestation, the said Defendant  
A. W. Robertson alleges and says:—

10—In answer to paragraph 1 of said intervention, the  
Defendant above mentioned admits that Katherine Kelly is a  
grand daughter of the late Hugh Quinlan he further adds that  
the will and testament of the late Hugh Quinlan speaks for  
itself and he denies all the other allegations contained in said  
40 paragraph;

20—In answer to paragraphs 2, 2a, 2b, 2c, 2h, 2i, 2l, 2o, 2p,  
2q, and 2r, the said Defendant says that the deed of settlement re-  
ferred to in said paragraphs speaks for itself; otherwise, the said  
paragraphs are denied;

30—The present Defendant denies paragraph 3 of the said  
intervention;

40—In answer to paragraph 4 of the said intervention,  
the present Defendant says that his last amended plea, bearing  
date of the 14th of January 1931, and which is the only one con-

stituting the issues as joined, speaks for itself; otherwise, the said paragraph is denied;

50—The said Defendant denies paragraphs 5a, 5b, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, as being false in fact and unfounded in law, and the said Defendant further adds that the said paragraphs have erroneously reproduced the allegations and statements of  
10 the Defendant now pleading, as they appear in the pleadings, as well as in the evidence;

WHEREFORE the Defendant A. W. Robertson prays that his present contestation be maintained and the intervention originally fyled by J. T. Kelly and continued by Katherine Kelly, be dismissed the whole with costs.

Montreal, 22nd of April 1938.

20

Beaulieu, Gouin & Tellier,  
Attorneys for the Defendant A. W. Robertson.

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ANSWER OF INTERVENANT TO CONTESTATION OF  
INTERVENTION FYLED BY A. W. ROBERTSON.

1. Intervenant respectfully excepts from the judgment  
30 of the Court of King's Bench mentioned in said contestation and reserves all rights concerning same;

2. Intervenant prays acte of the admission in paragraph 1; joins issue with the denial therein;

3.—Intervenant joins issue with the denials contained in paragraphs 2 3 4 and 5;

4. Further as to paragraphs 4 and 5 that the record will  
40 speak for itself;

5. Contestation of A. W. Robertson is unfounded in law and in fact;

WHEREFORE the intervenant prays for the dismissal of the contestation of A. W. Robertson with costs.

Montreal April 25th 1938

C. Holdstock,  
Attorney for Intervenant.

CONTESTATION PAR LES DEFENDEURS, MARGARET  
QUINLAN ET JACQUES DESAULNIERS DE L'IN-  
TERVENTION DE DAME KATHERINE KELLY.

10 Pour contestation de l'Intervention de Dame KATHERINE KELLY, les Défendeurs susdits disent :

1.—Les Défendeurs, MARGARET QUINLAN et JACQUES DESAULNIERS. demandent acte du jugement de la Cour d'Appel, retranchant de ladite Intervention la majorité de ses allégations.

20 2.—Ils plaident comme suit aux allégations conservées par la Cour d'Appel.

3.—Les documents mentionnés dans le paragraphe No 1, parlent par eux-mêmes

4.—L'acte de règlement mentionné dans le paragraphe No 2, parle par lui-même. Ils nient le reste dudit paragraphe No 2 et de ses sous-paragraphes.

5.—Ils nient le paragraphe No 3.

30 6.—En réponse au paragraphe No 4, le dossier et la preuve parlent par eux-mêmes.

7.—En réponse au paragraphe No 5, ils disent que la preuve, les procédures, les documents et les jugements dans la cause, parlent par eux-mêmes et nient le reste dudit paragraphe No 5.

ET D'ABONDANT, LES DEFENDEURS AJOUTENT :

40 8.—Les défendeurs susdits sont assignés pour répondre à la demande de Dame KATHERINE KELLY, contenue dans son intervention.

9.—Comme il appert à ladite intervention, l'intervenante y attaque une convention de règlement en date du 31 janvier 1934, reçue par acte authentique devant Me N. Papineau Couture, N.P., et à laquelle les dits défendeurs étaient parties.

10.—Par cette convention de règlement, les exécuteurs-testamentaires de la succession Hugh Quinlan ont, en vertu des

pouvoirs à eux conférés par le testament, vendu au défendeur Robertson toutes les actions provenant dudit Hugh Quinlan dans un certain nombre de compagnies industrielles et que ledit défendeur Robertson prétendait avoir acquises antérieurement du défunt lui-même en des circonstances qui ont fait l'objet en partie de l'action principale en cette cause;

10

11.—Lesdites actions sont les suivantes:—

1151 actions de la Compagnie Quinlan, Robertson et Janin Ltd;  
250 actions de la Compagnie Amiesite Asphalt Ltd.;  
200 actions de la Compagnie Ontario Amiesite Ltd;  
400 actions de la Compagnie Fuller Gravel Co. Ltd.;

20

12.—Ledit défendeur ROBERTSON avait déjà payé la somme de deux cent soixante-dix-mille dollars à la dite succession Hugh Quinlan (\$270,000.00), et pour son bénéfice, en vertu de l'achat qu'il prétendait avoir fait desdites actions du vivant même dudit Hugh Quinlan.

30

13.—Par la convention de règlement ci-haut mentionnée du 31 janvier 1934, le dit défendeur ROBERTSON consentit à payer, et les exécuteurs-testamentaires de ladite succession consentirent à vendre lesdites actions pour un prix total de trois cent vingt mille dollars, (\$320,000.00), soit cinquante mille dollars, (\$50,000.00) de plus que le prix porté dans la première prétendue vente alors attaquée devant les tribunaux, et ledit défendeur ROBERTSON, par suite de cette convention de règlement ci-haut mentionnée, a payé le surplus de prix, savoir: la somme de (\$50,000.00) cinquante mille dollars à la succession;

40

14.—Cette convention de règlement du 31 janvier 1934 a été faite pendant que la présente action principale était mue en Appel devant la Cour Suprême du Canada et alors que la présente défenderesse Margaret Quinlan était dans la cause demanderesse conjointe avec la présente demanderesse, Dame Ethel Quinlan et que le présent défendeur Jacques Désaulniers était dans la cause le procureur au dossier de ladite Margaret Quinlan;

15.—La présente cause sur l'action principale était alors à la Cour Suprême en Appel du jugement unanime de la Cour du banc du roi à Montréal, lequel avait maintenu le jugement de la Cour Supérieure prononcé par l'honorable Juge Martineau et qui avait pour effet, entre autres, de ne pas reconnaître et d'annuler le prétendu achat que le défendeur ROBERTSON prétendait avoir fait desdites actions dudit Hugh Quinlan en son vivant;

16.—Lors du procès devant la Cour Supérieure sur l'instance principale, ledit défendeur ROBERTSON avait tenté de faire une preuve testimoniale de diverses circonstances à l'effet de prouver son prétendu achat desdites parts et, sur objection des demanderesses, ladite preuve testimoniale avait été empêchée et déclarée illégale et la même objection à la preuve testimoniale avait été maintenue par la Cour du banc du roi;

17.—Lorsque ladite convention de règlement du 31 janvier 1934 a été passée, l'appel devant la Cour Suprême avait été plaidé en partie oralement par les procureurs au dossier, comme il arrive, au cours de l'argument, des honorables membres du tribunal avaient eu l'occasion de faire des remarques et en particulier, le juge en chef Sir Lyman Duff, avait fait des remarques qui étaient de nature à laisser prévoir qu'il était possible que la Cour Suprême permit la preuve testimoniale ci-haut mentionnée au sujet des circonstances du prétendu achat par le défendeur ROBERTSON desdites parts, et qu'en conséquence, les demanderesses fussent renvoyées devant la Cour Supérieure pour que cette preuve fut reçue, ce qui en outre, pouvait laisser prévoir que la preuve une fois faite, le sentiment, à tout le moins de la Cour Suprême, pourrait être favorable à la reconnaissance de ladite vente et la preuve testimoniale apportée par le Défendeur ROBERTSON pouvait paraître suffisante;

18.—C'est dans ces circonstances que la présente défenderesse, dame Margaret Quinlan, alors demanderesse sur l'instance principale, et son époux, le présent défendeur, Jacques Désaulniers, alors le procureur de ladite Margaret Quinlan, décidèrent qu'ils avaient intérêt à concourir dans une transaction quant à eux au sujet du litige, et dans l'application quant à eux, d'une vente définitive et ferme qui serait faite par écrit au dit défendeur ROBERTSON desdites actions par les exécuteurs-testamentaires en vertu des pouvoirs à eux conférés et pour un prix qui a alors paru raisonnable;

19.—Au reste, cette cause, sur l'instance principale qui était très sérieuse, n'avait pas manqué, même avant les remarques de la Cour Suprême, de provoquer des pourparlers de règlement de temps à autre, auxquels les présents défendeurs avaient pris part;

20.—Lorsque ledit règlement fut définitivement consenti et que les présents défendeurs agréèrent la vente des parts aux conditions qui y sont déterminées, les présents défendeurs avaient

10 envisagé en outre la situation qui serait faite à la succession dont la défenderesse Margaret Quinlan est l'une des légataires universelles, du fait que si même le prétendu achat du défendeur ROBERTSON restait annulé définitivement et qu'il eut à retourner lesdites actions à la succession Hugh Quinlan, celle-ci serait restée, du fait de ces actions, actionnaire minoritaire dans toutes les compagnies intéressées, lesquelles étaient et avaient chance de demeurer contrôlées par ledit défendeur ROBERTSON seul ou avec le concours d'associés, ce qui aurait pu en pratique, contribuer à laisser auxdites actions des revenus plus que douteux parce que sujets à des déclarations de dividendes non contrôlées par la succession, et en définitive, à diminuer grandement au point de vue pratique la valeur desdites actions;

20 21.—Sous les circonstances, les présents défendeurs Margaret Quinlan et Jacques Désaulniers ont cru qu'il était à la fois de l'intérêt de la succession, et dans tous les cas, de l'intérêt de ladite Margaret Quinlan, de mettre fin audit litige quant à elle, et d'approuver en outre la vente ferme desdites parts au prix de trois cent vingt mille dollars (\$320,000.00) qui a été fixé, et en exigeant toutefois que les frais des divers avocats qui jusque-là avaient représenté la demande fussent payés, et qui fut finalement consenti par ladite convention de règlement.

30 22.—Il s'est trouvé que seule la demanderesse, dame Ethel Quinlan, a refusé, comme elle en avait le droit, de transiger sur le litige ou d'acquiescer à la vente desdites actions, et les présents défendeurs Margaret Quinlan et Jacques Désaulniers, tout en ne désirant pas entraver les recours que la demanderesse Ethel Quinlan, entend continuer, sont intéressés à demander au moins quant à eux, une déclaration de validité de ladite convention de règlement et le renvoi de la présente instance prise contre eux à cet égard;

40 23.—La participation des présents défendeurs à ladite convention de règlement a été en outre approuvée et recommandée par les autres avocats et conseils que les présents défendeurs ont alors consultés;

24.—Aux termes du testament dudit feu Hugh Quinlan, ses exécuteurs-testamentaires avaient toute autorité pour faire la vente des dites actions et consentir à tout ce à quoi ils ont consenti à ladite convention de règlement du 31 janvier 1934.

25.—Le consentement desdits exécuteurs testamentaires à la convention de règlement du 31 janvier 1934 a été fait de bonne foi et sans fraude et dans l'intérêt de la succession;

26.—De même, le consentement des présents défendeurs à ladite convention de règlement a été fait de bonne foi et sans fraude et dans leur intérêt légitime, et en outre, ladite convention était dans l'intérêt de la succession;

10 27.—En se rapportant aux allégations ci-dessus, les présents défendeurs Margaret Quinlan et Jacques Désaulniers, nient en fait et en droit, toutes les allégations de ladite intervention qui ne seraient pas conformes aux allégations ci-dessus.

20 POURQUOI, les défendeurs Margaret Quinlan et Jacques Désaulniers, se réservant tous recours à raison des allégations diffamatoires contenues dans l'Intervention de ladite Dame Katherine Kelly, concluent à ce que la convention de règlement intervenue le 31 janvier 1934, devant Me Papineau-Couture, N.P., qui est attaquée par ladite intervention, soit déclarée valide et légale à toutes fins que de droit, et dans tous les cas, autant que lesdits défendeurs Margaret Quinlan et Jacques Désaulniers, sont concernés, et à ce que ladite convention de règlement soit maintenue quant auxdits défendeurs Margaret Quinlan et Jacques Désaulniers, et à ce que leur égard, ladite intervention et ses conclusions soient rejetées avec dépens quant aux dits défendeurs Margaret Quinlan et Jacques Désaulniers.

Montréal, 13 avril 1938.

30

Jacques Désaulniers,  
Procureur desdits défendeurs Dame Margaret  
Quinlan et Jacques Désaulniers.

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ANSWER OF THE INTERVENANT TO THE CONTESTA-  
TION OF DEFENDANTS DAME MARGARET  
40 QUINLAN AND JACQUES DESAULNIERS  
OF THE INTERVENTION.

1. Intervenant respectfully excepts from the judgment of the Court of King's Bench, mentioned in paragraphs 1 and 2 and reserves all rights concerning same.

2. Intervenant joins issues with denials of paragraphs 4, 5 and 7;

3. Paragraphs 8 and 9 are admitted;



4. Paragraph 10 is denied and for further answer intervenants reiterate the allegations of the Intervention attacking the validity of said agreement;

10 5. Paragraph 11 is denied as drawn said list does not refer to all the shares mentioned in the so-called agreement and especially were the Fuller Gravel shares not acquired from the late Hugh Quinlan as alleged

6. The Intervenant denies the allegations mentioned in paragraphs 12 and 13;

7. As to paragraphs 14, 15 and 16 intervenant states that the record will speak for itself;

20 8. Paragraphs 17 and 18 are denied and are irrelevant;

9. Intervenant is ignorant of the allegations contained in paragraph 19 but if true neither plaintiffs nor intervenant had any part in same;

30 10. Paragraph 20 is denied, defendant A. W. Robertson having sold and parted with said shares to the knowledge of Defendants Dame Margaret Quinlan and Jacques Desaulniers, said A. W. Robertson could not return them to the estate and in any case the allegations of said paragraph do not constitute a defense to intervenant's demand;

11. Paragraph 21 is denied as drawn, intervenant says that the consent of the defendants Margaret Quinlan and Jacques Desaulniers was obtained through the sums paid to Jacques Desaulniers mentioned in the intervention;

12. Paragraphs 22, 23, 24, 25 and 26 are denied;

40 13. The Intervenant joins issue with the denials contained in paragraph 27;

14. The Contestation of the defendants Dame Margaret Quinlan and Jacques Desaulniers is unfounded in law and in fact;

WHEREFORE the Intervenant prays, re-iterating the allegations and conclusions of the intervention and the conclu-

sions taken against said Margaret Quinlan and Jacques Desaulniers that same be maintained with costs and that the contestation of the defendants Dame Margaret Quinlan and Jacques Desaulniers be dismissed with costs;

Montreal, April 25th, 1938.

10

C. Holdstock,  
Attorney for Intervenant.

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20 REPLIQUE A LA REPOSE DE L'INTERVENANTE SUR  
LA CONTESTATION DES DEFENDEURS MARGA-  
RET QUINLAN ET JACQUES DESAULNIERS.

Les défendeurs MARGARET QUINLAN et JACQUES DESAULNIERS nient toutes et chacune des allégations contenues dans la réponse de l'intervenante.

30 POURQUOI les dits défendeurs concluent au rejet de ladite réponse avec dépens et se réservent leurs recours légaux quant aux allégations de diffamation contenues dans ladite réponse.

Montréal le 30 avril 1938.

Jacques Désaulniers,  
Procureur des défendeurs Margaret  
Quinlan et Jacques Désaulniers.

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PROCES-VERBAL D'AUDIENCE DANS LA CAUSE  
No 36664

10

COUR SUPERIEURE  
Enquêtes et Plaidoiries

Audience de 2 novembre 1938.

Présidence de l'Honorable Juge Gibsone

Procès-verbal des procédures faites à l'audience devant le tribunal.

20

Les parties comparaissent par leurs procureurs respectifs.

Suivant un jugement rendu d'une Cour Supérieure, les défendeurs continue leur enquête.

Sténo: Bush. pas de dépôt.

Hélène King, 49 ans, 4870 Côte des Neiges, ass. & ex. pr. déf.

30

Exh. D.R.-53 document produit par Mlle H. King.

Louis Nap. Leamy, 62 ans, Sec. Trés., 3483 Marlowe Ave., ass. & ex. pr. déf.

Exh. D.R.-54 lettre de Leamy à Robertson, en date du 23 mai 1927.

40 Angus William Robertson, 63 ans, défendeur, Montebello, ass. & ex. pr. déf.

Enquête des défendeurs suspendue.

Ajournée à 2 h. 15 P.M.

Séance de 2 h. 15 P.M.

Les défendeurs cont. leur enquête.

Sténo: Bush.

Alban Janin, 58 ans, contracteur, 140 Pagnuelo, ass. & ex. pr. déf.

Exh. D.R-55 Copie photo. des minutes de l'assemblée des directeurs, en date du 22 juin 1927.

10 Exh. D.R-56: Copie Photo. des minutes de l'assemblée des directeurs en date du 22 juin 1927.

Exh. D.R-57: Copie photo. des minutes de l'assemblée des directeurs de Ontario Amiesite Ltd., en date du 16 nov. 1927.

Exh. D.R-58: Copie certifiée re-Dépôt de documents pour faire minute du notaire Roger Biron, 31 janvier 1935, par Angus Wm. Robertson.

Exh. D.R-59: Copie d'un Acte de autorisation au mineur John Henry Dunlop, en date du 2 fév. 1934.

20 Exh. D.R-60: Copie de l'acte de autorisation du mineur Ernest Ledoux, en date du 2 fév 1934.

Exh. D.R-61: Extract from the Minutes of a meeting of the Board of Directors of General Trust of Can., en date du 21 sept. 1934.

Exh. D.R-62: Agreement of Settlement Proposed to be entered into between executors Quinlan and Mr. A. W. Robertson en date du 22 oct. 1934.

30 Exh. D.R-63: Copie d'acte de "Final Acquittance and Discharge of Mr. Jacques Desaulniers, en date du 23 nov. 1934.

Exh. D.R-64: Copie d'acte de "Final Acquittance of Estate Hugh Quinlan, en date du 21 déc. 1934.

#### Admission

Les parties admettent que la somme de \$10,000.00, payable à Mtre Edouard Masson pour ses frais, sous l'empire du règlement du 31 janvier 1934 a été effectué et payé.

40 Enquête des défendeurs close.

Le procureur de l'Intervenant demande à procéder avec l'action principale et l'intervention.

La Cour ordonne aux procureurs de procéder avec l'action principale et l'intervention après.

Contre-preuve des dem.

Sténo: Bush.

Jean McArthur, 52 ans, garde-malade, 306 Rockland, ass. & ex. pr. dem.

Vernise Karr, 49 ans, garde-malade, 2246 Oxford Ave., ass. & ex. pr. dem.

John G. Lannax, 72 ans, expert en documents, 1947 St-Luc, ass. & ex. pr. dem.

Sténo: Paul Cusson.

10 Henri Ledoux, 49 ans, agent d'ass., 6401 Christophe-Columb, ass. et ex. pr. dem.

Ema. Ludger Parent, 58 ans, gérant général, 271 Bronson, Ottawa, Ont., ass. & ex. pr. dem.

Exh. P.S-1-A et B protêt & Procès-verbal au Capital Trust Corporation en date du 29 sept. 1933 et 16 octobre 1933.

Exh. P.S-2 lettre de Capital Trust Corp., en date du 20 décembre 1933.

20 Exh. P.S-3 document fait par Mtre Geoffrion, en date du 7 décembre 1933.

Exh. PS-4 document, en date du 6 sept. 1933.

Exh. P.S-5 copie du factum des Intervenants en Cour Suprême.

Contre-preuve des dem. suspendue.

Ajournée au 3 nov. 1938 à 10 h. 30 A.M.

30

O. Mercure,  
D. P. C. S.

Advenant 10.30 a.m. le 3 nov. 1938 la cour continue l'enquête.

Suite de la Contre-Preuve.

Sténo. Henri MacKay.

Charles Fournier, 36 ans, ass. sec., Sun Trust, 3751 Kent, ass. et exam. pour dem.

40 P.S-6 Lettre du 14 sept. 1928 à Gen. Trust par W. P. McDonald Construction Co.

2 j. \$4.00 Fare & ex. \$20.65 \$24.65 Em. Ludger-Parent, déjà assermenté continue son témoignage.

Exhibit D.R-65 Copie certifiée du règlement daté 31 janv. 1934. Notaire, Papineau-Couture. Entre Quinlan & al & Capital Trust Corp. Ltd. & Robertson.

La cour ajourne à 2.30 p.m. ce jour.

J. A. Cloutier,  
D.P.C.S.

Advenant 2.30 p.m. ce jour, la cour continue à entendre la preuve dans cette cause.

Sténo. MacKay, Henri.

Sténo. Bush.

10 dem. A. — Wm. Roberston, déjà assermenté, est exam. en c.p. pour

P.S-7 Convention entre Janin & Robertson, 12 sepbre 1930.

Les demandeurs déclarent leur contre-preuve close, sauf à produire comme témoin A. Janin.

Re-Contre-Preuve

Sténo. Bush.

20 Louis Nap. Leamy, déjà assermenté est exam. en re-contre-preuve par défendeurs.

Angus Wm. Robertson, déjà ass. est interrogé en re-c-preuve par défendeurs.

Sténo. Henri MacKay.

Jacques Desaulniers, 45 ans, avocat du barreau de Montréal, ass. et exam. en re-c-preuve par déf.

Les défendeurs déclarent leur enquête close.

30 Suite de la contre-preuve Dem.

Sténo. Bush.

A. Janin, déjà assermenté, est interrogé par les demandeurs en c-preuve.

Preuve close de part et d'autres sur la preuve. Preuve close.

Enquête de l'intervenante.

40 Les parties déclarent produire au dossier un consentement, que la preuve faite sur l'action principale servira de preuve sur l'intervention et qu'il n'y aura pas d'autres preuves ni sur l'intervention ni sur la défense ni sur aucune contestation ni de la part d'aucune des parties.

Arguments remis sine die.

J. A. Cloutier,  
D.P.C.S.

Témoins taxes et non entendus, assignés par demandeur.

Mrs. J. H. Dunlop 2 jours \$4.00

Mrs. Ernest Ledoux 2 jours 4.00

Mrs. Helene Quinlan 2 jours 4.00

10 Jacques Desaulniers 2 jours 4.00

J. A. Cloutier,  
D.P.C.S.

Le 22 déc. /38

Advenant 10 $\frac{1}{2}$  a.m. la cour entend les arguments dans cette cause.

La cour ajourne à 2 $\frac{1}{2}$  p.m. ce jour.

20

J. A. Cloutier,  
D.P.C.S.

Advenant 2 $\frac{1}{2}$  p.m. ce jour la cour continue à entendre les arguments en cette cause.

La cour ajourne à 10 hrs a.m. le 23 Déc. 1938.

J. A. Cloutier,  
D.P.C.S.

Audience de 23 décembre 1938

30 Advenant 10 hrs. a.m. le 23 déc. 1938 le tribunal continue à entendre les arguments des procureurs en cette cause.

La cour ajourne à 2.30 ce jour.

J. A. Cloutier,  
D.P.C.S.

Advenant 2.30 ce jour, la cour continue à entendre les arguments des parties.

40 La cause sera continuée au 1er février ou à une date avant si possible. Date à être fixée.

J. A. Cloutier,  
D.P.C.S.

Advenant 10 $\frac{1}{4}$  a.m. ce 27 février 1939 la cour continue à entendre les arguments des procureurs en cette cause.

La cour ajourne à 2 hrs. 30 p.m. ce jour.

J. A. Cloutier,  
D.P.C.S.

Advenant 2.30 hrs. p.m. ce jour la cour continue à entendre les arguments des procureurs en cette cause.

La cour ajourne à 10 hrs. 30 a.m. le 28 février 1939.

J. A. Cloutier,  
D.P.C.S.

10

Advenant 10 hrs. 30 a.m. le 28 février la cour continue à entendre les plaidoiries des procureurs en cette cause.

Maître Beaulieu qui argumentait, étant malade, n'a pu finir sa plaidoirie; du consentement des parties le tribunal, demande à entendre Maître Desaulniers, Maître Couture et Maître Geoffrion, et déclare qu'il entendra Maître Beaulieu avant que d'entendre de nouveau Maîtres Holdstock et Chauvin qui agissent pour les demandeurs en réponse aux arguments des autres procureurs.

20

Continuée sine die.

J. A. Cloutier,  
D.P.C.S.

Audience de 1 mai 1939.

Advenant 11 hrs ce jour 1 Mai /39 la cour continue à entendre les procureurs des parties dans cette cause.

Arguments de Mtre Beaulieu.

30

Sténo. Chamberland.

La cour ajourne à p.m. ce jour.

J. A. Cloutier,  
D.P.C.S.

Advenant 2 hrs 30 minutes ce jour la cour entend la plaidoirie de maître Chauvin.

Arguments — Suite.

40

Sténo. Chamberland.

P. O. C. A. V.

J. A. Cloutier,  
D.P.C.S.

L'honorable Juge demande aux procureurs des parties de produire des factums dans le plus court délai.

J. A. Cloutier,  
D.P.C.S.



*T. J. SPELLANE (for Plaintiff) Examination in chief.*

**Part II — WITNESSES**

**Plaintiffs' Evidence**

10

Examination under order of Mr. Justice Curran of 22nd March, 1935.  
Present: Mr. Henry N. Chauvin, K.C., of Counsel for the Plaintiffs.

**DEPOSITION OF THOMAS F. SPELLANE**

On this twenty-sixth of March, in the year of Our Lord,  
One thousand nine hundred and thirty-five personally came and  
appeared: Thomas F. Spellane, aged over 21 years Secretary-  
20 Treasurer of Amiesite Asphalt Limited; at number 2020 Union  
Avenue, in the City and District of Montreal: a witness produced  
and examined on behalf of the Plaintiff; who, being duly sworn,  
deposes and says as follows:—

Examined by Mr. Henry N. Chauvin, K.C., of counsel for  
the Plaintiff:—

Q.—You are the Secretary of the Amiesite Asphalt, Lim-  
ited, Mr. Spellane?

30

A.—I am.

Q.—And will you be good enough to produce, at this ex-  
amination, certificate number one of the Amiesite Asphalt, Lim-  
ited; for one share of stock, in the name of Hugh Quinlan; dated  
September the third, 1923; and certificate number five for forty-  
nine (49) shares of the Amiesite Asphalt, Limited; in the name  
of Hugh Quinlan; dated the twenty-third of May, 1924; as re-  
quired by the Subpoena Duces Tecum?

A.—Yes, sir.

40

Q.—The stock certificates appear to have been transferred  
by Hugh Quinlan, on the twenty-second of June, 1927, to A. W.  
Robertson?

A.—That is correct.

Q.—And will you produce them as Plaintiffs' exhibit RP-  
one, that is for certificate number one; and RP-two, for certifi-  
cate number five?

A.—Yes, sir.

And further the deponent saith not.

Charles F. Larkin,  
Official Stenographer.

*H. KING (for Defendant at Enq.) Examination in chief.*

### Defendant's Evidence at Enquete

10

#### DEPOSITION OF HELEN KING

A witness produced on behalf of the Defendant Robertson.

On this second day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: Helen King, of the city of Montreal, aged 49 years, a witness produced on behalf of the Defendant Robertson, who being duly sworn doth depose and say as follows:—

20

Examined by Mr. L. E. Beaulieu, K.C., of counsel for Defendant Robertson:—

Q.—Miss King, you have already been heard as a witness in the present case?

A.—Yes.

Q.—Some years ago?

A.—Yes.

30

Q.—You stated at that time that you had been the private secretary of the late Honorable J. L. Perron for many years?

A.—Yes.

Q.—You also filed at that time as Exhibit D-R-2 the document which I now show you?

A.—Yes.

Q.—And you remember that you stated that this letter was found by you in the safe of Mr. Perron?

A.—Yes.

40

Q.—I put to you only the broad question which was objected to, and which objection was maintained, and I asked you the following verbatim question: “Were there any other documents in the same envelope?”, and you answered that question, “There is a draft of a letter that I remember distinctly making out myself. It does not bear any date because it was subject to modifications.”

Now, will you please take communication of the document which I now exhibit to you and state if that is the document you were referring to in your testimony?

*H. KING (for Defendant at Enq.) Examination in chief.*

A.—Yes, I remember that distinctly.

Q.—Will you please file that document as Exhibit D-R-53?

A.—Yes.

10 Q.—Will you please state if that document D-R-53 was dictated to you by the late honorable Mr. Perron?

A.—Yes, it was dictated to me by the honorable Mr. Perron?

Q.—Do you remember what happened to that document after it was dictated to you?

A.—It was deposited in the vault.

Q.—It was found in the vault?

A.—Yes.

20 Q.—Do you remember if it was dictated to you before or after the letter of the 20th of June 1927?

A.—Well, a few days before. I remember that, yes.

Cross-examined by Mr. Henry Chauvin, K.C., of Counsel for Plaintiffs:—

Q.—When did you first see Exhibit D-R-2?

A.—When did I first see it?

Q.—Yes.

A.—Well, I made it out.

30 Q.—You made out D-R-2?

A.—Yes.

Q.—You mean you wrote it on the typewriter?

A.—Well, I mean I wrote the draft at the time.

Q.—But D-R-2 is not a draft?

A.—You mean the Exhibit?

Q.—I mean the letter D-R-2 I am showing to you now. I am asking you when did you see it?

A.—I do not know when I saw it exactly. I cannot tell you exactly when I saw it.

40 Q.—You cannot say when you first saw it?

A.—Not exactly, no. I do not remember at all.

Q.—You do not remember that?

A.—When I saw it? The date I mean. You are talking about the date?

Q.—I mean the circumstances, the time, under what circumstances did you first see D-R-2?

A.—I do not remember.

Q.—You do not remember?

A.—I do not remember.

*H. KING (for Defendant at Enq.) Examination in chief.*

Q.—You said that you found this letter in an envelope that was kept in the vault in Mr. Perron's office?

A.—Yes.

10 Q.—And this envelope formed part of one of the records of the office, did it not?

A.—Yes, sir.

Q.—What record did it form part of?

A.—I knew at the time. Mr. Perron told me at the time.

Q.—I am not asking you that. I am asking you what record it formed part of?

20 A.—I cannot remember the record. Of course, those instructions were given to me at the time, I deposited the letter at the time; I deposited the letter on Mr. Perron's instructions. I do not remember any other details about it, what record it formed part of. I put those letters where Mr. Perron wanted me to put them.

Q.—Let me see what you said at the last hearing. When you were examined at the trial, you were asked where the documents was, and you produced the envelope in which you found it. Do you remember that?

A.—Yes, Mr. Chauvin.

30 Q.—And you were asked how you happened to find the envelope, and you said; "There was a memorandum in the record, I think, of the Quinlan case, in which there was a reference to this particular document number 369 in the case, and that was where I found it in an envelope," is that right?

A.—Yes, Mr. Chauvin.

40 Q.—And then, you were asked again at page 369: "I understand that you found the papers you are filing in this case with record bearing number Q-79." You answered, "Yes," and then the next question: "And that record is Ethel Quinlan et al Plaintiffs vs A. W. Robertson et al Defendants and William Quinlan et al Mis-en-Cause" and you answered, "Yes," and you were asked; "This is the record in this case," and you said, "Yes," and you were asked: "What was the latest proceeding in the record?", and you said, "The latest proceeding was the declaration in this case."

Are those answers right?

A.—Yes.

Q.—You persist in them?

A.—Yes, I do.

Q.—Did you see this letter or this draft of letter at any time after you typed it, and the date when you found it in the envelope to which you referred to in your evidence?

*L. N. LEAMY (for Defendant at Enq.) Examination in chief.*

A.—No, it was just put there at the time, and I had no occasion to refer to it.

Q.—You did not see it between the time you typed it and the time this present action was instituted?

10 A.—I deposited it in the safe, and that is all I remember.

Q.—What I want to be clear about is, whether you saw it between the time you typed it and the time you found it in the envelope in the record in this case?

A.—No.

Q.—You did not see it between those two dates?

A.—No.

Q.—And how do you recognize it as having been a letter typed by you?

20 A.—Well, that is my way of typing letters. I remember distinctly.

Q.—You can?

A.—I can recall that — those dots. That is one item the way I make those dots out.

Q.—You recognize the typing, do you?

A.—Yes.

Q.—Usually, do you not put your initials on the bottom of the letter and the initial of the party dictating it?

A.—It was a draft of the letter.

30 And further deponent saith not.

E. W. Bush,  
Official Court Reporter.

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DEPOSITION OF LOUIS NAPOLEON LEAMY

40 A witness produced on behalf of the Defendant Robertson.

On this second day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: Louis Napoleon Leamy of the city of Montreal, Secretary Treasurer, aged 62 years, a witness produced on behalf of the Defendant Robertson, who being duly sworn doth depose and say as follows:

Mr. Chauvin:—My Lord, before the witness is examined, I would like to enter an objection to verbal evidence being made

*L. N. LEAMY (for Defendant at Enq.) Examination in chief.*

of a consent or assent of the late Mrs. Hugh Quinlan to the document D-R-1.

10 I realize, of course, that the Supreme Court has sent this record back with certain instructions, and these instructions, I assume, have got to be followed at the same time. This may not be the end of this case....

His Lordship:—You do not want to acquiesce. It is quite proper to enter an objection.

20 Mr. Chauvin:—I do not wish to have to make an objection to every question which arises, but I wish it to be understood that the Plaintiff objects to verbal evidence being taken on the assent, or the alleged assent of the late Hugh Quinlan, to the letter of June 20th 1927, D-R-1, and to add to verbal evidence that is made, in virtue of the present reference from Supreme Court.

30 My Lord, at the first trial the evidence was made by Mr. Leamy and Mr. Robertson, that they together went to Mr. Quinlan's room on the 20th of June, and that Mr. Leamy read the letter. The question that was then put to them was, what was Mr. Quinlan's reaction, and that question was disallowed. They stated they were alone with Mr. Quinlan at the time, and I am going to ask your Lordship and my learned friends, in making this evidence during Mr. Leamy's testimony, that Mr. Robertson be excluded or if Mr. Robertson testifies first that Mr. Leamy be excluded from the room. We realize this is a vital point of the case and it depends on the statements of these two gentlemen, and I submit for the sake of their own case they should be willing to feel that your Lordship is entitled to believe them absolutely.

40 His Lordship:—I do not think I have jurisdiction to give an order in the sense in which you ask, Mr. Chauvin. If you suggest it to Mr. Beaulieu, and he consents, he is at liberty to accept or not. I do not think I can exclude the witnesses. I do not think I have any jurisdiction.

Examined by Mr. Beaulieu, K.C., of counsel for Defendant Robertson:—

Q.—Mr. Leamy, you have already been heard as a witness in the present case?

A.—Yes.

*L. N. LEAMY (for Defendant at Eng.) Examination in chief.*

Q.—In 1927?

A.—Yes.

Q.—Will you please tell the Court what was your occupation?

A.—Secretary Treasurer.

10 Q.—Secretary Treasurer of what?

A.—A. W. Robertson, Limited.

Q.—You have already stated in your previous deposition at page 758 that in April 1927 you paid a visit to Mr. Hugh Quinlan?

A.—Yes.

Q.—Do you remember that statement?

A.—Yes.

Q.—Was that correct?

20 A.—Yes.

Q.—You also stated that it was at the time when Mr. Robertson was absent from the city?

A.—Yes.

Q.—When, you were asked, “Did Mr. Quinlan mention to you what he intended to do with his shares?” Objection was made, and the objection was maintained. Will you please state to the Court what took place during the conversation at that interview that you had with Mr. Quinlan, in April 1927?

30 Mr. Chauvin:—This question referred to the visit Mr. Leamy made in April 1927. I do not see that the order of the Supreme Court covers that.

His Lordship:—It covers May. I am not quite sure that it covers April. There is a great deal of distinction between April and May.

40 Mr. Chauvin:—If it is referring to the visit of the Honorable J. L. Perron and the present Appellant to the late Hugh Quinlan during the month of May or thereabouts, that is referring to something else altogether, and it was in May that the certificates were obtained by Mr. Robertson. This is a different matter altogether, and I submit it does not fall within the reference.

His Lordship:—I must reserve the objection.

A.—Mr. Quinlan said that day that he was anxious for Mr. Robertson to return from the South, or from his Mediterranean trip that he wanted to transfer to Mr. Robertson his shares in Quinlan, Robertson & Janin, Amiesite Asphalt and Ontario Amiesite Limited.

*L. N. LEAMY (for Defendant at Enq.) Examination in chief.*

By Mr. Beaulieu:—

Q.—Did you report that conversation to Mr. Robertson when he was back?

10 A.—Yes, I did.

Q.—Will you take communication of a letter bearing date the 23rd May 1927, signed by you and addressed to Mr. Robertson, and state if you wrote that letter?

A.—Yes, sir, I wrote that letter.

Q.—Will you file this letter as Exhibit D-R-54?

A.—Yes.

Q.—Did you, as a matter of fact, at a later date receive from Mr. Robertson the various certificates therein mentioned?

20 A.—I did.

Q.—For safekeeping?

A.—For safekeeping.

Q.—I notice in that letter, that certificate number 9 of the Amiesite Asphalt Limited for 200 shares, G. H. Dunlop, is also mentioned?

A.—Yes.

Q.—Will you also take communication of this Certificate, which has already been filed as Exhibit P-11, and state if you know the endorsement of Mr. Dunlop appearing on the back of it?

30 A.—Yes.

Q.—Do you know his signature?

A.—Well, I witnessed it.

Q.—And you were present when he signed?

A.—Yes.

Q.—Let us come back to the letter of the 20th of June 1927, the original of which has been filed as Exhibit D-R-1. You remember that letter, of course?

A.—Yes.

40 Q.—The letter of the 27th of June 1927?

A.—Yes.

Q.—You have already stated in your deposition that that letter was typewritten by yourself?

A.—Yes.

Q.—And you were then asked at page 760 also (reference is made for the convenience of my confrere but of course it does not form part of the record) — you were asked the following question: “Was that letter Exhibit D-R-1 copied in part, or was the whole of it prepared by the Honorable Mr. Perron, which



*L. N. LEAMY (for Defendant at Enq.) Examination in chief.*

you had in your possession"? Will you please take communication of the document already filed by Miss King as Exhibit D-R-53 and state if this was the document prepared by Mr. Perron that you had in hand when you drafted D-R-1?

10

A.—No.

Q.—What was that?

A.—It was a draft made by Mr. Robertson from this draft handed to me, and which I wrote the letter.

Q.—You remember that D-R-53 that you have in your hand was given to Mr. Robertson?

A.—Yes, it was mailed to Mr. Robertson by the Honorable Mr. Perron.

20

Q.—Did you receive instructions from Mr. Robertson to draft or redraft the document as it is now, Exhibit D-R-1?

A.—He redrafted this himself.

Q.—To your knowledge?

A.—Yes sir.

Q.—And then you....

A.—Then, I typed it.

Q.—You typewrote it as drafted by Mr. Robertson?

A.—That is right.

Q.—And made D-R-1?

A.—That is right.

30

Q.—You notice that two duplicates of that letter of the 20th of June 1927 were signed by Mr. Robertson, D-R-1 and D-R-2? You also notice that your initials appear on both these duplicates?

A.—Yes sir.

Q.—Will you state to the Court what you did with one of these duplicates?

A.—I mailed it to the Honorable Mr. Perron?

Q.—You mailed one of them?

A.—I mailed one of them.

40

Q.—And you kept the other?

A.—Yes.

Q.—When did you mail it to the Honorable Mr. J. L. Perron?

A.—I would say that day.

Q.—You have already stated that you were at Mr. Hugh Quinlan's house on the 20th of June 1927 with Mr. Robertson?

A.—Yes.

Q.—You have also stated that you read that letter D-R-1 to the late Hugh Quinlan?

A.—Yes sir.

*L. N. LEAMY (for Defendant at Enq.) Cross-examination.*

Q.—Will you now state what was the answer, if there was any answer, on the part of Mr. Hugh Quinlan after you read the letter?

10 A.—He said that was all right.

Q.—Who were present then?

A.—Mr. A. W. Robertson.

Q.—And yourself?

A.—Yes.

Q.—No other person?

A.—No.

Q.—Besides Mr. Hugh Quinlan?

A.—Yes.

20 Q.—Did you meet Mrs. Quinlan that day, the wife of the late Hugh Quinlan?

A.—I did.

Q.—You know that Mrs. Quinlan died since the first enquete in this case?

A.—Yes.

Q.—But she was alive at the time, in fact?

A.—Yes.

Q.—And you made the same statement at the enquete held before Mr. Justice Martineau, to wit, that you had met Mrs. Quinlan on that day?

30 A.—I did.

Cross-examined by Mr. Henry Chauvin, K.C., of counsel for Plaintiff:—

Q.—In regard to Exhibit P-11, when was it endorsed by Mr. Dunlop? Was the space for the transferee's name in blank?

A.—That was added after.

40 Q.—That is to say, the name of the transferee was filled in afterwards?

A.—Yes.

Q.—It was endorsed in blank?

A.—From my recollection.

Q.—It was endorsed in blank?

A.—Yes, from my memory it was endorsed in blank.

Q.—When did you find the letter D-R-54?

A.—I did not find it. It was not in my possession.

Q.—It was not in your possession?

A.—No.

Q.—Have you seen it since you wrote it before today?

A.—I saw it the last time I appeared in Court.

*L. N. LEAMY (for Defendant at Enq.) Cross-examination.*

Q.—You saw it the last time you appeared in Court?

A.—Some years ago, the last time we appeared in Court.

Q.—That is the last time we appeared before Mr. Justice Martineau?

10 A.—I think it was.

Q.—It was not produced then?

A.—Yes.

Q.—Well, I don't think it was.

A.—To my memory it was.

Q.—There is no indication that it was produced at that time?

A.—I was thinking of the other one.

20 Q.—I am referring to D-R-54: this D-R-54, the letter of May 23rd, 1927, was referred to?

A.—I don't know. I found it among our correspondence during the first trial.

Q.—You are not sure of that?

A.—That is a long time ago. I am not infallible.

Q.—What makes you think that you had it during the first trial, that is, the trial before Judge Martineau?

A.—I do not know, except we were looking through our letters, through files, looking for correspondence.

30 Q.—Have you any recollection of having had this letter during the first trial?

A.—Not from memory. I would not say so.

Q.—Not from memory?

A.—No.

Q.—Have you seen it since then? ?

A.—No.

Q.—Not until today?

A.—No. I saw it the other day in Mr. Beaulieu's office.

40 Q.—But prior to the preparation for this trial, you had not seen it, since this trial?

A.—That is right.

Q.—You stated in answer to a question by Mr. Beaulieu that Exhibit D-R-1, that is, the letter of June 20th 1927 was prepared by you, from the draft made by Mr. Robertson? ?

A.—Yes.

Q.—Have you Mr. Robertson's draft?

A.—No, I have not.

Q.—What became of it?

A.—It went into the waste paper basket.

Q.—Was it a handwritten draft?

A.—Yes, it was, a pencil draft.

*L. N. LEAMY (for Defendant at Enq.) Cross-examination.*

Q.—In pencil?

A.—Yes.

Q.—Was Mr. Robertson present when you wrote D-R-1?

A.—Yes.

10 Q.—Where was it written?

A.—In the office, 1680 St. Patrick street.

Q.—That office had just one division?

A.—Two rooms, that is all.

Q.—You were in the outer office?

A.—Yes.

Q.—Was Mr. Robertson there when you wrote it?

A.—He wrote it on my desk in the office.

Q.—He wrote the draft on your desk?

A.—Yes sir.

20 Q.—Was Mr. Robertson present when you typed D-R-1?

A.—He was in my office, yes sir.

Q.—Was it the morning of the 20th of June 1927?

A.—In the forenoon, yes.

Q.—You said at the first trial that you went to Mr. Quinlan's house between eleven and twelve on the morning of June 20th?

A.—Yes sir.

30 Q.—Did you go right up to Mr. Quinlan's house as soon as this letter was typed?

A.—Shortly after.

Q.—What do you mean by shortly after?

A.—Well, I wrote a letter. I cannot tell you how long after we proceeded up to Mr. Quinlan's house.

Q.—How long were you in Mr. Quinlan's room that morning?

A.—A few minutes.

Q.—A few minutes?

A.—Yes.

40 Q.—What do you mean by a few minutes?

A.—I would say two or three.

Q.—Two or three minutes?

A.—Yes.

Q.—Was there any conversation besides reading this letter?

A.—No, not as far as I was concerned.

Q.—Was there any conversation between Mr. Robertson and Mr. Quinlan?

A.—Not after I left — I am wrong; I say I don't know, because I left.

*L. N. LEAMY (for Defendant at Enq.) Cross-examination.*

By Mr. Geoffrion:—

Q.—Not before you left??

A.—No.

10

By Mr. Chauvin:—

Q.—You left Mr. Robertson in the room?

A.—Yes.

Q.—You left Mr. Robertson with Mr. Quinlan?

A.—Yes sir, I did.

Q.—Did you go into the room with Mr. Robertson?

A.—I did.

20

ter?

Q.—Was there any conversation before you read the let-

felt.

A.—Well, just the usual salutation. I asked him how he

Q.—That was all?

A.—That was all.

Q.—There was no reference to what was in the letter?

A.—Not just then.

Q.—Then, you just simply read the letter?

30

he wanted me to read it to him.

A.—Yes. Mr. Robertson mentioned he had this letter and

Q.—And you read the letter?

A.—I did.

Q.—And left the room?

A.—I did.

Q.—With the letter?

A.—No, I handed it back to Mr. Robertson.

time?

Q.—Did you have the duplicate with you there at that

A.—No, I did not.

40

Q.—Where was the duplicate?

A.—In the office.

Q.—How long did Mr. Robertson stay with Mr. Quinlan  
after you left?

A.—Five or ten minutes.

Q.—Did you wait for him in the house?

A.—I did.

Q.—You went out together? You left the house together?

A.—Yes.

*L. N. LEAMY (for Defendant at Enq.) Cross-examination.*

Q.—When you wrote D-R-1, was it all done at one typing?

A.—Yes.

Q.—In duplicate, at the same time?

A.—At the same time.

10 Q.—The whole letter complete was done in one typing?

A.—From memory I would say so.

Q.—Well, I am asking you?

A.—I am saying from memory.

Q.—You typed the letter complete I suppose?

A.—Is that a carbon copy?

Q.—You know whether you took a carbon copy of it. There are both of them. D-R-1 and D-R-2.

A.—Exhibit D-R-2 is the carbon.

20 Q.—D-R-2 is a carbon copy of D-R-1?

A.—Yes, and these four items were inserted after this letter was written.

Q.—When you wrote the letter, the names of the stocks were not in?

A.—They were not in at the time. I mean they were not in here. That may have been added after. I do not remember.

Q.—You do not remember?

A.—No, but the carbon shows that the four insertions were added after the letter was written.

30 Q.—What about the original?

A.—I do not remember.

Q.—You do not remember?

A.—No.

Q.—You do not remember whether when you wrote the original, the names of the stocks and the number of shares were in the letter?

A.—No, I do not remember.

Q.—When did you put in the names of the stocks and the number of shares in the duplicate D-R-2?

40 A.—I presume that day.

Q.—You presume?

A.—Yes.

Q.—Do you know?

A.—I put them in there.

Q.—I am asking you when you put them in?

A.—Well, I say that day.

Q.—You are sure of that?

A.—From memory.

*L. N. LEAMY (for Defendant at Enq.) Cross-examination.*

Q.—And when did you mail the duplicate to Mr. Perron?

A.—That day.

Q.—Before or after you went to Mr. Quinlan's house?

A.—After.

10 Q.—Do you swear that D-R-2 is a carbon copy of D-R-1  
made in the machine at the same time as D-R-1?

A.—Yes.

Q.—Do you remember that there was a time that the letter  
of June 20th 1927, D-R-1, could not be found?

A.—That is right.

Q.—Did you at that time tell Mr. Robertson that you had  
mailed the duplicate to Mr. Perron?

A.—The day we wrote that letter Mr. Robertson phoned  
Mr. Perron and read that letter to him before we went to Mr.  
20 Quinlan's house.

Q.—But I asked you if there was a time when the letter  
D-R-1 could not be found, and you say, yes?

A.—Well, it was not in my possession.

Q.—Did you tell Mr. Robertson then that you had mailed  
a duplicate to Mr. Perron?

A.—Well, he was familiar with it. It was mailed on his  
instructions.

30 Q.—Well, but if you had the duplicate, and Mr. Perron  
had a duplicate, would not a duplicate have answered just as well  
as the original?

A.—I don't know that. It is not for me to judge.

Q.—You knew Mr. Perron was enquiring for the letter,  
do you not?

A.—Yes.

Q.—And you were asking both the Capital Trust and Mr.  
Robertson to find it?

A.—Yes.

40 Q.—And all the time he had a duplicate according to you,  
in his possession?

A.—Yes, he had.

Q.—Is that right?

A.—That is right, as far as I know.

Q.—Well, that is right?

A.—That is right.

Q.—All the time he was looking for D-R-1, he had a sign-  
ed duplicate in his possession?

A.—That is right.

And further deponent saith not.

E. W. Bush,  
Official Court Reporter.

A. W. ROBERTSON (*for Defendant at Eng.*) Exam. in chief.

DEPOSITION OF ANGUS WILLIAM ROBERTSON

A witness produced on behalf of the Defendant Robertson.

10

On this second day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: Angus William Robertson, of Monte Bello, Quebec, Contractor, aged 63 years, a witness produced on behalf of the Defendant Robertson, who being duly sworn doth depose and say as follows:—

Examined by Mr. L. E. Beaulieu, K.C., of counsel for Defendant Robertson:—

20

Q.—Mr. Robertson, I understand you are the Defendant in the present case?

A.—Yes.

Q.—Will you please take communication of the four certificates which have already been filed as Exhibits P-9, P-10, P-26 and P-27, and state if the endorsements Hugh Quinlan on the back were put there by Mr. Hugh Quinlan himself, to your knowledge?

30

A.—Yes. These are his signatures.

Q.—Were you present when Mr. Quinlan signed these endorsements?

A.—I was.

Q.—Being transfers in blank?

A.—Yes.

Q.—For each one of these transfers you see the date 22nd of June 1927. Was that date there when Mr. Quinlan signed?

A.—No.

Q.—When was it put down, and by whom.

40

A.—It was put there I think by the auditor, when he made the transfer. At any rate it was done at that time the 22nd of June.

Q.—It was not done by you or under your instructions?

A.—No.

By the Court:—

Q.—What do you mean by the auditor?



*A. W. ROBERTSON (for Defendant at Enq.) Exam. in chief.*

By Mr. Beaulieu:—

Q.—You said it was put there by the auditor. What do you mean by the auditor?

10 A.—Either the auditor, or the Secretary, Mr. Malone, at the meeting of the transfer.

Q.—You remember that on the 22nd of June 1927 there were meetings of the two Companies?

A.—Yes.

Q.—A meeting of the Amiesite Asphalt Company and Quinlan, Robertson & Janin Limited held on the 22nd of June?

A.—Yes.

20 Q.—And according to the minutes which are already filed, it was during these meetings of the 22nd of June 1927 that the transfers by Mr. Hugh Quinlan were approved?

A.—Yes.

Q.—And it would be according to you, to the best of your recollection, the Secretary or the auditor of these two Companies who put the dates, being the same date as the date of the minutes?

A.—Yes.

Q.—The minutes whereby the transfers were approved?

A.—Yes.

30 Q.—Do you recognize the signature of Mr. Hugh Quinlan on the back of these four certificates?

A.—Yes.

Q.—Now Mr. Robertson, you have already stated that you paid a visit to Mr. Quinlan prior to the endorsements of these certificates, in May 1927.

A.—Yes.

Q.—After a trip you made abroad?

A.—Yes.

Q.—You remember that?

40 A.—Yes.

Q.—You were then prevented from stating what took place during that conference. Will you now state to the Court what took place during the conversation between yourself and Mr. Hugh Quinlan in May 1927 after your return from abroad?

A.—When I came back, he told me he had definitely decided to get out of those Companies and he wanted me to take over the stock.

Q.—Was there anything else to your recollection?

A.—That he would arrange with Mr. Perron as to the value of them.

A. W. ROBERTSON (*for Defendant at Enq.*) Exam. in chief.

Q.—That was all that was said at the time, so far as you can recollect?

A.—Yes.

10 Q.—Will you take communication of the letter bearing date the 23rd of May 1927 already filed as Exhibit D-R-54, and state if you remitted the four certificates which you have already examined, to Mr. Leamy at the time of that letter?

A.—Yes sir.

Q.—Besides the four certificates, P-9, P-10, P-26 and P-27 that you have already examined, there is a mention in this same letter of May 23rd of a certificate of Amiesite Asphalt Company, a certificate for 200 shares, G. H. Dunlop?

A.—Yes.

20 Q.—Will you state if this certificate, Exhibit P-11 is the certificate mentioned in that letter as being in the name of G. H. Dunlop?

A.—Yes, that is for the 200 shares.

Q.—Were you present when Mr. Leamy signed as a witness to the endorsements of Mr. Dunlop?

A.—I was.

Q.—On the 20th of June 1927 were you still in possession of these five certificates P-9, P-10, P-11, P-26 and P-27 which were then being kept by Mr. Leamy?

30 A.—Yes.

Q.—And had you been in possession through Mr. Leamy of these five certificates from the date of the 23rd of May 1927 till the date of the letter read to Mr. Quinlan, that is to say, on the 20th of June 1927?

A.—Yes.

Q.—Where were these certificates?

A.—In the vault, in the office.

Q.—The office of A. W. Robertson Limited?

A.—Yes.

40 Q.—You had your office there also?

A.—Yes.

Q.—And Mr. Leamy also had his office there?

A.—Yes.

Q.—Will you please take communication of this letter of June 20th 1927, which bears your signature and which is filed as Exhibit D-R-1, and state if you remember that letter?

A.—I do.

Q.—You have already said that this letter was read in

A. W. ROBERTSON (*for Defendant at Enq.*) *Cross-examination.*

your presence by Mr. Leamy to the late Mr. Hugh Quinlan on the date it bears, 20th of June 1927?

A.—Yes.

10 Q.—Will you state to the Court what answer, if any, Mr. Hugh Quinlan gave after the letter was read to him?

A.—He said, “That is all right.”

Cross-examined by Mr. Henry Chauvin, K.C., of counsel for Plaintiff:—

Q.—Mr. Robertson, did you hear the evidence given by Mr. Leamy?

A.—No, I cannot hear very well.

20 Q.—You did not hear what he said?

A.—No.

Q.—When you said to Mr. Beaulieu that the signatures of these certificates, Exhibits, P-9, P-10, P-26 and P-27 were the signature of Mr. Hugh Quinlan, do you mean to say that you remember Mr. Quinlan signing?

A.—I certainly do.

Q.—You say that you remember distinctly Mr. Quinlan signing those certificates?

A.—Signing the original certificates.

30 Q.—Signing the originals?

A.—These are photostatic copies.

Q.—Signing the originals of these Exhibits I have just mentioned, Exhibit P-9, P-10, P-26 and P-27?

A.—Yes.

Q.—You do?

A.—Yes.

Q.—You positively remember him saying that?

A.—I do.

40 Q.—Why did you not say so when you were examined on discovery?

A.—Well, I don't know. I do not recall having been asked that.

Q.—You do not recall having been asked that?

A.—No.

Q.—When was it that Mr. Quinlan told you that he would arrange with Mr. Perron as to values?

A.—Some time during the month of May.

Q.—You cannot be more precise than that, can you?

A.—I don't remember the date.

*A. W. ROBERTSON (for Defendant at Enq.) Cross-examination.*

Q.—Had you the letter D-R-54 in your possession when you were examined on discovery in October 1929?

A.—I don't know.

10 Q.—D-R-54 is a letter of the 23rd of May 1927 addressed to you, and signed by Mr. Leamy?

A.—It would be in the records in the office, some place I think.

Q.—Well, it was not addressed to the office, it was addressed to you personally?

A.—I know that all my letters are kept there.

Q.—I ask you Mr. Robertson, if you had this letter D-R-54 in October 1929 when you were examined on discovery?

20 A.—Well, it was in the office. I may not have had it, but it was there.

Q.—Did you know of it at that time?

A.—I did.

Q.—You knew that that letter existed at that time? Let me put the question this way. You knew when you were examined in October 1929, that this letter of May 23rd 1927 was in existence and that you had it?

A.—I know that I recognized this letter as a letter addressed to me on that date.

30 Q.—That is not what I have asked you Mr. Robertson. I want an answer.

A.—If it were presented to me I would have recognized it.

Q.—That is not what I am asking you. I asked you first of all if you had that letter in your possession when you were examined on discovery in October 1929?

A.—If I did not it was in the records in the office.

Q.—And you knew it was there?

A.—I do not recall that. I remember this letter.

40 Q.—And you would have remembered it just as well in October 1929 as today?

A.—Likely.

Q.—Don't you remember when you were examined on discovery that you said you got these shares from Mr. Quinlan three or four days before he died?

A.—The transfer was made a few days before he died.

Q.—But you got the share certificates from him?

A.—I do not recall having said that.

Q.—You do not recall having said that?

A.—No.

A. W. ROBERTSON (for Defendant at Enq.) Cross-examination.

Q.—What time do you say it was when you went to Mr. Quinlan's house on the 2nd of June 1927?

A.—Just before noon, I think.

10 Q.—Did you go right in to Mr. Quinlan's room?

A.—Yes.

Q.—Without seeing any one?

A.—I don't remember whether I saw any one or not.

Q.—You do not remember whether you saw any one before you went into the room?

A.—No.

Q.—Your mind is a blank on that, is it?

A.—Well, I do not recall now who was there.

Q.—Did you see the nurse?

20 A.—I do not recall.

Q.—You do not recall seeing the nurse?

A.—No.

Q.—How long were you in the room altogether?

A.—Probably five or ten minutes.

Q.—Did you and Mr. Leamy go in together?

A.—We went up together, yes.

Q.—Did you go in the room together?

A.—We went in at the same time.

30 Q.—You went in the room at the same time??

A.—Yes.

Q.—Did you leave the room at the same time??

A.—No. I stayed there a little while after Mr. Leamy went out and talked to Mrs. Quinlan.

Q.—Was Mrs. Quinlan in the room?

A.—No.

Q.—But I am asking you about the time you were in Mr. Quinlan's room, the sick room, you said you and Mr. Leamy went in together?

A.—Yes.

40 Q.—I asked you if you left the room together?

A.—I said no.

Q.—The sick room?

A.—No.

Q.—And you said that you stayed and talked with Mrs. Quinlan?

A.—No, I did not.

Q.—Oh, you did not? What did you say?

A.—I said that Mr. Leamy left and I stayed there a few minutes.

*A. W. ROBERTSON (for Defendant at Enq.) Cross-examination.*

- Q.—You stayed there a few minutes where?  
A.—In Mr. Quinlan's room.  
Q.—In the sick room?  
A.—Yes.  
10 Q.—And you did not say you talked to Mrs. Quinlan?  
A.—Not in the sick room.  
Q.—Was Mr. Quinlan lying in bed?  
A.—Yes.  
Q.—Was he sitting up, propped up in his bed or lying down?  
A.—Propped up.  
Q.—You are sure that was the morning of the 20th June,  
are you?  
A.—I am.  
20 Q.—What day of the week was it?  
A.—I don't know.  
Q.—You don't know?  
A.—No.  
Q.—How do you know it was the morning of the 20th of  
June?  
A.—Because letters indicate that.  
Q.—Did you know that a duplicate of Exhibit D-R-1 had  
been sent to Mr. Perron?  
A.—I instructed Mr. Leamy to send it.  
30 Q.—You remember there was a time when you could not  
find the letter D-R-1?  
A.—I think there was. There was a question about it, but  
I do not remember the details.  
Q.—Well, you remember that you were asked by Mr. Per-  
ron to find it. Do you remember that?  
A.—Well, I don't know that he asked me to find it. He may  
have asked Mr. Leamy.  
Q.—He did not send you a memorandum asking you to find  
the letter?  
40 A.—He may have.  
Q.—You do not remember that?  
A.—No.  
Q.—But you do not remember that you could not find it,  
that is, you could not find D-R-1?  
A.—When you refer to me, do you mean personally?  
Q.—Yes, I mean you.  
A.—I do not keep any of the records, and never have.  
Q.—But you were asked for the letter by the Capital Trust?  
A.—Yes.

A. W. ROBERTSON (for Defendant at Enq.) Cross-examination.

Q.—They wrote to you and asked you for the letter?

A.—Yes.

10 Q.—And you wrote back and said you could not find it? Do you remember that?

A.—I remember something about it. Of course, I am hazy on it. Now, that is a long while ago.

Q.—What makes you say that you were present when Mr. Dunlop signed Exhibit P-11?

A.—Because I was there.

Q.—You remember that?

A.—I do.

Q.—That is quite a while ago too, is it not?

A.—Yes.

20 Q.—You remember that you were present when Dunlop signed Exhibit P-11?

A.—Yes.

Q.—When he signed the certificates of which P-11 is a photostat?

A.—Yes.

Q.—Do you ever remember saying that you did not know whether Dunlop had signed this or not?

A.—No, I do not recall that.

Q.—You do not recall that?

30 A.—No.

Q.—Were you present when the letters D-R-1 and D-R-2 were typed?

A.—I was in the office.

Q.—Can you say whether the number of shares were written in that letter when it was first typed?

A.—I did not type the letter.

Q.—I did not say you did, but you said you were present when it was typed?

A.—I was in the office most of the time.

40 Q.—Do you know whether the shares were typed in when the letter was first typed?

A.—I know those are the number of shares.

Q.—I did not ask you that either. I wish you would answer the question that was put to you?

A.—How would I, if I did not type the letter, know when they were put in, except I know they were in when I signed it.

Q.—You know there were in when you signed them?

A.—Yes.

*A. W. ROBERTSON (for Defendant at Enq.) Cross-examination.*

Q.—You never saw the letter with the blank where the names of the shares and the numbers of shares are now mentioned?

A.—No.

10 Q.—You never saw the letter with that blank?

A.—No.

Q.—Are you sure of that?

A.—I am sure of it.

Q.—You are positive you never saw the letter only with the blank where the shares are now mentioned?

A.—I never recall having seen it any other way than that.

Q.—That it is at the present time?

A.—Yes.

20 Q.—Did you sign both the original and the carbon copy at the same sitting?

A.—I would not think so.

Q.—We do not want to know what you think. We want to know what you did?

A.—I am quite confident I did not.

Q.—When did you sign the original?

A.—At that moment.

Q.—As soon as it was typed?

A.—When it was presented to me.

Q.—And when did you sign the duplicate?

30 A.—When it was presented to me immediately after.

Q.—Then, you did sign them both at the same sitting?

A.—During the same few minutes.

Q.—Of course, you could not sign them both at the same moment. I did not ask you that. I asked you if you signed both at the same sitting and you say you did?

A.—I did at the same time. It might not have been in that sitting though.

And further deponent saith not.

40

E. W. Bush,  
Official Court Reporter.

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A. JANIN (for Defendant at Enq.) Examination in chief.

DEPOSITION OF ALBAN JANIN

A witness produced on behalf of the Defendant Robertson.

10 On this second day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: Alban Janin, of the City of Outremont, Contractor, aged 58 years, a witness produced on behalf of the Defendant Robertson, who being duly sworn doth depose and say as follows:—

Examined by Mr. L. E. Beaulieu, K.C., of counsel for Defendant Robertson:—

20 Q.—Mr. Janin, you have already been examined as a witness in the present cause?

A.—Yes.

Q.—That was several years ago?

A.—Yes.

30 Q.—During your evidence you were asked if you had met the late Hugh Quinlan during the month of May 1927, some weeks before his death? I am not referring to pages 725 and 726 of the evidence, and you were further asked if there was any mention of the late Hugh Quinlan's intention to sell his shares. At that time objection was made to the evidence. The objection was maintained. Will you please state to the Court what took place during that interview you had with the late Hugh Quinlan in May 1927?

A.—I had occasion to visit Mr. Quinlan who had been ill for some time, and in the general conversation I reported to him what we were doing, what was going on, and in the course of that conversation Mr. Quinlan said, "Janin, cannot you arrange to pay me up. You can see I cannot be active any more, and I would like to retire," or something to that effect.

40 Q.—"To pay me out"?

A.—To buy his shares with Mr. Robertson, so that he could retire.

Q.—What shares was he referring to at the time?

A.—I do not remember if he mentioned specifically, but I understood it meant everything that he was in with us.

Q.—"With us" meaning Mr. Robertson and yourself?

A.—Yes.

Q.—Did you have any other conversation about the same matter? ?

A.—No, not with him.

A. JANIN (for Defendant at Enq.) Cross-examination.

Q.—Of course, you had further conversations with Mr. Robertson, but it is already mentioned in the evidence, and we do not want to repeat it. Now, Mr. Janin, you no doubt are aware of the tenor, or contents, of Exhibit D-R-1 which reads more particularly as follows:—

Mr. Robertson is writing to Hugh Quinlan and he says in that Exhibit D-R-1:—"I have agreed to obtain for you the sum of \$250,000.00 for the above mentioned securities." Is it to your own knowledge that Mr. Robertson and yourself actually tried to find a purchaser who would pay the \$250,000.00?

A.—Oh yes, Mr. Robertson and I discussed that several times. We even interviewed people we knew whom we thought might be interested in coming with us and several names were mentioned between ourselves, but it did not go any further, because we did not come to the point where we could make a proposition to any of the gentlemen we had in mind, realizing that it was pretty difficult to sell a minority share to somebody who was not in the business which we were in.

Q.—Now, a last question I want to put to you is this: I understand that on the 22nd of June 1927 you were the secretary of Quinlan, Robertson & Janin Limited. Will you please take communication of a photostat copy of a meeting of Quinlan, Robertson & Janin Limited held on the 22nd day of June 1927, and state if this is a correct photostat copy of the minutes of that meeting?

A.—It is a correct copy.

Q.—Will you file it as Exhibit D-R-55?

A.—Yes.

Q.—Will you file the minutes of the meeting of the Amiesite Asphalt Limited held on the 22nd of June 1927 as Exhibit D-R-56?

A.—Yes.

Q.—Will you also file the minutes of a meeting of the Ontario Amiesite Company held on the 16th of November 1927, as Exhibit D-R-57?

A.—Yes.

Cross-examined by Mr. Chauvin, K.C., of counsel for Plaintiff:—

Q.—Mr. Janin, you were the secretary of the meeting that is recorded in the minutes of the 22nd of June 1927, Exhibit D-R-55?

A.—Yes sir.

*A. JANIN (for Defendant at Enq.) Re-examination.*

Q.—These minutes record that the notice of the meeting was duly read and approved. Was that notice sent to the directors?

A.—I would think so.

10 Q.—That is a copy of the notice that was actually sent to the directors for the meeting?

A.—Yes. The notification must have been sent. I do not recall exactly.

Q.—The minutes also record Mr. Hugh Quinlan' submitted to the meeting his resignation as vice-president and director of the Company which was duly accepted. How was that resignation submitted?

A.—By Mr. Robertson.

Q.—Verbally?

20 A.—Verbally.

Q.—You stated that you had discussed with Mr. Robertson a possible buyer of the shares of Quinlan, Robertson & Janin Limited, and the Amiesite Asphalt that belonged to Mr. Quinlan. Do you remember if that was after Mr. Quinlan's death?

A.—It was after his death.

Q.—Did you at any time suggest to Mr. Robertson a purchaser??

A.—Yes, I did.

Q.—That is, you did not suggest any one?

30 A.—I did not suggest the one who would purchase. I suggested names.

Q.—Of possible prospects?

A.—Yes.

Q.—But you did not suggest any one who would purchase?

A.—No, because we never approached anybody.

Q.—You just talked the mater over yourselves?

A.—Yes. We thought it would be desirable to have somebody with us, not to remain, the two of us alone.

40 Q.—But you never actually approached any one in connection with the purchase of the shares?

A.—No.

Re-examined by Mr. Beaulieu, K.C., of counsel for Defendant Robertson:—

Q.—When you discussed with Mr. Robertson the possibility of having a third party with you, what was the answer of Mr. Robertson? What was his view about it?

*A. JANIN (for Defendant at Enq.) Re-examination.*

A.—I do not remember who suggested the thing first, whether it was he or I. We were both of the same mind on that.

10 Mr. Beaulieu:—I produce, my Lord, as Exhibit D-R-58 Deed of Deposit in the record of Roger Biron, Notary.

I also produce Deed of Judicial Authorization to Mr. John Henry Dunlop, as Exhibit D-R-59 being a party to the agreement of the 2nd February 1934.

I also produce Judicial Authorization of the same date on behalf of Mr. Ernest Ledoux as Exhibit D-R-60.

20 I also produce as Exhibit D-R-61 certified extract of the Resolution of the General Trusts of Canada, authorizing the agreement.

I also produce as Exhibit D-R-62 Resolution of the Capital Trust Corporation Limited authorizing the same settlement.

I also produce as Exhibit D-R-63 final acquittance and discharge by Mr. Jacques Desaulniers, being for the amount which was agreed to be paid to them for their costs.

30 I also produce as Exhibit D-R-64 final agreement by the Estate of Hugh Quinlan for the amount of \$50,000.00 which was payable to the Estate itself under the same agreement.

In order to complete that, I would ask my learned friends if they will admit that Mr. Edouard Masson, whose name does not appear in these various documents actually received the sum of \$10,000.00, which he agreed to accept in full settlement, but the receipt from Mr. Masson we have not got.

40 Mr. Chauvin:—We will agree to that.

And further deponent saith not.

E. W. Bush,  
Official Court Reporter.

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*J. McARTHUR (for Plaintiff on Rebuttal  
on the Principal Action) Examination in chief.*

**Plaintiff's Evidence in Rebuttal on the Principal Action**

10

DEPOSITION OF JEAN McARTHUR

A witness produced on behalf of the Plaintiff in Rebuttal on the principal action.

On this second day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared :Jean McArthur, of the city of Westmount, Nurse, aged 52 years, a witness produced on behalf of the Plaintiff in Rebuttal on the principal Action, who being duly sworn doth depose and say as follows:—

Examined by Mr. Henry Chauvin, K.C., of counsel for Plaintiff:—

Q.—Miss McArthur, did you nurse the late Hugh Quinlan who estate is interested in this case?

A.—Yes.

Q.—Were you his nurse all during his entire sickness?

30

A.—Yes, I was.

Q.—I understand that was from December 1926 to the date of his death, June 26th, 1927?

A.—Thirteen months to be exact?

Q.—You were thirteen months?

A.—Yes, till the 26th of June, the following year, 1927.

Q.—In the month of June 1927, that is the month, in which Mr. Quinlan died, were you on day or night duty?

A.—I was on day duty.

Q.—And that would be from what hour to what hour?

40

A.—From eight to eight.

Q.—From eight in the morning to eight in the evening?

A.—Yes.

Q.—Do you know, and did you know at that time Mr. A. W. Robertson and Mr. L. N. Leamy?

A.—Yes, I did.

Q.—Both of whom were examined as witnesses here this morning?

A.—Yes.

Q.—I understand that the 26th of June 1927 was a Sunday?

A.—Yes.

*J. McARTHUR (for Plaintiff on Rebuttal  
on the Principal Action) Examination in chief.*

Q.—Mr. Quinlan died on the Sunday?

A.—Yes.

10 Q.—During the week before Mr. Quinlan's death, that is, from the Sunday morning, on the 19th, previous to his death and the balance of the week up to the day on which he died did Mr. A. W. Robertson and Mr. L. N. Leamy see Mr. Quinlan at any time during the day?

Mr. Beaulieu:—I object to this question as having been decided by the Supreme Court which held that it was *res judicata*.

The Court reserves the objection.

20 A.—To my knowledge they did not. Mr. Leamy did.

By Mr. Chauvin:—

Q.—When?

A.—On Monday.

Q.—That would be Monday the 20th?

A.—Yes.

Q.—Just tell his Lordship what happened?

30 A.—We were under instructions not to allow any one to see Mr. Quinlan. He was very very seriously ill, and I left the room long enough to go to the end of the hall and back. When I came back Mr. Leamy was in the room standing at the foot of Mr. Quinlan's bed, and I asked him if he did not understand that the instructions were that he was not to go into the room that morning. He did not answer me. As far as I remember he looked at me, and I still waited for him to leave and then he did leave.

Q.—What was Mr. Quinlan's position in bed? Was he lying down?

A.—He had a hospital bed which we kept up.

40 Q.—The head was raised up?

A.—From time to time we adjusted it, sometimes lower and sometimes higher.

Q.—When you came back and saw Mr. Leamy in the room, was Mr. Quinlan aware of Mr. Leamy's presence?

A.—I do not think so.

Mr. Beaulieu:—I object to this evidence for the same reason.

The Court reserves the objection.

*J. McARTHUR (for Plaintiff on Rebuttal  
on the Principal Action) Cross-examination.*

By Mr. Chauvin:—

Q.—Why do you say you do not think so?

10 A.—That morning he was not in a condition to talk to any one unless he was talked very directly to and then, I think all he would be able to do was to answer.

Q.—Were his eyes open when you went in the room?

A.—They might have been.

Q.—When you went in the room and found Mr. Leamy there?

A.—I could not remember then.

Q.—How long were you out of the room at that time?

20 A.—I should say not more than a minute and a half or two minutes, may be not that long.

Q.—Where did you go?

A.—I turned down to the bathroom at the head of the hall and back, just long enough to empty something and then go back again.

Q.—Mr. Robertson has stated in his evidence at the trial that he saw Mr. Quinlan on Wednesday or Thursday before he died. Did he see him during the day time?

30 A.—No, he did not. He could not have without my knowledge, because I was there all the time. He might have from the door.

Q.—That is, he might have looked in the door?

A.—Yes he might have done that.

Q.—But he did not go in the room?

A.—No.

Cross-examined by Mr. L. E. Beaulieu, K.C., of counsel for Defendant Robertson:—

40 Q.—You were heard as a witness on the 2nd of December 1930, were you not?

A.—Yes.

Q.—Probably you do not remember the date. It was some years ago?

A.—Yes, it was.

Q.—I presume at that time what you said was true?

A.—Yes, I would say it was.

Q.—And you do not intend now to correct your evidence?

A.—I certainly do not.

*J. McARTHUR (for Plaintiff on Rebuttal  
on the Principal Action) Cross-examination.*

Q.—Do you remember that you stated that during the month of June Mr. Robertson saw Mr. Hugh Quinlan very often?

A.—During the month of June I think very likely, yes.

10 Q.—“Q.—Did Mr. Leamy visit Mr. Quinlan during the month of June?

A.—I think Mr. Leamy did. He came quite often. That is true.”

A.—Yes.

Q.—You were also asked if you knew Mr. Leamy and you were asked, “Did he also visit Mr. Quinlan,” and you said, “Quite often”?

A.—More often.

20 Q.—Can you give us the dates of the various visits made by Mr. Robertson or Mr. Leamy during the month of June?

A.—No, I could not.

Q.—You remember they were very frequent?

A.—Mr. Leamy came, I should say almost every day.

Q.—And Mr. Robertson came almost every day?

A.—Quite frequently, yes.

Q.—You stated a moment ago that you had to leave the room of Mr. Hugh Quinlan on the 20th of June for a few minutes?

A.—Yes.

30 Q.—To go into the bathroom?

A.—Yes.

Q.—Did you take any note of that particular date when you left Mr. Hugh Quinlan’s room to go to the bathroom?

A.—The date?

Q.—Yes. Did you take a note of it somewhere? Did you write down a note, in order to remember that today? That is many years ago?

A.—It is a long time ago. What did my evidence say the last time? As far as I can remember now, it is a long time ago.

40 Q.—I am sure it is a very long time ago.

A.—It is a long time ago.

Q.—And not many people could answer?

A.—I distinctly remember, because I was annoyed when orders are disobeyed.

Q.—You remember that day that you were annoyed?

A.—Yes.

Q.—You were annoyed to see Mr. Leamy there?

A.—To see anybody there that was not allowed.

Q.—If you left Mr. Hugh Quinlan’s room once to go to the



*J. McARTHUR (for Plaintiff on Rebuttal  
on the Principal Action) Cross-examination.*

bathroom downstairs, is it not possible that you left the room more than once?

A.—To go downstairs?

10 Q.—Yes.

A.—I did not go downstairs. I just went to the end of the hall.

Q.—I am mistaken. You went to the end of the hall?

A.—Yes.

Q.—Well, I suppose you did not leave Mr. Quinlan's room only once to go to the end of the hall?

A.—If I had to leave Mr. Quinlan during that last week any longer, then I had to have some one come, the second nurse.

20 Q.—You are not in a position to say you did not leave Mr. Hugh Quinlan's room during the last week of June while he was alive — during the last week of his life?

A.—When it became necessary we had to have a second nurse or some member of the family. Some one would relieve me if it was necessary, because he certainly wanted to get out of bed and we were a little afraid of that. The bed was high, and we could not leave him.

30 Q.—But when you went to the end of the hall you did not think it was necessary to have some member of the family to replace you?

A.—Not for that length of time. I knew I was only going and coming back. Mr. Quinlan was resting quietly at the time. That I remember quite well.

Q.—Can you state if that was the only instance when you had to leave the room to go the end of the hall?

A.—That would be a big statement.

And further deponent saith not.

40

E. W. Bush,  
Official Court Reporter.

V. L. KERR (for Plaintiff in Rebuttal  
on the Principal Action) Examination in chief.

DEPOSITION OF VERNIE LOUISE KERR

10 A witness produced on behalf of the Plaintiff in Rebuttal  
in the principal Action.

On this second day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: Vernie Louise Kerr, of the city of Montreal, Registered Nurse, aged 49 years, a witness produced on behalf of the Plaintiff in Rebuttal in the principal Action, who being duly sworn doth depose and say as follows:—

20 Examined by Mr. Henry Chauvin, K.C., of counsel for  
Plaintiff:—

Q.—Miss Kerr, did you assist in nursing the late Hugh  
Quinlan?

A.—Yes I did, for six months.

Q.—Were you on duty during the month of June 1927, the  
month in which Mr. Quinlan died?

A.—Yes, I was. I was on night duty in the month of June.

Q.—What were your hours?

30 A.—From eight at night until eight in the morning.

Q.—During the last week of Mr. Quinlan's life, the week  
beginning Sunday the 19th, did Mr. A. W. Robertson interview  
Mr. Quinlan at any time while you were on duty?

A.—Not to my knowledge, not while I was on duty. He  
may have been in the house; I don't know, but he was not in the  
room. He used to come and see Mr. Quinlan; I did not see him in  
the room during the last week.

Q.—Were you continuously with Mr. Quinlan when you  
were on duty?

40 A.—Yes, I was. I would never leave him for any length of  
time.

Q.—Was he allowed to see visitors during the last week of  
his illness?

A.—No, he was not, just his own family.

Q.—What do you mean by just his own family?

A.—Mrs. Quinlan at all times and the sons and daughters  
would come in and always speak to him, but they would not re-  
main. They never stayed.

*V. L. KERR (for Plaintiff in Rebuttal  
on the Principal Action) Cross-examination.*  
*J. J. LOMAX (for Plaintiff in Rebuttal  
on the Principal Action) Examination in chief.*

Cross-examined by Mr. Beaulieu, of counsel for Defendant  
Robertson:—

10

Q.—Did you happen to see Mr. Robertson or Mr. Leamy during the month of June, in the beginning of the month of June?

A.—I do not remember seeing Mr. Leamy at all during June, but I think Mr. Robertson — I could not say, because Mr. Quinlan in the early part of that month was feeling a little better, just towards the middle.

A.—And you saw Mr. Robertson at the time?

A.—I could not say. I would just say he used to come in but not very often at night.

20

And further deponent saith not.

E. W. Bush,  
Official Court Reporter.

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DEPOSITION OF JOHN J. LOMAX

30

A witness produced on behalf of the Plaintiff in Rebuttal in the principal action.

On this second day of November in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: John J. Lomax, of the city of Montreal, Examiner of questioned documents, aged 72 years, a witness produced on behalf of the Plaintiff in Rebuttal on the principal action, who being duly sworn doth depose and say as follows:—

40

Examined by Mr. Chauvin, K.C. of counsel for Plaintiff:—

Q.—You said your occupation was Examiner of questioned documents?

A.—Yes.

Q.—How long have you been engaged in that, Mr. Lomax?

A.—About thirty-five years.

Q.—Did you examine the original and duplicate of letters dated June 20th 1927 which were produced here in this case respectively as Exhibits D-R-1 and D-R-2?

A.—Yes.

*J. J. LOMAX ( for Plaintiff in Rebuttal  
on the Principal Action ) Examination in chief.*

Q.—Is D-R-2 a carbon copy of D-R-1?

A.—No.

10 Mr. Beaulieu:—I object, my Lord, to this evidence. There is no allegation in the pleadings to that effect. If my learned friend wants to prove that there is a forgery of some kind he should have alleged it specifically. I submit there is no allegation, and secondly it is against the ruling of the Supreme Court at this stage. Insofar as the reading of these documents were made to Mr. Quinlan they are not res judicata. They are against it. My learned friend is trying to reopen the case beyond the limits fixed by the Supreme Court, and is trying to prove a fact which is not even alleged.

20 Of course, if this evidence is permitted I will have to ask for postponement in order to rebut that evidence.

His Lordship:—I must reserve the objection.

By Mr. Chauvin:—

Q.—Will you please state your reason for your answer?

30 A.—The original typed letter was written leaving blank several lines in which space later on the four lines giving particular of shares in various Companies was typed. The space where these four lines now appear was left blank in both original and carbon.

40 The carbon copy bearing number 197 was made at the same time as the original 196, leaving the blank space for the four lines mentioned. This is easily proven by a superposing of the original and carbon 196 and 197, and then too, we find the same erasure made on both 196 and 197 under the letters “rn” in “return” in the fourth to last line; and the same correction made, and also another correction in the word “represented” in the first line of the second paragraph where the small letter “e” appears under the letter “t” in the word “represented”, and then, “ed” has been crossed off.

After this typing was done the original and a carbon were taken from the machine and later on the four lines as to the shares were added, but in this case 196 and 197 were put in the machine separately, and both are original typing, and this is fur-

*J. J. LOMAX ( for Plaintiff in Rebuttal  
on the Principal Action) Cross-examination.*

ther proven by the fact that the two copies 196 and 197, do not agree, there being differences on the first, second, third and fourth lines between the two documents, both in spelling and in spacing; and in 197 the perpendicular alignment of these four  
10 lines does not correspond with the other portions of the letter.

In 196 there is also an erasure under the letters "ar" in "shares" where the letter "h" appears under letter "a" and "e" under "a" and this does not appear in 197. There is no comma after "shares" in 196 such as appears in 197 and this makes this line in 197 one letter longer than on 196.

In 196 there is a ditto sign under the word "Shares" for  
20 the 50 Amiesite Asphalt Limited shares, while in 197 the word "shares" is repeated in 196. It states "200 shares Ontario Amiesite Limited" while in 197 it states "200 shares Ontario Asphalt Limited."

In 196 the last line reads "200 shares Amiesite Asphalt Limited, H. Dunlop," while in 197 it shows "200 shares Amiesite Asphalt Limited, H. Dunlop." The letters "h" and the "p" being reversed. The alignment of the added four lines is different in each of the two documents 196 and 197.

30 Cross-examined by Mr. Beaulieu, K.C., of counsel for Defendant Robertson.

Q.—I understand all you have said appears from the comparison of the two documents?

A.—Yes.

Q.—Does it happen sometimes to your knowledge that after a carbon copy is made, one of the two copies only is corrected instead of the two?

40 A.—If the carbon copy is made at the same time as the original, they are both alike.

Q.—We agree upon that, but does it not happen sometimes to your knowledge that you take the trouble of only correcting one carbon copy?

A.—This could not have been corrected because the words are not the same and they are not the same line.

Q.—That could not be corrected that way, according to you?

A.—Yes, it could be corrected.

*H. LEDOUX (pour les Dem. en contre-preuve) Examen en chef.*

Q.—But it does happen sometimes that with two carbons you correct only one and will correct the other later on. You will not do it at the same time.

10 A.—It may be done in that way.

And further deponent saith not.

E. W. Bush,  
Official Court Reporter.

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DEPOSITION DE HENRI LEDOUX

20 L'an mil neuf cent trente-huit, le deux novembre, a comparu: Henri Ledoux, agent d'assurances, demeurant au 6401 rue Christophe-Colomb, à Montréal, âgé de quarante-neuf ans, témoin entendu de la part des demandeurs, lequel, après serment prêté sur les Saints Evangiles, dépose:

Interrogé par Me Charles Holdstock, avocat des demandeurs:—

30 D.—Vous êtes le frère de monsieur Ernest Ledoux, un des défendeurs en cette cause?

R.—Oui.

D.—Vous êtes aussi subrogé-tuteur à ses enfants, en vertu d'un acte de tutelle?

R.—Non.

D.—Vous n'êtes pas subrogé-tuteur?

R.—Non.

D.—Avez-vous assisté à une assemblée de parents au bureau de MM. Campbell et Couture?

40 R.—Oui.

D.—Vous rappelez-vous de la date?

R.—Je pense que c'est le trente-et-un (31) janvier mil neuf cent trente-quatre (1934).

D.—Vers quelle heure?

R.—Entre trois et quatre heures de l'après-midi.

D.—Qui était là?

R.—Il y avait beaucoup de personnes, il y avait monsieur Quinlan, William; monsieur Eddy Quinlan; il y avait monsieur et madame Dunlop; il y avait monsieur et madame Ernest Le-

*H. LEDOUX (pour les Dem. en contre-preuve) Examen en chef.*

doux; il y avait monsieur Couture, le notaire, je pense; monsieur Morin; monsieur Couture, l'avocat; monsieur Robertson.

10 Me Beaulieu, C.R. :—

D.—A l'assemblée, monsieur Robertson était là?

R.—Oui.

D.—Vous êtes sûr de cela?

R.—A l'assemblée, quand ils ont fait un règlement?

Q.—Oui.

R.—Absolument sûr.

V.—Vous ne vous rappelez pas de grand-chose?

20 R.—Il était là quand nous sommes arrivés. Il n'était pas dans l'assemblée même. Il m'a donné même la main en entrant. Il y avait monsieur Morin, je pense.

Me Holdstock :—

D.—Monsieur Masson?

R.—Oui.

D.—Monsieur Beaulieu et monsieur Couture, avocats?

R.—Oui.

30 Me Beaulieu, C.R. :—

D.—J'étais à l'assemblée, moi?

R.—Quand je suis arrivé là, vous étiez là.

Me Holdstock :—

D.—Monsieur Désaulniers?

R.—Non. Il y avait son frère.

D.—Lequel?

40 R.—Lucien, je crois.

D.—Alors, vous dites que monsieur Robertson vous a rencontré là, il vous a donné la main?

R.—Oui.

D.—Qu'est-ce qui s'est passé à cette assemblée-là?

R.—Nous sommes tous entrés, monsieur le notaire Couture a commencé à lire un document. Quand il eût fini de lire, monsieur Robertson et monsieur Beaulieu sont partis. Monsieur Masson est sorti.

*H. LEDOUX (pour les Dem. en contre-preuve) Examen en chef.*

D.—A-t-on commencé?

R.—Oui. Après cela, nous avons commencé à délibérer en famille. Monsieur Morin est resté là. Monsieur Masson est resté là aussi avec le notaire Couture.

10 D.—Et-ce que le notaire a commencé à lire quelque chose?

R.—Non. Les enfants ont commencé à discuter, ils ont...

D.—A-t-on expliqué le but de l'assemblée?

R.—Oui. Le but était de faire signer ce document-là. C'était un arrangement. C'était une discussion avant de signer, pour voir si les héritiers signeraient ou non.

D.—Pouvez-vous vous rappeler un peu de la discussion entre les héritiers?

R.—Oui. Ils ont commencé à discuter...

20 Me Couture, C.R.:—Objecté à la preuve de la discussion entre les héritiers parce qu'elle ne nous intéresse pas du tout.

D.—Entre les héritiers et ceux qui assistaient, autres que les héritiers?

R.—Madame Ledoux...

30 Me Geoffrion, C.R.:—Objecté à cette question pour la raison qu'en supposant que les héritiers qui ont signé l'acte du trente-et-un (31) janvier mil neuf cent trente-quatre (1934), auraient été trompés, cela ne pourrait être invoqué par la demanderesse, Ethel Quinlan, parce qu'elle a refusé de signer et qu'apparemment elle n'a pas été trompée par les représentations ainsi faites.

L'objection est admise.

40 Me Holdstock; déclare exciper respectueusement du jugement.

D.—Est-ce que les représentants des compagnies de fiducie, la General Trust et la Capital Trust ont représenté aux héritiers qu'advenant le cas où monsieur Robertson gagnerait en Cour Suprême, que les revenus seraient diminués.

Me Geoffrion, C.R.:—Objecté à cette question pour les raisons données antérieurement et parce qu'elle est suggestive.

L'objection est admise



*E. L. PARENT (pour les Dem. en contre-preuve) Examen en chef.*

Me Holdstock; déclare exciper respectueusement du jugement.

10 Les avocats des défendeurs et mis-en-cause déclarent ne pas avoir de contre-interrogatoire à faire subir au témoin.

Et le témoin ne dit rien de plus.

Paul Cusson,  
Sténographe judiciaire.

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20 DEPOSITION DE EMMANUEL LUDGER PARENT

L'an mil neuf cent trente-huit, le deux novembre, a comparu: Emmanuel Ludger Parent, gérant-général du Capital Trust, d'Ottawa, âgé de cinquante-huit ans, témoin produit de la part des demandeurs, lequel, après serment prêté sur les Saints Evangiles, dépose:

Interrogé par Me Holdstock, avocat des demandeurs:—

30 D.—Vous êtes un des officiers du Capital Trust?

R.—Oui.

D.—Je vous ai assigné en vous demandant d'apporter avec vous les copies du protêt fait par madame Kelly à la compagnie Capital Trust; voulez-vous produire le protêt en date du seize (16) octobre mil neuf cent trente-trois (1933), comme pièce P, S, 1a et le procès-verbal comme pièce P, S, 1b?

Me Beaulieu, C.R.:—Objecté à la preuve de tout protêt autre que celui allégué.

40

R.—Oui.

D.—Je vous ai demandé d'apporter l'opinion de Me Geoffrion en date du sept (7) décembre mil neuf cent trente-trois (1933) est-ce que vous l'avez apporté?

R.—J'en ai apporté une copie mais la lettre de monsieur Geoffrion, je ne sais pas si je suis obligé de la donner sans son consentement.

Me Couture, C.R.:—J'appuie la réponse de monsieur Parent et je m'oppose à cette preuve parce qu'elle est illégale.

*E. L. PARENT (pour les Dem. en contre-preuve) Examen en chef.*

Me Beaulieu, C.R.:—Objecté à la production d'une opinion de monsieur Geoffrion, je crois que ce n'est pas un élément qui peut aider le tribunal.

10 Me Geoffrion, C.R.:—Je concours dans l'objection de Me Beaulieu.

L'objection est admise.

20 D.—Je vous montre l'original d'une lettre en date du vingt (20) décembre mil neuf cent trente-trois (1933), signée Capital Trust, General Trust, Executors Estate Quinlan, adressée à madame Kelly, et voulez-vous dire si elle a été envoyée en réponse au protêt?

Me Beaulieu, C.R.:—Objecté, la lettre elle-même, n'est aucunement pertinente et n'a rien à faire avec le dossier, elle n'est pas alléguée. Tout ce que j'ai dit pour m'objecter à la production de l'opinion de monsieur Geoffrion s'applique également à la production de cette lettre.

La preuve est prise sous réserve de l'objection.

30 R.—Oui, apparemment.

D.—Voulez-vous voir si dans la deuxième page il n'y a pas une référence à l'opinion de monsieur Geoffrion?

R.—Il y a ce paragraphe qui dit: "If you desire explanations or if you wish to see the opinion we have obtained from Messrs. Geoffrion et Prud'homme, you may call at the office of either of us. — Capital Trust, General Trust.

D.—Voulez-vous donner communication de cette opinion, maintenant?

40 Me Beaulieu, C.R.:—Objecté à cette question parce qu'elle est illégale.

L'objection est admise.

D.—Voulez-vous produire cette lettre comme pièce P,S,2?

Me Beaulieu, C.R.:—Objecté à cette question parce qu'elle est illégale.

*E. I. PARENT (pour les Dem. en contre-preuve) Examen en chef.*

La preuve est prise sous réserve de l'objection.

R.—Oui.

10 La Cour:—

D.—A ce moment-là, les deux Trusts étaient les exécuteurs-testamentaires?

R.—Oui, c'était le Trust Général et nous autres.

Me Holdstock:—

20 D.—Voulez-vous produire l'opinion que vous avez eue de monsieur Geoffrion, qui est mentionnée aux deuxième et troisième paragraphes de la pièce P,S,2?

Me Beaulieu, C.R.:—Objecté à cette question parce que ce document est étranger à la contestation.

La preuve est prise sous réserve de l'objection.

30 D.—Voulez-vous produire comme pièce P,S,3, l'opinion de monsieur Geoffrion en date du sept (7) décembre mil neuf cent trente-trois (1933)?

Me Beaulieu, C.R.:—Même objection.

La preuve est prise sous réserve de l'objection.

R.—Oui, j'en produis une copie certifiée par deux de mes employés.

40 Me Beaulieu, C.R.:—Le défendeur Robertson s'oppose, quant à lui, à la production tant du protêt qui vient d'être produit que de la réponse au protêt sous forme de lettre en date du vingt (20) décembre mil neuf cent trente-trois (1933) et de l'opinion de Me Aimé Geoffrion en date du sept (7) décembre mil neuf cent trente-trois (1933), parce que ces documents, quant à lui, sont "res inter alios acta", le défendeur Robertson n'ayant jamais connu ni le protêt, ni la réponse, ni l'opinion de monsieur Geoffrion.

La preuve est prise sous réserve de l'objection.

*C. FOURNIER (pour la Dem. en contre-preuve) Examen en chef.*

D.—Votre compagnie a signé un autre document pendant que la cause procédait en Cour Suprême, n'est-ce pas, et je vous exhibe un duplicata de ce document voulez-vous le produire comme pièce P-S-4?

10 R.—Oui.

D.—Voulez-vous produire, comme pièce P-S-5, une copie de votre factum en date du vingt-quatre (24) janvier mil neuf cent trente-quatre (1934), dans la cause en Cour Suprême dans lequel votre compagnie déclare s'en remettre à justice?

Me Beaulieu, C.R.:—Objecté à cette preuve parce qu'elle est étrangère à la contestation.

20 La preuve est prise sous réserve de l'objection.

Et le témoin ne dit rien de plus pour le moment.

Paul Cusson,  
Sténographe judiciaire.

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#### DEPOSITION DE CHARLES FOURNIER

30 Le trois novembre mil neuf cent trente-huit, a comparu: Charles Fournier, assistant-secrétaire du Sun Trust, âgé de trente-six ans, domicilié au No 3751, rue Kent, à Montréal, témoin entendu de la part de la demanderesse, en contre-preuve, lequel, après serment prêté sur les saints Evangiles, dépose et dit:

Interrogé par Me Charles Holdstock, avocat de la demanderesse:—

40 D.—Monsieur Fournier, je comprends que votre compagnie est dépositaire d'une lettre adressée à votre compagnie le 14 septembre 1928, signée par William P. McDonald Construction Company, par John I. McDonald, Vice-Président et ayant trait aux compagnies Amiesite Asphalt et Macurban Asphalt?

Me L. E. Beaulieu, C.R., avocat du défendeur A. W. Robertson:—Je m'oppose à cette preuve parce qu'elle tend à contredire la décision que Votre Seigneurie avez rendue hier sur l'admissibilité de la preuve des fausses représentations comme ayant

*E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.*

entaché le consentement des parties ou des héritiers qui ont signé la convention.

10 Mêmes objections de la part de Me Aimé Geoffrion, C.R.,  
Conseil pour la Capital Trust Corporation Limited.

L'objection est réservée par le Président du Tribunal.

R.—Oui, monsieur.

Me Holdstock:—

D.—Voulez-vous la produire comme pièce P-S-6?

20 Le témoin:—Avec la permission de la Cour, est-ce que je  
pourrais déposer une copie certifiée?

L'avocat:—Certainement.

(Le témoin produit comme pièce P-S-6, une copie certifiée de la lettre en question).

Et le témoin ne dit rien de plus.

30

Henri Mackay,  
Sténographe.

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#### DEPOSITION DE EMMANUEL LUDGER PARENT

Le trois novembre mil neuf cent trente-huit, a comparu:  
Emmanuel Ludger Parent, gérant général, âgé de cinquante-  
40 huit ans, domicilié au No 271 rue Bronson, à Ottawa, témoin en-  
tendu de la part de la demanderesse, en contre-preuve, pour con-  
tinuer son témoignage; lequel, sous le serment qu'il a déjà prêté,  
dépose et dit:

Interrogé par Me Charles Holdstock, avocat de la deman-  
deresse:—

D.—Je crois que nous étions à discuter votre réponse à  
Madame Kelly, pièce P-S-2. Je constate que, dans le protêt, il y  
avait demande aux exécuteurs-testamentaires de demander un

*E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.*

compte à M. Robertson, lors de sa démission comme exécuteur-testamentaire. Il y avait cette demande-là, dans le protêt ?

10 Me Guy-C. Papineau-Couture, C.R., avocat de Capital Trust Corporation Limited:—Le protêt parle par lui-même.

Le témoin:—Je ne me rappelle pas. Il faudrait que je voie le protêt.

Me Holdstock:—

D.—Qu'avez-vous fait en rapport avec cette demande-là ?

20 Me Beaulieu:—Je m'oppose à cette question. Il n'y a aucune allégation disant qu'on aurait dû demander une reddition de comptes à M. Robertson et qu'on ne lui en a pas demandé.

Me Holdstock:—

D.—Vous avez dit dans votre lettre que vous avez fait enquête sur tous les faits et circonstances en rapport avec cette demande-là et que vous avez jugé bon de ne pas agir dans ce cas-là ?

R.—Autant que possible, on a fait enquête.

30 D.—Quelle enquête avez-vous faite ?

Le témoin:—Sur quel point ?

L'avocat:—Sur le point de savoir si vous deviez demander un compte à M. Robertson au sujet de son administration pendant qu'il était co-exécuteur avec vous.

40 Me Beaulieu:—Je m'oppose à cette preuve comme illégale. Ceci n'est ni dans le plaidoyer supplémentaire, ni dans les décisions du tribunal.

Me Couture:—Objecté à cette preuve de la part des exécuteurs-testamentaires pour les mêmes raisons que celles données par M. Beaulieu et pour la raison additionnelle que cela n'entre pas dans le cadre des allégations de la réponse supplémentaire.

Me Holdstock:—

D.—Alors, monsieur Parent, je vous demanderais de nous

*E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.*

dire, si, avant que le règlement du 31 janvier 1934 soit signé, vous avez eu de M. Robertson un compte de son administration?

R.—Non.

D.—Comme exécuteur-testamentaire?

10 R.—C'est la compagnie qui tenait les livres, ce n'est pas M. Robertson.

Me Beaulieu, C.R. :—

D.—Quelle compagnie? Capital Trust?

R.—Capital Trust.

D.—M. Robertson ne pouvait pas rendre compte, c'est vous qui aviez les livres?

20 R.—C'est nous qui avons les livres. C'est dans le testament, d'ailleurs, que c'est le Capital Trust qui fait la comptabilité.

Le Juge:—

D.—Suivant vous, vous n'aviez pas de comptes à lui demander?

R.—Nous n'avions pas de comptes à lui demander.

D.—C'est vous qui teniez les comptes?

R.—C'est nous qui tenions les comptes.

30

Me Holdstock:—

D.—Le 9ième item dans le protêt avait trait à des valeurs de la machinerie de Quinlan, Robertson & Janin, qui a été mentionnée dans une lettre, et cette machinerie-là appartenait à la A. W. Robertson Limited, et on vous a demandé de faire enquête sur la valeur de cette machinerie-là: Avez-vous fait une enquête sur cela?

40 Me Couture:—Même objection. Il n'y a absolument rien d'allégué dans la réponse en ce qui concerne les exécuteurs, quant à la valeur de la machinerie ou de quoi que ce soit.

Me Beaulieu:—Le défendeur Robertson se joint à cette objection.

L'objection est maintenue par le Président du tribunal.

*E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.*

Me Holdstock:—

D.—Avant de signer le règlement du 31 janvier 1934, avez-vous fait une enquête sur la valeur de la machinerie que la compagnie Quinlan Robertson & Janin, avait prise de la compagnie  
10 A. W. Robertson, Limited?

Me Beaulieu:—Objecté à cette preuve comme ne relevant pas de la contestation.

Me Couture:—J'appuie cette objection.

L'objection est réservée par le Président du tribunal.

20 Me Holdstock:—

D.—Dans le règlement du 31 janvier 1934, qui est produit, il y a une clause, no 5, dans laquelle toutes les parties donnent quittance à M. Robertson de toutes les réclamations, — “all and every right, claim and action, etc.,” — tel que reproduit dans le paragraphe 5. Quand vous avez signé ce règlement, est-ce que vous saviez qu'il existait une réclamation qui concernait la valeur de certaine machinerie, appartenant à la Quinlan, Robertson & Janin, qui était empruntée par A. W. Robertson Limited?  
30

Me Couture:—Objecté à cette preuve pour les raisons déjà données, parce que cela ne relève pas de la contestation.

L'objection est réservée par le Président du tribunal.

Le Juge:—

D.—On vous demande si vous saviez qu'il y avait une réclamation bien fondée?  
40

Me Holdstock:—

D.—Dans ce paragraphe 5, les parties de première part, de deuxième part, de troisième part et de quatrième part se donnent libération mutuelle “to all and every right . . .” (L'avocat donne lecture du paragraphe 5).

Cette clause, cette libération se trouve dans le règlement du 31 janvier 1934, que vous avez signé?

R.—Oui.



*E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.*

D.—Saviez-vous, alors, quand vous avez signé cette quittance, que cette créance existait?

10 Le témoin:—Quelle créance? Pour la machinerie?

L'avocat:—Oui, sur la machinerie.

Même objection de la part de Me Beaulieu.

20 R.—A ma connaissance, cela avait été réglée entre les deux compagnies. J'ai pris le trouble de me rendre moi-même au bureau de M. Robertson. M. Leamy m'a montré les livres et les chèques qui avaient été échangées d'une compagnie à l'autre, qui avaient été payés.

D.—La compagnie A. W. Robertson a été payée par Quinlan, Robertson & Janin?

R.—Je ne me rappelle pas quelle compagnie, mais une compagnie avait payé l'autre.

Me Beaulieu, C.R.:—

D.—Et il n'y avait pas de réclamation?

30 R.—Il n'y avait pas de réclamation, à ma connaissance.

Me Holdstock:—

D.—Savez-vous quel montant avait été payé?

Même objection de la part de Me Couture, de Me Geof-  
frion et de Me Beaulieu.

La question est permise par le Président du tribunal.

40 Le Juge:—

D.—Le savez-vous, monsieur?

R.—Je ne me rappelle pas au juste. Je pense que c'est \$4,000.00, autour de \$4,000.00. Je ne me rappelle pas au juste.

Me Holdstock:—

D.—Avez-vous fait enquête pour savoir si la somme de \$4,000.00 représentait la véritable valeur de cette machinerie?

*E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.*

Même objection de la part de Me Beaulieu et de Me Couture.

10 La question est permise par le Président du tribunal.

R.—Non, je n'ai pas fait enquête.

Le Juge:—

D.—Vous avez accepté les chiffres que vous avez trouvés dans les livres des différentes compagnies?

20 R.—Je connais assez la valeur des machineries, des vieilles machineries, je sais qu'on ne peut pas les donner, les trois-quarts du temps.

Me Beaulieu, C.R.:—

D.—Vous ne pouvez pas donner les vieilles machineries? Personne n'en veut, même pour rien?

R.—Personne n'en veut.

Me Holdstock:—

30 D.—C'était de la vieille machinerie, vous dites? L'avez-vous vue?

R.—Je ne l'ai pas vue, mais c'est l'idée que je me fais de cette machinerie.

D.—Sans la voir?

R.—Sans la voir. Quand c'est de la machinerie usagée.

D.—A quelle époque avez-vous reçu la somme de \$4000.00?

R.—Ce n'est pas moi qui l'ai reçue. Cela a été payé d'une compagnie à l'autre.

40 D.—A quelle époque avez-vous constaté le paiement entre les deux?

R.—Je ne me rappelle pas. Il faudrait que je verrais mes notes. Je ne me rappelle pas par coeur. Cela fait de dix à douze ans, je pense.

D.—Cela formait partie de votre comptabilité?

R.—Non. Cela, c'est un règlement entre les deux compagnies. Cela n'a pas été aux exécuteurs. Cela a été payé par une compagnie à l'autre.

D.—Vers quelle date, à peu près? Pouvez-vous le dire?

R.—Je ne peux pas me rappeler du tout. Il faudrait que je réfère à mes filières.

*E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.*

D.—Avant de signer le règlement du 31 janvier 1934, est-ce que vous étiez au courant de certaine division de machinerie entre la succession Quinlan et A. W. Robertson?

10 Me Beaulieu s'oppose à cette preuve comme ne relevant pas de la contestation.

Même objection de la part de Me Couture.

L'objection est réservée par le Président du tribunal.

Le témoin:—Quelle machinerie?

20 L'avocat:—Le "dredging plant" et des lots, et autres choses.

R.—Oui, j'étais au courant de cela.

D.—De quelle façon avez-vous fait ces lots-là?

Le témoin:—Les lots?

L'avocat:—Oui?

30 R.—Il y avait quatre item, si je me rappelle bien, — quatre ou cinq item, — dans la compagnie A. W. Robertson Limited, en Liquidation. C'était difficile de vendre.

Me Couture:—Est-ce qu'on va entrer dans les affaires de la compagnie A. W. Robertson Limited en Liquidation?

Me Beaulieu s'oppose à cette preuve comme illégale.

L'objection est réservée par le Président du tribunal.

40

Le Témoin:—Quand cette division-là a été faite, M. Robertson m'a fait venir, — je ne sais pas si c'est à son bureau. J'étais avec le Docteur Kelly, le gérant général du temps. On a fait cinq lots. La "dredge" était d'un côté. Il y avait \$12,000.00 de l'autre côté des lots à Lasalle, évalués à peu près à \$9,000 ou \$10,000. Je n'ai pas tous les faits je parle par coeur. Il y avait des lots et il y avait une "quarry" qui avait une valeur municipale de \$4600.00. M. Kelly l'avait évaluée, un temps, à \$1,000,000. Alors j'ai choisi les "quarries", en premier...

*E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.*

Me Geoffrion:—

10 D.—Vous avez choisi, vous dites? Comment cela s'est-il fait? Qui choisissait?

R.—M. Robertson m'a donné le choix, m'a permis de faire mon choix en premier. Alors, j'ai demandé quelques jours pour y penser. Je suis revenu à Ottawa et après être arrivé à une décision, on lui a donné la "dredge" et on a pris le \$12,000.00, le "quarry", et le reste, qui avait une valeur à peu près égale, \$25,000.00 chacun, dans les livres.

Me Beaulieu:—

20 D.—Et c'est vous qui avez choisi le premier?

R.—C'est moi qui ai choisi le premier.

Me Holdstock:—

D.—Dans les livres de qui?

R.—Dans les livres de la succession.

Le Juge:—

30 D.—Vous, comme représentant la succession de feu...

R.—De feu M. Quinlan.

Me Holdstock:—

D.—Qui en avait fixé la valeur? Avez-vous eu un expert pour fixer la valeur?

Le Témoin:—De la "dredge"?

40 L'avocat:—Ou de ces choses-là?

R.—Il y avait la valeur municipale pour les terrains. L'argent avait sa valeur propre. Alors, il restait seulement la "dredge" à évaluer, et cela a été fait, aussi.

D.—Par qui?

R.—Je ne me rappelle pas, là. Je n'ai pas mes filières. Je n'étais pas préparé à répondre à toutes ces questions-là. On avait reçu une offre, je puis dire. On a essayé à la vendre, cette "dredge", et on a reçu seulement une offre dans les \$12,000.00. On lui a donné une valeur de \$25,000.

*E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.*

Me Geoffrion:—

D.—C'est M. Robertson qui l'a prise?

10 R.—C'est M. Robertson qui l'a prise à \$25,000.00.

Me Holdstock:—

D.—Et vous ne vous rappelez pas quel expert vous avez consulté?

R.—Non, je ne me rappelle pas par coeur.

D.—En avez-vous consulté un?

20 R.—Oui. A part cela, je me suis basé un peu sur les offres qu'on a reçues. Elle a été annoncée et on a reçu une offre seulement, de \$10,000.00 ou de \$12,000.00, — je ne me rappelle pas.

Le Juge:—

D.—Avez-vous annoncé dans les journaux?

R.—Oui, je le pense. Je ne me rappelle pas trop par coeur, parce que cela fait déjà une dizaine d'années.

Me Holdstock:—

30 D.—Lors du règlement, il y avait aussi un item qui concernait les intérêts de la succession dans la compagnie Peter Lyall?

Même objection de la part de Me Couture et de la part de Me Beaulieu.

R.—Il y avait une question douteuse, litigieuse. On y a référé au premier procès.

40 D.—Avez-vous vérifié les montants dûs à la succession Hugh Quinlan, dans cette chose-là, avant de signer le règlement?

R.—Cela nous a été payé, on a reçu l'argent, — excepté le montant douteux.

D.—Excepté le montant douteux?

R.—Oui, douteux.

D.—Quel était ce montant?

R.—Je ne me rappelle pas.

D.—Est-ce que c'était une moitié de \$25,000.00?

R.—Non.

D.—Est-ce que c'était un tiers de \$25,000.00?

*E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.*

Me Couture:—Si vous ne vous rappelez pas, monsieur Parent...

Le Témoin:—Je ne me rappelle pas.

10

Me Holdstock:—

D.—Venant au règlement, monsieur Parent, pouvez-vous nous dire quand la succession a reçu l'argent, le \$50,000.00, mentionné dans l'acte de règlement?

R.—Non. Je n'ai pas emporté mes livres, alors, je ne sais pas.

20

Me Beaulieu:—Un acte authentique a été produit au dossier. C'est la preuve absolue.

Me Holdstock:—

D.—Il n'est pas fait mention dans l'acte si l'argent avait été payé, et, de fait, il n'était pas payé dans le temps. Je voudrais savoir quand cela a été payé?

R.—Je ne peux pas le dire, parce que je n'ai pas mes livres ici.

30

D.—Vous rappelez-vous quand vous avez reçu l'argent?

R.—Je ne m'en rappelle pas la date. Je sais qu'on l'a reçu, mais je ne me rappelle pas la date par coeur.

D.—La résolution qui est produite, vous autorisant à signer le règlement, est datée du 29 janvier. Est-ce que cela vous donne l'idée quand vous avez reçu l'argent, est-ce que c'était avant la résolution ou après?

R.—Je ne me rappelle pas.

D.—Ou entre la date de la résolution et la date où vous avez signé le règlement?

40

R.—Je ne peux pas répondre quant à la date sans avoir mes livres.

D.—Une somme de \$50,000.00 est une somme assez considérable. Pouvez-vous nous dire si vous avez le moindre souvenir sur la réception d'une somme de \$50,000.00 de M. Robertson? Est-ce que vous pouvez nous dire que c'était un mois après le règlement ou trois mois, ou quatre mois, ou quand?

R.—Je ne me rappelle pas du tout.

D.—Vous ne vous rappelez pas non plus la date à laquelle vous avez signé?

*E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.*

R.—C'est la date du document. Je pense qu'on a signé tous ensemble, le même jour.

D.—Au bureau de M. Campbell?

R.—Au bureau de M. Campbell.

10 D.—Je constate, dans le paragraphe premier, que le règlement devait se faire pour \$50,000.00, à être payés à la succession, et pour d'autres sommes qui ne sont pas mentionnées, pour frais. Saviez-vous le montant de ces frais-là quand vous avez signé le document?

Me Beaulieu s'oppose à cette preuve comme illégale parce que dans les actes authentiques qui ont été produits, tous les montants sont mentionnés en détail.

20 L'objection est réservée par le Président du tribunal.

R.—Seulement les montants qu'il y a dans l'acte. Je ne connaissais rien autre chose, seulement ce à quoi il est référé dans l'acte lui-même. S'il y a eu d'autres montants payés, je ne le sais pas.

Me Holdstock:—

30 D.—Vous parlez de l'acte du 31 janvier 1934?

R.—La quittance.

D.—Je vous montre la pièce D-R-65. Voulez-vous lire le paragraphe premier, dans lequel les sommes sont mentionnées?

(Le témoin lit le paragraphe premier de la pièce D-R-65).

R.—Je l'ai lu.

D.—Est-ce que vous saviez le chiffre global des autres sommes qui devaient être payées?

R.—Non.

D.—L'avez-vous demandé?

40 R.—Je l'ai su plus tard, je pense. M. Beaulieu a dit tout à l'heure qu'il avait été payé \$10,000.00 à M. Masson. Je ne savais pas cela.

Le Juge:—

D.—Les sommes dont il est question, ce sont les sommes que M. Robertson se serait engagé à payer comme frais de justice ou choses semblables?

R.—C'est cela.

*E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.*

D.—Vous ne saviez pas les détails, ni la somme totale?

R.—Excepté les montants mentionnés dans l'acte lui-même,

Me Holdstock:—

10

D.—Vous ne le saviez pas?

R.—Non, je ne le savais pas.

D.—Avant quelle date, dites-vous?

R.—Je viens d'apprendre, j'ai appris lors de la procédure  
actuelle le cas de M. Masson.

D.—Alors, vous ne savez pas que c'était \$44,000.00?

R.—Non.

Me Geoffrion:—

20

D.—Ce n'était pas vous qui payiez?

R.—Non.

Me Holdstock:—

D.—Je constate par le règlement produit comme pièce  
D-R-65, dans le troisième "whereas" avant le paragraphe pre-  
mier, qui n'est pas numéroté, je constate dans ce "whereas" là  
30 que c'est là où on parle ...

Le Témoin:—Page 6?

L'avocat:—Oui, les deux dernières lignes de la page 6.

(Le témoin examine la page 6 de la pièce D-R-65).

D.—Ce paragraphe, monsieur Parent, a trait à la possi-  
bilité que M. Robertson fasse remise des actions en question à la  
40 succession?

R.—Oui.

D.—Qu'avez-vous fait pour vérifier cet état de choses-là,  
pour savoir s'il était capable, oui ou non de les remettre à la suc-  
cession?

Me Beaulieu et Me Couture s'opposent à cette preuve com-  
me illégale.

L'objection est réservée par le Président du tribunal.



*E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.*

10 R.—J'ai toujours été sous l'impression qu'il pouvait les remettre s'il voulait payer le prix pour. Je n'ai pas fait d'enquête, je n'en ai pas parlé à M. Robertson, je ne lui ai jamais demandé. Il ne me l'aurait pas dit, d'ailleurs, tout probablement. Je puis en avoir parlé au Trust Général, aussi, je puis avoir discuté l'affaire avec le Trust Général avant de signer. J'ai probablement discuté l'affaire avec le Trust Général avant de signer.

D.—Vous avez assisté au procès devant l'honorable Juge Martineau ?

R.—Oui.

D.—Vous rappelez-vous de la preuve faite par M. Robertson, à l'effet qu'il avait vendu ces actions-là ?

20 Me Beaulieu s'oppose à cette question parce qu'on ne rapporte pas la preuve telle qu'elle a été faite et qu'on n'a pas le droit de demander au témoin de faire des commentaires sur la preuve.

L'objection est réservée par le Président du tribunal.

R.—Je m'en rappelle seulement vaguement. Je ne peux pas me rappeler tout ce qui a été dit. Cela a duré très longtemps, ce procès-là.

30

(Me L. E. Beaulieu, C.R., avocat du défendeur Robertson, déclare n'avoir pas de questions à poser au témoin.)

Et le témoin ne dit rien de plus.

Henri Mackay,  
Sténographe.

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*A. W. ROBERTSON (for Plaintiff in Rebuttal  
in the Principal Action) Examination in chief.*

DEPOSITION OF ANGUS WILLIAM ROBERTSON

10 A witness produced on behalf of the Plaintiff in Rebuttal  
in the principal action.

On this third day of November, in the year of Our Lord,  
one thousand nine hundred and thirty-eight, personally came and  
appeared: Angus William Robertson of the city of Montreal,  
Contractor, aged 63 years, a witness produced on behalf of the  
Plaintiff in Rebuttal in the Principal Action, who being duly  
sworn doth depose and say as follows:—

20 Examined by Mr. Chauvin, K.C., of counsel for Plaintiff:

Q.—Mr. Robertson, there was produced this morning by  
the representative of the Sun Trust Company Limited a certi-  
fied copy of a letter written by the William P. McDonald Con-  
struction Company, to the Sun Trust Company Limited on the  
14th September 1928, Exhibit P-S-6. Will you state if this let-  
ter refers to the sale of the shares of the Amiesite Asphalt Com-  
pany Limited and the McUrban Asphalt Company Limited to  
the W. P. McDonald Construction Company?

30 A.—I think that is correct?

Q.—It does?

A.—Yes.

Q.—Did you have a written agreement covering the sale of  
these shares?

A.—I think that is the agreement.

Q.—This is the Agreement, Exhibit P-6?

A.—I have not the correspondence I don't know. I think  
that is the agreement?

Q.—You think that is the Agreement?

40 A.—Yes.

Q.—You were summoned, Mr. Robertson, to bring the  
Agreement under which you sold the Amiesite and the McUrban  
shares?

A.—Well, any records I have are here or, they are in their  
office. I have none.

Q.—You know, do you not, whether there was any agree-  
ment apart from this letter of September 14th 1928?

A.—I suppose there would be an agreement, although I  
cannot recall where it is.

A. W. ROBERTSON (*for Plaintiff in Rebuttal  
in the Principal Action*) Examination in chief.

Q.—If there was an agreement, apart from this, I wish you would produce it? ?

A.—Well, I have not got it. I don't know where it is.

10 Q.—First of all, is there an agreement apart from P-S-6?

A.—Well, I do not know that now. That appears to be a complete agreement here.

Q.—Have you got your subpoena with you?

A.—No, I have not.

Q.—You were asked to bring the agreement under which you sold Quinlan estate shares in Amiesite Asphalt Company Limited?

20 A.—I thought all the agreements were in the records here. I have not got any.

Q.—You have not any?

A.—No.

Q.—Surely you must know whether there was any agreement other than this letter of September 14th 1928. You were the man who made the deal, were you not?

A.—I was just the agent.

Q.—But you actually made the deal, did you not?

A.—Well, as the agent for the shareholders.

Q.—For yourself and the other shareholders?

30 A.—Well, I was a minority shareholder, of course.

Q.—But you made the deal?

A.—I was the agent.

Q.—I did not ask you whether you were the agent. I asked you if you made the deal. Do you understand that? It is quite understandable?

A.—I do not know what you mean by, made the deal?

Q.—You conducted the negotiations, you made the trade?

A.—Oh no, I did not.

Q.—Who did then?

40 A.—Mr. Janin, more than I.

Q.—Mr. Janin more than you?

A.—Yes.

Q.—I think that is different from what you said in your first examination?

A.—Well, I do not remember.

Q.—I understood you to say in your first examination that you made the trade, and that the money was paid to you in trust for the others?

A.—That is why I say I was the agent.

*A. W. ROBERTSON (for Plaintiff in Rebuttal  
in the Principal Action) Examination in chief.*

Q.—Well, we have not yet got a definite answer, whether this letter of September 14th 1928 is the only agreement or the only written evidence of the sale? ?

10 A.—I would have to consult Mr. Janin to recall just what took place.

Q.—Well, you were asked to bring the document?

A.—I have not got it.

Mr. Beaulieu:—The witness cannot bring what he has not got, he says he has not got any.

Witness:—I have no document in connection with it.

20 By Mr. Chauvin:—

Q.—Did you ever have one?

A.—If there was one, it was in the office of Quinlan, Robertson & Janin Limited, or the Asphalt office.

Q.—And you do not know whether the document exists or not?

A.—No, I do not know where it is, if it does exist.

30 what I want to know?  
Q.—But do you know whether it exists or not. That is

A.—I have just forgotten what document passed at the time.

Q.—Who would know apart from yourself?

A.—Mr. Janin I should think.

Q.—Have you the document under which you sold your shares of Quinlan, Robertson & Janin Limited?

A.—Well, it is in the records here.

40 When you got the subpoena did you look for it?  
Q.—Where is it in the records? Did you ever produce it.

A.—I have no document in my possession.

Q.—Did you look for it?

A.—I did not look for it because I knew I did not have it.

Q.—When you sold the Quinlan, Robertson & Janin shares was there an agreement in writing??

A.—Yes, there was.

Q.—Where is the agreement?

A.—Well, I think it is here in those records.

Q.—What do you mean by here in those records?

A.—That is it.

A. W. ROBERTSON (*for Plaintiff in Rebuttal  
on the Principal Action*) *Cross-examination.*

Q.—Will you file this document as Exhibit P-S-7 being an agreement of the 12th September 1930 between A. W. Robertson and Alban Janin?

10 A.—Yes.

Q.—In regard to the sale of the Fuller Gravel shares, Mr. Robertson, have you any writing in connection with the sale of those shares that has not been produced in this case?

A.—No.

Q.—You have not?

A.—No.

20 Cross-examined by Mr. Beaulieu, K.C., of counsel for Defendant Robertson:—

Q.—You transferred the shares of Quinlan, Robertson & Janin Limited while the case was pending.

A.—Yes.

Q.—As to the Fuller Gravel shares, it was stated this morning that were also sold while the case was pending. I think this was stated in the answer to the supplementary plea? Were the Fuller Gravel shares sold before or during the pendency of the case?

A.—I am not sure.

30 By Mr. Chauvin:—

Q.—Would you mind just stating what date you resigned as executor? Do you remember what date you resigned as Executor?

A.—No, I do not.

Q.—February 1931?

A.—It is in the records.

40 Mr. Beaulieu:—There is a notarial deed. Under the will Mr. Robertson was entitled to appoint his successor, under the notarial will. We can find it out. I don't remember it by heart, but I will undertake to give you the date, if it is not in the record. We can verify it.

And further deponent saith not.

E. W. Bush,  
Official Court Reporter.

*A. JANIN (for Plain. in Reb. on the Main Action) Exam. in chief.*

DEPOSITION OF ALBAN JANIN

A witness produced on behalf of the Plaintiff in the Main  
Action, in Rebuttal.

10

On this third day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and reappeared: Alban Janin, of the city of Montreal, Contractor, a witness produced on behalf of the Plaintiff on the Main Action, in Rebuttal, who being duly sworn doth depose and say as follows:—

Examined by Mr. Chauvin, K.C., of Counsel for Plaintiff:

20

Q.—Would you look at the Exhibit P-S-6 which is a letter dated 14th September, 1928, and say if you know of any other document establishing the sale of the Amiesite and McUrban shares to the McDonald Construction Company?

A.—I do not know of any other. I do not remember seeing this one.

No Cross-examination.

30

And further deponent saith no.

E. W. Bush,  
Official Court Reporter.

40

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*L. N. LEAMY (for Def. Robertson in sur reb.) Exam. in chief.*

**Evidence in Sur Rebuttal on behalf of the Defendant Robertson**

10

DEPOSITION OF LOUIS N. LEAMY

A witness produced on behalf of Defendant Robertson in Sur Rebuttal.

On this third day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: Louis N. Leamy, of the city of Montreal, Secretary Treasurer, a witness already examined not recalled in Sur Rebuttal on behalf of the Defendant Robertson, who being duly sworn doth depose and say as follows:—

Examined by Mr. L. E. Beaulieu, K.C., of Counsel for Defendant Robertson:—

Q.—Now Mr. Leamy, you have been shown the two documents D-R-1 and D-R-2 very often. It was stated by Mr. Lomax that Exhibit D-R-2 was not a carbon copy of D-R-1. Will you look at that and give your answer?

30 A.—I might say that this is a part carbon copy of D-R-1.

Q.—Which part is not a carbon copy?

A.—The four items here.

Q.—That is to say, the names of the Companies and the numbers of the certificates?

A.—Yes.

Q.—Besides that enumeration is the document D-R-2 a copy of the other one?

A.—Yes, it is.

40 Q.—Do you remember how it happened, that so far as that part is concerned, the enumeration of the shares and the numbers of the certificates was not made on the carbon copy of D-R-1?

A.—I do not remember the incident of it.

Q.—Will you please state to the Court if the two copies, D-R-1 and D-R-2 were complete and filled up as they are now when they were signed by Mr. Robertson?

A.—Yes.

Q.—Does the same answer apply to when you showed these documents to Mr. Robertson for the first time?

A.—Yes.

*L. N. LEAMY (for Def. Robertson in sur reb.) Cross-examination.*

Q.—I want to know, as a matter of fact, if the two copies D-R-1 and D-R-2 were complete when Mr. Robertson saw them for the first time?

A.—They were.

10 Q.—Were they also complete when you read D-R-1 to the late Hugh Quinlan?

A.—Yes sir.

Q.—And were they complete when you sent one of those duplicates, or copies, that is to say, D-R-2 to the Honourable Mr. Perron?

A.—Yes.

Q.—From the moment that these two documents were signed by Mr. Robertson, did you make any alterations or changes in any of these two documents?

20 A.—No.

Cross-examined by Mr. Chauvin, K.C., of Counsel for Plaintiff:—

Q.—It is quite evident Mr. Leamy that D-R-1 was not complete when you first took it out of the machine, is that right?

A.—It looks that way.

30 Q.—And you would say you do not remember why you did not fill in the names and the shares when you typed the letter in the first instance?

A.—No.

Q.—You do not remember that?

A.—No.

Q.—You do not remember filling in the names and the descriptions of the shares?

A.—I do.

Q.—You do?

A.—Yes.

40 Q.—Do you remember taking the letter out of the machine with the space in blank for the names and description of the shares?

A.—I must have taken it out.

Q.—But I am asking if you remember?

A.—I do.

Q.—You remember that?

A.—From memory I would say yes.

Q.—Or are you just saying that because it must have been so?



A. W. ROBERTSON (*for Def. Robertson in sur reb.*) *Ex. in chief.*

A.—Well, I did say in my previous testimony that I did not remember the incident, how it happened.

Q.—Do you remember filling in the blanks?

A.—Well, I must have filled them in.

10 Q.—Not that you must have, but I am asking you if you remember filling them in?

A.—No, I do not remember.

Q.—How then can you say that the blanks were filled in when you first showed it to Mr. Robertson?

A.—Because I am positive that they were in there when Mr. Robertson saw the letters and when he signed them.

Q.—What makes you positive?

A.—Well I am that sure of it any way.

20 Q.—It is not through any act of memory, is it?

A.—No, I think I am positive of it.

Q.—You are positive because, I suppose, it would be the only thing to do?

A.—Yes.

And further deponent saith not.

E. W. Bush,  
Official Court Reporter.

30

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#### DEPOSITION OF ANGUS W. ROBERTSON

A witness produced on behalf of the Defendant Robertson in Sur Rebuttal.

40 On this third day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: Angus W. Robertson, of the city of Montreal, Contractor, a witness recalled on behalf of the Defendant Robertson in Sur Rebuttal, who being duly sworn doth depose and say as follows:—

Examined by Mr. Beaulieu, K.C., of Counsel for Defendant Robertson:—

Q.—You have already been sworn, Mr. Robertson?

A.—Yes.

*A. W. ROBERTSON (for Def. Robertson in sur reb.) Ex. in chief.*

Q.—You have already filed in this case a document showing that you had reserved the right to repurchase the Quinlan, Robertson & Janin Limited shares?

A.—Yes.

10 Q.—Now, so far as the Ontario Amiesite are concerned, are you in a position to repurchase them?

A.—They are in my possession now.

Q.—You can deliver them now?

A.—Yes.

Q.—As to the Amiesite Asphalt Company, is there any reason why you should not repurchase them if it was necessary to repurchase them?

20 Mr. Chauvin:—I object to this question as illegal. I suppose it may be possible for Mr. Robertson or for any other man to go to the present owners and repurchase the shares. I do not think we need testimony as to that, but if there was any agreement under which he has the right to do it any more than any other individual, all right, but I submit we do not want proof that he has the same right as anybody else in the world to go and purchase or try to purchase the shares.

30 Mr. Beaulieu:—If my friend wants to admit that it is possible, and not impossible, for Mr. Robertson to repurchase these shares I am quite satisfied, because he has alleged that they were sold and that Mr. Robertson could not repurchase them. I must say frankly I am afraid if I simply leave in the record, the fact they were sold, there might be a presumption that they cannot be repurchased, and that is the presumption I want to rebut. I submit I am entitled to rebut it.

The Court reserves the objection.

40 A.—I have never tried to purchase them.

By Mr. Beaulieu:—

Q.—Do you think if you tried you could succeed?

A.—I suppose so, but I have never tried.

Q.—What is the actual condition of this Company? Is it active or inactive?

A.—Well, I have no knowledge of what they are doing. I never hear of them.

A. W. ROBERTSON (for Def. Robertson in sur reb.) Cross-ex.

Q.—Now, about the Fuller Gravel?

A.—I have never tried to repurchase any shares in it, but it has been very inactive ever since we sold it.

Q.—Have you any idea of the actual value of these shares?

10 A.—The only cue is what the Consolidated who bought it, what their shares are selling for on the market.

Q.—What are they selling for on the market?

A.—I don't know just at the present time, but the preferred shares sold down as low as seven dollars a share.

Q.—That was the Consolidated Gravel who purchased the Fuller Gravel?

A.—Yes.

20 Cross-examined by Mr. Chauvin, K.C., of Counsel for Plaintiff:—

Q.—Do you know the par value of the Consolidated Gravel Company's shares?

A.—The preferred, one hundred dollars.

Q.—And is it the value they are selling at, seven dollars?

A.—Not now. It was. I don't know what it is. I have not seen the quotation.

Q.—Do you know how many shares have been issued?

30 What their issued share capital is?

A.—No, I do not.

Q.—The Consolidated Gravel Company made a merger of a number of Companies at the time you sold the Fuller Gravel to them, did it not?

A.—I believe so.

And further deponent saith not.

40

E. W. Bush,  
Official Court Reporter.

*J. DESAULNIERS (pour le déf. Robertson  
en sur contre-preuve) Examen en chef.*

DEPOSITION DE JACQUES DESAULNIERS

Le trois novembre mil neuf cent trente-huit, a comparu:  
10 Jacques Désaulniers, avocat, Conseiller du Roi, témoin entendu  
de la part du défendeur Robertson, en sur-contre-preuve; lequel,  
après serment prêté sur les saints Évangiles, dépose et dit:

Interrogé par Me Aimé Geoffrion, C.R., Conseil pour le  
défendeur Robertson:—

D.—Monsieur Désaulniers, vous étiez à la fois le mari de  
la demanderesse, dans la cause dont il s'agit, et l'avocat au dos-  
20 sier?

Le Témoin:—Devant quelle Cour?

L'avocat:—Devant la Cour Suprême?

R.—Oui, monsieur.

D.—Vous étiez le mari de l'une des demanderesses et son  
avocat, devant la Cour Suprême, dans la cause dont il s'agit?

R.—Oui, monsieur.

D.—Je vois par les notes des juges que la plaidoirie s'est  
30 faite les 4 et 5 décembre 1933?

R.—Je le crois, oui, si je me rappelle bien.

D.—Le jugement le constate. Vous étiez là, n'est-ce pas?

R.—Oui, j'étais là à la première séance.

D.—Cela a duré deux jours?

R.—Oui.

D.—La question de l'admissibilité de la preuve par écrit  
s'est discutée, n'est-ce pas?

R.—Je ne sais pas si elle s'est discutée, mais il y a eu des  
40 remarques faites par certains membres du tribunal, je me sou-  
viens d'une, entr'autres.

Me Henry N. Chauvin, C.R., Conseil pour la demanderesse,  
s'oppose à cette preuve comme illégale.

D.—Des remarques sur ce sujet-là?

R.—Sur le sujet de la preuve testimoniale, oui.

D.—C'était l'une des grosses questions dans la cause,  
n'est-ce pas?

R.—Bien, c'était, je crois, la principale.

*J. DESAULNIERS (pour le déf. Robertson  
en sur contre-preuve) Examen en chef.*

D.—La principale question ?

R.—Oui.

10 D.—Et dans une plaidoirie de deux jours, c'est difficile  
qu'on n'en ait pas parlé ?

R.—Evidemment.

D.—Est-ce que ces remarques-là ont eu une influence  
quelconque sur votre décision quant au règlement ultérieur ?

Me Chauvin s'oppose à cette question comme illégale.

L'objection est réservée par le Président du tribunal.

R.—Elles ont eu l'influence prépondérante.

20

D.—Comment cela ?

R.—Parce que, si je me souviens bien, Me Beaulieu plai-  
dait devant la Cour Suprême lorsqu'il a été interrompu, à un  
moment donné, par l'honorable juge en Chef Duff, qui lui a posé  
soudainement la question ou a fait soudainement la remarque  
suivante: "Mais on ne vous a pas laissé prouver, à la Cour supé-  
rieure, cette lettre ? On ne vous a pas permis de faire cette preuve  
testimonial, à la Cour supérieure ?" Pour moi, cette remarque  
a été suffisante, quand je suis revenu à Montréal, — avec d'au-  
30 tres considérations, — pour me faire régler cette cause aussitôt  
que j'ai pu le faire, parce que je croyais que la Cour Suprême,  
si parfois la cause revenait devant elle, et peut-être même les  
cours inférieures, — supérieure et d'Appel, seraient influencées  
par ces remarques, — non pas seraient influencées, mais je  
croyais que le jugement de la Cour Suprême à l'issue de ces re-  
marques, serait à l'effet que la preuve testimoniale serait per-  
mise.

D.—M. George Campbell, avocat des exécuteurs, était-il  
présent en Cour ce jour-là ? Vous rappelez-vous cela ?

40

R.—Je le crois.

Et le témoin ne dit rien de plus.

Henri Mackay,  
Sténographe.

Part III — EXHIBITS

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10 DEFENDANT'S EXHIBIT D-R-53 AT ENQUETE

*Document filed by Helene King.*

Montreal, etc.,

Hugh Quinlan Esq.,  
Montreal,

My dear Hugh,

20 You have transferred to me.....shares in the capital stock of the company known as Quinlan, Robertson & Janin Limited, with.....shares in the capital stock of.....(insert here the number of shares and the names of the corporations) being all your holdings in the above mentioned companies.

I have agreed to obtain for you the sum of \$250,000. for the holdings above mentioned, payable, one-half cash on the day of the sale, and the balance in one year, such balance bearing interest at the rate of 6% per annum.

30

Should your health permit you to attend to business as usual within a year from this date, I agree, upon the reimbursement of the amount then paid to you plus the interest at 6%, per annum, to retransfer for you the above mentioned shares.

Yours sincerely

40

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DEFENDANT'S EXHIBIT D-R-54 AT ENQUETE

*Letter from L. N. Leamy to Robertson.*

10

A. W. ROBERTSON LIMITED  
Engineers & Contractors

May 23rd 1927.

A. W. Robertson,  
1690 St. Patrick St.,  
Montreal, Que.

Dear Sir:—

20

This will acknowledge receipt from you, to be kept in the office here, the following stock certificates, the property of Mr. Hugh Quinlan,

No	1	Amiesite Asphalt Limited	1 share	
	5	“ “ “	49 “	
	9	“ “ “	200 “	J. H. Dunlop
	4	Quinlan, Robertson & Janin Limited	1 share	
30	8	do	1150 “	

Yours truly,

A. W. Robertson, Limited  
per L. N. Leamy.

L

DEFENDANT'S EXHIBIT D-R-55 AT ENQUETE

40

*Minutes of a Meeting of Directors of Quinlan, Robertson Co.*

QUINLAN, ROBERTSON AND JANIN, LIMITED

Minutes of a meeting of the Board of Directors of Quinlan, Robertson and Janin, Limited, held at the head office of the Company, 702 Sherbrooke Street West, Montreal, Canada, on the 22nd day of June, 1927, at the hour of eleven o'clock in the forenoon.

Were present:

Messrs. A. W. Robertson  
Alban Janin

10 Mr. A. W. Robertson, President, acted as Chairman of the meeting, and Mr. Alban Janin, Secretary of the Company, acted as Secretary of the meeting.

Notice of the meeting as follows was duly read and approved:

Montreal, June 18, 1927.

20 Notice is hereby given that a meeting of the Board of Directors of Quinlan, Robertson and Janin, Limited, will be held at the head office of the Company, 702 Sherbrooke Street West, Montreal, Canada, on June 22, 1927, at the hour of eleven o'clock in the forenoon, for the transaction of any business that may come before the said meeting.

A. JANIN,  
Secretary.

Minutes of Directors meeting held on May 2, 1927, were read and approved.

30 The Secretary submitted to the meeting a transfer by Mr. Hugh Quinlan of one thousand one hundred and fifty-one shares of the capital stock of the Company in favour of Mr. A. W. Robertson, Montreal.

On motion duly made, seconded and carried unanimously it was resolved that the said transfer be accepted.

40 Mr. Hugh Quinlan submitted to the meeting his resignation as Vice-President and Director of the Company, which was duly accepted.

Mr. Alban Janin submitted to the meeting his resignation as Secretary-Treasurer of the Company, which was duly accepted.

On motion duly made, seconded and carried unanimously it was resolved that Mr. Alban Janin, a qualified Shareholder, be appointed as Vice-President and Managing Director for the ensuing year.



The Secretary submitted to the meeting a transfer by Mr. A. W. Robertson of one share of the capital stock of the Company in favour of Mr. L. N. Leamy.

10 On motion duly made, seconded and carried unanimously it was resolved that the said transfer be accepted.

On motion duly made, seconded and carried unanimously it was resolved that Mr. L. N. Leamy, a qualified Shareholder, be named a Director and Secretary-Treasurer for the ensuing year.

There being no further business, adjournment was made.

20 A. W. Robertson,  
Chairman.

A. Janin,  
Secretary.

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DEFENDANT'S EXHIBIT D-R-56 AT ENQUETE

30 *Minutes of a meeting of the board of Directors of  
Amiesite Asphalt Ltd.*

AMIESITE ASPHALT, LIMITED

Minutes of a meeting of the Board of Directors of Amiesite Asphalt, Limited, held at the head office of the Company, 702 Sherbrooke Street West, Montreal, Canada, on June 22, 1927, at the hour of twelve o'clock, noon.

40 Were present: Messrs. Alban Janin

A. W. Robertson

Mr. Alban Janin, President of the Company, acted as Chairman of the meeting, and Mr. C. J. Malone, Secretary-Treasurer, acted as Secretary of the meeting.

Notice of the meeting as follows was duly read and approved:

Montreal, June 18, 1927.

Notice is hereby given that a meeting of the Board of Directors of Amiesite Asphalt, Limited, will be held at the head office of the Company, 702 Sherbrooke Street West, Montreal, Canada, on June 22, 1927, at the hour of twelve o'clock, noon,  
10 for the transaction of any business that may come before the said meeting.

C. J. MALONE,  
Secretary.

Minutes of Directors meeting held on May 5, 1927, were read and approved.

The Secretary submitted to the meeting a transfer of Mr. Hugh Quinlan of fifty shares of the capital stock of the Company in favour of Mr. A. W. Robertson, Montreal.

20 On motion duly made, seconded and carried unanimously it was resolved that the said transfer be accepted.

Mr. Hugh Quinlan submitted to the meeting his resignation as Director of the Company, which was duly accepted.

The Secretary submitted to the meeting a transfer of Mr. J. H. Dunlop of two hundred shares of the capital stock of the Company in favour of Mr. A. W. Robertson, Montreal.

30 On motion duly made, seconded and carried unanimously it was resolved that the said transfer be accepted.

The Secretary submitted to the meeting a transfer by Mr. A. W. Robertson of one share of the capital stock of the Company in favour of Mr. C. J. Malone, Montreal.

On motion duly made, seconded and carried unanimously it was resolved that the said transfer be accepted.

40 On motion duly made, seconded and carried unanimously it was resolved that Mr. C. J. Malone, a duly qualified Shareholder, be named a Director of the Company for the ensuing year.

There being no further business, adjournment was made.

A. Janin,  
Chairman.

C. J. Malone,  
Secretary.

A. W. Robertson.  
Approved

DEFENDANT'S EXHIBIT D-R-57 AT ENQUETE

*Minutes of a meeting of the Board of Directors of  
Ontario Amiesite Ltd.*

10

ONTARIO AMIESITE LIMITED

Minutes of a meeting of the Board of Directors of Ontario Amiesite Limited, held at the head office of the Company, Fleet Street and Spadina Avenue, Toronto, Ont., Canada, on 16th day of November, 1927, at the hour of twelve o'clock, noon.

20

Were present: Messrs. A. W. Robertson,  
R. Miller,  
G. W. Rayner.

being all Directors of the Company.

Mr. A. W. Robertson, President of the Company, acted as Chairman of the meeting, and Mr. C. J. Malone, Secretary of the Company, acted as Secretary of the meeting.

30

Notice of meeting as follows was duly read and approved:

Toronto, Ont., November 10, 1927.

Notice is hereby given that a meeting of the Directors of Ontario Amiesite Limited will be held at the office of the Company, Fleet Street and Spadina Avenue, Toronto, Ont., on November 16, 1927, at the hour of twelve o'clock noon, for the transaction of such business as may come before the said meeting.

40

C. J. MALONE,  
Secretary.

Minutes of Directors meeting held on 16th day of November 1927, were duly read and approved.

The Secretary submitted to the meeting a transfer by Estate Hugh Quinlan, of two hundred shares of the capital stock of the Company in favour of Mr. A. W. Robertson.

On motion duly made, seconded, and carried unanimously, it was resolved that the said transfer be accepted.

The Secretary submitted to the meeting a transfer by Mr. A. W. Robertson of one share of the capital stock of the Company in favour of Mr. C. J. Malone.

10 On motion duly made, seconded, and carried unanimously, it was resolved that the said transfer be accepted.

The President informed the meeting there was a vacancy on the Board of Directors of this Company, caused by the death of Mr. Hugh Quinlan, and that such vacancy should be filled for the balance of the ensuing year.

20 On motion duly made, seconded, and carried unanimously it was resolved that Mr. C. J. Malone, a qualified shareholder of the Company, be elected a Director for the balance of the ensuing year.

There being no further business, adjournment was made.

A. W. Robertson,  
President.

C. J. Malone,  
Secretary.

30 Approved:  
A. Janin,  
G. W. Rayner,  
Ray Miller.

---

PLAINTIFF'S EXHIBIT P-S-6 AT ENQUETE

*Letter from Wm. P. McDonald Construction to  
The Sun Trust Co., Ltd.*

40 Montreal, September 14th 1928.

The Sun Trust Company Limited  
Montreal.

Sirs:—

We are enclosing the following certificates:

Certificate No. 18 Amiesite Asphalt Limited, in favour of Sydney V. Kendall, for one share;

Certificate No. 19, Amiesite Asphalt Limited, in favour of Thomas F. Spellane, for one share;

Certificate No. 20, Amiesite Asphalt Limited, in favour of John I. McDonald for 998 shares;

10 Certificate No. 14 Macurban Asphalt Limited in favour of Sydney V. Kendall, for one share;

Certificate No. 15 Macurban Asphalt Limited in favour of Thomas F. Spellane, for one share;

Certificate No. 16 Macurban Asphalt Limited in favour of John I. McDonald. for 998 shares;

20 Those certificates are to be held in escrow for the benefit of Mr. A. W. Robertson to guarantee the payment to him of the following:

A draft for \$100,000, dated September 14th 1928, at sight, drawn on Hackensack Trust Company, Hackensack, N.J., and payable to the order of the Bank of Toronto;

A note for \$50,000 dated September 14th, 1928, payable at one month, from date, in favour of Mr. A. W. Robertson;

30 A note for \$50,000 dated September 14th, 1928, payable at two months, in favour of Mr. A. W. Robertson;

A cheque of the Amiesite Asphalt Limited to the order of John I. McDonald, duly endorsed by the said John I. McDonald for the sum of \$300,000.

40 A transfer for \$75,000 of the Department of Highways of the Province of Quebec in favour of Mr. A. W. Robertson;

A transfer of \$175,000 of the Department of Highways of the Province of Quebec in favour of Mr. A. W. Robertson.

You are to hold those certificates until the above have been discharged. Upon presentation to you of an order from Mr. A. W. Robertson, you will deliver those certificates to us, or if we do not produce such order, the production of the draft and notes above mentioned plus a certificate from the Department of Highways of the Province of Quebec that the sum of \$250,000.00 has

been paid to Mr. Robertson, will be sufficient to compel you to return the certificates to us.

(signed) Wm. P. McDonald Const. Co.  
John I. McDonald,  
Vice-Pres.

10

Montreal, Dec. 4, 1928.

Received the certificates enumerated within the bracket, namely:  
1000 shares Amiesite Asphalt Limited  
1000 shares Macurban Asphalt Limited

for delivery to Mr. McDonald

20

(signed) Thos. F. Spellane  
605 Keefer Bldg.

---

PLAINTIFF'S EXHIBIT P-S-7 AT ENQUETE

*Agreement between A. Janin & Andrew Robertson.*

COPY

30 MEMORANDUM OF AGREEMENT entered into at Montreal,  
on the twelfth day of September, Nineteen Hundred and Thirty;  
BETWEEN

ANGUS W. ROBERTSON, of the City of Westmount dis-  
trict of Montreal, Contractor hereinafter styled the

PARTY OF THE FIRST PART

AND

40 ALBAN JANIN of the City of Outremont, district of  
Montreal, Contractor, hereinafter styled the

PARTY OF THE SECOND PART

WHEREAS, the parties herein are shareholders in the follow-  
ing corporation:—

ALBAN CONSTRUCTIONS LIMITED  
ROBERTSON & JANIN BUILDING CO., LIMITED  
ROBERTSON & JANIN PAVING COMPANY, LIMITED

MONTREAL CONST. SUPPLY & EQUIPMENT LIMITED  
 ONTARIO AMIESITE LIMITED  
 RAYNER CONSTRUCTION LIMITED  
 ROBERTSON & JANIN OF ONTARIO LIMITED  
 TORONTO READY MIX CONCRETE LIMITED  
 SCOTSTOWN GRANITE COMPANY LIMITED  
 10 READY MIX CONCRETE LIMITED  
 ROBERTSON & JANIN CONTRACTING COMPANY, LTD.

WHEREAS, the party of the first part owns two thousand, three hundred and two shares (2,302) in the Alban Construction Limited valued at \$538,000.00, one thousand, one hundred and fifty-one (1,151) shares of the above company being at present under litigation, in a case between two of the heirs of the late MR. HUGH QUINLAN, and the said party of the first part and others:

20 WHEREAS, the party of the second part owns and holds the following amount of shares in the hereinafter mentioned companies:—

	ALBAN CONSTRUCTION LIMITED .....	1150 shares
	ROBERTSON & JANIN BUILDING CO., LTD.,	
	1 share property of ROBERTSON & JANIN LTD.	
	ROBERTSON & JANIN PAVING CO., LTD.,	
30	1 share property of ROBERTSON & JANIN LTD.	
	MONTREAL CONSTRUCTION SUPPLY &	
	EQUIPMENT LIMITED	
	1 share property of ROBERTSON & JANIN LTD.	
	ONTARIO AMIESITE LIMITED .....	400 shares
	RAYNER CONSTRUCTION LIMITED .....	160 shares
	ROBERTSON & JANIN OF ONTARIO LIMITED	50 shares
	TORONTO READY MIX CONCRETE LIMITED	550 shares
	SCOTSTOWN GRANITE COMPANY LTD.	128 prefer. shares
	“ “ “ “ “	250 common “
40	READY MIX CONCRETE LIMITED .....	425 shares
	ROBERTSON & JANIN CONTRACTING CO.....	1500 shares

WHEREAS The parties herein have come to an agreement as to their holdings in the several companies hereinabove mentioned.

NOW THESE PRESENTS WITNESSETH:—

1) The party of the first part has this day transferred to the party of the second part, one thousand one hundred and fifty-one (1,151) shares in the ALBAN CONSTRUCTION LIMITED.

2) The party of the first part has further transferred this day to the party of the second part one thousand one hundred and fifty-one shares (1,151) of the ALBAN CONSTRUCTION LIMITED being the shares presently under litigation and the party of the second part has this day endorsed, the new certificate for the said shares in blank, and has deposited the said certificate in escrow with the THE SUN TRUST COMPANY, LIMITED, with instructions to the said THE SUN TRUST COMPANY, LIMITED, that if the party of the first part is declared by a final judgment to be the owner of the said shares then the said, THE SUN TRUST COMPANY, LIMITED, will deliver the said certificate back to the party of the second part, and that if by final judgment of the Court it is declared that the said shares are the property of the Estate of the late Mr. Hugh Quinlan, the said THE SUN TRUST COMPANY, LIMITED, will have to abide by the said judgment, and will complete the endorsements in blank on the said certificate and transfer the said shares "A QUI DE DROIT" in conformity with the said judgment and in such event the party of the first part shall pay to the party of the second part, the sum of two hundred and sixty-nine thousand (\$269,000.00) dollars, plus interest thereon at the rate of six percentum per annum, from the twenty-sixth day of June, nineteen hundred and thirty, in lieu of an in full of all claims in respect of said shares.

30 For the purpose of meeting such payment, the party of the first part has this day deposited with the THE SUN TRUST COMPANY, LIMITED, in escrow a demand note payable to the order of the party of the second part in the amount of two hundred and sixty nine thousand (\$269,000.00) dollars, dated twenty sixth day of June, nineteen hundred and thirty, and bearing interest at six percentum per annum, which note shall be returned to the party of the first part by the THE SUN TRUST COMPANY, LIMITED, when it delivers back to the party of the second part the certificate for one thousand one hundred and fifty one shares (1,151) deposited with it in escrow, this day however, should the THE SUN TRUST COMPANY, LIMITED be required, by the final judgment hereinabove referred to, to deliver the said shares in litigation to the Estate Quinlan, then the said THE SUN TRUST COMPANY, LIMITED, shall deliver said demand note to the party of the second part in fulfillment of the foregoing obligation.

The party of the first part hereby bonds and obliges himself that he will continue to contest the action at present pending against



him bearing number 36664 of the records of the Superior Court of the District of Montreal, unless advised to make a settlement by the solicitors presently acting for him in the said action.

10 3) The transfer of the above mentioned shares in the ALBAN CONSTRUCTION LIMITED, by the party of the first part to the party of the second part, carries with it a transfer of all directors' qualifying shares of the subsidiary companies of the said ALBAN CONSTRUCTION LIMITED, now registered in the name of the party of the first part,

4) The party of the second part has transferred to the party of the first part all his shares in the hereinafter mentioned Companies, i.e.

20	ONTARIO AMIESITE LIMITED .....	400 shares
	RAYNER CONSTRUCTION LIMITED .....	160 "
	ROBERTSON & JANIN OF ONTARIO LTD. ....	50 "
	TORONTO READY MIX CONCRETE LIMITED	550 "
	SCOTSTOWN GRANITE COMPANY	
		LIMITED 128 preferred shares
	" "	" 250 common shares
	READY MIX CONCRETE LIMITED .....	425 shares
	ROBERTSON & JANIN CONTRACTING	
		COMPANY LIMITED 1,500 shares

30 and three hundred and sixty-six thousand (\$366,000.00) dollars of bonds at par value deposited by the party of the second part as collateral security and enumerated in paragraph nine hereof.

40 5) The party of the first part hereby agrees and undertakes to release the party of the second part of all his obligations of whatsoever nature in connection with the companies, the shares of which party of the second part has transferred to the party of the first part, and the party of the second part likewise agrees and undertakes to release the party of the first part of all his obligations of whatsoever nature in connection with the companies, the shares of which the party of the first part has transferred to the party of the second part;

6) The party of the first part hereby agrees and undertakes to have, within a delay of sixty days, the name of the party of the second part, removed from the bond given for the Tunnel Division of the RAYNER CONSTRUCTION LIMITED, and release the party of the second part, of all his obligations with regards to the bonds and the contract covered by the said bonds.

7) The party of the first part agrees and undertakes to cause ROBERTSON & JANIN CONTRACTING COMPANY to transfer to ROBERTSON & JANIN PAVING COMPANY, LIMITED, the paving contracts which the ROBERTSON & JANIN CONTRACTING COMPANY LIMITED, are now executing for the cities of WESTMOUNT AND VERDUN. The party of the first part hereby renouncing all rights and claims in the said contracts and the party of the second part hereby agrees and undertakes to release the party of the first part and the said ROBERTSON & JANIN CONTRACTING COMPANY LIMITED of all liabilities and claims whatsoever in conjunction with the said contracts;

8) The consideration of the transfer by the party of the first part of the shares held by him in the ALBAN CONSTRUCTION LIMITED, (including the shares under litigation) is the sum of five hundred and thirty eight thousand (\$538,000.00) dollars.

9) The sum of five hundred and eighty two thousand (\$582,000.00) dollars is the consideration paid to the party of the second part for the following cash advance shares, bonds and interests;

	ONTARIO AMIESITE LIMITED .....	400 shares
	RAYNER CONSTRUCTION LIMITED ....	160 "
30	ROBERTSON & JANIN OF ONTARIO LIMITED .....	50 "
	TORONTO READY MIX CONCRETE LIMITED .....	550 "
	SCOTSTOWN GRANITE COMPANY LIMITED .....	128 preferred shares
	SCOTSTOWN GRANITE COMPANY LIMITED .....	250 common shares
	READY MIX CONCRETE LIMITED .....	425 "
40	ROBERTSON & JANIN CONTRACTING COMPANY LIMITED .....	1500 " .....
	\$166,000.00 in Bonds deposited in connection with the Tunnel contract at Toronto, Ontario.	
	\$150,000.00 in Bonds deposited in connection with the ROBERTSON & JANIN CONTRACTING COMPANY LIMITED.	
	\$ 25,000.00 in Bonds deposited in connection with the Bell Telephone Building in Toronto.	
	\$ 25,000.00 in Bonds deposited in connection with TORONTO READY MIX CONCRETE LIMITED	

\$216,000.00 represented cash advances in the sum of \$116,000.00, by the party of the second part for the benefit of the various enterprises, and an additional sum of \$100,000.00 in complete payment of the interest of the party of the second part in the above mentioned companies,

10

leaving a balance in favor of the second part of forty four thousand dollars (\$44,000.) which the party of the second part acknowledges to have received this day from the party of the first part, each party giving to each other a complete and final discharge.

20

10) the ALBAN CONSTRUCTION LIMITED, is at present carrying on work in the Harbour of Montreal (Construction of cellular concrete cribs) for which it is using patent rights owned by ROBERTSON & JANIN CONTRACTING COMPANY, LIMITED, of which the party of the first part has absolute control, and the party of the first party hereby agrees and undertakes that the ALBAN CONSTRUCTION LIMITED, may continue to have the right to use the beforementioned patents for cellular concrete cribs in the Harbour of Montreal, at the same rate of royalty as at present, it being clearly understood that the right to use the said patent rights is not in any way exclusive.

30

(signed) A. W. R. (SIGNED) A. J.

MADE IN DUPLICATE

Montreal, this 12th day of September  
nineten hundred and thirty.

WITNESSES:

(signed) A. J. M. PETRIE  
" E. C. MONK

(signed) A. W. ROBERTSON  
" A. JANIN

40

Certifié conforme  
ce 4 novembre 1938

Le SUN TRUST, Limitée  
(signé) Chs. Therrien  
Ass't. Sec.

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PLAINTIFF'S EXHIBIT P.S-4 AT ENQUETE

*Notice to A. W. Robertson & al., from Capital Trust Corporation Ltd.*

10

TO:

Angus William Robertson, the Appellant herein,  
and to

Messrs. Beaulieu, Gouin, Mercier & Tellier,  
Attorneys for Appellant,  
and to

20

Dame Ethel Quinlan, of the City of Westmount,  
wife common as to property of John Thomas  
Kelly and the said John Thomas Kelly for  
the purpose of authorizing his said wife,  
and to

Dame Margaret Quinlan, of the said City of  
Westmount, wife separate as to property  
of Jacques Desaulniers, Advocate, and the  
said Jacques Desaulniers for the purpose  
of authorizing his said wife.

30

and to  
Messrs. Tanner & Desaulniers,  
Attorneys for Respondents.

Sirs and Mesdames:—

40

NOTICE IS HEREBY GIVEN to you by the undersigned in their quality of Executors of the Estate of the late Hugh Quinlan, in his lifetime of the City of Westmount, General Contractor that, insofar as may be useful or necessary, they have accepted and hereby accept on behalf of the said Estate Hugh Quinlan, all benefits and advantages accruing to the Estate of the said late Hugh Quinlan under the judgments rendered in this cause under No. A. 36664 of the records of the Superior Court for the District of Montreal, on or about the 6th day of February, 1931, by the Honourable Mr. Justice Martineau, and by the Court of King's Bench, sitting in Appeal, for the said District of Montreal (under No. 85 of the records of said Court) on or about the 30th day of December, 1932.

This notice is given under reserve of all other and further rights of the said Estate and of the undersigned in their said quality of Executors.

Montreal, September 6th, 1933.

10 General Trust of Canada  
(signed) René Morin  
General Manager

(signed) Ernest Guimond  
Director

Capital Trust Corporation, Limited  
(signed) John S. Lyons,  
President.

20 " E. B. Pennefather,  
General Manager

(SEAL)  
Executors Estate Late Hugh Quinlan

Countersigned  
(Signed) Campbell, McMaster, Couture,  
Kerry & Bruneau,  
Attorneys for Executors.

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PLAINTIFF'S EXHIBIT P.S-1a AT ENQUETE

*Protest served upon Capital Trust Corporation Ltd.,  
at the request of Dame Ethel Quinlan.*

(SEAL)

40 IN THE YEAR ONE THOUSAND NINE HUNDRED  
AND THIRTY-THREE, on the twenty-ninth day of the month  
of September, at the request of Dame ETHEL QUINLAN, wife  
common as to property of JOHN THOMAS KELLY and by him  
duly authorized, I NOEL PICARD, the undersigned Notary  
Public of the Province of Quebec, residing and practising in the  
city of Montreal, repaired to the head office of the CAPITAL  
TRUST CORPORATION LIMITED in the city of Ottawa in  
the Province of Ontario, and there being and speaking to Mr. E. T.  
B. Pennefather, general manager of the Capital Trust Corporation  
Limited,

DECLARED:

10 That the said Dame Ethel Quinlan is a daughter of the late Hugh Quinlan, and one of the beneficiaries under his last will and testament executed on the 14th day of April 1926 before Mtres Edouard Biron and Eugene Poirier;

That by his said will the said Hugh Quinlan appointed the said Capital Trust Corporation Limited and one Angus W. Robertson joint executors and trustees of his estate;

20 That upon the death of the said Hugh Quinlan, to wit, on the 26th day of June 1927, the said Capital Trust Corporation Limited and the said Angus W. Robertson accepted the said appointment as joint executors and trustees of the said estate, took possession of the assets thereof and continued to act as joint executors and trustees of the said estate until the 19th day of February 1931;

30 That on the said 19th day of February 1931 the said Angus W. Robertson resigned as one of the joint executors and trustees of the said estate and, exercising the power upon him conferred by the said will, appointed as his successor the General Trust of Canada, a body corporate and politic having its head office in the city of Montreal;

That since the said 19th day of February 1931 the said Capital Trust Corporation Limited and the said General Trust of Canada have been seized of the said estate as joint executors and trustees thereof, have administered and are now administering the said estate;

40 That no valid inventory of the said estate was ever made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees thereof;

That the only inventory ever made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate was not signed by them, and that the said inventory was made in contravention of article 919 of the Civil Code of Lower Canada in that it was made by the said Capital Trust Corporation Limited and the said Angus W. Robertson without notice to the heirs, legatees and other interested persons to be present;

That the said inventory made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate was and is incomplete in that no mention is made therein of a number of the principal and most valuable assets of the said estate, in particular the following: 250 shares of the capital stock of Amiesite Asphalt Limited; 10 200 shares of the capital stock of Ontario Amiesite Limited; the sum of \$84,314.60 declared as a dividend on the 31st day of March 1925 by a resolution of the Board of directors of Quinlan, Robertson & Janin Limited on 1,151 shares of the capital stock of the said Quinlan, Robertson & Janin Limited then owned by the said Hugh Quinlan and mentioned in the said inventory as an asset of the said estate; the interest of the said estate in certain monies payable to the said Angus W. Robertson by Peter Lyall & Sons Limited, the said interest having been established by a writing 20 executed on the 2nd day of July 1926 by the said Angus W. Robertson and the said Hugh Quinlan;

That the said inventory made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate was replete with false appraisals of a number of the principal and most valuable assets of the said estate, and that, in particular, 1,000 preferred shares and 499 common shares of the capital stock of Fuller Gravel Limited, having a total value of \$90,000.00, were appraised in 30 the said inventory as having a total value of \$1.00;

That the resignation of the said Angus W. Robertson on the said 19th day of February 1931 as one of the joint executors and trustees of the said estate was pursuant to a judgment rendered against him on the 5th day of February 1931 by the Honourable Mr. Justice Martineau, one of the judges of the Superior Court of the Province of Quebec, in an action bearing number A.36664 of the records of the said Superior Court, District of Montreal, instituted on the 25th day of October 1928 by the said 40 Dame Ethel Quinlan and her sister, Dame Margaret Quinlan, by which judgment the purchase by the said Angus W. Robertson from the said estate of 1,151 shares of the capital stock of the said Quinlan, Robertson & Janin Limited, 250 shares of the capital stock of the said Amiesite Asphalt Limited, 200 shares of the capital stock of the said Ontario Amiesite Limited and 400 shares of the capital stock of the said Fuller Gravel Limited was annulled, and that in delivering the said judgment the said Honour-

able Mr. Justice Martineau declared that in the event of the said Angus W. Robertson appealing therefrom “comme c’est son droit de le faire s’il le croit mal fondé, il devrait, dans les cas où les demanderesses n’en appelleraient pas elle-mêmes, résigner ses fonctions et se nommer un successeur, comme le testament lui en donne le droit, en ayant le soin de choisir un homme qui lui est  
10 absolument étranger, afin que celui-là soit libre de combattre ses prétentions, et que les héritiers ne puissent douter de son impartialité”.

That the resignation of the said Angus W. Robertson on the said 19th day of February 1931 as one of the joint executors and trustees of the said estate was made two days before the said Angus W. Robertson entered an appeal from the said judgment, but that in appointing the said General Trust of Canada to be his  
20 successor as one of the joint executors and trustees of the said estate the said Angus W. Robertson acted in total disregard of advice tendered him by the said Mr. Justice Martineau, to wit, that the said Angus W. Robertson should select and appoint as his successor one whose impartiality the heirs of the said Hugh Quinlan could not question;

That the said General Trust of Canada assumed its functions as one of the joint executors and trustees of the said estate without making any inventory in conformity with the provisions of article 919 of the Civil Code of Lower Canada, and that  
30 the said Dame Ethel Quinlan has never been informed by the said Capital Trust Corporation Limited or by the said General Trust of Canada and does not yet know whether any inventory, in conformity with the provisions of article 919 of the Civil Code of Lower Canada or not, has ever been made by the said Capital Trust Corporation Limited and the said General Trust of Canada;

That no account of his administration as one of the joint  
40 executors and trustees of the said estate has ever been rendered by the said Angus W. Robertson to the said Capital Trust Corporation Limited and the said General Trust of Canada as joint Executors and trustees of the said estate, and that no account of his administration has ever been required of him by the said Capital Trust Corporation Limited and the said General Trust of Canada since the said 19th day of February 1931

That by paragraph “j” of the fourth article of his said will the said Hugh Quinlan empowered his said executors and



trustees to employ the said Capital Trust Corporation Limited as “agent, accountant and manager” of the said estate, “with power to do and execute the detail work in connection with the administration” thereof, ‘to keep the books of account, to make collections and execute minor acts of administration’, and provided that for such services the Capital Trust Corporation Limited should be entitled to receive “its usual commission”;

That since the death of the said Hugh Quinlan the said Capital Trust Corporation Limited has been employed for the purposes set out in the said paragraph “j” of the fourth article of the said will, but the services thus rendered were negligently and unfaithfully performed by the said Capital Trust Corporation Limited: in particular, the books of account were irregularly and inaccurately kept, the whole, as more fully appears hereunder, for the purpose of concealing from the said Dame Ethel Quinlan and the other beneficiaries under the said will various and numerous acts of maladministration and malversation from time to time committed by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate;

That in furtherance of the said purpose of concealing the said acts of maladministration and malversation from the said Dame Ethel Quinlan and the other beneficiaries under the said will the said Capital Trust Corporation Limited and the said Angus W. Robertson engaged P. C. Shannon, Son & Co. as auditors of the said estate, and that the said P. C. Shannon, Son & Co. never made a proper and regular audit of the affairs of the said estate, but accepted without verification or critical examination the statements of the said Capital Trust Corporation Limited and declared the accounting of the said Capital Trust Corporation Limited to have been carried out in an accurate manner;

That the further retention of the said P. C. Shannon, Son & Co. as auditors of the said estate constitutes a useless and unnecessary expenditure inasmuch as the statements of the said P. C. Shannon, Son & Co. can inspire no greater confidence than those of the said Capital Trust Corporation Limited;

That the said estate is a shareholder of A. W. Robertson Limited, a body corporate and politic having its head office in the city of Montreal, and is the owner of 1,586 shares of the capital stock thereof;

That at various dates prior to the 10th day of April 1929 divers sums of money, making a total of \$254,701.11, were paid by the said A. W. Robertson Limited to M. J. O'Brien Limited, a body corporate and politic and having its head office in the city of Ottawa, and that subsequent to the said date divers further sums were paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited;

10

That the said sums paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited were paid without legal cause, and that the said A. W. Robertson Limited was under no obligation to pay them, or any of them, to the said M. J. O'Brien Limited;

That on the 27th day of February 1924 a contract for the construction of the eighth section of the Welland Ship Canal was concluded by the said A. W. Robertson Limited with the Government of the Dominion of Canada;

20

That the said sums paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited were paid in virtue of an agreement alleged to have intervened in or about the month of February 1924 between the said A. W. Robertson Limited, the said M. J. O'Brien Limited and one Michael J. O'Brien;

30

That by the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien the said A. W. Robertson Limited granted to the said M. J. O'Brien Limited one quarter interest in the said contract for the construction of the eighth section of the Welland Ship Canal, and the said Michael J. O'Brien became liable to the said A. W. Robertson Limited, jointly and severally with the said M. J. O'Brien Limited, for the performance of such obligations as were assumed by the said M. J. O'Brien Limited;

40

That at the time of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien the said Michael J. O'Brien was a member of the Senate of Canada, and that the said agreement was in contravention of the Senate and House of Commons Act, Revised Statutes of Canada, 1906, chapter 10, and was null, void and of no legal effect;

That the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien was negotiated and verbally concluded on behalf of the said A. W. Robertson Limited by the said Angus W. Robertson, its then president, and on behalf of the said M. J. O'Brien Limited by the said Michael J. O'Brien and one J. Ambrose O'Brien, two of its directors and officers, and remained clandestine so long as the said Michael J. O'Brien continued to be a member of the Senate of Canada;

That the said Michael J. O'Brien ceased to be a member of the Senate of Canada on the 1st day of September 1925, and that on the 17th day of November 1925 the said Michael J. O'Brien acknowledged in writing his participation in the said agreement alleged to have intervened between himself and the said A. W. Robertson Limited and M. J. O'Brien Limited

10

That on the 23rd day of November 1926 the said A. W. Robertson Limited, by its then president, the said Angus W. Robertson, wrote to the said J. Ambrose O'Brien as follows:

“As requested in your letter of the 22nd instant, we herewith return the Undertaking which your father signed some time ago. It would be much better if the Undertaking were dated much earlier. All monies in our books will show as payments to M. J. O'Brien Limited, and the one-quarter interest in Section No. 8 of Welland Ship Canal is in the name of M. J. O'Brien Limited”;

20

That it was only after the action hereinabove referred to had been instituted against the said Angus W. Robertson by the said Dame Ethel Quinlan and the said Dame Margaret Quinlan, to wit, on the 10th day of December 1928 that the board of directors of the said A. W. Robertson Limited first acknowledged the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien, the said acknowledgment being by a resolution in the following terms:

30

“That, at the request of M. J. O'Brien Limited, this company does formally admit and confirm the acceptance of the undivided one quarter share and interest of M. J. O'Brien Limited in the Welland Ship Canal (Section No. 8) contract obtained by this company in February 1924, and in respect of which substantial payments have from time to time heretofore been made by this company to said M. J. O'Brien Limited”

40

That on the said 10th day of December 1928 the said board of directors of A. W. Robertson Limited was composed of the said Angus W. Robertson, one Louis N. Leamy and the late Dr. B. G. Connolly, then general manager of the said Capital Trust Corporation Limited, and that the said Angus W. Robertson, Louis N. Leamy and Dr. B. G. Connolly participated in the said resolution acknowledging the said agreement alleged to have in-

tervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien;

10 That on the said 10th day of December 1928 the said Michael J. O'Brien and the said J. Ambrose O'Brien were directors of the said Capital Trust Corporation Limited, and that the said Michael J. O'Brien is still a director and honorary president of the said Capital Trust Corporation Limited;

20 That the said resolution adopted on the 10th day of December 1928 by the Board of Directors of the said A. W. Robertson Limited acknowledging the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien was fraudulently contrived and manoeuvred by the said Angus W. Robertson, Louis N. Leamy, Dr. B. G. Connolly and J. Ambrose O'Brien for the purpose of assuring the continuation of the payments until then made from time to time by the said A. W. Robertson Limited to the said M. J. O'Brien Limited, and was in fraud of the rights of the shareholders of the said A. W. Robertson Limited;

30 That on the 9th day of October 1929 the board of directors of the said A. W. Robertson Limited unanimously adopted a resolution to the effect that the said company be wound up under the provisions of the Quebec Winding Up Act (Revised Statutes of Quebec, 1925, chapter 225) and that one Charles A. Shannon and the said Louis N. Leamy be appointed liquidators;

That on the said 9th day of October 1929 the Board of directors of the said A. W. Robertson Limited was composed of the said Angus W. Robertson, Louis N. Leamy, Dr. B. G. Connolly, J. Ambrose O'Brien, and the Honorable J. L. Perron, all of whom participated in the said resolution;

40 That for several years prior to the said 9th day of October 1929 the said Charles A. Shannon had been the auditor of the said A. W. Robertson Limited, and that, contrary to his duty as auditor, he had approved each and every of the payments until then made by the said A. W. Robertson Limited to the said M. J. O'Brien Limited;

That at a meeting of shareholders of the said A. W. Robertson Limited held on the said 9th day of October 1929 the said resolution of the board of directors to the effect that the said company be wound up and that the said Charles A. Shannon and

Louis N. Leamy be appointed liquidators was unanimously ratified and confirmed, and the said Angus W. Robertson and the said Dr. B. G. Connolly were appointed inspectors;

10 That at the said meeting of shareholders held on the 9th day of October 1929 the holders of 3,173 shares of the total issue of 3,175 shares were present in person, to wit: the said Angus W. Robertson, 1,584 shares; the said Louis N. Leamy, 1 share; the said Dr. B. G. Connolly, 1 share; the said J. Ambrose O'Brien, 1 share; the estate of the said Hugh Quinlan (represented by its joint executors, the said Angus W. Robertson and the said Capital Trust Corporation Limited, the latter acting by the said Dr. B. G. Connolly) 1,586 shares;

20 That the said resolution adopted on the 9th day of October 1929 by the board of directors of the said A. W. Robertson Limited and its ratification by the meeting of shareholders of the said company were fraudulently contrived and manoeuvred by the said Angus W. Robertson, Louis N. Leamy, Dr. B. G. Connolly and J. Ambrose O'Brien in furtherance of the aforesaid purpose of assuring the continuance of the payments until then made from time to time by the said A. W. Robertson Limited to the said M. J. O'Brien Limited, as well for the purpose of enabling the said Angus W. Robertson to achieve, to the detriment of the said A. W. Robertson Limited and the shareholders thereof, 30 contrary to his duty as director and president of the said A. W. Robertson Limited, and for his own personal benefit and advantage, the creation of Angus Robertson Limited, a body corporate and politic having its head office in the City of Montreal, in order that, through the instrumentality of the said Angus Robertson Limited, he, the said Angus W. Robertson, might carry on the business theretofore engaged in by the said A. W. Robertson Limited and personally retain the entire profit thereof;

40 That the said Charles A. Shannon and Louis N. Leamy, both then fully conversant with all that had been done prior to the said 9th day of October 1929 and aware of the illegality of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien, undertook and are presently engaged in the winding up of the said A. W. Robertson Limited and as liquidators of the said A. W. Robertson Limited have paid divers large sum of money to the said M. J. O'Brien Limited in virtue of the said alleged agreement;

That in the immediate future further sums, as yet neither determined nor determinable in amount but in any event in excess of \$150,000.00, will become due and payable to the said M. J. O'Brien Limited in virtue of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien, and that the said  
10 Charles A. Shannon and Louis N. Leamy as liquidators of the said A. W. Robertson Limited intend and propose to pay such further sums to the said M. J. O'Brien Limited with all possible dispatch upon receipt from the Government of the Dominion of Canada of the balance of the monies still to be paid by the said Government in virtue of the contract with it concluded on the 27th day of February 1924 by the said A. W. Robertson Limited;

That the payment of the said sums paid to the said M. J. O'Brien Limited by the said Charles A. Shannon and Louis N.  
20 Leamy as liquidators of the said A. W. Robertson Limited was approved by the inspectors appointed by the said resolution adopted by the said meeting of shareholders of A. W. Robertson Limited held on the said 9th day of October 1929, to wit, the said Angus W. Robertson and Dr. B. G. Connolly;

That all monies paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited or the liquidators thereof in virtue of the said agreement alleged to have intervened between  
30 the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien or the acknowledgment thereof contained in the said resolution adopted on the said 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited are recoverable from the said M. J. O'Brien Limited by the liquidators of the said A. W. Robertson Limited, and that the said liquidators are under no duty to pay any further sum due or to become due in virtue of the said alleged agreement;

That the payments made to the said M. J. O'Brien Limited  
40 by the said A. W. Robertson Limited and the liquidators thereof in virtue of the said alleged agreement have diminished the value of the said 1,586 shares of the capital stock of the said A. W. Robertson Limited owned by the said estate by at least \$200,000.00, and that any further payment made to the said M. J. O'Brien Limited will still further diminish the value of the said 1,586 shares;

That for the reasons hereinabove set out it has been the duty and now is the urgent duty of the said Capital Trust Cor-

poration Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause to be recovered by the liquidators of the said A. W. Robertson Limited all the said monies paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited and the liquidators thereof, and to prevent the payment of any further sums due or to become due in virtue of the said alleged agreement;

That for the reasons hereinabove set out it has long been the duty and now is the urgent duty of the said Capital Trust Corporation Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause the said Charles A. Shannon and Louis N. Leamy to be removed from and destituted of the office of liquidators of the said A. W. Robertson Limited;

That for the reasons hereinabove set out it has long been the duty and now is the urgent duty of the said Capital Trust Corporation Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien and the acknowledgment thereof contained in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited to be declared null, void and of no legal effect;

That for the reasons hereinabove set out it has long been the duty and now is the urgent duty of the said Capital Trust Corporation Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause the said Angus W. Robertson to account to the liquidators of the said A. W. Robertson Limited for the profits, benefits and advantages by the said Angus W. Robertson derived from the creation and exploitation of the said Angus Robertson Limited and among other things to cause the said Angus W. Robertson to convey to the liquidators of the said A. W. Robertson Limited all of the shares of the capital stock of the said Angus Robertson Limited held by him, the said Angus W. Robertson;

That in the course of the winding up of the said A. W. Robertson Limited the liquidators of the said company, the said Charles A. Shannon and Louis N. Leamy divided certain of the assets of the said company into two portions declared by the said liquidators to be of equal value, conveying one of the said portions

to the said estate and the other to the said Angus W. Robertson, but that the division of the assets so conveyed was fraudulently made by the said liquidators at the instigation of the said Angus W. Robertson, with the result that the value of the portion conveyed to the said estate was only a small fraction of the value conveyed to the said Angus W. Robertson;

10

That as a result of the fraudulent concert of the said Angus W. Robertson and one Emmanuel Ludger Parent, manager of the estates department of the said Capital Trust Corporation Limited, the said Quinlan, Robertson & Janin Limited was enabled to remove and appropriate to itself, without paying or undertaking to pay therefor, considerable machinery belonging to the said A. W. Robertson Limited, and that for several years past the said machinery has been treated and is still being treated by the said Quinlan, Robertson & Janin Limited as its own property;

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That by a written agreement made on the 2nd day of July 1926 the said Angus W. Robertson promised to pay to the said Hugh Quinlan one half of the sum of \$75,000.00 then owing to the said Angus W. Robertson, stipulating, however, that in the event of the said Hugh Quinlan predeceasing him before the due date of the final or any other payment to be made by the said Peter Lyall & Sons Limited the estate of the said Hugh Quinlan should receive only one third of the payment or payments remaining due; that subsequent to the death of the said Hugh Quinlan the said Angus W. Robertson received from the said Peter Lyall & Sons Limited three payments of \$25,000.00 each, but paid to the said estate its share of only two of the said payments and refused to pay its share of the third; and that although the said Angus W. Robertson should have paid the said estate's share of the said third payment of \$25,000.00 several years ago the said Capital Trust Corporation Limited and the said General Trust of Canada have done nothing as joint executors and trustees of the said estate to recover the said share from the said Angus W. Robertson;

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That at the death of the said Hugh Quinlan there was due him by the said Quinlan, Robertson & Janin Limited the sum of \$84,314.60, balance of a dividend declared on the 31st day of March 1925 by the board of directors of the said company on the 1,151 shares of the capital stock thereof belonging to the said Hugh Quinlan, and that to the knowledge of the said Capital Trust Corporation Limited and the said General Trust of Canada the said



sum of \$84,314.60 has been wrongfully and illegally paid to the said Angus W. Robertson since the death of the said Hugh Quinlan, but the said Capital Trust Corporation Limited and the said General Trust of Canada have done nothing as joint executors and trustees of the said estate to recover from the said Quinlan, Robertson & Janin Limited the amount of the said dividend, which should have been paid to the said estate;

That in the month of April 1927 the said Angus W. Robertson and one Alban Janin, then directors and officers of Quinlan, Robertson & Janin Limited and Amiesite Asphalt Limited and using the monies of the said companies therefor, caused Macurban Asphalt Limited, a body corporate and politic having its head office in the city of Montreal, to be organized in order that, through the instrumentality of the said Macurban Asphalt Limited, the said Angus W. Robertson and the said Alban Janin might engage, contrary to their plain duty as directors and officers of the said Quinlan, Robertson & Janin Limited and Amiesite Asphalt Limited, in the asphalt and paving business and divert to the said Macurban Asphalt Limited, the entire share issue of which was held by the said Angus W. Robertson and the said Alban Janin and their prête-noms, the profits which would otherwise have accrued to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited, the whole to the great detriment of the said companies and the shareholders thereof;

That the said Angus W. Robertson and the said Alban Janin, then directors and officers of the said Quinlan, Robertson & Janin Limited and Amiesite Asphalt Limited, personally, to the exclusion of the said Quinlan, Robertson & Janin Limited and Amiesite Asphalt Limited and contrary to their duty as directors and officers of the said companies, contracted for divers works in connection with the construction of the road known as Tascherau Boulevard, and failed and neglected to account to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited for the profits by them made in the execution of the works so contracted for;

That in the month of November 1927 the said Angus W. Robertson appropriated to himself without color of right 200 shares of the capital stock of Ontario Amiesite Limited neither paying nor undertaking to pay the value thereof;

That the said Angus W. Robertson then one of the joint executors and trustees of the said estate and as such unable leg-

ally to purchase from the said estate, purchased for himself through persons interposed 1,000 preferred shares and 499 common shares of the capital stock of the said Fuller Gravel Limited and resold the said shares at a profit of \$40,000.00, but failed and neglected to account to the said estate for the profit thus illegally made;

10

That although for several years the said Capital Trust Corporation Limited has been cognizant or able to become cognizant of each and every of the facts hereinabove set out, it has neglected and failed, contrary to its duty as one of the joint executors and trustees of the said estate, to remedy or cause to be remedied any of the hereinabove declared wrongs, and that the said Capital Trust Corporation Limited still persists in its said neglect;

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That although long before its appointment on the said 19th day of February 1931 by the said Angus W. Robertson as one of the joint executors and trustees of the said estate the General Trust of Canada had been cognizant or able to become cognizant of each and every of the facts hereinabove set out, it has neglected and failed, contrary to its duty as one of the joint executors and trustees of the said estate, to remedy any of the hereinabove declared wrongs, and that the said General Trust of Canada still persists in its said neglect;

30

That by reason of the persistent neglect and failure of the said Capital Trust Corporation Limited and the said General Trust of Canada as joint executors and trustees of the said estate to remedy or cause to be remedied any of the hereinabove declared wrongs the assets of the said estate have long been wasted and depleted and are presently exposed to serious further waste and depletion;

40

That by reason of her interest in the said estate the said Dame Ethel Quinlan is entitled to take all measures necessary or useful to prevent such further waste and depletion of the assets of the said estate and to recover insofar as such recovery may still be possible the assets lost, as well as to cause to be remedied each and every of the wrongs, by whomsoever committed, as a result of which the assets of the said estate have failed to be increased or are likely to fail to be increased;

WHEREFORE at the request aforesaid and speaking as aforesaid I required the said Capital Trust Corporation Limited

as one of the joint executors and trustees of the said estate to do within fifteen days hereof all things capable of being done in order;

10 THAT there be made a complete and faithful inventory of the said estate in conformity with article 919 of the Civil Code of Lower Canada;

THAT such action as the law provides be instituted against the said Angus W. Robertson for the purpose of compelling him to render an account of his administration as one of the joint executors and trustees of the said estate, unless within eight days hereof he shall have rendered such account in the manner and form by law provided;

20 THAT the said P. C. Shannon, Son & Co. be dismissed as auditors of the said estate and that there be appointed as such auditors a chartered accountant, or firm of chartered accountants, of unquestioned and unquestionable competence, integrity and responsibility, any one of the following being acceptable to the said Dame Ethel Quinlan: Clarkson, McDonald, Currie & Co., Peat, Marwick, Mitchell & Co., Price, Waterhouse & Co. and R. Schurman & Co.;

30 THAT the said Charles A. Shannon and the said Louis N. Leamy be removed from and destituted of the office of liquidators of the said A. W. Robertson Limited and replaced by one or more persons of unquestioned and unquestionable competence integrity and responsibility;

THAT the inspectors of the said A. W. Robertson Limited be removed from and destituted of their office and replaced by persons of unquestioned and unquestionable competence integrity and responsibility;

40 THAT the monies paid as aforesaid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited and the liquidators thereof be recovered and that the payment of any further sums due or to become due in virtue of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien and the acknowledgment thereof contained in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited be prevented;

10 THAT the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien and the acknowledgment thereof contained in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited be declared null void and of no legal effect;

20 THAT the said Angus W. Robertson be compelled to account to the liquidators of the said A. W. Robertson Limited for the profits, benefits and advantages whatsoever by him derived from the creation and exploitation of the said Angus Robertson Limited, and that he be made to convey or cause to be conveyed to the liquidators of the said A. W. Robertson Limited all of the shares of the capital stock of the said Angus Robertson Limited held by himself, the said Angus W. Robertson, or by his prétenoms;

THAT the assets of the said A. W. Robertson Limited fraudulently conveyed as aforesaid to the said Angus W. Robertson by the said Charles A. Shannon and Louis N. Leamy as liquidators of the said A. W. Robertson Limited be annulled, and that the said assets or the value thereof be recovered from the said Angus W. Robertson by the liquidators of the said A. W. Robertson Limited;

30 THAT the said Quinlan, Robertson & Janin Limited be compelled to pay to the liquidators of the said A. W. Robertson Limited the value of the machinery belonging to the said A. W. Robertson Limited which as a result of the fraudulent concert between the said Angus W. Robertson and the said Emmanuel Ludger Parent the said Quinlan, Robertson & Janin Limited has removed and appropriated to itself;

40 THAT the monies due to the said estate from the said Angus W. Robertson in virtue of the said written agreement made on the 2nd day of July 1926 by the said Hugh Quinlan be recovered by the said estate from the said Angus W. Robertson;

THAT the monies due to the said estate by the said Quinlan, Robertson & Janin Limited in virtue of the dividend declared on the 31st day of March 1925 by the board of directors of the said company be recovered by the said estate from the said Quinlan, Robertson & Janin Limited;

THAT the said 200 shares of Ontario Amiesite Limited illegally appropriated by the said Angus W. Robertson, or their value, be recovered by the said estate;

10 THAT the said Angus W. Robertson be compelled to account to the said estate for the profits by him made as a result of his illegal purchase and subsequent resale of the said 1,000 preferred shares and 499 common shares of the said Fuller Gravel Limited;

20 THAT the said Angus W. Robertson and the said Alban Janin be compelled to account to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited for the profits, benefits and advantages whatsoever by them illegally derived from the creation and exploitation of the said Macurban Asphalt Limited, and that they be compelled to convey or cause to be conveyed to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited all of the shares of the capital stock of the said Macurban Asphalt Limited held by them, the said Angus W. Robertson and the said Alban Janin, or by their prête-noms;

30 THAT the said Angus W. Robertson and the said Alban Janin be compelled to account to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited for all profits, benefits and advantages whatsoever by them illegally derived from the construction of the said road known as Tasche-reau Boulevard;

AND at the request aforesaid and speaking as aforesaid I further declared that the said Dame Ethel Quinlan is ready and willing to communicate to the said Capital Trust Corporation Limited and the said General Trust of Canada as joint executors and trustees of the said estate such further evidence as they may require in order the better to comply with the requests upon them hereinabove made.

40 DONE at Montreal under number three hundred and forty eight of my minutes on the day first above mentioned, an authentic copy hereof having been left with the said Capital Trust Corporation Limited, speaking as aforesaid, in order that the said Capital Trust Corporation Limited may not plead ignorance hereof.

(Signed) NOEL PICARD, Notary.

TRUE COPY of the original hereof remaining of record in my office. (Three words scratched are null).

Noel Picard, Notary.

PLAINTIFF'S EXHIBIT P-S-1B AT ENQUETE

10 *Protest served upon Capital Trust Corporation Limited  
at the request of Dame Ethel Quinlan.*

20 IN THE YEAR ONE THOUSAND NINE HUNDRED  
AND THIRTY-THREE, on the sixteenth day of the month of  
October, at the request of Dame ETHEL QUINLAN, wife com-  
mon as to property of JOHN THOMAS KELLY and by him du-  
ly authorized, I, NOEL PICARD, the undersigned Notary Pub-  
lic of the Province of Quebec, residing and practising in the city  
of Montreal, repaired to the head office of the CAPITAL  
TRUST CORPORATION LIMITED in the city of Ottawa in  
the Province of Ontario, and there being and speaking to E. T.  
B. Pennefather, general manager of the Capital Trust Corpora-  
tion Limited.

DECLARED:

30 THAT on the 29th day of September 1933, at the request of the  
said Dame Ethel Quinlan I repaired to the head office of the  
Capital Trust Corporation Limited in the city of Ottawa in the  
Province of Ontario, and there being and speaking to E. T. B.  
Pennefather, its general manager, declared:

“That the said Dame Ethel Quinlan is a daughter of the  
late Hugh Quinlan, and one of the beneficiaries under his last  
will and testament executed on the 14th day of April 1926 before  
Mtres. Edouard Biron and Eugene Poirier;

40 “That by his said will the said Hugh Quinlan appointed  
the said Capital Trust Corporation Limited and one Angus W.  
Robertson joint executors and trustees of his estate;

“That upon the death of the said Hugh Quinlan, to wit, on  
the 26th day of June 1927, the said Capital Trust Corporation  
Limited and the said Angus W. Robertson accepted the said ap-  
pointment as joint executors and trustees of the said estate, took  
possession of the assets thereof and continued to act as joint ex-  
ecutors and trustees of the said estate until the 19th day of Fe-  
bruary 1931;

“That on the said 19th day of February 1931 the said Angus W. Robertson resigned as one of the joint executors and trustees of the said estate and, exercising the power upon him conferred by the said will, appointed as his successor the General Trust of Canada, a body corporate and politic having its head office in the city of Montreal;

10

“That since the said 19th day of February 1931 the said Capital Trust Corporation Limited and the said General Trust of Canada have been seized of the said estate as joint executors and trustees thereof, have administered and are now administering the said estate;

“That no valid inventory of the said estate was ever made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees thereof;

20

“That the only inventory ever made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate was not signed by them, and that the said inventory was made in contravention of article 919 of the Civil Code of Lower Canada in that it was made by the said Capital Trust Corporation Limited and the said Angus W. Robertson without notice to the heirs, legatees and other interested persons to be present;

30

“That the said inventory made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate was and is incomplete in that no mention is made therein of a number of the principal and most valuable assets of the said estate, in particular the following: 250 shares of the capital stock of Amiesite Asphalt Limited; 200 shares of the capital stock of Ontario Amiesite Limited; the sum of \$84,314.60 declared as a dividend on the 31st day of March 1925 by a resolution of the board of directors of Quinlan, Robertson & Janin Limited on 1,151 shares of the capital stock of the said Quinlan, Robertson & Janin Limited then owned by the said Hugh Quinlan and mentioned in the said inventory as an asset of the said estate; the interest of the said estate in certain monies payable to the said Angus W. Robertson by Peter Lyall & Sons Limited, the said interest having been established by a writing executed on the 2nd day of July 1926 by the said Angus W. Robertson and the said Hugh Quinlan;

40

“That the said inventory made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate was replete with false appraisals of a number of the principal and most valuable assets of the said estate, and that, in particular, 1,000 preferred shares and 499 common shares of the capital stock of Fuller Gravel Limited, having a total value of \$90,000.00, were appraised in the said inventory as having a total value of \$1.00;

“That the resignation of the said Angus W. Robertson on the said 19th day of February 1931 as one of the joint executors and trustees of the said estate was pursuant to a judgment rendered against him on the 5th of February 1931 by the Honourable Mr. Justice Martineau one of the judges of the Superior Court of the Province of Quebec, in an action bearing number A-36664 of the records of the said Superior Court, District of Montreal, instituted on the 25th day of October 1928 by the said Dame Ethel Quinlan and her sister, Dame Margaret Quinlan, by which judgment the purchase by the said Angus W. Robertson from the said estate of 1,151 shares of the capital stock of the said Quinlan, Robertson & Janin Limited, 250 shares of the capital stock of the said Amiesite Asphalt Limited, 200 shares of the capital stock of the said Ontario Amiesite Limited and 400 shares of the capital stock of the said Fuller Gravel Limited was annulled, and that in delivering the said judgment the said Honourable Mr. Justice Martineau declared that in the event of the said Angus W. Robertson appealing therefrom “comme c’est son droit de le faire s’il le croit mal fondé, il devrait, dans les cas où les demandereses n’en appelleraient pas elles-mêmes, résigner ses fonctions et se nommer un successeur, comme le testament lui en donne le droit, en ayant le soin de choisir un homme qui lui est absolument étranger, afin que celui-là soit libre de combattre ses prétentions, et que les héritiers ne puissent douter de son impartialité”;

“That the resignation of the said Angus W. Robertson on the said 19th day of February 1931 as one of the joint executors and trustees of the said estate was made two days before the said Angus W. Robertson entered an appeal from the said judgment, but that in appointing the said General Trust of Canada to be his successor as one of the joint executors and trustees of the said estate the said Angus W. Robertson acted in total disregard of the advice tendered him by the said Mr. Justice Martineau, to wit, that the said Angus W. Robertson should select and appoint as his successor one whose impartiality the heirs of the said Hugh Quinlan could not question;



“That the said General Trust of Canada assumed its functions as one of the joint executors and trustees of the said estate without making any inventory in conformity with the provisions of article 919 of the Civil Code of Lower Canada, and that the said Dame Ethel Quinlan has never been informed by the said Capital Trust Corporation Limited or by the said General Trust of Canada and does not yet know whether any inventory, in conformity with the provisions of article 919 of the Civil Code of Lower Canada or not, has ever been made by the said Capital Trust Corporation Limited and the said General Trust of Canada;

“That no account of his administration as one of the joint executors and trustees of the said estate has ever been rendered by the said Angus W. Robertson to the said Capital Trust Corporation Limited and the said General Trust of Canada as joint executors and trustees of the said estate, and that no account of his administration has ever been required of him by the said Capital Trust Corporation Limited and the said General Trust of Canada since the said 19th day of February 1931;

“That by paragraph “j” of the fourth article of his said will the said Hugh Quinlan empowered his said executors and trustees to employ the said Capital Trust Corporation Limited as “agent, accountant and manager” of the said estate, “with power to do and execute the detail work in connection with the administration” thereof, “to keep the books of account, to make collections and execute minor acts of administration”, and provided that for such services the Capital Trust Corporation Limited should be entitled to receive “its usual commission”;

“That since the death of the said Hugh Quinlan the said Capital Trust Corporation Limited has been employed for the purposes set out in the said paragraph “j” of the fourth article of the said will, but the services thus rendered were negligently and unfaithfully performed by the said Capital Trust Corporation Limited: in particular, the books of account were irregularly and inaccurately kept, the whole, as more fully appears hereunder, for the purpose of concealing from the said Dame Ethel Quinlan and the other beneficiaries under the said will various and numerous acts of maladministration and malversation from time to time committed by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate;

“That in furtherance of the said purpose of concealing the said acts of maladministration and malversation from the said Dame Ethel Quinlan and the other beneficiaries under the said will the said Capital Trust Corporation Limited and the said Angus W. Robertson engaged P. C. Shannon, Son & Co. as auditors of the said estate, and that the said P. C. Shannon, Son & Co. never made a proper and regular audit of the affairs of the said estate, but accepted without verification or critical examination the statements of the said Capital Trust Corporation Limited and declared the accounting of the said Capital Trust Corporation Limited to have been carried out in an accurate manner;

“That the further retention of the said P. C. Shannon, Son & Co. as auditors of the said estate constitutes a useless and unnecessary expenditure inasmuch as the statements of the said P. C. Shannon, Son & Co. can inspire no greater confidence than those of the said Capital Trust Corporation Limited;

“That the said estate is a shareholder of A. W. Robertson Limited, a body corporate and politic having its head office in the city of Montreal, and is the owner of 1,586 shares of the capital stock thereof;

“That at various dates prior to the 10th day of April 1929 divers sums of money, making a total of \$254,701.11, were paid by the said A. W. Robertson Limited to M. J. O'Brien Limited, a body corporate and politic and having its head office in the city of Ottawa, and that subsequent to the said date divers further sums were paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited;

“That the said sums paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited were paid without legal cause, and that the said A. W. Robertson Limited was under no obligation to pay them, or any of them, to the said M. J. O'Brien Limited;

“That on the 27th day of February 1924 a contract for the construction of the eighth section of the Welland Ship Canal was concluded by the said A. W. Robertson Limited with the Government of the Dominion of Canada;

“That the said sums paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited were paid in virtue of an agreement alleged to have intervened in or about the month

of February 1924 between the said A. W. Robertson Limited, the said M. J. O'Brien Limited and one Michael J. O'Brien;

10 "That by the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien the said A. W. Robertson Limited granted to the said M. J. O'Brien Limited one quarter interest in the said contract for the construction of the eighth section of the Welland Ship Canal, and the said Michael J. O'Brien became liable to the said A. W. Robertson Limited, jointly and severally with the said M. J. O'Brien Limited, for the performance of such obligations as were assumed by the said M. J. O'Brien Limited;

20 "That at the time of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien the said Michael J. O'Brien was a member of the Senate of Canada, and that the said agreement was in contravention of the Senate and House of Commons Act, Revised Statutes of Canada, 1906, chapter 10, and was null, void and of no legal effect;

30 "That the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien was negotiated and verbally concluded on behalf of the said A. W. Robertson Limited by the said Angus W. Robertson, its then president, and on behalf of the said M. J. O'Brien Limited by the said Michael J. O'Brien and one J. Ambrose O'Brien, two of its directors and officers, and remained clandestine so long as the said Michael J. O'Brien continued to be a member of the Senate of Canada;

40 "That the said Michael J. O'Brien ceased to be a member of the Senate of Canada on the 1st day of September 1925, and that on the 17th day of November 1925 the said Michael J. O'Brien acknowledged in writing his participation in the said agreement alleged to have intervened between himself and the said A. W. Robertson Limited and M. J. O'Brien Limited;

"That on the 23rd day of November 1926 the said A. W. Robertson Limited, by its then president the said Angus W. Robertson, wrote to the said J. Ambrose O'Brien as follows:

"As requested in your letter of the 22nd instant, we herewith return the Undertaking which your father signed some time ago. It would be much better if the Undertaking were dated much earlier. All monies in our books

will show as payments to M. J. O'Brien Limited, and the one-quarter interest in Section No. 8 of Welland Ship Canal is in the name of M. J. O'Brien Limited";

10 "That it was only after the action hereinabove referred to had been instituted against the said Angus W. Robertson by the said Dame Ethel Quinlan and the said Dame Margaret Quinlan, to wit, on the 10th day of December 1928 that the board of directors of the said A. W. Robertson Limited first acknowledged the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien the said acknowledgment being by a resolution in the following terms:

20 "That, at the request of M. J. O'Brien Limited, this company does formally admit and confirm the acceptance of the undivided one quarter share and interest of M. J. O'Brien Limited in the Welland Ship Canal (Section No. 8) contract obtained by this company in February 1924, and in respect of which substantial payments have from time to time heretofore been made by this company to said M. J. O'Brien Limited";

30 "That on the said 10th of December 1928 the said board of directors of A. W. Robertson Limited was composed of the said Angus W. Robertson, one Louis N. Leamy and the late Dr. B. G. Connolly, then general manager of the said Capital Trust Corporation Limited, and that the said Angus W. Robertson, Louis N. Leamy and Dr. B. G. Connolly participated in the said resolution acknowledging the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien;

40 "That on the said 10th day of December 1928 the said Michael J. O'Brien and the said J. Ambrose O'Brien were directors of the said Capital Trust Corporation Limited, and that the said Michael J. O'Brien is still a director and honorary president of the said Capital Trust Corporation Limited;

"That the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited acknowledging the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien was fraudulently contrived and manoeuvred by the said Angus W. Robertson, Louis N. Leamy,

Dr. B. G. Connolly and J. Ambrose O'Brien for the purpose of assuring the continuation of the payments until then made from time to time by the said A. W. Robertson Limited to the said M. J. O'Brien Limited, and was in fraud of the rights of the shareholders of the said A. W. Robertson Limited;

10 "That on the 9th day of October 1929 the board of directors of the said A. W. Robertson Limited unanimously adopted a resolution to the effect that the said company be wound up under the provisions of the Quebec Winding up Act (Revised Statutes of Quebec, 1925, chapter 225) and that one Charles A. Shannon and the said Louis N. Leamy be appointed liquidators;

20 "That on the said 9th day of October 1929 the board of directors of the said A. W. Robertson Limited was composed of the said Angus W. Robertson, Louis N. Leamy, Dr. B. G. Connolly, J. Ambrose O'Brien and the Honourable J. L. Perron, all of whom participated in the said resolution;

"That for several years prior to the said 9th day of October 1929 the said Charles A. Shannon had been the auditor of the said A. W. Robertson Limited, and that, contrary to his duty as auditor, he had approved each and every of the payments until then made by the said A. W. Robertson Limited to the said M. J. O'Brien Limited;

30 "That at a meeting of shareholders of the said A. W. Robertson Limited held on the said 9th day of October 1929 the said resolution of the board of directors to the effect that the said company be wound up and that the said Charles A. Shannon and Louis N. Leamy be appointed liquidators was unanimously ratified and confirmed, and the said Angus W. Robertson and the said Dr. B. G. Connolly were appointed inspectors;

40 "That at the said meeting of shareholders held on the 9th day of October 1929 the holders of 3,173 shares of the total issue of 3,175 shares were present in person, to wit: the said Angus W. Robertson, 1,584 shares; the said Louis N. Leamy, 1 share; the said Dr. B. G. Connolly, 1 share; the said J. Ambrose O'Brien, 1 share; the estate of the said Hugh Quinlan (represented by its joint executors, the said Angus W. Robertson and the said Capital Trust Corporation Limited, the latter acting by the said Dr. B. G. Connolly) 1,586 shares;

10 “That the said resolution adopted on the 9th day of October 1929 by the board of directors of the said A. W. Robertson Limited and its ratification by the meeting of shareholders of the said company were fraudulently contrived and manoeuvred by the said Angus W. Robertson, Louis N. Leamy, Dr. B. G. Connolly and J. Ambrose O’Brien in furtherance of the aforesaid purpose of assuring the continuance of the payments until then made from time to time by the said A. W. Robertson Limited to the said M. J. O’Brien Limited, as well for the purpose of enabling the said Angus W. Robertson to achieve, to the detriment of the said A. W. Robertson Limited and the shareholders thereof, contrary to his duty as director and president of the said A. W. Robertson Limited, and for his own personal benefit and advantage, the creation of Angus Robertson Limited, a body corporate and politic having its head office in the city of Montreal, in order  
20 that, through the instrumentality of the said Angus Robertson Limited, he, the said Angus W. Robertson, might carry on the business theretofore engaged in by the said A. W. Robertson Limited and personally retain the entire profit thereof;

30 “That the said Charles A. Shannon and Louis N. Leamy, both then fully conversant with all that had been done prior to the said 9th day of October 1929 and aware of the illegality of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O’Brien Limited and Michael J. O’Brien, undertook and are presently engaged in the winding up of the said A. W. Robertson Limited and as liquidators of the said A. W. Robertson Limited have paid divers large sums of money to the said M. J. O’Brien Limited in virtue of the said alleged agreement;

40 “That in the immediate future further sums, as yet neither determined nor determinable in amount but in any event in excess of \$150,000.00, will become due and payable to the said M. J. O’Brien Limited in virtue of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O’Brien Limited and Michael J. O’Brien, and that the said Charles A. Shannon and Louis N. Leamy as liquidators of the said A. W. Robertson Limited intend and propose to pay such further sums to the said M. J. O’Brien Limited with all possible dispatch upon receipt from the Government of the Dominion of Canada of the balance of the monies still to be paid by the said Government in virtue of the contract with it concluded on the 27th day of February 1924 by the said A. W. Robertson Limited;

“That the payment of the said sums paid to the said M. J. O’Brien Limited by the said Charles A. Shannon and Louis N. Leamy as liquidators of the said A. W. Robertson Limited was approved by the inspectors appointed by the said resolution adopted by the said meeting of shareholders of A. W. Robertson Limited held on the said 9th day of October 1929, to wit, the said  
10 Angus W. Robertson and Dr. B. G. Connolly;

“That all monies paid to the said M. J. O’Brien Limited by the said A. W. Robertson Limited or the liquidators thereof in virtue of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O’Brien Limited and Michael J. O’Brien or the acknowledgment thereof contained in the said resolution adopted on the said 10th day of December  
20 1928 by the board of directors of the said A. W. Robertson Limited are recoverable from the said M. J. O’Brien Limited by the liquidators of the said A. W. Robertson Limited, and that the said liquidators are under no duty to pay any further sum due or to become due in virtue of the said alleged agreement;

“That the payments made to the said M. J. O’Brien Limited by the said A. W. Robertson Limited and the liquidators thereof in virtue of the said alleged agreement have diminished the value of the said 1,586 shares of the capital stock of the said A. W. Robertson Limited owned by the said estate by at least  
30 \$200,000.00, and that any further payment made to the said M. J. O’Brien Limited will still further diminish the value of the said 1,586 shares;

“That for the reasons hereinabove set out it has long been the duty and now is the urgent duty of the said Capital Trust Corporation Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause to be recovered by the liquidators of the said A. W. Robertson Limited all the  
40 said monies paid to the said M. J. O’Brien Limited by the said A. W. Robertson Limited and the liquidators thereof, and to prevent the payment of any further sums due or to become due in virtue of the said alleged agreement;

“That for the reasons hereinabove set out it has long been the duty and now is the urgent duty of the said Capital Trust Corporation Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause the said Charles A. Shannon and Louis N. Leamy to be removed from and destituted of the office of liquidators of the said A. W. Robertson Limited;

“That for the reasons hereinabove set out it has long been the duty and now is the urgent duty of the said Capital Trust Corporation Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O’Brien Limited and Michael J. O’Brien and the acknowledgment thereof contained in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited to be declared null, void and of no legal effect;

“That for the reasons hereinabove set out it has long been the duty and now is the urgent duty of the said Capital Trust Corporation Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause the said Angus W. Robertson to account to the liquidators of the said A. W. Robertson Limited for the profits, benefits and advantages by the said Angus W. Robertson derived from the creation and exploitation of the said Angus Robertson Limited and among other things to cause the said Angus W. Robertson to convey to the liquidators of the said A. W. Robertson Limited all of the shares of the capital stock of the said Angus Robertson Limited held by him, the said Angus W. Robertson;

“That in the course of the winding up of the said A. W. Robertson Limited the liquidators of the said company, the said Charles A. Shannon and Louis N. Leamy divided certain of the assets of the said company into two portions declared by the said liquidators to be of equal value, conveying one of the said portions to the said estate and the other to the said Angus W. Robertson, but that the division of the assets so conveyed was fraudulently made by the said liquidators at the instigation of the said Angus W. Robertson, with the result that the value of the portion conveyed to the said estate was only a small fraction of the value of the portion conveyed to the said Angus W. Robertson;

“That as a result of the fraudulent concert of the said Angus W. Robertson and one Emmanuel Ludger Parent, manager of the estates department of the said Capital Trust Corporation Limited, the said Quinlan, Robertson & Janin Limited was enabled to remove and appropriate to itself, without paying or undertaking to pay therefore, considerable machinery belonging to the said A. W. Robertson Limited, and that for several years past the said machinery has been treated and is still being treated by the said Quinlan, Robertson & Janin Limited as its own property;



“That by a written agreement made on the 2nd day of July 1926 the said Angus W. Robertson promised to pay to the said Hugh Quinlan one half of the sum of \$75,000.00 then owing to the said Angus W. Robertson, stipulating, however, that in the event of the said Hugh Quinlan predeceasing him before the due date of the final or any other payment to be made by the said Peter Lyall & Sons Limited the estate of the said Hugh Quinlan should receive only one third of the payment or payments remaining due; that subsequent to the death of the said Hugh Quinlan the said Angus W. Robertson received from the said Peter Lyall & Sons Limited three payments of \$25,000.00 each, but paid to the said estate its share of only two of the said payments and refused to pay its share of the third; and that although the said Angus W. Robertson should have paid the said estate’s share of the said third payment of \$25,000.00 several years ago the said Capital Trust Corporation Limited and the said General Trust of Canada have done nothing as joint executors and trustees of the said estate to recover the said share from the said Angus W. Robertson;

“That at the death of the said Hugh Quinlan there was due him by the said Quinlan, Robertson & Janin Limited the sum of \$84,314.60, balance of a dividend declared on the 31st day of March 1925 by the board of directors of the said company on the 1.151 shares of the capital stock thereof belonging to the said Hugh Quinlan, and that to the knowledge of the said Capital Trust Corporation Limited and the said General Trust of Canada the said sum of \$84,314.60 has been wrongfully and illegally paid to the said Angus W. Robertson since the death of the said Hugh Quinlan, but the said Capital Trust Corporation Limited and the said General Trust of Canada have done nothing as joint executors and trustees of the said estate to recover from the said Quinlan, Robertson & Janin Limited the amount of the said dividend, which should have been paid to the said estate;

“That in the month of April 1927 the said Angus W. Robertson and one Alban Janin, then directors and officers of Quinlan, Robertson & Janin Limited and Amiesite Asphalt Limited and using the monies of the said companies therefor, caused Macurban Asphalt Limited, a body corporate and politic having its head office in the city of Montreal, to be organized in order that, through the instrumentality of the said Macurban Asphalt Limited, the said Angus W. Robertson and the said Alban Janin might engage, contrary to their plain duty as directors and officers of the said Quinlan, Robertson & Janin Limited and Amie-

10 site Asphalt Limited, in the asphalt and paving business and divert to the said Macurban Asphalt Limited, the entire share issue of which was held by the said Angus W. Robertson and the said Alban Janin and their prête-noms, the profits which would otherwise have accrued to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited, the whole to the great detriment of the said companies and the shareholders thereof;

20 “That the said Angus W. Robertson and the said Alban Janin, then directors and officers of the said Quinlan, Robertson & Janin Limited and Amiesite Asphalt Limited, personally, to the exclusion of the said Quinlan, Robertson & Janin Limited and Amiesite Asphalt Limited and contrary to their duty as directors and officers of the said companies, contracted for divers works in connection with the construction of the road known as Taschereau Boulevard, and failed and neglected to account to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited for the profits by them made in the execution of the works so contracted for;

30 “That in the month of November 1927 the said Angus W. Robertson appropriated to himself without color of right 200 shares of the capital stock of Ontario Amiesite Limited, neither paying nor undertaking to pay the value thereof;

“That the said Angus W. Robertson, then one of the joint executors and trustees of the said estate and as such unable legally to purchase from the said estate, purchased for himself through persons interposed 1,000 preferred shares and 499 common shares of the capital stock of the said Fuller Gravel Limited and resold the said shares at a profit of \$40,000.00 but failed and neglected to account to the said estate for the profit thus illegally made;

40 “That although for several years the said Capital Trust Corporation Limited has been cognizant or able to become cognizant of each and every of the facts hereinabove set out, it has neglected and failed, contrary to its duty as one of the joint executors and trustees of the said estate, to remedy or cause to be remedied any of the hereinabove declared wrongs, and that the said Capital Trust Corporation Limited still persists in its said neglect;

“That although long before its appointment on the said 19th day of February 1931 by the said Angus W. Robertson as

one of the joint executors and trustees of the said estate the General Trust of Canada had been cognizant or able to become cognizant of each and every of the facts hereinabove set out, it has neglected and failed, contrary to its duty as one of the joint executors and trustees of the said estate, to remedy any of the hereinabove declared wrongs, and that the said General Trust of  
10 Canada still persists in its said neglect;

“That by reason of the persistent neglect and failure of the said Capital Trust Corporation Limited and the said General Trust of Canada as joint executors and trustees of the said estate to remedy or cause to be remedied any of the hereinabove declared wrongs the assets of the said estate have long been wasted and depleted and are presently exposed to serious further waste and depletion;

20 “That by reason of her interest in the said estate the said Dame Ethel Quinlan is entitled to take all measures necessary or useful to prevent such further waste and depletion of the assets of the said estate and to recover insofar as such recovery may still be possible the assets lost, as well as to cause to be remedied each and every of the wrongs, by whomsoever committed, as a result of which the assets of the said estate have failed to be increased or are likely to fail to be increased”;

30 THAT for the foregoing reasons at the request aforesaid and speaking as aforesaid I required the said Capital Trust Corporation Limited as one of the joint executors and trustees of the said estate to do within fifteen days thereof all things capable of being done in order;

“That there be made a complete and faithful inventory of the said estate in conformity with article 919 of the Civil Code of Lower Canada;

40 “That such action as the law provides be instituted against the said Angus W. Robertson for the purpose of compelling him to render an account of his administration as one of the joint executors and trustees of the said estate, unless within eight days hereof he shall have rendered such account in the manner and form by law provided;

“That the said P. C. Shannon, Son & Co. be dismissed as auditors of the said estate and that there be appointed as such auditors a chartered accountant, or firm of chartered accountants,

of unquestioned and unquestionable competence, integrity and responsibility, any one of the following being acceptable to the said Dame Ethel Quinlan: Clarkson, McDonald, Currie & Co., Peat, Marwick, Mitchell & Co., Price, Waterhouse & Co. and R. Schurman & Co.;

10           “That the said Charles A. Shannon and the said Louis N. Leamy be removed from and destituted of the office of liquidators of the said A. W. Robertson Limited and replaced by one or more persons of unquestioned and unquestionable competence, integrity and responsibility;

              “That the inspectors of the said A. W. Robertson Limited be removed from and destituted of their office and replaced by persons of unquestioned and unquestionable competence, integrity and responsibility;

20

              “That the monies paid as aforesaid to the said M. J. O’Brien Limited by the said A. W. Robertson Limited and the liquidators thereof be recovered, and that the payment of any further sum due or to become due in virtue of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O’Brien Limited and Michael J. O’Brien and the acknowledgment thereof contained in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited be prevented;

30

              “That the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O’Brien Limited and Michael J. O’Brien and the acknowledgment thereof contained in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited be declared null, void and of no legal effect;

40           “That the said Angus W. Robertson be compelled to account to the liquidators of the said A. W. Robertson Limited for the profits, benefits and advantages whatsoever by him derived from the creation and exploitation of the said Angus Robertson Limited, and that he be made to convey or cause to be conveyed to the liquidators of the said A. W. Robertson Limited all of the shares of the capital stock of the said Angus Robertson Limited held by himself, the said Angus W. Robertson, or by his prônoms;

“That the assets of the said A. W. Robertson Limited fraudulently conveyed as aforesaid to the said Angus W. Robertson by the said Charles A. Shannon and Louis N. Leamy as liquidators of the said A. W. Robertson Limited be annulled, and that the said assets or the value thereof be recovered from the said Angus W. Robertson by the liquidators of the said A. W. Robertson Limited;

“That the said Quinlan, Robertson & Janin Limited be compelled to pay to the liquidators of the said A. W. Robertson Limited the value of the machinery belonging to the said A. W. Robertson Limited which as a result of the fraudulent concert between the said Angus W. Robertson and the said Emmanuel Ludger Parent the said Quinlan, Robertson & Janin Limited has removed and appropriated to itself;

“That the monies due to the said estate from the said Angus W. Robertson in virtue of the said written agreement made on the 2nd day of July 1926 by the said Hugh Quinlan be recovered by the said estate from the said Angus W. Robertson;

“That the monies due to the said estate by the said Quinlan, Robertson & Janin Limited in virtue of the dividend declared on the 31st day of March 1925 by the board of directors of the said company be recovered by the said estate from the said Quinlan, Robertson & Janin Limited;

“That the said 200 shares of Ontario Amiesite Limited illegally appropriated by the said Angus W. Robertson, or their value, be recovered by the said estate;

“That the said Angus W. Robertson be compelled to account to the said estate for the profits by him made as a result of his illegal purchase and subsequent resale of the said 1,000 preferred shares and 499 common shares of the said Fuller Gravel Limited;

“That the said Angus W. Robertson and the said Alban Janin be compelled to account to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited for the profits, benefits and advantages whatsoever by them illegally derived from the creation and exploitation of the said Macurban Asphalt Limited, and that they be compelled to convey or cause to be conveyed to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt limited all of the shares of the ca-

pital stock of the said Macurban Asphalt Limited held by them, the said Angus W. Robertson and the said Alban Janin, or by their prête-noms;

10 “That the said Angus W. Robertson and the said Alban Janin be compelled to account to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited for all profits, benefits and advantages whatsoever by them illegally derived from the construction of the said road known as Taschereau Boulevard”; the said Dame Ethel Quinlan being ready and willing to communicate to the said Capital Trust Corporation Limited and the said General Trust of Canada as joint executors and trustees of the said estate such further evidence as they might require in order the better to comply with the requests thus made upon them;

20 AND thereupon I required the said Capital Trust Corporation Limited to declare, what, if anything, it had done since the said 29th day of September 1933 in order that there be made a complete and faithful inventory of the said estate in conformity with article 919 of the Civil Code of Lower Canada; to which demand I received for answer: “We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put.”

30 AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that such action as the law provides be instituted against the said Angus W. Robertson for the purpose of compelling him to render an account of his administration as one of the joint executors and trustees of the said estate, unless within eight days of the said 29th day of September 1933 such account was rendered by him in the manner and form by law provided; to which demand I received for answer:  
40 “We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put.”

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said P. C. Shannon, Son & Co. be dismissed as auditors of the said estate and that there be appointed as such auditors a chartered accountant, or firm of chartered accountants, of unquestioned and unquestionable competence, integrity and responsibility; to which demand I received

for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put.

10 AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said Charles A. Shannon and the said Louis N. Leamy be removed from and destituted of the office of liquidators of the said A. W. Robertson Limited and replaced by one or more persons of unquestioned and unquestionable competence, integrity and responsibility; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

20 AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the inspectors of the said A. W. Robertson Limited be removed from and destituted of their office and replaced by persons of unquestioned and unquestionable competence, integrity and responsibility; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

30 AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the monies paid as aforesaid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited and the liquidators thereof be recovered, and that the payment of any further sum due or to become due in virtue of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien and the acknowledgment thereof contained  
40 in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited be prevented; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said agreement alleged to have intervened between the said A. W. Robertson Limited,

M. J. O'Brien Limited and Michael J. O'Brien and the acknowledgment thereof contained in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited be declared null, void and of no legal effect; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said Angus W. Robertson be compelled to account to the liquidators of the said A. W. Robertson Limited for the profits, benefits and advantages whatsoever by him derived from the creation and exploitation of the said Angus Robertson Limited, and that he be made to convey or cause to be conveyed to the liquidators of the said A. W. Robertson Limited all of the shares of the capital stock of the said Angus Robertson Limited held by himself, the said Angus W. Robertson, or by his prête-noms; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion, and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the assets of the said A. W. Robertson Limited fraudulently conveyed as aforesaid to the said Angus W. Robertson by the said Charles A. Shannon and Louis N. Leamy as liquidators of the said A. W. Robertson Limited be annulled and that the said assets or the value thereof be recovered from the said Angus W. Robertson by the liquidators of the said A. W. Robertson Limited; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particular you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said Quinlan, Robertson & Janin Limited be compelled to pay to the liquidators of the said A. W. Robertson Limited the value of the machinery belonging to the said A. W. Robertson Limited which as a result of the fraudulent concert between the said Angus W. Robertson and



the said Emmanuel Ludger Parent the said Quinlan, Robertson & Janin Limited has removed and appropriated to itself; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion, and refer you to him for the particulars you require in the question you have put."

10

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the monies due to the said estate from the said Angus W. Robertson in virtue of the said written agreement made on the 2nd day of July 1926 by the said Hugh Quinlan be recovered by the said estate from the said Angus W. Robertson; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

20

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the monies due to the said estate by the said Quinlan, Robertson & Janin Limited in virtue of the dividend declared on the 31st day of March 1925 by the board of directors of the said company be recovered by the said estate from the said Quinlan, Robertson & Janin Limited; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

30

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said 200 shares of Ontario Amiesite Limited illegally appropriated by the said Angus W. Robertson, or their value, be recovered by the said estate; to which demand I received for answer: We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

40

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said Angus W. Robertson be compelled to account to the said estate for the profits by him made as a result of his illegal purchase and subsequent resale of the said 1,000 preferred shares and 499 common shares of the

said Fuller Gravel limited; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

10 AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said Angus W. Robertson and the said Alban Janin be compelled to account to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited for the profits, benefits and advantages whatsoever by them illegally derived from the creation and exploitation of the said Macurban Asphalt Limited, and that they be compelled to convey or cause to be conveyed to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited all of the shares of the capital stock of the said Macurban Asphalt Limited held by them, the said Angus W. Robertson and the said Alban Janin, or by their prête-noms; to which demand I received  
20 for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said Angus W. Robertson and the said Alban Janin be compelled to account to the said  
30 Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited for all profits, benefits and advantages whatsoever by them illegally derived from the construction of the said road known as Taschereau Boulevard; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

40 DONE at Montreal under number three hundred and fifty four of my minutes on the day first above mentioned, an authentic copy hereof having been left with the said Capital Trust Corporation Limited, speaking as aforesaid, in order that the said Capital Trust Corporation Limited may not plead ignorance hereof.

(Signed) NOEL PICARD,  
Notary

True Copy of the original  
hereof remaining of record  
in my office.

Noel Picard,  
Notary.

PLAINTIFF'S EXHIBIT P-S-3 AT ENQUETE

*Document from Aimé Geoffrion to Capital Trust  
Corporation Ltd.*

10

COPY

GEOFFRION & PRUD'HOMME,  
Advocates, Barristers, etc.,  
112 St. James Street, West,  
Montreal.

December 7th, 1933.

Capital Trust Corporation, Limited,  
10 Metcalfe Street,  
Ottawa, Ont.

20

Dear Sirs:

re: Estate Hugh Quinlan — Fyle 614  
Mrs. Kelly's Protests

I am taking the last protest of October 17th, 1933 and I follow the requests contained at the end thereof.

30 The first request is in respect of the inventory which is alleged to be insufficient.

In the suit now pending before the Supreme Court taken by the present complainant and another, against A. W. Robertson and the Capital Trust Corporation, both personally and as executors, demand is made, Vol. 1, page 14, paragraph E, that the inventory prepared by defendants be set aside as incorrect, false and fraudulent.

40

The judgment of the Superior Court, Vol. 8, pages 788, 789 and 790, dismisses that demand and expressly states that the inventory, though incomplete at first, is now complete.

It is therefore obviously unnecessary to make a new inventory.

As a general proposition, it is not necessary to make a new inventory, whenever new items, whether disputed or not, are discovered nor when there is a change in the executorship.

If new items are discovered, whether admitted or disputed, they should be added with the necessary qualification in that respect.

10 The next request is that an action to account be taken against A. W. Robertson who has resigned as an executor.

Under the will, the Capital Trust Corporation is to be the agent acting in the management of the estate with power to do and execute the detailed work in connection with its administration, to keep the books of account, etc.

The Capital Trust Corporation has attended exclusively to that work.

20 It is still an executor.

The account of the retiring executor on his being replaced is due to the next executor and not to the heirs.

The new executor will have to account to the heirs, when the time comes, both for his period of administration and for that of his predecessor.

30 It is for him to say if he needs an account from the predecessor.

In this case it seems to me that the request for such an account would be useless, the executor who kept the books alone being still in office.

I understand that the balance sheet was established by the remaining executor when A. W. Robertson resigned.

40 The third demand is that Messrs. P. C. Shannon Son & Co. be dismissed as useless and incompetent.

I understand they were the auditors for the late Mr. Quinlan's affairs.

It would seem to me that an auditor of the estate is far from useless.

These are chartered accountants I find no evidence of their incompetent; their fee is very small; it is, however, for the

executors to decide, in their uncontrolled discretion, if an auditor is useful, and if these auditors are competent. If so, they may be kept.

I will suspend the 4th and 5th questions.

10       The 6th and 7th questions deal with the O'Brien matter.

The O'Brien matter was dealt with by the Superior Court Judge in the above mentioned case, Vol. 8, page 803, and the way it was handled by the executors is approved.

20       The complainant in this case has not appealed from that judgment. She alleges no new facts except the charge that the contract was illegal when made because Mr. O'Brien was a Senator.

30       Without going into details, there are so many doubtful questions of law and of fact involved in such a suit as the executors are asked to take that they are quite entitled to exercise their discretion and refuse to take it, particularly in view of the fact that it will be a suit *by the Company* in liquidation and not by the estate and the Company has confirmed the agreement since Mr. Quinlan's death, on advice of the Solicitor who is mentioned in the will as the one to advise the executors, that such a suit would  
involve the charge that Messrs. Quinlan and O'Brien were guilty of a corrupt act, a charge which, apart from casting odium on Mr. Quinlan would, if not proved, involve the Company and through it the estate in heavy expense and probably heavy damages.

From this answer it follows that the payments under this agreement must be continued.

40       It follows, in respect of the suspended questions 4 and 5, that the principal reason given why the liquidator of the Company and its inspectors should be dismissed, disappears.

The other reason, namely, that A. W. Robertson has not been prevented from forming a new Company, under his own name, to carry on a similar business, is obviously untenable. How and for what reason could he be prevented from doing so.

The next request is based on the fact just mentioned that A. W. Robertson founded a new Company, under the name of Angus Robertson & Co. Ltd., to carry on the asphalt business.

The suggestion is that he should hand over all the profits he made in that business and all the shares in that Company because, being a director of A. W. Robertson & Co., his incorporating that new Company and it was a breach of trust.

10 The former Company was being wound up.

I can see no justification whatever for that view.

The moment Quinlan was dead Robertson was quite free to refuse to work for his estate, and to begin working for himself alone. He could, therefore, insist on the winding-up of the former Company which he shared with the late Mr. Quinlan, and organize a new Company alone.

20 The next complaint is in respect of the division of assets of A. W. Robertson Ltd., when being wound up, between the estate and Angus Robertson.

The information given me is that two shares were made, as equal as possible. The Capital Trust Corporation was allowed first choice for the estate and chose what it thought was the better share, Angus Robertson taking the other.

30 There is, therefore, nothing in that complaint.

The next request is in respect of machinery alleged to have been taken without payment by Quinlan, Robertson & Janin Ltd. from A. W. Robertson Ltd.

I am informed that this was old machinery which was paid for at its full value.

There is, therefore, nothing in that complaint.

40 The next request is in respect of the Peter Lyall payments.

The question here should be investigated. The question is: Was a payment for \$25,000.00 by Lyall Company due to 8th March, 1927, paid on the 20th., May while Mr. Quinlan lived and divided equally between the two interested parties, or was it paid only on the 3rd October, after his death, in which case Robertson does owe one-third to the estate?

The next request is in respect of the \$84,314.60 dividend declared on the 31st March, 1925.

This is also a debatable question but if Robertson loses his appeal in Supreme Court, it seems clear that he will have to return that amount.

10 If he wins, the question of his liability for its return will arise and it may very well be that he shall have to repay but the obvious thing to me seems to be to wait till the judgment is rendered as it may well settle the question.

The amount involved is only one-third of the above sum.

The question of the 200 shares of the Ontario Amiesite is at present in litigation in that suit; so is the question of the 1000 preferred shares and 499 common shares of the Fuller Gravel Ltd.

20 Those questions will be settled by that judgment.

The two last questions, namely, whether A. W. Robertson is liable towards Quinlan, Robertson & Janin Ltd. and Amiesite Asphalt Ltd. for the profits he made jointly with Janin personally, in connection with the Taschereau Boulevard and through the MacUrban Asphalt Co. for other works, because as director of the Quinlan, Robertson & Janin Ltd. he was not entitled to compete personally or through another Company with that Company, may be an interesting one but it will arise only if the judgment against Robertson is confirmed in the Supreme Court.

30 It will be time then to consider the question as well as many other questions that will result from that judgment.

Yours truly,

AG/MC

“Aime Geoffrion”

40 P.S.—Copy of above opinion is forwarded to General Trust of Canada.

Copied: WH

Chk'd:LL

May 3/38

Certified true copy of the original remaining on file.

G. Bélanger  
Lionel Lefebvre

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PLAINTIFF'S EXHIBIT P-S-2 AT ENQUETE

*Letter from Capital Trust Corporation Ltd., to Mrs. J. T. Kelly.*

10 CAPITAL TRUST CORPORATION Limited  
Incorporated by the Parliament of Canada

Ottawa, Can., December 20th, 1933.

REGISTERED  
Mrs. J. T. Kelly,  
(Mary Ethel Quinlan),  
Place Viger Hotel,  
Montreal, Que.

20 Dear Madam:—

*Re: Estate of Hugh Quinlan.*

We answer seriatim several requests contained in your notification and protest of the 17th of October, 1933, as it contains a series of questions and presumably supersedes or at least incorporates your previous notification and protest.

30 As to the first request respecting the inventory, the second respecting an action to account against Mr. A. W. Robertson, the third and fourth respecting Mr. Shannon as auditor and as liquidator of A. W. Robertson, Limited, the fifth respecting the inspectors of that liquidation, and the sixth and seventh respecting the O'Brien matter, the eighth respecting the incorporation of Angus Robertson Limited, the ninth respecting the division of assets of A. W. Robertson, Limited, and the tenth respecting the sale of machinery to Quinlan, Robertson & Janin, Limited, our  
40 answer is, in view of the facts and circumstances as we have been able to ascertain them after a careful investigation and in accordance with the opinion of our legal advisers, Messrs. Geoffrion & Prud'homme, nothing can or should be done in these respects.

If you desire explanations or if you wish to see the opinion we have obtained from Messrs. Geoffrion & Prud'homme, you may call at the office of either of us.

If you have any criticisms to make you may then do so, and we may submit them to these barristers for reconsideration, and



if you suggest new facts or mistakes in the facts we have, we will investigate to verify your statements.

10 With respect to the \$25,000.00 payment from Peter Lyall and Company, we have already investigated this matter and it seems to us that Mr. Quinlan has received his share of the amount referred to. However, we have no objection to investigating this again. Mr. Robertson does not acknowledge responsibility.

Even if we come to the conclusion that he is liable after completing our investigation and, therefore, should be sued, we may, though the point is not definitely decided, deem it advisable to wait till after the judgment of the Supreme Court as we may very well have other demands to make against him before the Courts as a result of that judgment, and we would prefer to merge all our claims, in so far as possible, in the same suit.

20 As regards the demand in respect of the dividend of Quinlan, Robertson & Janin, we again think we should wait till after the judgment of the Supreme Court because if Mr. Robertson loses he must clearly return that dividend and probably will concede that. If he does not a suit may be necessary and the reasons for waiting apply also here.

30 As respects the Ontario Amiesite shares, the Fuller Gravel shares, Robertson & Janin's alleged liability to account respecting the MacUrban Asphalt Company activities and the Taschereau Boulevard contract, the two first questions will be settled by the Supreme Court judgment and whatever may be the merits of the two other claims they need only be considered if you are successful before the Supreme Court.

40 The merits of the two latter have, therefore, not been yet considered. The merits of the other two need not be considered as the court will pass on them in this suit and any action before that judgment would be premature or inadvisable.

Yours very truly,

Capital Trust Corporation Limited

G. Wa??????????

Assistant Manager.

Executors Estate Hugh Quinlan.

General Trust of Canada

Co. executor.

Louis Trottier,

Treasurer.

PLAINTIFF'S EXHIBIT P-S-5 AT ENQUETE

*Copy of factum of Intervenants.*

10

Dominion of Canada  
IN THE SUPREME COURT OF CANADA  
(Ottawa)

The Intervenants intervene in this Appeal in their quality of Trustees and Testamentary Executors under the Last Will and Testament of the late Hugh Quinlan, in his lifetime of the City of Westmount, in the District of Montreal, Province of Quebec, General Contractor, upon the suggestion of the Honourable the Supreme Court of Canada and upon being required so to do by the Appellant.

The Intervenants' Motion or Petition for Leave to Intervene was granted by Order of the Right Honourable the Chief Justice of Canada dated the 16th day of January, 1934.

The Intervenant, Capital Trust Corporation Limited, was one of the Defendants in these proceedings in the Superior Court for the District of Montreal, and filed a defence therein, which is printed in Volume 1, at pages 17 and following of the Case.

The Intervenant, General Trust of Canada, was appointed an Executor and Trustee of the Will of the said late Hugh Quinlan in replacement of and succession to the Appellant Robertson, who had resigned his office and appointment as such, subsequent to the rendering of the Judgment of the Superior Court in this cause on the 6th February, 1931, the said Intervenants having been appointed in succession to and replacement of Appellant Robertson by Deed of Appointment, passed before Roger Biron, Notary, on the 19th February, 1931.

The Intervenants took no part in the discussion of this cause before the Court of King's Bench (Appeal Side) of the Province of Quebec, and were not called upon to do so either by that Honourable Court or by any of the parties to these proceedings.

In the Judgment of the learned Trial Judge he found, as one of the reasons for his judgment, that the Intervenant, Capi-

tal Trust Corporation Limited, ought not to have sustained the validity of the sales of shares of stock to the Appellant, which are at issue in this cause, (Case, Vol. 8, p. 785, l. 31).

10 In his Notes of Judgment the learned Trial Judge expressed the opinion that in this regard the said Intervenant ought to have submitted itself to justice, (Case, Vol. 8, p. 806, l. 3).

In view of this finding, and these observations of the learned Trial Judge, the present Intervenants now declare that they "submit themselves to justice" herein, and ask that in any event the costs of this Intervention be costs in the cause.

OTTAWA, January 24th., 1934.

20 Campbell, McMaster, Couture, Kerry & Bruneau,  
Attorneys for Intervenants.

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EXHIBIT D-R-59 OF CONTESTANT AT ENQUETE

*Copie d'un acte d'autorisation au mineur John Henry Dunlop.*

30 L'AN MIL NEUF CENT TRENTE-QUATRE, le trente-un janvier.

DEVANT Mtre R. PAPINEAU-COUTURE, Notaire Public pour la Province de Québec, soussigné, résidant en la cité d'Outremont et pratiquant en les cité et district de Montréal.

A COMPARU:—

40 JOHN HENRY DUNLOP, de la cité de Westmount, vendeur de débentures.

LEQUEL aurait fait assembler par devant Nous Notaire soussigné, aux fins mentionnées en la déclaration ci-dessus faite devant nous, le trente et un janvier mil neuf cent trente-quatre: MARY THERESA QUINLAN, épouse de JOHN HENRY DUNLOP mère du mineur;

EDWARD HUGH QUINLAN, de la cité de Montréal, gentilhomme, oncle maternel;

WILLIAM A. QUINLAN, de la cité de Westmount oncle maternel;

KATHLEEN VERONICA QUINLAN, épouse d'ERNEST LEDOUX de la cité de Montréal, tante maternelle;

10 ERNEST LEDOUX de la cité de Montréal, agent, oncle maternel;

LUCIEN DESAULNIERS, commis voyageur de la cité de Montréal, oncle maternel par alliance;

HELEN HILDA QUINLAN, fille majeure, tante maternelle;

20 LESQUELS, après serment prêté sur les Saints-Evangiles, après avoir pris communication de la déclaration susmentionnée et avoir mûrement délibéré entre eux, ont été unanimement d'avis que JOHN HENRY DUNLOP soit autorisé de signer et exécuter en sa qualité de tuteur la convention entre ESTATE HUGH QUINLAN et al., et ANGUS WILLIAM ROBERTON, acceptée par les autres parties et dont copie de la convention a été annexée aux présentes pour référence et signée par les membres du conseil de famille, avec et en présence du notaire soussigné.

DONT ACTE requis et octroyé en brevet.

30 FAIT ET PASSE à la cité de Montréal.

Et après lecture faite, les parties ont signé avec et en présence du notaire soussigné.

40 (SIGNE) J. H. DUNLOP  
“ HELEN QUINLAN  
“ W. A. QUINLAN  
“ KATHLEEN QUINLAN  
“ LUCIEN DESAULNIERS  
“ M. THERESA QUINLAN  
“ H. E. QUINLAN  
“ ERNEST LEDOUX  
“ R.-PAPINEAU COUTURE  
N.P.

Province de Québec  
District de Montréal

COUR SUPERIEURE

Vu la requête ci-annexée de John Henry Dunlop, de la cité de Westmount, vendeur de débentures en date du 31 Janvier 1934

demandant l'homologation de l'avis de parents de son enfant mineur John Stuart Dunlop y dénommé reçu le 31 janvier 1934 devant maître R. Papineau-Couture notaire, suivant les formalités voulues par la loi et annexé à ladite requête;

10 Vu ledit avis et la déclaration qui le précède, et le rapport fait par ledit notaire, aux termes de l'article 261 du Code civil, Nous, soussigné, député-protonotaire, dans et pour le district de Montréal, de la Cour supérieure de la province de Québec, homologuons ledit avis pour être suivi et exécuté selon sa forme et teneur; ordonnons en conséquence que le dit John Henry Dunlop soit et demeure autorisé de signer et exécuter en sa qualité de tuteur à son enfant mineur Joan Stuart Dunlop, une convention pour mettre fin au litige qui existe entre Estate Hugh Quinlan et al, vs Angus William Robertson et al. de la cité de Westmount  
20 entrepreneur, et le dit John Henry Dunlop et al. mis-en-cause et portant le No 36664 des dossiers de la dite Cour Supérieure, laquelle cause est actuellement pendante à la Cour Suprême, la dite convention acceptée par les autres parties et dont copie est annexée à l'original des présentes comme en faisant partie pour référence, et signée par les membres de l'avis de parents avec et en présence du notaire sus nommé.

30 Dont acte à Montréal, dans le district de Montréal, ce 2ième jour de février mil neuf cent trente-quatre.

(SIGNE) W. A. BAKER  
Député-protonotaire de la Cour Supérieure.

Pour copie conforme à l'original demeuré au greffe de la dite Cour supérieure à Montréal.

J. A. Valiquette,  
Député Protonotaire, C. S.

EXHIBIT D-R-60 OF CONTESTANT AT ENQUETE

*Copie de l'acte d'autorisation du mineur Ernest Ledoux.*

10 L'AN MIL NEUF CENT TRENTE-QUATRE, le trente et un janvier.

DEVANT Mtre R. PAPINEAU-COUTURE, Notaire Public pour la Province de Québec, soussigné, résidant en la cité d'Outremont et pratiquant dans les cité et district de Montréal.

A COMPARU :

20 ERNEST LEDOUX, de la cité de Montréal, agent.

LEQUEL aurait fait assembler par devant Nous Notaire soussigné, aux fins mentionnées en la déclaration ci-dessus faite devant nous, le trente et un janvier courant.

KATHLEEN VERONICA QUINLAN, épouse d'ERNEST LEDOUX, de la cité de Montréal, agent, mère des mineurs.

30 MARY THERESA QUINLAN, épouse de JOHN HENRY DUNLOP, tante maternelle ;

EDWARD HUGH QUINLAN, de la cité de Montréal, gentilhomme, oncle maternel ;

WILLIAM A. QUINLAN, de la cité de Westmount, oncle maternel ;

40 JOHN HENRY DUNLOP, de la cité de Westmount, vendeur de débentures, oncle maternel ;

LUCIEN DESAULNIERS, commis voyageur de la cité de Montréal, oncle maternel par alliance.

HENRI LEDOUX, de la cité de Montréal, agent manufacturier oncle paternel par alliance.

LESQUELS, après serment prêté sur les Saints-Evangiles, après avoir pris communication de la déclaration sus-mentionnée et avoir mûrement délibéré entre eux, ont été unanime-

ment d'avis que ERNEST LEDOUX soit autorisé de signer et exécuter en sa qualité de tuteur la convention entre ESTATE HUGH QUINLAN et al., et ANGUS WILLIAM ROBERTSON, acceptée par les autres parties et dont copie de la convention a été annexée aux présentes pour référence et signée par les membres du conseil de famille, avec et en présence du notaire soussigné.

DONT ACTE requis et octroyé en brevet.

FAIT ET PASSE à la cité de Montréal.

Et, après lecture faite, les parties ont signé avec et en présence du notaire soussigné, à l'exception d'Henri Ledoux qui a refusé d'accepter la convention.

20

(SIGNE) E. LEDOUX  
“ W. A. QUINLAN  
“ KATHLEEN QUINLAN  
“ M. THERESA QUINLAN  
“ H. E. QUINLAN  
“ LUCIEN DESAULNIERS  
“ J. H. DUNLOP  
“ R.-PAPINEAU COUTURE  
N.P.

30 Province de Québec  
District de Montréal

COUR SUPERIEURE

Vu la requête ci-annexée de Ernest Ledoux, de la cité de Montréal, agent, en date du 31 Janvier 1934, demandant l'homologation de l'avis de parents de Hugh, Francis, David et Mary Thérèse Ledoux, ses enfants mineurs y dénommés reçu le 31 janvier 1934 devant maître R. Papineau-Couture notaire, suivant les formalités voulues par la loi et annexé à ladite requête;

40

Vu ledit avis et la déclaration qui le précède, et le rapport fait par ledit notaire, aux termes de l'article 261 du Code civil, Nous, soussigné, député-protonotaire, dans et pour le district de Montréal, de la Cour supérieure de la province de Québec, homologuons ledit avis pour être suivi et exécuté selon sa forme et teneur; ordonnons en conséquence que le dit Ernest Ledoux soit et demeure autorisé de signer et exécuter en sa qualité de tuteur à ses dits enfants mineurs, une convention pour mettre fin au

litige qui existe entre Estate Hugh Quinlan et al. vs Angus William Robertson et al, de la cité de Westmount, entrepreneur et le dit Ernest Ledoux et al, mis-en-cause et portant le No 36664 des dossiers de la dite Cour Supérieure, laquelle cause est actuellement pendante à la Cour Suprême, afin que le dit Ernest Ledoux en sa dite qualité de tuteur puisse intervenir et être partie  
10 à un acte de règlement et à être soumis, laquelle susdite convention acceptée par les autres parties dont copie est annexée à l'original des présentes pour en faire partie pour référence et signée par les membres du conseil de famille, avec et en présence du notaire soussigné.

Dont acte à Montréal, dans le district de Montréal, ce 2ième jour de février mil neuf cent trente-quatre.

20 (SIGNE) W. A. BAKER  
Député-protonotaire de la Cour Supérieure.

Pour copie conforme à l'original demeuré au greffe de ladite Cour supérieure à Montréal.

J. A. Valiquette,  
Député Protonotaire, C. S.

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30 EXHIBIT D-R-65 OF CONTESTANT AT ENQUETE

*Agreement between Estate Hugh Quinlan & al., &  
Angus W. Robertson.*

BEFORE M<sup>RE</sup>. R. PAPINEAU-COUTURE, Notary Public  
for the Province of Quebec, residing in the City of  
Outremont and practising in the City and District of  
Montreal,

40 APPEARED:—

DAME MARGARET QUINLAN, of the City of Montreal,  
wife separate as to property of Jacques Desaulniers, K.C.,  
Barrister, of the same place, herein acting and represented  
by LUCIEN DESAULNIERS, Commercial Traveller, by  
virtue of Power of Attorney executed before J. H. Cour-  
tois, N.P. on the 25th day of January, 1934, and the said  
JACQUES DESAULNIERS, K.C., to authorize his said  
wife to these presents, also acting and represented by the



said Lucien Desaulniers, by virtue of Power of Attorney executed before J. H. Courtois, N.P. on the 25th day of January, 1934, being minute numbers 2119 and 2122,

PARTY OF THE FIRST PART

10

— and —

20 WILLIAM A. QUINLAN, Manager of the City of Westmount KATHLEEN VERONICA QUINLAN, wife separate as to property of ERNEST LEDOUX, agent of the City of Montreal and the said Ernest Ledoux to authorize his wife hereto; ANNE AUGUSTA QUINLAN, spinster of the City of Montreal, herein acting and represented by LUCIEN DESAULNIERS, Commercial Traveller, of the City of Montreal, by virtue of Power of Attorney executed by the said Anne Augusta Quinlan before J. H. Courtois, N.P. on the 25th day of January, 1934, under minute number 2123; MARY THERESA QUINLAN, wife common as to property of JOHN HENRY DUNLOP, Bond Sale-  
30 man, of the City of Westmount, and the said JOHN HENRY DUNLOP personally and to authorize his wife to these presents; EDWARD HUGH QUINLAN, Gentleman, of the City of Montreal; HELEN HILDA QUINLAN, spinster, of the City of Montreal; and the said JOHN HENRY DUNLOP, hereinabove described, in his quality of Tutor to his minor child JOAN STUART DUNLOP; and the said ERNEST LEDOUX, hereinabove described, in his quality of Tutor to all his minor children, namely, HUGH, FRANCIS, DAVID, and MARY THERESA LEDOUX,

PARTY OF THE SECOND PART

— and —

40

CAPITAL TRUST CORPORATION, LIMITED, a body politic and corporate, having its principal place of business in the City of Ottawa, Province of Ontario, and having a place of business in the City of Montreal, District of Montreal, herein acting and represented by EMMANUEL LUDGER PARENT, Assistant General Manager, duly authorized to these presents under Power of Attorney dated at the City of Ottawa, Province of Ontario, on the twenty-ninth day of January instant (1934), duly issued under the authority of By-Law No. 47 of said Corporation and attached hereto and signed “ne varietur” by the parties to form

10 part hereof; and GENERAL TRUST OF CANADA, a  
body politic and corporate having its principal place of  
business in the City of Montreal, District of Montreal,  
herein acting and represented by BEAUDRY-LEMAN,  
one of its Directors and RENE MORIN, its Secretary and  
General Manager, duly authorized hereto in virtue of By-  
Law No. 41 of said Corporation, a certified copy whereof is  
attached hereto and signed "ne varietur" by the parties to  
form part hereof, said CAPITAL TRUST CORPORATION  
LIMITED, and GENERAL TRUST OF CANADA,  
herein acting in their quality of Executors and Trustees  
of the Estate of the late Hugh Quinlan, by virtue of his  
Last Will and Testament of the 14th day of April, 1926,  
executed before Edouard Biron, N.P. and Colleague, and  
duly registered at Montreal on the 24th day of March,  
20 1928, under No. 173295,

PARTY OF THE THIRD PART

— and —

ANGUS WILLIAM ROBERTSON, Contractor of the  
City of Westmount in the District of Montreal,

PARTY OF THE FOURTH PART

30 The said parties declared before me as follows:

WHEREAS the party of the first part, acting jointly with  
her sister, Dame Ethel Quinlan, wife separate as to property of  
John Thomas Kelly, instituted an action against the then testa-  
mentary executors and trustees appointed under the will of her  
late father, Hugh Quinlan, to wit: The Capital Trust Corporation  
and A. W. Robertson, above described, whereby she prayed  
amongst other things:

40 (a) That the two testamentary executors and trustees, to  
wit: Capital Trust Corporation Limited, and A. W. Robertson,  
be dismissed and removed from office;

(b) That the said testamentary executors and trustees be  
condemned to render an account of their administration and, in  
default thereof to pay to herself and to her sister, Ethel Quinlan,  
each the sum of \$500,000.00;

(c) That the inventory prepared by the testamentary executors and trustees be declared illegal, fraudulent and be annulled;

10 (d) That the transfer to A. W. Robertson of shares belonging to the late Hugh Quinlan in the three companies, to wit: "Quinlan, Robertson & Janin, Ltd.", "Amiesite Asphalt Ltd" and "Fuller Gravel Co. Ltd", be annulled and the said A. W. Robertson condemned to return these shares to the estate, or to pay the value thereof; namely one million three hundred thousand dollars (\$1,300,000.00);

20 (e) That all the shares of the following companies, to wit: "Ontario Amiesite Asphalt Ltd," "McCurban Asphalt Ltd", "Quinlan, Robertson & Janin (London, Engl). "Crokston Quarries Ltd" and Canadian Amiesite Ltd" be declared to belong to the estate of the late Hugh Quinlan, and be returned to the said estate, failing which the testamentary executors and trustees be condemned to pay an additional sum of \$1,000,000.00;

(f) And finally that all the profits made and dividends paid by all these companies, since the death of the late Hugh Quinlan be declared to be the property of the said estate;

30 WHEREAS by judgment delivered by Mr. Justice Martineau, on the 6th of February 1931, the above action was dismissed in toto, as regards the Capital Trust Corporation, Limited, save as to certain costs, and was maintained in part as to A. W. Robertson, in the manner hereafter explained, to wit:—

40 (a) The said judgment declared non existent or annulled the transfer to the said A. W. Robertson of the following shares: 1151 shares of "Quinlan, Robertson & Janin, Ltd", 250 shares of Amiesite Asphalt Ltd", 200 shares of "Ontario Amiesite Asphalt Ltd", and 400 shares of "Fuller Gravel Co. Ltd";

(b) The said judgment ordered the said A. W. Robertson to return the above shares to the said estate or to pay the value thereof, which was fixed as follows as to the shares of "Quinlan Robertson & Janin Ltd", the sum of \$272,928.00; as to the shares of "Amiesite Asphalt Ltd", the sum of \$100,000.00; as to the shares of "Ontario Amiesite Asphalt Ltd" no value; as to the shares of "Fuller Gravel Co. Ltd" the sum of \$36,000.00;

(c) The said judgment declared that all the profits made and dividends declared since the death of the late Hugh Quinlan upon the above-mentioned shares, belonged to the estate;

10 (d) But authorized the said A. W. Robertson to retain these shares, profits and dividends, so long as he would not be reimbursed of the price he had actually paid for them to wit: \$20,000.00 for the shares of "Fuller Gravel Co. Ltd", and \$250,000.00 for the other shares enumerated in the present paragraph;

20 WHEREAS the said A. W. Robertson, after the said judgment, availing himself of the right granted to him under the Will of the late Hugh Quinlan, resigned his office of testamentary executor and trustee and appointed as his successor the General Trust of Canada and then appealed, in his personal capacity, from the judgment above mentioned to the Court of King's Bench (Appeal Side) of the Province of Quebec;

WHEREAS the said testamentary executors and trustees were not parties to the said appeal, nor represented therein;

WHEREAS the said Court of Appeals, although confirming in substance the judgment of the trial Judge, modified said judgment on various points, to wit:

30 (a) It held the value of the shares, which the said A. W. Robertson was ordered to return, should be fixed as of the date of the action instead of as of the date of the month of December 1927;

(b) It held that the estate was only entitled to the dividends declared and paid during the period beginning at the death of the late Hugh Quinlan;

40 (c) And finally it held that all the shares of the three companies above mentioned, to wit: "Quinlan, Robertson & Janin, Ltd", "Amiesite Asphalt Ltd", and "Ontario Amiesite Ltd" should be considered as one unit and that the said A. W. Robertson had to deliver every one of these shares or pay the entire value of all of them;

WHEREAS the said judgment, however, again reserved to the said A. W. Robertson the right to satisfy the condemnation by returning the shares in question on being reimbursed the price, instead of paying the value thereof, and furthermore allowed the

said A. W. Robertson to retain all these shares together with the bonuses and dividends declared and paid thereon since the death of the late Hugh Quinlan until reimbursement, with interest, of the price he had actually paid, to wit; a total sum of \$270,000.00.

10 WHEREAS the said A. W. Robertson has taken an appeal to the Supreme Court of Canada from the judgment of the Court of King's Bench, and that the said appeal is now pending;

WHEREAS the testamentary executors and trustees, to wit: Capital Trust Corporation, Limited, and the General Trust of Canada, upon the suggestion of the Court, have intervened in the appeal now pending before the Supreme Court of Canada, and are parties to said appeal;

20 WHEREAS all the parties to the present agreement realize that the ultimate outcome of the appeal now pending is uncertain, more particularly as to certain points now in issue;

WHEREAS the parties of the first part and of the second and third part realize that, should the judgment of the Court of King's Bench be confirmed, A. W. Robertson would still be entitled and might be able to return the shares in dispute to the estate and that these shares, being minority shares, would not, under the present circumstances, be worth the price which was  
30 paid for them by A. W. Robertson, to wit \$270,000.00 which price would have to be reimbursed to said Robertson with interest, in order that the estate recover them;

WHEREAS all the parties are desirous to put an end, not only to the case which is now pending, but to all further litigation which might arise from the facts therein disclosed and generally from all causes whatsoever now existing;

40 WHEREAS under the Will of the late Hugh Quinlan, the party of the third part is vested with full power to sell, exchange, convey, hypothecate, pledge or otherwise alienate the whole or any part of the property or assets at any time forming part of his succession and is also vested with full power to compromise, settle and adjust or waive any and every claim and demand belonging to or against the succession and, as Trustees, is also empowered to act by virtue of the provisions of the Civil Code; IT IS NOW THEREFORE agreed, enacted and covenanted as follows:

1. The party of the fourth part hereby elects to keep all the shares mentioned in the judgments above mentioned and, with this end in view, the said party of the fourth part agrees to purchase, re-purchase and does hereby purchase and repurchase, so far as may be necessary, all the shares above mentioned, for and in consideration of an additional price of \$50,000.00 to be paid upon the execution of these presents, and he further agrees to pay all such sums as may be necessary to pay and satisfy all claims for taxable Court costs and for all extra judicial costs, disbursements and Counsel fees due to the Honourable J. L. St. Jacques, now one of His Majesty's Judges of the Court of King's Bench, Mr. Jacques Desaulniers, K.C., Mr. Edouard Masson, Barrister, and Mr. Henri Masson-Loranger, Solicitor, being all the Counsel, attorneys and solicitors who have represented the Respondent, Margaret Quinlan, and an additional sum of \$4,025.00 to Mr. Agé-  
10 nor H. Tanner, K.C., of the City of Montreal. Out of the said sum of \$4,025.00, there shall be paid in full all the costs and disbursements which might be taxed against the said A. W. Robertson in favour of the said Agé-  
20 nor H. Tanner, K.C., in connection with the above case, and the balance shall be applied in satisfaction of the claims which the said Agé-  
nor H. Tanner K.C. may have for Court costs, disbursements and Counsel fees against Respondent, Margaret Quinlan. And said Respondent, Margaret Quinlan, hereby declares that the said Agé-  
30 nor H. Tanner, K.C., ceased to represent her and act for her after the judgment of the Superior Court of the 6th of February, 1931.

2. In consideration of the foregoing, the party of the third part agrees to sell, re-sell, transfer, re-transfer and retrocede to the said part of the fourth part, so far as may be necessary, in full ownership, all the shares above described together with all the profits, bonuses or dividends paid or declared in connection with and upon the said shares from the death of the late Hugh Quinlan; as well as all profits earned and accrued upon the said shares or on account of the said shares which have  
40 not been declared, whether as bonuses, dividends or otherwise.

3. The parties of the first and of the second part hereby concur in the said sale, re-sale, transfer, re-transfer or retrocession as far as may be necessary, ratifying and confirming the same without any reserve, exception or restriction whatsoever.

4. The parties of the first, second and third part, for the same consideration, further desist from the judgments above mentioned and renounce to, give up and abandon all the rights,

claims and pretensions of whatever nature or description which may belong to them under the said above mentioned judgments or which may be vested in them under the said judgments without any exception, reserve or restrictions;

10 5. The parties of the first, second, third and fourth part always, for the same consideration, further renounce to all and every right, claim, action, contention of whatever nature and description which may belong to them or be vested in them or in anyone of them against or in favour of the said A. W. Robertson and reciprocally from whatever source, origin or cause now existing. And without restricting the generality of the above terms, the said parties of the first, second, third and fourth part expressly renounce to all and every right, claim, action, contention of  
20 whatever nature or description which may belong to them or to be vested in them against or in favour of the said A. W. Robertson and reciprocally arising from any of the facts disclosed in the evidence adduced in the above case, or from the administration or management of the estate of the late Hugh Quinlan, by the said A. W. Robertson as testamentary executor or trustee, or from the dealings, connections or operations of the said A. W. Robertson with the said late Hugh Quinlan as co-partner, co-shareholder co-associate or otherwise, or from the dealings, connections or operations of the said A. W. Robertson acting jointly with the said late Hugh Quinlan with third parties, of from the personal acts  
30 or deeds of the said A. W. Robertson, in whatever capacity, circumstances or time;

6. The present agreement of settlement, transaction, renunciation, sale and discharge, notwithstanding the fact that the parties hereto have signed it this day, will only come into effect and become binding on the said parties after the same shall have been submitted to the Supreme Court of Canada as its February session, and provided the said Court, before which the litigation  
40 between the parties hereto is still pending, see no objection to the party of the third part carrying it into effect or grants acte thereof, and should the said Court decide otherwise, then the said agreement shall be null and void and deemed never to have been entered into.

WHEREOF ACTE:—

THUS DONE AND PASSED at the City of Montreal, on the thirty-first day of the month of January nineteen hundred and thity-four and of record in the office of the undersigned

Notary under his minute number seven thousand eight hundred and twenty-seven.

AND AFTER DUE READING HEREOF the said parties have signed with and in the presence of the undersigned Notary.

10

(SIGNED) LUCIEN DESAULNIERS, Attorney  
“ W. A. QUINLAN  
“ KATHLEEN QUINLAN  
“ ERNEST LEDOUX  
“ MARY THERESA QUINLAN  
“ J. H. DUNLOP  
“ J. H. DUNLOP, Tutor  
“ H. E. QUINLAN  
“ A. W. ROBERTSON  
20 “ CAPITAL TRUST CORPORATION LTD.  
“ E. L. PARENT  
Assistant General Manager

(PRINTED) GENERAL TRUST OF CANADA  
(SIGNED) RENE MORIN  
General Manager

30

“ BEAUDRY-LEMAN  
Director  
“ ERNEST LEDOUX Tutor  
“ HELEN QUINLAN  
“ R. PAPINEAU-COUTURE, N.P.,

A TRUE COPY of the original hereof remaining of record in my office (one marginal note good).

40

(Signed) R. Papineau-Couture, N.P.

KNOW ALL MEN BY THESE PRESENTS, that Capital Trust Corporation, Limited, a body politic and corporate, duly incorporated as such and having its Head Office and principal place of business in the City of Ottawa, in the Province of Ontario, one of the Provinces of the Dominion of Canada, herein acting and represented by JOHN J. LYONS, its President, and E. T. B. PENNEFATHER, its General Manager, and duly authorized for all purposes herein by virtue of By-Law No. 47 of the By-laws of the said Corporation, a certified copy of which



By-law is hereunto annexed to form part hereof, doth hereby make, nominate, and appoint, EMMANUEL LUDGER PARENT of the said City of Ottawa, the Assistant General Manager of the said Corporation, its true and lawful attorney, for it and in its name to appear before a Notary Public, in the City of Montreal, in the Province of Quebec, and to intervene on behalf of the said Capital Trust Corporation, Limited, and formally to execute a Notarial Deed of Settlement dated the 31st day of January 1934, between the Executors of the Last Will and Testament of Hugh Quinlan, late of the City of Montreal in the Province of Quebec, deceased, and Angus Robertson, of the said City of Montreal, of an action now before the Supreme Court of Canada for the sum of fifty thousand dollars (\$50,000.00) and such other consideration mentioned therein;

20 The said Capital Trust Corporation, Limited, hereby ratifying and confirming, and agreeing to ratify and confirm, all and whatsoever its said Attorneys shall lawfully do or cause to be done by virtue hereof.

(SEAL)

IN TESTIMONY WHEREOF, the above named Officers of Capital Trust Corporation, Limited, have affixed their signatures and the seal of this Corporation at Ottawa in the Province of Ontario, this 29th day of January, 1934.

CAPITAL TRUST CORPORATION, LIMITED,  
(SIGNED) JOHN J. LYONS  
President

“ E. T. B. PENNEFATHER  
General-Manager.

WITNESSES:

40 J. A. SMITH  
C. N. NOBERT  
(SEAL)

(SEAL)

CITY OF OTTAWA )  
COUNTY OF CARLETON )  
PROVINCE OF ONTARIO )  
TO WIT: )

I, JOSEPH ALEXANDER SMITH, of the City of Ottawa in the County of Carleton and Province of Ontario, Estates Manager, make oath and say:

(1) THAT I am Manager of the Estate Department of Capital Trust Corporation, Limited, and have knowledge of the facts herein deposed to.

10 (2) THAT I was personally present and did see the annexed Power of Attorney duly executed by John J. Lyons and E. T. B. Pennefather, respectively, the President and General Manager of Capital Trust Corporation, Limited, and the Seal of the said Capital Trust Corporation, Limited, duly impressed thereon.

(3) THAT the signatures "JOHN J. LYONS" and "E. T. B. PENNEFATHER" are the signatures of the said John J. Lyons and E. T. B. Pennefather.

20 (4) THAT the said document was executed in my presence and in the presence of Cyril Noel Nobert the other attesting witness to the said execution.

SWORN BEFORE ME at the City )  
of Ottawa, in the County of )  
Carleton, this 29th day of ) (Signed) J. A. SMITH  
January, 934, )  
)  
(SEAL) )  
30 (SIGNED) JAS J. LYONS )  
A notary, etc. )

CAPITAL TRUST CORPORATION, LIMITED.  
BY-LAW NO. 47

40 In so far as the Province of Quebec is concerned the President or one of the Vice-Presidents or a Director and the General Manager or Assistant General Manager or Secretary or an officer appointed from time to time for that purpose by the Board of Directors or by the Advisory Board at Ottawa, are hereby authorized and empowered to negotiate and enter into all contracts, undertakings and agreements on behalf of the Company, and to sign, seal, execute and deliver and deeds, documents or agreements whether notarial or otherwise, in the name and as the act and deed of the Company, and the said officers are further hereby specially authorized and empowered to delegate to one or more attorney or attorneys by Power of Attorney under their hands and Seal of this Company the power to sign and execute any

particular deeds, contracts or documents whether notarial or otherwise which it may be necessary for this Company to sign, execute or enter into in the said Province of Quebec.

10 I, JAMES J. LYONS, Secretary of Capital Trust Corporation, Limited, certify that the above By-law was duly passed at a duly constituted Meeting of the Board of Directors of Capital Trust Corporation, Limited, at which a legal quorum was present, held on the 19th day of December, 1922 and was unanimously sanctioned and confirmed by the Shareholders of the Company at a special General Meeting duly called for considering the same, held on February 13th, 1923 and as amended at the General Meeting February 9th, 1932.

(SEAL)

(SIGNED) JAS. J. LYONS

Secretary.

20

EXTRACT from the Minutes of a Meeting of the Board of Directors of CAPITAL TRUST CORPORATION, LIMITED, held at the Head Office of the CORPORATION, on Tuesday, February 14th, 1933.

“Upon resolution duly moved, seconded, and unanimously carried, Mr. John J. Lyons was elected President”.

30

I hereby certify that the above is a Minute of the Meeting of the Board of Directors of CAPITAL TRUST CORPORATION, LIMITED, duly held on Tuesday, the 14th day of February, 1933, and that the said John J. Lyons is President of Capital Trust Corporation, Limited, Ottawa.

As witness, my hand and the Seal of the Corporation, this 29th day of January 1934 (SEAL)

40

(SIGNED) JAS J. LYONS,

Secretary.

EXTRACT from the Minutes of a Meeting of the Board of Directors of CAPITAL TRUST CORPORATION, LIMITED, held at the Head Office of the CORPORATION on Friday, January 16th 1931.

“It was moved by Colonel D. R. Street, seconded by J. J. Seitz and unanimously carried that Mr. E. T. B. Pennefather be appointed General Manager of the Corporation. . .”

I hereby certify that the above is a Minute of the Meeting of the Board of Directors of CAPITAL TRUST CORPORATION LIMITED, duly held on Friday, the 16th day of January 1931, and that the said E. T. B. PENNEFATHER is General Manager of Capital Trust Corporation, Limited, Ottawa.

10 As witness, by hand and the Seal of the Corporation, this 29th day of January, 1934 (SEAL)

(SIGNED) JAS J. LYONS,  
Secretary.

20 This is the Power of Attorney dated at the City of Ottawa Province of Ontario, on the twenty-ninth day of January instant (1934) and duly issued under By-Law No. 47 of Capital Trust Corporation Limited, and referred to in a Deed of Agreement between Estate Hugh Quinlan et al and Angus William Robertson executed before Mtre R. Papineau-Couture, Notary Public, on the thirty-first day of January instant under his minute number seven thousand eight hundred and twenty-seven and annexed thereto after having been signed "ne varietur" by the parties thereto with and in the presence of the undersigned Notary.

"NE VARIETUR"

30 (SIGNED) LUCIEN DESAULNIERS, Attorney  
" W. A. QUINLAN  
" KATHLEEN QUINLAN  
" ERNEST LEDOUX  
" MARY THERESA QUINLAN  
" J. H. DUNLOP  
" J. H. DUNLOP, Tutor  
" H. E. QUINLAN  
" A. W. ROBERTSON  
" CAPITAL TRUST CORPORATION LTD.  
40 " E. L. PARENT  
Assistant General Manager

(PRINTED) GENERAL TRUST OF CANADA  
(SIGNED) RENE MORIN

General Manager  
" BEAUDRY-LEMAN  
Director  
" ERNEST LEDOUX Tutor  
" HELEN QUINLAN  
" R. PAPINEAU-COUTURE, N.P.,

A TRUE COPY  
(Signed) R. Papineau-Couture, N.P.

TRANSLATION

EXTRACTS FROM THE BY-LAWS OF  
GENERAL TRUST OF CANADA  
SIGNATURES

10

Art. 41 The president or a vice-president or a director and the general manager, or the secretary or the assistant-secretary and all other officers appointed by the Board of Directors or the Executive Committee are authorized

20

10: To make execute and sign, for and in the name of the company, all trust deeds, sales or purchases of movable or immovable property, purchases, sales, assignment or transfer of ordinary or hypothecary claims and other titles and securities whatsoever.

30

20: To make, execute and sign in the name of the company all discharges of ordinary or hypothecary claims due and paid to the company either for itself or as trustees, attorney, administrator or in any other capacity for others, to give mainlevée of the hypothecs, pledges, privileges and mortgages resulting from the deeds creating such debts or from any other deed or documents in relation thereto, and to consent to the radiation thereof.

40

30: To make, execute and sign all deeds of reduction or mainlevée of mortgages and all deeds of priority of mortgage, upon or without payment, as may be deemed advisable, and this in all cases where the company acts as trustees, administrator, testamentary executor, guardian, liquidator, trustee or agent.

40: To make, execute and sign all inventories of properties of estates or communities, all balance sheets, statements and declarations in respect of the payment of succession duties, all declaration of death, inheritance, transmission of immovable property, bonds, debentures, stocks and other securities or movable property of any kind whatsoever in the exercise by this company of the administrations, charges, functions, mandates and agencies with which it may be entrusted.

50: To manage and transact the banking operations of the company, to make, sign, accept, draw, endorse and execute for the company, and in its name, all cheques, receipts, bills of exchange, notes and other negotiable instruments, and other documents useful or necessary in respect of such banking operations. One of the above named officers may however receive alone from the bank, cancelled cheques and other instruments charged to the company's account and certify as to all balances.

10

60: Generally to make, execute and sign all acts, deeds and documents, whatever, in respect of the ordinary business transactions of the company and in the exercise of the charges, functions and administrations which it may be called upon to perform.

20

Upon a resolution of the Board of Directors or of the Executive Committee, the signature of one of the officers may be printed, engraved or lithographed.

CERTIFIED true translation of By-Law No. 41 of General Trust of Canada and to be in full force and effect.

Montreal January 31st 1934.

30

(SEAL)

(SIGNED) RENE MORIN  
Secretary.

This is the certified copy of By-Law No. 41 of General Trust of Canada referred to in a Deed of Agreement between Estate Hugh Quinlan, et al and Angus William Robertson executed before Mtre. R. Papineau-Couture Notary Public, on the thirty-first day of January nineteen hundred and thirty-four under his minute number seven thousand eight hundred and twenty-seven and annexed thereto after having been signed "ne varietur" by the parties thereto with and in the presence of the undersigned Notary.

40

"NE VARIETUR"  
(SIGNED) LUCIEN DESAULNIERS, Attorney  
" W. A. QUINLAN  
" KATHLEEN QUINLAN  
" ERNEST LEDOUX  
" MARY THERESA QUINLAN

(SIGNED) J. H. DUNLOP  
" J. H. DUNLOP, Tutor  
" H. E. QUINLAN  
" A. W. ROBERTSON  
" CAPITAL TRUST CORPORATION LTD.  
" E. L. PARENT  
Assistant General Manager  
10 (PRINTED) GENERAL TRUST OF CANADA  
(SIGNED) RENE MORIN  
General Manager  
" BEAUDRY-LEMAN  
Director  
" ERNEST LEDOUX Tutor  
" HELEN QUINLAN  
" R. PAPINEAU-COUTURE, N.P.,

20 A TRUE COPY  
(Signed) R. Papineau-Couture, N.P.

---

EXHIBIT D-R-61 OF CONTESTANT AT ENQUETE

*Extract from the minutes of a meeting of the Board of Directors  
of General Trust of Canada.*

30 EXTRACT from the Minutes of a meeting of the Board  
of Directors of GENERAL TRUST OF CANADA, held at the  
Head Office of the company, at Montreal, on Friday, September  
21st, 1934 at 12.30 a.m.

40 Authentic copy of the Deed of Agreement and Settlement  
received before R. Papineau-Couture Notary Public, at Montreal,  
on the 31st of January 1934, and bearing number 7827 of his  
Minutes, between Dame Margaret Quinlan and Jacques Desaul-  
niers, of the First Part, and William A. Quinlan et al. of the  
Second Part, and Capital Trust Corporation Limited and General  
Trust of Canada, in their quality of testamentary executors and  
trustees of the Estate of the late Hugh Quinlan, of the Third  
Part, and Angus Wiliam Robertson, of the Fourth Part, was laid  
before the meeting for consideration.

After consideration, it was moved, seconded and unani-  
mously resolved:

10 THAT the said Deed of Agreement and Settlement signed and executed on the said 31st day of January 1934, on its behalf by Beaudry Leman, one of its directors, and René Morin, its secretary and general manager, acting under the authority of by-law 41 of this corporation, be and the same is hereby ratified and confirmed for all legal intents and purposes by this corporation, in its quality of one of the testamentary executors and trustees of the Estate of the late Hugh Quinlan.

CERTIFIED true extract.

(SEAL)

(Signed) René Morin,  
Secretary.

EXHIBIT D-R-62 OF CONTESTANTS AT ENQUETE

20 *Agreement of Settlement proposed to be entered into between executors Quinlan and Mr. A. W. Robertson.*

IN THE MATTER OF THE ESTATE OF HUGH QUINLAN,  
AND IN THE MATTER OF A CERTAIN AGREEMENT OF  
SETTLEMENT PROPOSED TO BE ENTERED INTO BE-  
TWEEN EXECUTORS QUINLAN AND MR. A. W. ROBERT-  
SON

30 An authentic copy of the Deed of Agreement and Settlement received before R. Papineau-Couture, Notary Public, at Montreal, on the 31st of January, 1934, and bearing number 7827 of his Minutes, between Dame Margaret Quinlan and Jacques Desaulniers, of the First Part, and William A. Quinlan et al., of the Second Part, and Capital Trust Corporation, Limited, and General Trust of Canada, in their quality of testamentary executors and trustees of the Estate of the late Hugh Quinlan, of the Third Part, and Angus William Robertson, of the Fourth Part, was laid before the meeting for consideration.

40 Upon motion duly moved and seconded, it was therefore, unanimously resolved that the said Deed of Agreement and Settlement signed and executed on the said 31st day of January, 1934, by Emmanuel Ludger Parent, Assistant General Manager, under Power of Attorney of the 29th of January, 1934, issued under the authority of by-law forty-seven of this Corporation, be and the same is hereby ratified and confirmed for all legal intents and purposes by this Corporation in its quality of one of the testamentary executors and trustees of the Estate of the late Hugh Quinlan.



I, James J. Lyons, Secretary of Capital Trust Corporation, Limited, certify that the above resolution was duly passed at a duly constituted meeting of the Board of Directors of Capital Trust Corporation, Limited, held on the 18th day of October, 1934.

10 Given under my hand and the Seal of the Corporation this 22nd day of October, 1934.

(SEAL)

(Signed) James J. Lyons,  
Secretary.

EXHIBIT D-R-63 OF CONTESTANTS AT ENQUETE

20 *Final acquittance and discharge by Mr. Jacques Desaulniers, K.C. & al. in favour of Mr. Angus Robertson.*

(SEAL)

IN THE YEAR ONE THOUSAND NINE HUNDRED AND THIRTY-FOUR, on this twenty-third day of the month of November.

30 Before Me ROGER BIRON, the undersigned Notary in and for the Province of Quebec, residing and having his place of business in the City of Montreal.

CAME AND APPEARED:—

1.—Mr. JACQUES DESAULNIERS, K.C., Advocate, residing in the City of Montreal, at civic number 3488 Laval avenue.

40 2.—Mr. AGENOR-H. TANNER, K.C., Advocate, residing in the City of Montreal, at civic number 1455 Drummond Street.

WHO hereby acknowledge having received from Mr. ANGUS WILLIAM ROBERTSON contractor, of the City of Montreal.

a).—The sum of TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$27,500.00) by three cheques to the order of the said Mr. JACQUES DESAULNIERS, all dated the twenty-third day of November instant (1934), and respectively

for the amounts of: FOUR HUNDRED AND FIFTY DOLLARS (\$450.00),—THREE THOUSAND ONE HUNDRED DOLLARS (\$3,100.00), and TWENTY-THREE THOUSAND NINE HUNDRED AND FIFTY DOLLARS (\$23,950.00) and

10 b).—The sum of FOUR THOUSAND AND TWENTY-FIVE DOLLARS (\$4,025.00) by a cheque to the order of the said Mr. AGENOR-H. TANNER, dated the twenty-third day of November 1934.

20 In satisfaction of all claims, for court costs and for all extra-judicial costs, disbursements and counsel fees, in connection with the case instituted under No. A-36664, of the records of the Superior Court for the District of Montreal, by Dame MARGARET QUINLAN, wife separate as to property of the said Mr. JACQUES DESAULNIERS and dame ETHEL QUINLAN, wife separate as to property of Mr. JOHN-THOMAS KELLY, both duly authorized by their respective husband, against the CAPITAL TRUST CORPORATION LIMITED and the said Mr. ANGUS WILLIAM ROBERTSON, as well personally, as in their capacity of Testamentary-Executors and Trustees, appointed under the Will of the late HUGH QUINLAN.

30 In the two above mentioned sums are included all judicial costs, disbursements and counsel fees taxable and non-taxable for all proceedings before the Superior Court, the Court of King's Bench and the Supreme Court of Canada, and generally for all professional services of whatever kind or nature, in connection with the case originally instituted as aforesaid under No. A-36664 of the Record of the Superior Court for the District of Montreal, and with the matters therein mentioned, with the sole exception that Mr. AGENOR-H. TANNER, K.C., reserves all his rights against dame ETHEL QUINLAN, wife separate as to property of Mr. JOHN-THOMAS KELLY, for whatever balance might be due to him.

40

The said sums of TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$27,500.00) and of FOUR THOUSAND AND TWENTY-FIVE DOLLARS (\$4,025.00) are paid in conformity with and in execution of a deed of agreement passed before Me R. P. COUTURE, Notary at Montreal, on the thirty-first day of January last (1934), between the Estate HUGH QUINLAN, ET AL and Mr. ANGUS-WILLIAM ROBERTSON, and bearing the No. 7837 of the minutes of the said Notary, as supplemented by a private writing bearing date of the twenty-

ninth day of January last (1934), signed by the said Mr. JACQUES DESAULNIERS, acting through Mr. LUCIEN DESAULNIERS, his Attorney, and by others, and fixing to the amount of TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$27,500.00) the sum payable to the said Mr. JACQUES DESAULNIERS, under the said agreement of the thirty-first day of January last (1934).

The said Messrs. JACQUES DESAULNIERS and AGENOR-H. TANNER declare that they have adjusted between themselves the two said sums of TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$27,500.00) and of FOUR THOUSAND AND TWENTY-FIVE DOLLARS (\$4,025.00) to their mutual satisfaction, each one of them giving to the other a mutual and final discharge.

And in consideration of the two sums paid as aforesaid, the said Mr. JACQUES DESAULNIERS and Mr. AGENOR-H. TANNER, hereby grant to the said Mr. ANGUS-WILLIAM ROBERTSON a full, complete and final discharge of all claims, rights, pretensions or actions which they might have or be vested with, either personally or as members of the law firm of TANNER & DESAULNIERS, for whatever cause or from whatever source or origin, declaring that they retain no recourse either personally or as members of the said firm, or in whatever capacity, against the said Mr. ANGUS WILLIAM ROBERTSON.

The said Mr. AGENOR-H. TANNER hereby declares that he has already desisted with costs, from the two actions instituted under No. D-129935 and No. C-128938 of the records of the Superior Court for the District of Montreal, wherein he was plaintiff, the CAPITAL TRUST CORPORATION LIMITED ET AL were defendants and Mr. ANGUS WILLIAM ROBERTSON ET AL were mis-en-cause; that he has also desisted, without costs, with the Agreement of all interested parties, from two other actions to wit: an action bearing No. 137026, wherein he was the plaintiff, MR. JACQUES DESAULNIERS, K.C., was defendant, and Mr. ANGUS WILLIAM ROBERTSON was mis-en-cause, and an action bearing No. 137042, wherein he was plaintiff, dame MARGARET QUINLAN ET AL were defendants and MR. ANGUS WILLIAM ROBERTSON, ET AL, were mis-en-cause. And the said Mr. AGENOR-H. TANNER further declares that he has no other action pending which might affect the said Mr. ANGUS WILLIAM ROBERTSON.

INTERVENTION.—

To these presents is intervening :—

10 Mr. PERCY CARROLL RYAN, K.C., Advocate, residing in the City of Montreal, at civic number 1119 Anderson Street, the plaintiff in a case bearing the No. 126979, wherein dame MARGARET QUINLAN ET VIR ET AL, are defendants and Mr. ANGUS WILLIAM ROBERTSON is mis-en-cause;

20 WHO, after having taken communication of the present discharge and agreement, declares that he does not object to the said Mr. ANUGUS WILLIAM ROBERTSON paying to the said Mr. JACQUES DESAULNIERS and Mr. AGENOR-H. TANNOR the two above mentioned sums of TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$27,500.00) and of FOUR THOUSAND AND TWENTY-FIVE DOLLARS (\$4,025.00) and that he will, in no way, trouble the said M. ANGUS WILLIAM ROBERTSON, on account of the said payment, renouncing as far as may be necessary to all recourses he might be entitled to exercise, against the said Mr. ANGUS-WILLIAM ROBERTSON, by the fact of the said payment.

WHEREOF ACTE:—

30 DONE AND PASSED in the said City of Montreal, on the date firstly above mentioned, under the number THREE THOUSAND EIGHT HUNDRED AND FIFTY-THREE of the original deeds of the undersigned Notary.

40 And, after due reading hereof, the appearers have signed with and in the presence of the Notary, the intervener requested to sign has declared not to be able to do so on account of his right hand being paralyzed, and Mr. ROLLAND LANGLOIS, Advocate of the City of Montreal, signed as witness with the other parties and the undersigned Notary.

(SIGNED) PERCY C. RYAN  
per ROLLAND LANGLOIS, Witness  
( “ ) AGENOR HENRY TANNER  
( “ ) JACQUES DESAULNIERS  
( “ ) ROGER BIRON, Notary.

TRUE COPY of the original hereof, remaining of record in my office.

(Signed) Roger Biron, Notary.

**In the Privy Council**

No. of 1944

On Appeal from the Court of King's  
Bench for the Province of  
Quebec (Appeal Side)  
Canada

BETWEEN

**ETHEL QUINLAN (Wife of John Kelly),**  
**PLAINTIFF) APPELLANT,**  
and

**ANGUS WILLIAM ROBERTSON,**  
**CAPITAL TRUST CORPORATION LTD,**  
**and GENERAL TRUST OF CANADA,**  
**(DEFENDANT) RESPONDENTS,**  
and BETWEEN

**KATHERINE KELLY**  
**(Wife of Raymond Shaughnessy),**  
**(INTERVENANT) APPELLANT,**  
and

**ANGUS WILLIAM ROBERTSON,**  
**CAPITAL TRUST CORPORATION LTD,**  
**and GENERAL TRUST OF CANADA,**  
**(CONTESTANT) RESPONDENTS.**

**RECORD OF PROCEEDINGS**

**VOL. IX. — JUDGMENT SUPREME COURT OF  
CANADA, PLEADINGS, & INTERLOCUTORY  
JUDGMENTS AND EXHIBITS.**

**BLAKE & REDDEN,**  
for Appellants.

**LAWRENCE JONES & COMPANY,**  
for Respondent Robertson,

**CHARLES RUSSELL & COMPANY,**  
for Respondents Capital Trust  
Corporation Limited, and  
General Trust of Canada.