

In the Privy Council.

No. 78 of 1931.

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

Between

LADY DAVIS (Dame Eleanor Curran) and MORTIMER
BARNET DAVIS Junior - - - - - (Plaintiffs) Appellants

and

THE RIGHT HONOURABLE LORD SHAUGHNESSY
(William James Shaughnessy) and ALEXANDER
M. REAPER - - - - - (Defendants)

and

THE FEDERATION OF JEWISH PHILANTHROPIES
OF MONTREAL - - - - - (Mis-en-cause) Respondents.

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CANADA
PROVINCE OF
QUEBEC
DISTRICT OF
MONTREAL

Court of King's Bench

(APPEAL SIDE)

On Appeal from a final Judgment of the Superior Court, for the District of Montreal, rendered on June 30th, 1930.

10 LADY DAVIS (Dame Eleanor Curran, of Cannes, in the Republic of France, widow of the late Sir Mortimer Barnet Davis, Knight; and MORTIMER BARNET DAVIS, Junior, gentleman, of the City and State of New York, in the United States of America),

(Plaintiffs in the Superior Court),
APPELLANTS

— vs —

20 THE RIGHT HONOURABLE LORD SHAUGHNESSY (William James Shaughnessy), and ALEXANDER M. REAPER, both of the City and District of Montreal,

(Defendants in the Superior Court),
RESPONDENTS

— AND —

THE FEDERATION OF JEWISH PHILANTHROPIES OF MONTREAL, a body politic and corporate, duly incorporated according to law, and having its Head Office and principal place of business in Montreal aforesaid,

30 (Mis-en-cause in the Superior Court),
MIS-EN-CAUSE

JOINT CASE

PART I—PLEADINGS

*In the
Superior
Court,
District of
Montreal.*

40 PLAINTIFFS' DECLARATION AS AMENDED

Plaintiffs declare: *I.*

No. 1.
Plaintiffs'
Declaration,
16th January 1930.

1.—THAT the late Sir Mortimer Barnet Davis departed this life at Cannes, in the Republic of France, on March 22nd, 1928, leaving unrevoked and in full force and effect his Last Will and Testament in the form derived from the Laws of England, made at London,

*In the
Superior
Court,
District of
Montreal.*

No. 1.
Plaintiffs'
Declaration,
16th Janu-
ary 1930—
continued.

England, under date November 30th, 1927, and since duly probated by said Superior Court, for the District of Montreal, the whole as will more fully appear upon reference to copies of said Last Will and Testament, and of the probate thereof, herewith produced and fyled to form part hereof; as Plaintiffs' Exhibit No. 1.

2.—THAT under said Will, Female Plaintiff and Defendants were appointed the Trustees and Executors thereof, and were specially bequeathed, in trust, the universality of the Testator's property and rights, hereinafter referred to as "the Estate," to be dealt with, administered and disposed of by them in the manner, and in accordance with the instructions, in the said Will set forth, and said Trustees and Executors have duly accepted office, and have entered upon the duties thereof;

3.—THAT said Will includes the following bequests in favour of Female Plaintiff, widow of said Testator, that is to say:—

- 20 (a) The usufruct, etc., during her lifetime, of all residences, etc., in France; and in a general way, all the contents thereof; all rents and taxes to be paid by the Estate; (Clause VII);
- (b) All cash to be found in any of such residences, etc., in France, and any balances of money standing in the name of said Testator at the time of his death, in any Bank in France; (Clause VII);
- (c) An annuity of \$67,000 for her lifetime; (Clause XIII);
- 30 (d) One-half of the net annual revenues of the residue of the Estate; (Clause XIII);
- (e) One-half of the residue of capital of the Estate; subject to the substitution created by said Will; (Clause XIV);

4.—That said Will also includes the following bequests in favor of the Male Plaintiff, son of said Testator, all of said bequests to accrue to Female Plaintiff should she survive Male Plaintiff; that is to say:

- 40 (a) An annuity of \$67,000 for his lifetime (Clause X);
- (b) The remaining half of the net annual revenues of the residue of the Estate; (Clause XIII); and
- (c) The remaining half of the residue of the capital of the Estate, subject to substitution; (Clause XIV);

*In the
Superior
Court,
District of
Montreal.*

No. 1.
Plaintiffs'
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ary 1930—
continued.

5.—THAT under said Will, upon the death of the Plaintiffs the Trustees and Executors are ordered and required to accumulate and add the revenues to the capital, and at the expiration of fifty years from the death of the Testator, to apply and utilize the residue of the Estate for the following charitable purposes, to wit:—

- 10 (a) to the extent of 75% of said residue of the Estate, in the erection, equipment and the endowment of a Hospital in the City of Montreal to be known as "The Mortimer Davis Hospital," the majority of the management whereof shall be of the Jewish faith, but otherwise the public of Montreal generally, without regard to class, creed or distinction of any kind, to be given the opportunity to use and enjoy all of the possible benefits and advantages to be derived from the establishment and maintenance of such Hospital;
- 20 (b) to the extent of 12½% of said residue to the Mis-en-cause Federation of Jewish Philanthropies of Montreal, if such Federation be then in existence, and, if not, to Jewish charitable institutions in the City of Montreal assisting the Hebrew race; and
- (c) to the extent of the other 12½%, to non-sectarian charitable institutions in the Province of Quebec.

II.

30 6.—THAT in 1919, the late Sir Mortimer Barnet Davis, for his own purposes, procured the incorporation under Part I of "The Quebec Companies' Act" of a company under the name of Sir Mortimer Davis Incorporated, or hereinafter referred to as "the Incorporated Company," to which he transferred a large part of his assets in return for the issue to him of \$5,000,000 face value 6% Twenty-Year Serial Notes, and 50,000 Shares of its Capital Stock of a par value of \$100 each, being the whole of the issued Capital of the Incorporated Company;

40 7.—THAT said late Sir Mortimer Barnet Davis personally subscribed and paid for the whole of the issued Capital Stock of said Incorporated Company, and approximately 95% of said Capital Stock is held by or for his Estate, the remaining Shares having been received by one Waddell, without the expenditure by the latter of any cash;

8.—THAT accordingly, the Incorporated Company is to all

*In the
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No. 1.
Plaintiffs'
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continued.

intents and purposes merely an arm of the Estate, which, by reason of its predominating interest therein, is in a position to enforce a policy of management, dividends and distribution of assets, harmonizing with the interests and requirements of the Estate;

9.—THAT Defendant Shaughnessy, as also Defendant Reaper, hold office as Directors and Officers of the Incorporated Company only in virtue of the fact of their appointment as Executors and Trustees under said Last Will, the Estate being the beneficial owner of the qualifying shares upon which they were so appointed such Directors;

10.—THAT Defendants occupy their office of Directors and Officers of the Incorporated Company only as the agents and mandatories of the Estate, and both of them have always been and are in a fiduciary capacity towards the Estate;

11.—THAT since in or about April, 1928, Female Plaintiff has also been and still is a Shareholder and Director of the Incorporated Company;

12.—THAT the principal asset of the Estate, held through the medium of the Incorporated Company, is the controlling interest of Canadian Industrial Alcohol Company Limited, hereinafter referred to as the Alcohol Company;

13.—THAT Defendant Shaughnessy likewise, and in virtue of and by reason of his office as such Executor and Trustee under said Will, and of his intermediate office of a Director of the Incorporated Company, and for no other reason whatsoever, has been elected to the Board of Directors and as President of the Alcohol Company.

14.—THAT in law, Defendants are answerable and accountable, as such Executors and Trustees, for their acts as Directors of the Incorporated Company, as also of the Alcohol Company, hereinafter complained of;

III.

15.—THAT Defendants have exhibited a statement of the affairs of the Testator showing the assets of his Estate on March 22nd, 1928, the date of his death, to amount to \$11,270,949.60; a copy of said statement being herewith produced and filed to form part hereof as Plaintiffs' Exhibit No. 2.

16.—THAT by said Will, said Testator directed the payment by his Trustees and Executors of all his debts, reported by Defend-

ants, by said statement Exhibit No. 2, at \$3,651,418.53, and his funeral expenses amounting to \$50,437.50 additional; (Clause II);

*In the
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No. 1.
Plaintiffs'
Declaration,
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ary 1930—
continued.

17.—THAT by said Will, said Testator directed that all Succession Duties and other taxation of a similar nature arising out of his death, on bequests under his said Will, should be paid out of the capital of the residue of his Estate, and that no part of the same should be charged against any special Legatee, the amount due for such Succession Duties and expenses in connection therewith, being 10 shown by Defendants' said statement, Exhibit No. 2, at \$1,392,158.08; (Clause IV);

18.—THAT by said Will, said Testator bequeathed, by way of particular legacies, payable in cash to Charities and divers other Legatees therein named, sums aggregating \$411,000, as the same will more fully appear upon reference to the statement of said legacies herewith produced and fyled to form part hereof; as Plaintiff's Exhibit No. 3; (Clauses VIII and XII);

20 19.—THAT moreover, by said Will, said Testator bequeathed certain annuities, aggregating, with those bequeathed to Plaintiffs as aforesaid, the sum of \$180,600 per annum; said annuities being payable monthly from the date of said Testator's death, as the same will more fully appear upon reference to the statement of said annuities herewith produced and fyled to form part hereof, as Plaintiffs' Exhibit No. 4;

20 20.—THAT according to Defendants, and said statement, Exhibit No. 2, the surplus of said Estate on the date of the death 30 of the Testator, after providing for his debts, funeral expenses, Succession Duties, etc., amounted to \$5,748,211.95;

IV.

21.—THAT in April, 1928, shortly following the Probate as aforesaid of said Will, Female Plaintiff and Defendants met as such Executors and Trustees, and also as Directors of the Incorporated 40 Company, to make a survey of the affairs of the Estate and of the Incorporated Company, and to discuss the same and lay down a policy for the administration of the affairs thereof, at which time it was apparent that, in addition to the Liabilities due by the late Testator at the time of his death, early provision would have to be made for the following disbursements by the Estate:—

(a) Funeral Expenses..... \$ 50,000

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continued.

(b) Cash Legacies to Charities, etc.....	409,800
(c) Annuities.....	180,000
(d) Succession Duties, etc.....	1,400,000
Total.....	<u>\$2,039,800</u>

22.—THAT at the meeting referred to in the preceding para-
 10 graph, Defendants agreed with Female Plaintiff upon the policy of
 making provision for the early payment as well of the obligations due
 by the Testator at the time of his death as of the particular legacies,
 annuities and Succession Duties, by making available approximately
 the sum of \$4,000,000 from the following amongst other sources, to
 wit:—

- 20 (a) by the liquidation of all securities being carried in a specu-
 lative brokerage account by the Testator with Bamberger
 Brothers, stock brokers of New York City, thereby realizing
 an equity of approximately \$1,000,000;
- (b) by having the Incorporated Company sell 55,920 Class "B"
 non-voting Shares of Canadian Industrial Alcohol Com-
 pany Limited, which, at the then market value of \$40 per
 share, would have realized approximately \$2,236,800; and
- (c) by having the Incorporated Company get in the sum of
 \$880,000 then loaned on call.

23.—THAT following the understanding as aforesaid, relying
 30 upon Defendants adhering to the policy laid down and agreed to by
 them, Female Plaintiff, at the suggestion of Defendant Shaughnessy,
 on May 4th, 1928, executed a Power of Attorney in favor of Defend-
 ants jointly, the whole as more fully appears upon reference to a copy
 of said Power of Attorney, herewith produced to form part hereof as
 Plaintiffs' Exhibit No. 5;

24.—THAT in executing said Power of Attorney, Female Plain-
 tiff understood that she would be kept fully advised by monthly
 statements, similar to those supplied to said Testator during his life-
 40 time, as to all matters in which the Estate or the Incorporate Com-
 pany were in any manner interested;

25.—THAT immediately following the execution of said Power
 of Attorney, Female Plaintiff left Montreal to return to France, where
 she remained for about a year, the administration and management of
 the Estate and of the Incorporated Company being in the meantime
 conducted by Defendants without reference to her;

V.

*In the
Superior
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Montreal.*

No. 1.
Plaintiffs'
Declaration,
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ary 1930—
continued.

26.—THAT in London, England, in May, 1929, Defendant Shaughnessy announced to Female Plaintiff a complete departure from the previous policies discussed and agreed to by Female Plaintiff and Defendants as Executors and Trustees of said Will, and as Directors of the Incorporated Company, and in effect declared that he had met a "financial genius," for whom he had purchased an investment company for \$30,000 and had given him offices, and was
10 paying him a salary of \$20,000 a year; and that he, Defendant Shaughnessy, and the "financial genius" were going to use the funds of the Incorporated Company, over a period of years, for the purpose of building up a gigantic investment company (\$150,000,000 being mentioned in this connection), which would make impossible, in the meantime, any distribution to Plaintiffs of any revenues, other than the annuities of \$67,500, provided for by said Will;

27.—THAT the proposal of Defendant Shaughnessy outlined
20 in the preceding paragraph would have had for effect to completely nullify for an indefinite period of time, Clause XIII of said Will, whereby the Testator had expressly ordained that the net annual revenues from the residue of his Estate, (after providing for the bequests previously mentioned), should be paid over one-half to each of the Plaintiffs during their lifetimes, provided that should the Male Plaintiff predecease Female Plaintiff, the totality of such revenues from the residue of his Estate should be paid to Female Plaintiff during her lifetime.

28.—THAT alarmed by said announcement of policy for the
30 future administration of the Estate and of the Incorporated Company, Female Plaintiff left for Montreal immediately, to investigate Defendants' administration of the Estate and the Incorporated Company, and to prevent by all legal means the putting into force of the policy outlined to her by Defendant Shaughnessy, as recited in paragraph (26) of the present Declaration.

29.—THAT upon arriving at Montreal early in June last, 1929, Female Plaintiff interviewed Defendant Shaughnessy and demanded the immediate termination of all relations between the Estate and of
40 the Incorporated Company and the "financial genius," who turned out to be one Clark S. Jennison, and that for the future, all property, whether owned directly by the Estate or through the intermediary of the Incorporated Company, be administered in strict conformity with the principles applicable to property of Estates, to the whole of which, Defendant Shaughnessy, at the time, professed to agree, he at the time being under the impression that Female Plaintiff was returning to France immediately.

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No. 1.
Plaintiffs'
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continued.

10

30.—THAT at the interview referred to in the preceding paragraph, Defendant Shaughnessy deliberately misrepresented to Female Plaintiff, the relations existing between the Incorporated Company and said Jennison, as consisting merely of a Loan to the latter of the sum of \$10,000 which would be called and paid immediately, whereas, in truth and in fact, no such Loan then existed, the same having been merged months before into a purchase of Shares by the Incorporated Company from said Jennison for the sum of \$50,000 as hereinafter fully set forth.

20

31.—THAT subsequently, Defendants informed Female Plaintiff, that upon re-consideration, they had decided not to administer the Incorporated Company as an arm of the Estate, and to continue the connection of said Jennison with the Incorporated Company.

32.—THAT Female Plaintiff on numerous occasions demanded from Defendants full particulars of their administration of the property of the Estate and of the Incorporated Company, and after much evasion and many delays Defendants delivered to Female Plaintiff a statement of such administration for the fourteen months from the death of the Testator on March 22nd, 1928, to May 31st, 1929, and accompanied the same by an estimate for the year commencing on the latter date; said Statement being herewith produced and fyled to form part hereof as Plaintiffs' Exhibit No. 6.

30

33.—THAT following the receipt of the statements just alluded to, Female Plaintiff wrote Defendant Shaughnessy demanding the immediate preparation and prompt delivery of audited statements concerning the affairs of the Estate since the death of the Testator, and of the Incorporated Company since the last Auditors' statement for the year ending September 30th, 1928, as also for properly audited monthly balance sheets of all transactions concerning both the Incorporated Company and the Estates; copies of said demands being herewith produced and fyled to form part hereof as Plaintiffs' Exhibit No. 7.

40

34.—THAT Defendant Shaughnessy first temporized, then menaced Female Plaintiff, and finally delayed for nearly two months complying with said request for Auditors' statements, the same to August 31st, 1929, having been delivered only on or about October 15th, last, 1929, copies of the same being herewith produced and fyled to form part hereof as Plaintiffs' Exhibits No. 8 and 9; but failed and neglected to deliver any monthly balance sheets and statement;

35.—THAT notwithstanding repeated requests by Female Plaintiff for delivery to her of the Auditors' Report and Statement of the Incorporated Company for the year ending September 30th,

*In the
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No. 1.
Plaintiffs'
Declaration,
16th Janu-
ary 1930—
continued.

1929, delivery thereof was delayed until November 18th, 1929; copy of same being herewith produced and fyled to form part hereof as Plaintiffs' Exhibit No. 10;

36.—THAT the said statements of Defendants and of the Auditors indicated the affairs of the Estate and of the Incorporated Company were in the state of chaos hereinafter more fully referred to;

37.—THAT in the meantime Female Plaintiff, on October 5th, 1929, by revocation before H. B. McLean, Notary, duly revoked the Power of Attorney given by her on May 4th, 1928, to the Defendants as her Co-Executors and Trustees under said Last Will as aforesaid, the whole as appears upon reference to a copy of said revocation herewith produced and fyled to form part hereof, as Plaintiffs' Exhibit No. 11;

38.—THAT following the receipt as aforesaid by Female Plaintiff of the Auditors' Report and Statement to September 30th, 1929, Plaintiffs' Exhibit No. 12, she immediately thereafter, that is on 20 November 21st, 1929, acting by and through the undersigned, demanded Defendants' resignations as well as Executors and Trustees under said Will as Directors and Officers of said Incorporated Company and also of said Alcohol Company, which requests Defendants refused and neglected to comply with, copies of such demands being herewith produced and fyled to form part hereof as Plaintiffs' Exhibit No. 12;

VI.

30

39.—THAT Plaintiffs now allege and directly put in issue that Defendants, by reason of the premises and of each and every of the acts and omissions hereinafter complained of have failed and neglected to do and perform the acts required of them as well by said Will as by law, and have infringed their duties as such Executors and Trustees, and have dissipated and wasted the property of said Estate, and their administration thereof exhibits their incapacity, dishonesty and total unfitness to hold and exercise such offices as Executors and Trustees 40 under said Will, each and all of such acts and omissions constituting legal grounds for demanding that Defendants be forthwith removed from said offices as such Executors and Trustees by authority and justice.

40.—THAT each and every of the acts and omissions hereinafter attributed to Defendant Shaughnessy were counselled, aided, procured and abetted by Defendant Reaper, who knowingly partici-

pated therein, and is by law equally responsible with Defendant Shaughnessy therefor.

*In the
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VII.

No. 1.
Plaintiffs'
Declaration,
16th Janu-
ary 1930—
continued.

41.—THAT on May 5th, 1928, Defendant Shaughnessy unlawfully, wrongfully and fraudulently induced Female Plaintiff to affix her signature as a Co-Executor and Trustee to a paper writing prepared in advance and signed by the Defendants as Vice-President and Secretary-Treasurer of the Incorporated Company, and also by them as Executors and Trustees of the Estate, purporting to modify in favour of Defendant Shaughnessy, and in a manner adverse to the interests of both the Estate and the Incorporated Company, the terms of a Gift purporting to be made in and by a certain Agreement bearing date September 17th, 1924, respecting the engagement by the Incorporated Company of Defendant Shaughnessy, as also to modify with like effect a further Agreement in writing, bearing date October 15th, 1924, respecting said contract, and this at a time when Female Plaintiff was not at all familiar with said matters, and without Defendant Shaughnessy having exhibited to her either said Agreement of September 17th, 1924, or the Agreement of October 15th, 1924, while misrepresenting the purport of the paper writing presented for Female Plaintiff's signature, copies of said Agreements and Modifications being herewith produced and fyled to form part hereof, as Plaintiffs' Exhibits No. 13, 14, 15;

42.—THAT Defendant Shaughnessy has unlawfully, wrongfully and fraudulently converted to his own use moveable property belonging to the Estate, consisting of ornaments and valuable household furniture;

43.—THAT in place of promptly selling a valuable Rolls Royce automobile owned by the Testator at the time of his death, Defendant Shaughnessy unlawfully, wrongfully and fraudulently converted the same to his own use, and thereafter expended thereon a large sum belonging to the Estate, to the great prejudice of the latter;

44.—THAT Defendant Shaughnessy has unlawfully, wrongfully and fraudulently used and occupied, and permitted other persons to use and occupy, without paying any consideration therefor, a valuable property belonging to the Estate situate at Ste. Agathe, P.Q., while refusing to lease the same to other persons, as he could and should have done;

45.—THAT on or about September 18th, 1929, Defendant

*In the
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No. 1.
Plaintiffs'
Declaration,
16th January 1930—
continued.

Shaughnessy unlawfully, wrongfully and fraudulently appropriated to his own use a sum of approximately \$217,461.65, rightfully due by the Incorporated Company to the Estate, under the following circumstances:—

- 10 (a) Said late Sir Mortimer Davis intervened in said agreement of September 17th, 1924, respecting the engagement by the Incorporated Company of the services of Defendant Shaughnessy, and purported to thereby give and donate to defendant Shaughnessy, at a period five years later, 196½ \$1,000 6% Twenty-Year Notes, of an aggregate face value of \$196,500, and 2,375 Ordinary Shares of the Incorporated Company, subject to the fulfilment of the conditions therein set forth in said Agreement; said 196½ Notes and 2,375 Shares purporting to be in the meantime transferred in the names of Hon. H. M. Marler and H. B. McLean, Notaries of Montreal aforesaid, as Trustees, the whole as will more fully appear upon reference to a copy of said Agreement, Plaintiffs' Exhibit No. 13;
- 20 (b) By said Agreement, it was expressly provided that all interest paid on said 196½ Notes, or dividends, if any, declared upon 2,375 Shares, should, so long as they were held by said Trustees, be payable to the late Sir Mortimer Davis;
- 30 (c) Subsequent to the execution of said Agreement of September 17th, 1924, to wit, under date October 1st, 1924, a stock dividend was declared by the Incorporated Company, and in virtue of the same, 1,625 treasury shares of the Incorporated Company were allotted and issued to said Hon. H. M. Marler et al., Trustees, upon said 2,375 Shares, being a dividend at the rate of 65% on the paid up Capital for the time being of the Incorporated Company, the whole for the account of said late Sir Mortimer Barnet Davis, the whole as more fully appears upon reference to a copy of Extract from Minutes of Directors, of the Incorporated Company, herewith produced and filed to form part hereof as Plaintiffs' Exhibit No. 16;
- 40 (d) Immediately following said Stock Dividend, the Incorporated Company adopted a By-Law reducing its issued capital from \$8,250,000 to \$5,000,000, by the purchase and cancellation of 32,500 Shares of a value of \$100 per Share, and as a consequence thereof, said 1,625 Shares were purchased and cancelled by the Incorporated Company, and thereupon the sum of \$162,500 was credited to said Hon.

In the
Superior
Court,
District of
Montreal.

No. 1.
Plaintiffs'
Declaration,
16th January 1930—
continued.

H. M. Marler et al., as Trustees, for the account of said late Sir Mortimer Barnet Davis, since which time, interest at the rate of 6% per annum has been added thereto annually, said credit, with accumulated interest, amounting on September 18th, 1929, to approximately \$217,461.65; the whole as will more fully appear upon reference to said copy of extract from Minutes of Directors, Plaintiffs' Exhibit No. 16.

- 10 (e) By reason of the premises, said credit of \$162,500, and the further credits of interest thereon, amounting together to approximately \$217,461.65, was the sole property of said Sir Mortimer Barnet Davis during his lifetime, and ever since his death has formed and still forms part of his Estate;
- 20 (f) On or about September 18th, 1929, in and by a communication addressed to said Hon. H. H. Marler et al., as Trustees, Defendant Shaughnessy laid claim to said sum of \$162,500, and accumulated interest, and has since, without the authority of said Board of Directors or the knowledge or consent of Female Plaintiff, withdrawn from the funds of the Incorporated Company, and applied to his own uses, the whole of said sum and interest; the whole as will more fully appear upon reference to copies of said communication and of certificate therein referred to now produced and fyled to form part hereof as Plaintiffs' Exhibit No. 17;
- 30 (g) Under no conditions whatsoever was Defendant Shaughnessy entitled to demand, receive and appropriate the accumulated interest of \$54,961.55 on said credit of \$162,500;

46.—THAT said sum of approximately \$217,461.65 was rightly the property of the Estate for the further reason that the Gift of the original 2,375 Shares purporting to be made by said late Sir Mortimer Davis to Defendant Shaughnessy in and by said Agreement of September 17th, 1924, was and is null and void *ab initio* for the reasons that such Gift was revocable at the mere will of the Donor and was not made in Notarial form and *en minute*, and had never been registered in the manner required by law;

40

47.—THAT on or about September 18th, 1929, Defendant Shaughnessy unlawfully, wrongfully and fraudulently caused to be transferred into his own name on the registers and books of the Incorporated Company, said 196½ Notes and 2,375 Shares which, because of the absolute nullity of said pretended Gift, always remained the property of said late Sir Mortimer Barnet Davis, and after his death belonged absolutely to his Estate;

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48.—THAT on or about December 8th, 1928, on the occasion of the sale by Hon. H. M. Marler of 500 shares of the Incorporated Company, Defendant Shaughnessy unlawfully, wrongfully and fraudulently set up and asserted his right to purchase 25 of such shares at \$170 per share, to the great detriment of the Estate, which was justly entitled to the advantage to be derived from the purchase of said 25 shares at the favourable price of \$170;

49.—THAT as a matter of fact, the whole of said 500 shares
10 were purchased from said Hon. H. M. Marler, and paid for by and with the funds of the Estate, and Defendant Shaughnessy unlawfully, wrongfully and fraudulently manipulated first the funds of the Estate to purchase from said Hon. H. M. Marler the 25 shares concerned in the claim made as aforesaid by Defendant Shaughnessy, and later manipulated the funds of the Incorporated Company to effect a pretended re-purchase of the same 25 shares from the Estate for his own benefit without having at any time paid or provided the whole or any part of the consideration price of said 25 shares;

20 50.—THAT said Shaughnessy being an Executor and Trustee of the Estate, was precluded from directly or indirectly purchasing said 25 shares from the Estate, and the pretended purchase thereof was and is null, void and of no effect;

51.—THAT concurrently with the institution of the present suit, Plaintiffs have instituted appropriate proceedings-at-law to have said pretended Gift declared null, void and of no effect, and to recover for the benefit of the Estate the said 196½ \$1,000 serial Notes and 2,375 Shares, and said credit of the sum of \$217,461.65 and to likewise
30 recover said 25 Marler shares;

52.—THAT for the reasons given, said 25 shares, ever since the purchase thereof by the Estate from said Hon. H. M. Marler, have continued to be and still are the property of the Estate.

53.—THAT at all times prior to September 17th, 1929, Defendant Shaughnessy unlawfully, wrongfully and fraudulently refrained from distributing any sum whatever by way of dividends upon the Capital Stock of the Incorporated Company, and this notwithstanding
40 ing the urgent need of funds by the Estate, and the fact that the sum of approximately \$3,500,000 could and should have been made available to the Estate as the principal Shareholder of the Incorporated Company from the assets of the Incorporated Company for such distribution.

54.—THAT while so refraining from making such distribution, said Defendant Shaughnessy caused the Incorporated Company to loan to the Estate \$941,649.32 at interest;

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55.—THAT the result of Defendant Shaughnessy's said unlawful, wrongful and fraudulent conduct in not declaring dividends and in not distributing assets of the Incorporated Company, has been to deprive Plaintiffs of the advantage of the same as revenue of the Estate, while the latter, in place of having received to date from the Incorporated Company by way of dividends or distribution of assets the sum, say, of \$3,000,000, of which the Estate would have had the full benefit, that is, without any interest charge, has been compelled by Defendant Shaughnessy to borrow from the Incorporated Com-
10 pany the sum of approximately \$1,000,000 by way of a loan, and to pay interest thereon, the interest on said loan from the Incorporated Company aggregating approximately \$60,000 per annum;

56.—THAT the conduct of Defendant Shaughnessy just alluded to was unlawful, wrongful and fraudulent, and was resorted to by him as well for his self aggrandizement as because under the terms of said Agreement of September 17th, 1924, it was expressly stipulated that any dividends declared by the Incorporated Company prior to September 17th, 1929, would, insofar as concerned the 2,375
20 shares mentioned in said Agreement, be payable to the Estate, whereas according to the contention of Defendant Shaughnessy (the correctness of which is not admitted but is denied), such dividends if declared and paid after September 17th, 1929, would have belonged to him personally, and on a total distribution of say \$3,000,000, the dividends upon said 2,375 shares would have amounted to approxi-
mately \$150,000;

57.—THAT Plaintiffs specially allege and put in issue that sub-
sequent to the demand of November 21st, 1929, for Defendants'
30 resignations as Executors and Trustees under the Will and as Direc-
tors and Officers of the Incorporated Company and of the Alcohol
Company, Defendants acknowledged that the aforesaid charge against
them respecting their failure to declare any dividend by the Incor-
porated Company was well founded, by on or about December 4th,
1929, giving formal Notice to the Female Plaintiff as a Director of
the Incorporated Company that at a Meeting of the Board of Direc-
tors thereof to be held on December 9th, 1929, Defendants would
present for consideration a proposal to declare a dividend of 21%
to Shareholders of record of September 30th, 1929, with a further inti-
40 mation that Defendant Shaughnessy would be prepared to make an
adjustment with the Estate of any dividends received by him

“by which that Estate will receive such proportion of the divi-
“dends upon the shares acquired by Lord Shaughnessy under
“his agreement with the late Sir Mortimer Davis as would repre-
“sent the dividends on those shares that might fairly and equi-
“tably have been payable out of Surplus if dividends had been

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“declared by that Company between the date of the death of Sir
“Mortimer Davis and the seventeenth September, 1929;”

58.—THAT subsequently, to wit, under date December 6th,
1929, by an Amended Notice of said Meeting of the Board of Direc-
tors of the Incorporated Company, Defendants further acknowledged
that Plaintiffs said charge against them was well founded by giving
further Notice that at said Meeting they would propose to reduce the
capital of the Incorporated Company

10

“to such extent as may be necessary to enable the Executors of
“the Estate of the late Sir Mortimer B. Davis to repay to the
“Company all amounts advanced by the Company and expended
“by the Executors on account of capital indebtedness of the said
“Estate and to provide for certain future requirements of the
“Executors on capital account;”

59.—THAT Defendant Shaughnessy unlawfully and wrongfully has
donated and expended large sums of money of the Estate on philanthro-
pies, without the knowledge or concurrence of Female Plaintiff;

20

60.—THAT Defendant Shaughnessy has unlawfully, wrongfully
and fraudulently kept Female Plaintiff uninformed as to his adminis-
tration of the direct and indirect assets of the Estate, at times meeting
her legitimate demands for information with menaces, and in particu-
lar, he has failed and neglected to supply Female Plaintiff with
monthly statements showing in detail the administration of the affairs
of the Estate, and this notwithstanding her many demands to be
furnished with such statements;

30

61.—THAT Defendant Shaughnessy has failed, neglected and
refused to administer the Incorporated Company and its assets as
an arm of the Estate, and in the exercise of his functions as President
and Director of the Incorporated Company, has utterly disregarded
his paramount duty to foster and preserve the interests of the Estate,
but has endeavoured to give precedence over the same to the interests
and rights asserted by him under his claim of being a Shareholder of
the Incorporated Company;

40

VIII.

62.—THAT Defendant Shaughnessy has sought to take advan-
tage of his fiduciary position to advance his personal interests to the
prejudice of those of the Estate throughout the administration of the
affairs of the Incorporated Company, and has been guilty repeatedly
of gross breaches of trust in such connection by reason of the facts
hereinafter set out;

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63.—THAT as already recited, both Defendants are in law, chargeable, answerable and accountable as such Executors and Trustees for their acts as Directors of the Incorporated Company, as also of the Alcohol Company hereinafter complained of;

64.—THAT from the time Female Plaintiff was appointed a Director of the Incorporated Company, she has been completely ignored as such by Defendant Shaughnessy; so-called meetings of the Board since held, having taken place without even a semblance of a notice to Female Plaintiff; Defendant Shaughnessy having arrogated to himself in this as in all other matters, the administration of the Incorporated Company to the complete exclusion of Female Plaintiff;

65.—THAT Defendant Shaughnessy has systematically withheld from Female Plaintiff important information with reference to the administration both of the Incorporated Company, and of the Alcohol Company and McNish Bros., and has moreover, deliberately deceived her on many occasions with respect to such matters, and is at the present time surreptitiously carrying on negotiations having for their object a sale or merger of the Alcohol Company;

66.—THAT Defendant Shaughnessy unlawfully, wrongfully and fraudulently, under the guise of granting himself a bonus or in other form, raised to the extent of \$5,000 per annum the salary of \$20,000 stipulated payable to him by said Contract of September 17th, 1924, and this, without the authority of the Board of the Incorporated Company, and without notice to or knowledge by Female Plaintiff as a Director thereof;

67.—THAT Defendant Shaughnessy unlawfully, wrongfully and fraudulently also raised to the extent of \$2,500 per annum the salary paid to Defendant Reaper by said Incorporated Company, and this, without the authority of the Board of the Incorporated Company, and without notice to or knowledge by Female Plaintiff as a Director thereof;

68.—THAT Defendant Shaughnessy, being indebted to the Incorporated Company in the sum of \$50,000 by way of a loan of that amount, originally made in the lifetime of the late Sir Mortimer Davis, but for which the Incorporated Company was not furnished by Defendant Shaughnessy with any collateral security whatsoever, or even a note or other acknowledgment of the same, failed and neglected to repay said loan, and suffered the interest to accumulate and remain in arrears, and this without any authority from the Board of Directors;

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69.—THAT Defendant Shaughnessy, being likewise indebted to the Incorporated Company in the further sum of \$13,500 by way of another loan of that amount, originally made in the lifetime of said Testator, failed and neglected to repay said loan, while claiming and withdrawing large sums of money from the Incorporated Company, and this although the present market value of the collateral to said loan, viz., 3,000 debentures of R. McNish & Company Limited, of a face value of \$5.00 each, does not equal the amount of said loan; no authority from the Board of Directors for the contin-
10 uation of such loan having ever been given;

70.—THAT Defendant Shaughnessy, being likewise indebted to the Incorporated Company in the still further sum of \$7,248.72 by way of another loan of that amount, originally made in the lifetime of said Testator, failed and neglected to repay the same, while claiming and withdrawing large sums of money from the Incorporated Company, and this although the present market value of the collateral to said loan, viz., 375 "B" shares of Canadian Industrial Alcohol Company Limited, equals approximately only
20 two-thirds of the amount of said loan, and on the occasion of the recent break equalled approximately only one-quarter of said loan;

71.—THAT in addition to the three loans just referred to, said Defendant Shaughnessy unlawfully, wrongfully and fraudulently withdrew funds of the Incorporated Company to the amount of \$10,000 under the guise of another loan of that amount, and this under some date subsequent to September 30th, 1928, which Plain-
30 tiffs cannot for the moment precise, and for which pretended loan the Incorporated Company was not furnished by Defendant Shaughnessy with any collateral security whatsoever, or even with a note or other acknowledgment of the same, said loan having been made without the authority of the Board of Directors.

71 (a)—THAT Defendant Shaughnessy, in the months of July, August and September, 1928, unlawfully, wrongfully and fraudulently withdrew and caused to be withdrawn, and appropriated to his own use, funds of and belonging to the Incorporated Company and stand-
40 ing at the credit of the latter with its bankers, aggregating \$4,684.22, by means of cheques signed in the name of the Incorporated Company payable to the order of individuals and corporations in satisfaction of the private and personal indebtedness to them of Defendant Shaughnessy, all of said cheques having, upon presentation to said bankers, been duly paid from and out of said funds of the Incorporated Company; the particulars of the said withdrawals, as to dates, payees and amounts of cheques, being fully set forth in the List of same herein filed as Plaintiffs' Exhibit P-27;

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71 (b).—THAT Defendant Shaughnessy, in the months of April, May and June, 1929, unlawfully, wrongfully and fraudulently withdrew and caused to be withdrawn, and appropriated to his own use, funds of and belonging to the Incorporated Company and standing at the credit of the latter with its bankers, aggregating \$2,875.82, by means of cheques signed in the name of the Incorporated Company payable to the order of individuals and corporations in satisfaction of the private and personal indebtedness to them of Defendant Shaughnessy, all of said cheques having, upon presentation to said 10 bankers, been duly paid from and out of said funds of the Incorporated Company; the particulars of the said withdrawals, as to dates, payees and amounts of cheques, being fully set forth in the List of the same herein filed as Plaintiffs' Exhibit P-28;

71 (c).—THAT the amounts of \$4,684.22 and \$2,875.82 were so withdrawn by Defendant Shaughnessy from the funds of the Incorporated Company without any authority from the Board of Directors, and without the knowledge or consent of Female Plaintiff as a Director of the Incorporated Company;

20

71 (d).—THAT no collateral or other security was furnished or supplied to the Incorporated Company by Defendant Shaughnessy with respect to any of said withdrawals, nor was any interest ever debited, charged to or paid by Defendant Shaughnessy to the Incorporated Company in respect thereof.

71 (e).—THAT fictitious entries of the dates of the re-payment of both of said amounts of \$4,684.22 and \$2,875.82 were made by Defendants in the books of the Incorporated Company for the purposes of deceiving the Company's Auditors and of preventing said 30 withdrawals from appearing in the Auditors' Statements and Reports, then immediately about to be prepared.

72.—THAT under date December 4th, 1928, Defendant Shaughnessy unlawfully, wrongfully and fraudulently manipulated \$4,250 additional of the funds of the Incorporated Company and diverted the same to the purchase of 25 shares of the Capital Stock of the Incorporated Company, which, at some time previously, had appeared registered in the name of the Hon. Herbert M. Marler, and 40 this with the view, subsequently acted upon by Defendant Shaughnessy, of later claiming and appropriating said 25 shares personally; the whole without the authority of the Board of Directors and in violation of law;

IX.

73.—THAT moreover, Defendants' entire administration of the affairs of the Estate as likewise of the Incorporated Company,

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during the 22 months which have elapsed since the death of said late Sir Mortimer Barnet Davis, on March 22nd, 1928, has resulted disastrously and in a state of disorder which, if permitted to continue, will have for its ending the forced liquidation of the assets as well of the Estate as of the Incorporated Company;

74.—THAT Defendant Shaughnessy failed to adhere to the policy agreed to by the Defendants and Female Plaintiff in April, 1928, for the conduct of the affairs of the Estate and of the Incorporated Company in the matter of providing ready funds with which to meet the liabilities of the Testator, said legacies, Succession Duties, etc., as required by said Will;

75.—THAT Plaintiffs specially allege and put in issue, that since the abandonment by Defendants of the plan agreed to by them in April, 1928, they have not had and have not now, any feasible or workable plan for meeting the obligations of the Estate and of the Incorporated Company;

20 76.—THAT the results to date of Defendants' administration of the affairs of the Estate and of the Incorporated Company demonstrates their absolute incapacity and total unfitness to carry out the duties of Executors and Trustees under said Will, and renders their immediate removal from said offices imperative for the protection of the rights as well of the Plaintiffs as of the creditors and other legatees of the Estate and of the Incorporated Company;

X.

30 77.—THAT as shown by Defendants' Statement, Plaintiffs' Exhibit No. 6, the Gross Revenue of the entire Estate during the first 14 months of Defendants' administration, that is, from March 22nd, 1928, to May 31st, 1929, only amounted to \$113,100.42, or an average of about \$8,000 monthly, and this although the Assets directly and indirectly held by the Estate were worth at prevailing market quotations shortly after Defendants took office, upwards of \$25,000,000;

40 78.—THAT as a matter of fact, said Gross Revenue of \$113,100.42 for the said 14 months should be reduced to \$64,000.42 by reason of the fact that the same included the sum of \$49,100 derived from dividends upon 9,820 shares of Liggett & Myers Tobacco Company, included in said speculative brokerage account with Bamberger Bros., which securities should have been sold in the spring of 1928, the same having since greatly depreciated in value, to the prejudice of the Estate;

79.—THAT in particular, under Defendants' administration, not

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one cent of revenue has been received to date by the Estate on its investment in the shares of the Incorporated Company, and which upon the basis of the market quotations just referred to, represent an amount in the vicinity of \$23,000,000, although being carried in the Accounts of the Estate as of date August 31st, 1929, at the sum of \$7,622,750, out of the entire Assets of the Estate being carried as of the same date at \$9,980,587.19;

80.—THAT moreover, as acknowledged by Defendants' said
10 Statement, Plaintiffs' Exhibit No. 6, their administration of the Estate for the 14 months from March 22nd, 1928, to May 31st, 1929, resulted in a deficit of Revenue over Expenditure of \$381,205.29, that is, in a deficit averaging in excess of \$27,000 monthly, and in a further deficit, for the same period, in Capital Account of \$559,274.74 additional;

81.—THAT by the same Statement, Plaintiffs' Exhibit No. 6,
20 Defendants admitted that the continuation of their administration for the then next 12 months, to wit, for the year beginning June 1st, 1929, would again result in a deficit in the Revenue Account of the Estate of \$374,933.40, that is, in a deficit averaging in excess of \$31,400 monthly;

82.—THAT as disclosed by the Auditors' Report, Plaintiffs' Exhibit No. 8, Defendants' administration of the Estate for the 17 months beginning March 22nd, 1928, to August 31st, 1929, actually resulted in a deficit of Revenue over Expenditure of \$443,563.75, that is, in a deficit averaging in excess of \$26,000 monthly;

30 83.—THAT since the periods covered by Defendants' Statement and Auditors' Report just referred to, Defendants' administration of the Estate has resulted in a recurrence of life deficits, and a continuation of the same in the future is inevitable under the administration of Defendants;

84.—THAT Defendants have failed to pay the Succession Duties due to the Province by the Estate, amounting to \$1,300,000, and upon which, interest amounting to \$72,041.99 had accumulated up to August 31st, 1929;

40 85.—THAT Defendants have likewise failed to pay the legacies to charities and others, amounting to upwards of \$400,000;

86.—THAT moreover, Defendants have wholly failed to pay over to the Trustees, or to make other appropriate provision for the capital requirements of three certain Deeds of Donation and Trust, of sums aggregating \$1,500,000 from said late Sir Mortimer Barnet

Davis, and existing as obligations against his Estate, and payable thereby, that is to say:

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- 10 (a) Marriage Contract, October 20th, 1897, in favour of Dame H. M. Meyer, to Lord Shaughnessy, A. M. Reaper and Royal Trust Company, payable at the end of three months after the death of the late Sir Mortimer Barnet Davis, \$100,000;
- (b) Deed of Donation, October 26th, 1921, to H. M. Marler and J. B. Waddell, Trustees, payable on demand of Trustees, \$200,000; and
- (c) Deed of Donation, August 1st, 1923, to Lord Shaughnessy, Mortimer B. Davis, Jr., and H. M. Marler, Trustees, payable on demand of Trustees, \$1,200,000;

20 87.—THAT Defendants have also failed to pay over to the respective Trustees concerned in the Deeds of Donation and Trust referred to in the preceding paragraph hereof, or to make other appropriate provision for the interest which has accrued upon the aggregate sums thereof, \$1,500,000, from the date of the death of said late Sir Mortimer Barnet Davis, which interest as of date August 31st, 1929, amounted to the sum of \$128,202.77;

30 88.—THAT Defendants' administration of the valuable land, premises, furnishings, equipment and conservatories comprised in the former residence on Pine Avenue in the City and District of Montreal, of the late Sir Mortimer Barnet Davis, exhibits their incapacity to properly discharge their duties of office as such Executors and Trustees, and in particular, by reason of the following facts:

- 40 (a) There is not displayed anywhere upon the property the usual and customary signboard to inform the public that the property is for sale; Defendants having, as a matter of fact, directed the removal from the property of such a signboard;
- (b) The main entrance is boarded up, giving the house an unsightly appearance, and this, while a large number of furnaces are being operated for the heating of the house and conservatory;
- (c) Valuable tropical and other plants, which should have been sold in the Spring of 1928, are being kept in the conservatory of this vacant house, entailing very great wasteful expenditures;

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- (d) No effort is being made along the customary and usual lines to obtain a purchaser or even a tenant for the property, or otherwise to offset the high carrying charges for loss of interest on investment, taxes, insurance, fuel, caretaker, etc;

89.—THAT Defendants' administration of another valuable and extensive property owned by the Estate at St. Agathe, P.Q., further exhibits their incapacity for said offices, and in particular by
10 reason of the following facts:

- (a) No effort is being made along the customary and usual lines to obtain a purchaser or even a tenant for the property, or otherwise to offset the high carrying charges for loss of interest on investment, taxes, insurance, etc.;
- (b) There is operated in connection with the said property, an extensive farm, such operations entailing a heavy deficit annually;
- 20 (c) As alleged in paragraph ~~42~~⁴⁴ hereof, Defendant Shaughnessy has refused to lease the property, as he could, and should have done.

XI.

90.—THAT from the date of the death of the late Sir Mortimer Bernet Davis, on March 22nd, 1928, the Incorporated Company has been indebted to the Canadian Bank of Commerce for divers sums,
30 which, with interest, presently amount to approximately \$3,500,000, secured in part, by the pledge of 494,426 debentures of Robert McNish & Company Limited, of a par value of \$5.00 each, and a certain number of ordinary shares of the Alcohol Company;

91.—THAT having regard to the indebtedness of the Incorporated Company to the said Bank, as also to the requirements for funds by the Estate for the purposes hereinbefore recited, the obvious and imperative duty of Defendants, as being in charge of the management and administration of the affairs of the Incorporated Company,
40 required that effectual steps be taken by them to insure the prompt liquidation of said 494,426 McNish debentures, as also of said 55,920 Class "B" Alcohol shares, and such further assets as could be disposed of to good advantage;

92.—THAT Defendants failed and neglected to sell and dispose of said McNish debentures or said Alcohol "B" stock, which they could and should have done, and the Incorporated Company and

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the Estate have since sustained great loss and injury by the depreciation which has since taken place in the market value of said securities;

93.—THAT, moreover, Defendant Shaughnessy has ever since March 22nd, 1928, been a Director of Asbestos Corporation Limited, and the Incorporated Company, during that time, has directly held 5,000 Common shares of no par value of said Asbestos Corporation, but carried at \$100,000, and is further heavily interested in the same Company through its holdings of the shares of Consolidated Asbestos
10 Limited, which latter investment is carried at \$609,000;

94.—THAT Defendant Shaughnessy failed and neglected to take any measures to effectually protect the direct and indirect investments of the Incorporated Company in the shares of said Asbestos Corporation, and in particular, failed and neglected to take advantage of an opportunity to sell and dispose of a large block of said Asbestos Common shares at the very favorable price of 31, to the great prejudice of the Incorporated Company and of the
20 Estate;

95.—THAT in view of the said indebtedness to said Bank and of the requirements of the Estate, it was further and obvious and imperative duty of Defendants to adopt and rigorously enforce a policy of the greatest economy and retrenchment in the administration of the affairs of the Incorporated Company in order to conserve to the utmost its liquid assets;

96.—THAT Defendants, in place of adopting and enforcing such policy of economy and retrenchment, pursued a directly opposite
30 course, and apart from their unlawful, wrongful and fraudulent acts in increasing their own salaries, making and tolerating loans to Defendant Shaughnessy, and the withdrawal by the latter of said sum of \$217,461.65, as aforesaid, have made the further improvident diversion of the funds of the Incorporated Company to the several speculative ventures hereinafter especially referred to;

97.—THAT Defendant Shaughnessy improvidently speculated in the securities of the Alcohol Company in the name of the Incorporated Company, and without reference to its Board of Directors
40 improvidently invested of its funds approximately \$75,000 in the purchase of 2,200 Alcohol "A" shares at an average cost of approximately $31\frac{1}{4}$ and 160 shares of "B" stock at an average cost of $39\frac{1}{8}$, and which at the present market quotations represent a loss to the Incorporated Company of approximately \$45,000;

98.—THAT Defendant Shaughnessy, at a time when the position of the Incorporated Company was such as to render imperative the

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greatest economy and retrenchment for the conservation of its liquid assets, without right, and without consulting the Female Plaintiff, made donations of large sums from the funds of the Incorporated Company;

99.—THAT Defendant Shaughnessy, under the same conditions as set out in paragraph 98 in furtherance of the scheme announced to Female Plaintiff in London on May 11th, 1929, as set out in paragraph 26 hereof, improvidently first loaned \$10,000 of the funds of the Incorporated Company to said Jennison, without any adequate security and without the authority of the Board of Directors, and later purchased from said Jennison, for \$50,000, 500 Preferred shares, with a bonus of 500 Common shares of "Jennison & Company Limited," and to all intents and purposes committed the Incorporated Company to a further purchase of the same amount, without the authority of the Board; said shares being without value, and the whole transaction being resorted to by Defendant Shaughnessy and said Jennison as a pretext to provide said Jennison with funds necessary for his subsistence while endeavouring to carry through and give effect to certain theories of corporate finance and reorganization evolved by said Jennison and favoured by Defendant Shaughnessy, the whole as will more fully appear upon reference to a copy of Letter-Contract signed by the Defendant Shaughnessy on behalf of the Incorporated Company, bearing date January 16th, 1929, produced and fyled to form part hereof as Plaintiffs' Exhibit No. 18;

100.—THAT Defendant Shaughnessy, under the same conditions as set out in paragraph 98, improvidently and injudiciously committed the Incorporated Company to the purchase, for the sum of \$142,500, of 1,500 units and 3,000 "Directors' Common" shares of Investment Foundation Limited, said securities having since greatly depreciated in value;

101.—THAT Defendant Shaughnessy, under the same conditions as set out in paragraph 98, on or about February 24th, 1929, without having referred the same to the Board of Directors of the Incorporated Company, improvidently committed the Incorporated Company, to, among other things, finance Cadillac Coal Company for an unlimited sum, and pursuant thereto, has since made advances amounting, with interest, to upwards of \$111,000, for which no collateral is held; the whole as will more fully appear upon reference to copies of Letter-Subscriptions dated January 30th, 1929, and of Contract dated February 24th, 1929, herewith produced and fyled to form part hereof as Plaintiffs' Exhibit No. 19.

102.—THAT Defendant Shaughnessy, at the same time, transferred to said Cadillac Coal Company, a coal area held by the Incorporated

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porated Company in the Province of Alberta, in connection with which transfer the Incorporated Company was to receive \$50,000 in First Mortgage Bonds, which have never been delivered;

103.—THAT Defendant Shaughnessy, under the conditions as set out in paragraph 98 hereof, improvidently expended and wasted a large sum of money of the Incorporated Company upon coal lands, oil leases, nickel properties and other similar speculative and extremely hazardous ventures, employing geologists and aviators in connection therewith; the sum of \$19,397.19 having been diverted to that purpose during the year ending September 30th, 1929, and a very much larger sum during the preceding six months;

104.—THAT under Defendants' unsound and unbusinesslike methods of administering the affairs of the Incorporated Company, the latter has defaulted as to the payment of the interest on \$3,000,000 of the 6% Serial Notes of the Incorporated Company, which interest was in arrears to an amount of \$283,030.90 as of date September 30th, 1929;

20

105.—THAT under the same unsound and unbusinesslike methods of Defendants the Incorporated Company has further defaulted to meet the requirements of the By-law creating said 6% Serial Notes of the Incorporated Company whereby it was and is bound to retire annually at least \$100,000 of such Notes, such default now extending to \$140,000;

XII.

30 106.—THAT the administration of the affairs of the Alcohol Company by the Defendant Shaughnessy, as President, and more especially since October 1st, 1928, demonstrates his absolute incapacity and total unfitness to discharge the duties of such office, and renders his immediate removal therefrom imperative for the protection of the investment in said Alcohol Company held by the Estate through the medium of the Incorporated Company;

40 107.—THAT as hereinbefore alleged, said investment in the Alcohol Company is the principal asset of the Estate, the control of the Alcohol Company being represented as follows:

496,300 "A" shares, No Par value, entered at.....	\$9,926,000
56,080 "B" shares—entered at.....	\$1,121,600

forming together a total of \$11,047,800, which exceeds, in amount the combined Capital and Surplus of the Incorporated Company, of \$10,116,763.96, as of date September 30th, 1929;

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No. 1.
Plaintiffs'
Declaration,
16th January 1930—
continued.

108.—THAT the value of \$11,047,600 so placed upon the shares of the Alcohol Company so held by the Incorporated Company as above, is based upon \$20.00 per share, although, as a matter of fact, said shares have, since the death of the late Sir Mortimer Barnet Davis, been dealt in at very much higher figures, the "A" stock having sold above 50 and the "B" stock above 47, at which latter quotations the value of said Alcohol shares would be represented by the sum of \$27,450,760;

10 109.—THAT the Defendant Shaughnessy has been guilty of the following, among other acts, of arbitrary and improper conduct in connection with the discharge of the duties attaching to the office of President of the Alcohol Company:

- (a) he has arrogated to himself the attributes of the Board of Directors of the Alcohol Company;
- 20 (b) he has, without the authority of the Board of Directors of the Alcohol Company, increased his salary as the President thereof, by the sum of \$5,000 per annum;
- (c) he has submitted to the Directors, monthly statements of the Alcohol Company, wherein the Bank overdraft was included under the heading of Bills Payable;
- (d) he has refused information to the Directors of the Alcohol Company who are not employees thereof;
- 30 (e) he has discontinued the Executive Meetings of the Alcohol Company; and
- (f) he has vilified and abused such of the Directors as presumed to disagree with him;

110.—THAT the incapacity of Defendant Shaughnessy to hold and perform the duties of the office of President of the Alcohol Company, and his conduct above referred to, has resulted in the resignation, within the past few months, of all of the Directors of the Alcohol Company other than those who are employees thereof, 40 and has given rise to much adverse criticism in the press and of great dissatisfaction amongst the Shareholders of the Alcohol Company;

111.—THAT likewise the acts and conduct of Defendant Shaughnessy as President of the Alcohol Company have alienated the confidence and interest of the public in the securities of the Company;

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No. 1.
Plaintiffs'
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112.—THAT as a consequence of said acts and conduct by Defendant Shaughnessy in the exercise of the office of President and Director of the Alcohol Company, and because of the lack of public confidence in the management consequent thereon, the market value of the securities of the Alcohol Company, including the shares thereof held by and for the Estate as aforesaid, have depreciated enormously, and even prior to the recent break of prices general upon all Stock Exchanges, said shares were quoted and dealt in at an average price of 14 for both classes of stock, which would only represent a value of the 552,380 shares held by and for the Estate of \$7,733,320, to wit, a depreciation of approximately \$20,000,000 from the quotations at which said shares were dealt in since the death of the late Sir Mortimer Barnet Davis;

113.—THAT Plaintiffs have reason to believe, and now allege, that Defendants are at the present time conducting negotiations with a view to a merger of the Alcohol Company, which was founded by the late Sir Mortimer Davis and for many years conducted under his direction with outstanding success, with other competitive interests, whereby the control of the Alcohol Company presently owned and held by the Estate, would be forever lost;

114.—THAT under existing circumstances, any such merger with the other interests concerned, would cause great and irreparable loss and injury to the Estate.

XIII.

115.—THAT by reason of the premises Plaintiffs are well founded in asking and demanding the removal of Defendants from the offices of Joint Trustees and Executors under the Will of the late Sir Mortimer Barnet Davis;

116.—THAT by the terms of said Will it is expressly provided that vacancies in the offices of Trustees and Executors thereof shall be filled from time to time by individuals or Trust Companies appointed by Notarial acts by the surviving and acting Trustees and Executors, provided that if there be only one acting, the appointments necessary to bring the number up to three shall be approved by a Judge of the Superior Court after having satisfied himself as to the suitability of the persons to be appointed, and Female Plaintiff hereby makes express reservation of her right, following the rendering of the judgment in the present case, to appoint and thereafter to procure the requisite judicial approval of two individuals or Trust Companies to act as Trustees and Executors of said Will in the place and stead of Defendants;

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117.—THAT Plaintiffs expressly reserve their right to apply immediately following the service and return of the present action into Court for the appointment of a Sequestrator with authority to take possession of all property belonging to the Estate now in possession of Defendants and to exercise all of the rights therein and thereover;

118.—THAT Plaintiffs further expressly reserve their right to take and bring all appropriate proceedings to restrain and enjoin or to oust and remove Defendants from any and all offices held by them either in the Incorporated Company or any Corporation controlled by the latter including the Alcohol Company;

WHEREFORE Plaintiffs praying acte of the several reservations herein made by them, further pray that by the judgment to be rendered upon the present action it be said and declared as follows:

- 20 (a) That Defendants and both of them for the causes and reasons hereinbefore set forth be removed from the offices of Joint Executors and Trustees of said Last Will of said late Sir Mortimer Barnet Davis;
- (b) That Defendants and both of them be forbidden to interfere in any manner with the administration of the property and rights of the Estate of said Testator;
- 30 (c) That Defendants and both of them be ordered to render to the Female Plaintiff and to their successors in the offices of such Joint Executors and Trustees, a true and faithful account of their administration as Joint Executors of the property of the Estate of said Testator;
- (d) That Defendants be personally condemned to the payment of the costs of the present action including the costs of the Exhibits;
- (e) That the Mis-en-cause be summoned to be and appear before said Court for all purposes of law, and to hear the judgment to be rendered upon the present action.

40 Plaintiffs finally reserving unto themselves to take and bring such other and further conclusions in the premises as to law and justice may pertain.

MONTREAL, January 16th, 1930.

W. K. McKEOWN
Attorney for Plaintiffs

AMENDED PLEA OF DEFENDANT LORD SHAUGHNESSY

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Defendant Lord Shaughnessy for plea to plaintiffs' action saith:—

10 1. Paragraph 1 of the declaration is admitted and defendant invokes and relies upon the provisions of the said Will (Plaintiffs' Exhibit No. 1), which must be interpreted by its terms.

2. As to paragraphs 2, 3, 4 and 5, defendant says that the Will must be interpreted by its terms and denies the allegations of the said paragraphs in so far as they are not in accordance therewith.

3. Paragraph 6 is admitted.

20 4. Paragraph 7 as alleged is denied. In addition to said Waddell, defendant Shaughnessy is the owner of approximately five per cent of said issued capital stock.

5. Paragraph 8 as alleged is denied, but it is true that the late Sir Mortimer Davis in bequeathing his shares in the Incorporated Company to his trustees, of whom the defendants are the majority, thereby putting them in a position to control the management of the said Incorporated Company, and in fact the defendants have administered the affairs thereof in harmony with the interests and requirements of said Estate.

30 6. Paragraph 9 as alleged is denied. Defendants were both officers of the said Incorporated Company during the lifetime of the late Sir Mortimer Davis, and defendant Shaughnessy has a substantial personal stock interest therein, while the female plaintiff only became a director subsequent to the death of the late Sir Mortimer Davis and has no stock interest therein other than as trustee under his Will.

40 7. Paragraph 10 as alleged is denied in fact and in law. Defendants in their capacity of officers and directors of the said Incorporated Company have a duty to all the shareholders of that Company and not only to the Estate.

8. Paragraph 11 as alleged is denied. The female plaintiff on the 4th May, 1928, was qualified with one share of the said Incorporated Company in her quality of trustee of the Estate of the late Sir Mortimer Davis, and in that quality became a director of said Company on the 31st December, 1928.

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9. As to paragraph 12, defendant says that the most important asset of Sir Mortimer Davis, Incorporated, is its investment in the shares of the Alcohol Company and the Estate's holdings of shares of Sir Mortimer Davis, Incorporated, constitute an important asset of the Estate of the late Sir Mortimer Davis, otherwise said paragraph is denied.

10 Paragraph 13 is denied. Defendant Shaughnessy was elected to the board of directors and as President of the Alcohol Company several years before the death of the late Sir Mortimer Davis and has in said Alcohol Company a substantial personal interest and investment.

11. Paragraph 14 is denied.

20 12. The statement referred to in paragraph 15 (Plaintiffs' Exhibit No. 2) is also the first sheet of the statements contained in Plaintiffs' Exhibit No. 8 and must be interpreted by the terms of the whole of the said Exhibit No. 8, of which it forms a part, otherwise the said paragraph is denied.

13. The documents referred to in paragraphs 16, 17, 18, 19 and 20 must be interpreted by their terms; otherwise said paragraphs are denied.

30 14. Paragraphs 21 and 22 as alleged are denied. On or about the 25th day of April, 1928, a meeting of the trustees under the Will of the late Sir Mortimer Davis was held at the office of the Incorporated Company and a true copy of the minutes of said meeting is herewith produced to form part of the Defendants' Exhibit D-2.

15. At said meeting it was particularly agreed by all the trustees, including the female plaintiff, that the shares of stock of Liggett & Myers Limited should not be sold, but should be held for an anticipated improvement in the market price thereof, and the other shares that were carried by Bamburger Brothers were in fact forthwith sold.

40 16. There was no available market for the sale and disposition of any such quantity of Canadian Alcohol B stock at any such price as is indicated or any other reasonable price at that time, and any attempt by the trustees (who held the controlling interest of the voting shares of said Company) to sell any substantial quantity of shares of the Alcohol Company would have been fatal to all the holdings of the Estate in said Company and would have caused the entire collapse of the market for the shares of said Company.

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17. The sum loaned on call by the Incorporated Company was loaned at remunerative rates of interest and on ample, safe, marketable securities, and it was to the advantage of said Company to leave said money on loan until it was required for other legitimate purposes.

18. The power of attorney referred to in paragraph 23 must be interpreted by its terms. Otherwise said paragraph is denied. The female plaintiff voluntarily offered said power of attorney because she desired to absent herself from the City of Montreal, where the affairs of said Company are carried on.

19. Paragraph 24 is denied. Defendants have supplied plaintiff from time to time with all statements which she desired to have and which statements were apparently satisfactory to her, as she made no comment thereon or asked for further information in reference thereto. Plaintiff continued said power of attorney in force until 5th October, 1929.

20. Paragraph 25 as alleged is denied. The female plaintiff did leave Montreal and return to France, where she had been accustomed to reside for many years, and delegated to her co-executors and co-trustees her duties in connection with the administration and management of the Estate and of the Incorporated Company, but defendants kept her informed of such administration and management as fully as she required them to do.

21. Paragraph 26 as alleged is denied, but defendant Shaughnessy did discuss with female plaintiff entering into certain financial arrangements with said Jennison, to which arrangements she then agreed.

22. Paragraph 27 is denied. The arrangements proposed with said Jennison would have in no way affected said provisions of said Will or the rights of plaintiffs thereunder.

23. Paragraph 28 is denied. At said interviews with defendant Shaughnessy in London the female plaintiff declared herself satisfied with the policy for the administration of the Estate and of the Incorporated Company laid before her and declared that she was proceeding to America for the purpose of being with a relative who was dangerously ill, but that it was doubtful if she would in fact be in or near Montreal during said visit to America.

24. Paragraph 29 is denied. The Estate was administered in conformity with the Will of the deceased testator and the principles applicable thereto.

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25. Paragraphs 30 and 31 are denied.

26. Paragraph 32 is denied. Up to the time of the delivery to the female plaintiff of statement Exhibit No. 6 she had not suggested the delivery to her of any further statements of said Estate or said Incorporated Company than those which she received and with which she was evidently satisfied.

10 27. Paragraph 33 as alleged is denied. Defendant Shaughnessy, in spite of the unreasonable extent and peremptory manner of the demands contained in female plaintiff's letter of 15th August (part of Plaintiffs' Exhibit No. 7), wrote her a letter dated August 21st, 1929, a copy of which is herewith filed as Defendants' Exhibit D-3, in reply to which he received her peremptory and offensive letter dated August 23rd, also forming part of plaintiffs' Exhibit No. 7.

20 28. Paragraph 34 is denied. The said auditors' statements were prepared by the Company's auditors and delivered to female plaintiff by said auditors with all reasonable diligence following her request therefor, and at the same time as the said statements were received by defendants on October 7th, 1929.

30 29. Paragraphs 35 and 36 are denied. The said auditors' report and statement were prepared with the usual diligence and were delivered to the female plaintiff as soon as completed and certified by said auditors. Said statements properly interpreted show that the affairs of said Estate and the Incorporated Company were administered by defendants along the lines for many years laid down and adopted by the late Sir Mortimer Davis during his lifetime, and that the said administration has been in the best interest of the said Estate.

30 30. The document referred to in paragraph 37 must be interpreted by its terms. It was only shortly before said revocation that the female plaintiff made any complaint to defendants of the manner in which they had fulfilled their duties.

40 31. The document referred to in paragraph 38 must be interpreted by its terms. There was no justification or excuse for the demand therein made. At no time have defendants been able to obtain from the plaintiffs or their said attorney any statement in writing of their pretended causes of action until the service of the plaintiffs' declaration herein on the 18th January, 1930, and this in spite of repeated requests, including a letter dated November 26th, 1929, from defendants' attorneys to plaintiffs' attorney, filed herewith as Defendants' Exhibit D-4, to which no reply has been received.

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32. Paragraphs 39 and 40 are false and malicious and are denied. Defendant reserves all rights and recourses against plaintiffs for the unfounded, false and defamatory statements therein contained.

10 33. Paragraph 41 as alleged is denied. The female plaintiff signed and executed the documents therein referred to of her own free will, with full knowledge of all the facts, and moreover the documents are improperly described, construed and interpreted by plaintiffs in said paragraph.

20 34. Paragraph 42 is false and malicious and is denied. Defendant Shaughnessy by agreement with the other executors, including female plaintiff, received a dining-room table, various chairs and a tabouret, in part satisfaction of the bequest made to him in Article 8, clause 4 of the Will, wherein he was bequeathed a legacy of \$1,000.00 "wherewith to purchase a memento," and it was agreed by the female plaintiff that the said articles of furniture were appropriate in part satisfaction of said legacy, and furthermore that the female plaintiff not only declared her consent and approval before the removal of the said articles of furniture, but on frequent occasions thereafter, when visiting the residence of defendant Shaughnessy and viewing the said articles, declared her entire approval and concurrence in what had been done.

30 35. Paragraph 43 is false and malicious and is denied. Said car was a model of the year 1912 or 1913 and such use as defendant Shaughnessy made of the said car was for the purpose of verifying its condition and determining whether it could be put in sufficient repair to be used or disposed of, and after such use said defendant ascertained that the said car was incapable of being repaired or made use of except at a cost that was prohibitive, and defendant has at all times been prepared to sell the said car to any buyer at any reasonable price.

40 36. Paragraph 44 is false and malicious and is denied. Defendant Shaughnessy on two or three occasions visited said property for periods of a few days in accordance with the previous practice which had existed during the lifetime of the late Sir Mortimer Davis, during which the defendant Shaughnessy was frequently invited to make such use of the said property and did so at the invitation and with the knowledge and consent of the late Sir Mortimer Davis. Said property was not leased by reason of the fact that defendants were at all times endeavouring to find a purchaser for it and it was considered inadvisable and disadvantageous to lease it meanwhile.

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37. Paragraph 45 and sub-paragraphs (a), (b), (c), (d), (e), (f) and (g) thereof, and paragraphs 46, 47, 48 and 52 are denied. Said paragraphs are the subject matter of a further action between the said plaintiffs and defendant Shaughnessy (Case No. 65140 of the records of this Court) and referred to in paragraph 51 of the plaintiffs' declaration herein, in which the rights of the defendant Shaughnessy in respect to the said notes and shares and cash are at length discussed and will be decided, and the said rights cannot properly be put in issue in this cause. Moreover, the said sum of \$217,461.65 was credited to the trustees of defendant Shaughnessy on the books of the Incorporated Company during the lifetime of Sir Mortimer Davis and was received by defendant Shaughnessy in strict accord with his rights under his said agreement of 17th September, 1924, and the said credit to said trustees was further confirmed by the late Sir Mortimer Davis during his lifetime, as evidenced by the entries in all books and records of the Incorporated Company in reference thereto.

38. Paragraph 49 is false and malicious and is denied. Defendant Shaughnessy consulted female plaintiff as to the wisdom of the purchase of said Marler shares and as to his right to take up the portion thereof accruing to him by the by-laws of the said Company, and she expressed her concurrence therein. Said shares were paid for by money standing at the credit of the defendant Shaughnessy's trustees and were thereafter held by them and were only delivered to the said Shaughnessy upon the complete fulfilment of the terms of the said agreement and upon the termination of the period stipulated in said agreement and in accordance with its said terms.

39. Paragraph 50 is denied. Said shares were purchased by the trustees for the defendant Shaughnessy from Honourable H. M. Marler in accordance with the provisions of the by-laws of the Company.

40. That paragraphs 53, 54, 55, 56, 57 and 58 are false and malicious and are denied.

41. The moneys required by the Estate were required in large part before the date when any dividend could be declared.

42. The late Sir Mortimer Davis, in Article Twenty-third of his Will (Plaintiffs' Exhibit No. 1) charged his Trustees and Executors "to carry out the policy he had laid down."

43. The requirements of the Estate consisted of capital disbursements and revenue disbursements.

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44. It was not advisable in the interests of the Estate to take action as to a capital distribution by the Incorporated Company to cover the said capital disbursements of the Estate, nor to declare a dividend for the revenue disbursements earlier than the month of December, 1929, particularly in view of the questions then under discussion between the Executors and the Province of Quebec and the Income Tax Department of the Dominion of Canada and the situation of the said Incorporated Company with respect to its indebtedness to its bankers.

10

45. Defendants took steps on the 4th and 6th December, 1929, to provide for the said requirements of the Estate by appropriate capital distribution and declaration of dividend by the Incorporated Company, but owing to female plaintiff's refusal to co-operate and by reason of the litigation now instituted, said meetings have not been held and the appropriate action by the Company with reference to the Estate's requirements has, therefore, not yet been taken, and the defendants declare that they have always been, and still are, willing to take appropriate action in this connection.

20

46. Defendant Shaughnessy arranged with the defendant Reaper, who was Vice-President and Secretary-Treasurer of the Incorporated Company and a co-Executor, that whenever the Incorporated Company would declare any dividend an adjustment would be made between defendant Shaughnessy and the Estate of Sir Mortimer Davis by which that Estate would receive such proportion of the dividends upon the shares that defendant Shaughnessy had acquired under his agreement with the late Sir Mortimer Davis as would represent the dividend on those shares that would fairly and equitably have been payable out of surplus if dividends had been declared by the Company between the date of the death of the late Sir Mortimer Davis and the end of the contract period, namely: 17th September, 1929.

30

47. That paragraph 59 is denied. All expenditures or donations for philanthropy were payments of obligations incurred by the late Sir Mortimer Davis approved in his lifetime and were necessary and appropriate under the circumstances.

40

48. That paragraphs 60 and 61 are denied.

49. Paragraphs 62, 63 and 64 are false and malicious. Defendants gave the female plaintiff more than the usual consideration and information (particularly in view of the power of attorney which she executed as aforesaid) and she was duly summoned to all meetings of directors of said Company whenever she was in Canada and there was any possibility of her attending.

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50. Paragraph 65 is false and malicious and is denied. Defendant now pleading reserves all rights and remedies in respect of the unfounded and libellous statements therein contained. The consideration by defendant Shaughnessy, as President of the Alcohol Company, of the communications and suggestions made to him by other parties with regard to a merger was necessary and appropriate in the interests of that Company and of all its shareholders.

10 51. Paragraph 66 is false and malicious and is denied. On the 17th September, 1924, at a meeting at which both the plaintiff M. B. Davis and the late Sir Mortimer Davis were present the directors of Sir Mortimer Davis, Incorporated, resolved to engage the defendant Shaughnessy as its general counsel at a salary of \$20,000.00 a year "and on such terms and conditions as may be agreed to," and on the 1st December, 1925, approved the payment of a bonus of \$5,000.00 to the defendant Shaughnessy in addition to his said salary. On the 25th January, 1927, at a meeting at which the plaintiff M. B. Davis was present the payment of a bonus of \$10,000.00 "as recommended by Sir Mortimer B. Davis" was approved and ratified by the said 20 directors, and a bonus of \$5,000.00 for each of the years 1927 and 1928 was also paid. By resolution of the directors of the said Company on the 31st December, 1928, it was resolved that in place of paying an annual bonus to Lord Shaughnessy, he (being then President as well as General Counsel) be placed on a straight salary basis of \$25,000.00 per annum, which was done.

30 52. Paragraph 67 is false and malicious and is denied. On the 23rd February, 1926, the defendant Reaper was appointed Secretary-Treasurer of Sir Mortimer Davis, Incorporated, at a salary of \$6,000.00 a year, payable from the 1st February, 1926. On the 25th January, 1927, at a meeting at which the defendant M. B. Davis was present the defendant Reaper's salary as Secretary-Treasurer was increased to \$7,500.00 a year. Defendant Reaper became a director of Sir Mortimer Davis, Incorporated, on the 29th December, 1927, and at the annual meeting of Sir Mortimer Davis, Incorporated, held on the 31st of December, 1928, defendant Reaper was again elected a director, and at the subsequent directors' meeting was elected Vice-President and Secretary-Treasurer of that Company, and his salary 40 was increased to \$10,000.00 a year to commence on the 1st of the following January.

53. Paragraph 68 is false and malicious and is denied. During Sir Mortimer Davis' lifetime at a meeting of the directors of Sir Mortimer Davis, Incorporated, at which the plaintiff M. B. Davis was present, it was reported that, with the approval of the late Sir Mortimer Davis, a loan of \$50,000.00 had been made to defendant

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10 Shaughnessy at an interest of six per cent (6%) per annum. At the time of the said loan Serial Notes and shares of Sir Mortimer Davis, Incorporated, were held in trust for the defendant Shaughnessy under the terms of the agreement (Plaintiffs' Exhibit No. 13) and in addition the amount of \$217,461.65, standing at the credit of defendant Shaughnessy's trustees on the books of said Incorporated Company, constituted further valuable collateral security to the said loan. Said loan has been duly paid and discharged by the defendant Shaughnessy, both as to capital and interest, and was dealt with throughout with the full knowledge of the late Sir Mortimer Davis and the Company's directors and was duly and clearly shown in the Company's periodical statements.

20 54. That paragraphs 69 and 70 are false and malicious and are denied. Said loans were made upon the instructions of the late Sir Mortimer Davis and were duly and clearly shown in the periodical statements of the Company, and the interest on the bonds and dividends on the shares have more than covered the interest due on the said loans, and the surplus was also duly credited against the said loans.

30 55. Paragraph 71 is denied. The loan of \$10,000.00 with interest was duly repaid on the 25th September, 1929, and the Serial Notes and shares of Sir Mortimer Davis, Incorporated, which were held by the trustees for the defendant Shaughnessy, as aforesaid, and the amount of \$217,461.65 standing at the credit of the said trustees on the books of the Incorporated Company, constituted complete and effective collateral security for the amount of said indebtedness.

56. Paragraph 72 is denied. The said shares were purchased by the trustees for defendant Shaughnessy, who had the right to purchase and did purchase said shares in accordance with the by-laws of the Incorporated Company, and said shares were duly charged against and paid for out of the amount standing at the credit of said trustees on the books of said Company.

40 57. Paragraphs 73, 74, 75 and 76 are false and malicious and are denied.

58. Paragraphs 77, 78, 79, 80, 81, 82 and 83 are denied. The exhibits therein referred to must be interpreted according to their terms, which when properly interpreted do not bear the interpretation put upon them by plaintiffs. The said apparent deficits were merely bookkeeping entries resulting from the continuation by the directors of the Incorporated Company of the policies which had prevailed during the lifetime of Sir Mortimer Davis and which at

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any time could be wiped out and replaced by further offsetting entries on the books of said Incorporated Company and of the Estate as soon as the appropriate time arrived for the directors of the said Incorporated Company and the executors of the said Estate to take such action either by way of declaration of dividends or by way of reduction in capital or both, and the female plaintiff, before the institution of these proceedings, was notified to attend meetings of directors of said Incorporated Company in order that she might co-operate with the defendants in taking such steps as were necessary to that end, but
10 she has hitherto failed and neglected to do so.

59. Paragraph 84 is denied. The succession duties in France and in England have been paid while the amount of the succession duties in Canada is not yet finally ascertained as the duties payable are still under discussion with the proper authorities in the endeavour to secure further reductions in addition to those already obtained.

60. Paragraphs 85, 86 and 87 are denied. Said legacies and
20 donations could not properly be paid until settlement of the succession duties to the Province of Quebec and the final disposal of certain contested claims for alleged arrears of income tax in Canada.

61. Paragraphs 88 and 89 are denied. Appropriate steps were
30 taken by defendants to procure purchasers for both the said properties in accordance with the established custom of real estate brokers in dealing with properties of such classes respectively. Various offers to purchase were communicated to female plaintiff from time to time to which she refused to agree and the said properties were administered in the meantime as they had been during the lifetime of the late Sir Mortimer Davis when he was not in Canada.

62. The debt referred to in paragraph 90 was incurred by the Incorporated Company before the death of the late Sir Mortimer Davis and with his consent and approval and constituted an additional reason why it was injudicious prematurely to declare dividends on the stock of the said Incorporated Company.

63. Paragraphs 91 and 92 are denied. There was no reasonable
40 opportunity of disposing of said debentures or shares under the market conditions prevailing for such securities since the death of Sir Mortimer Davis, and any attempt to dispose of them in large quantity would have resulted in further depreciation of the market value of such securities. As many of said securities as the market would absorb without undue depreciation of the market price were, in fact, sold by defendants.

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64. Paragraphs 93 and 94 are denied. The 5,000 shares of Asbestos Corporation stock were purchased by the Company during the lifetime of Sir Mortimer Davis upon his express instructions and with the idea that they should be carried as a long-term investment, and, in any event, there was not thereafter, since the death of Sir Mortimer Davis, any satisfactory market in which the said shares could have been sold, nor was their sale ever suggested by plaintiffs. The interest in the shares of Consolidated Asbestos Limited therein referred to was likewise acquired by Sir Mortimer Davis, Incorporated, long before the death of Sir Mortimer Davis, and there has been no market for said shares since the date of his death nor was the sale thereof ever suggested by plaintiffs.

65. Paragraphs 95 and 96 are denied. Defendants' conduct and administration as directors of the Incorporated Company has always been in the interests of that Company and its shareholders.

66. Paragraph 97 is denied. Certain shares of the Alcohol Company were purchased from time to time by the Incorporated Company following its previous practice and in an attempt to support the market for said shares.

67. Paragraph 98 is denied.

68. Paragraph 99 is denied. The letter (Plaintiffs' Exhibit No. 18) clearly shows the falsity of the plaintiffs' allegations.

69. Paragraph 100 is denied. The shares therein referred to have depreciated less in value in the general fall in securities than many other reputable securities and the Company's purchase of those shares was reasonable and justifiable under the circumstances and was in accordance with the principles laid down by Sir Mortimer Davis in his lifetime.

70. Paragraphs 101 and 102 are denied. The late Sir Mortimer Davis during his lifetime acquired a coal property (called the "Federal Coal Property") which formed part of his Estate at the time of his death, and he discussed and considered with the Incorporated Company and the defendants further investments in coal properties and their more active and extensive operation and exploitation in that connection, which he favoured, and before the date of the Plaintiffs' Exhibit 19, namely, on the 31st December, 1928, the matter was referred to the board of directors of the Incorporated Company who approved what was afterwards done. Sir Mortimer Davis, Incorporated, is the owner of ninety per cent of all the issued capital stock of the Cadillac Coal Company Limited, and the securities called for by said contract will be delivered in due course.

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71. Paragraph 103 is false and malicious and is denied. All such disbursements were made in connection either with properties which were acquired during the lifetime of Sir Mortimer Davis or properties or leases subsequently acquired or investigated under instruction or in accordance with the principles laid down by him during his lifetime.

10 72. Paragraph 104 is denied. The \$3,000,000.00 of Serial Notes were handed over to trustees by the late Sir Mortimer Davis in 1922 and during the lifetime of Sir Mortimer Davis the interest on said Notes was credited to him personally on the books of the Incorporated Company, while since his death the same interest has been similarly credited to the trustees, who have never demanded payment thereof.

20 73. Paragraph 105 is denied. On the 26th September, 1919, the issue was authorized of \$5,000,000.00 of the Serial Notes in question, which were duly issued, and although the by-law authorizing that issue contemplated that at least \$100,000.00 (par value) of the Notes would be redeemed each year, the only redemptions of Notes that occurred during the ten years that elapsed up to the death of the late Sir Mortimer Davis took place on or about the 11th June, 1923, when certain Notes were redeemed.

30 74. Paragraphs 106, 107, 108, 109, 111, 112, 113 and 114 are false and malicious and are denied. Defendant Shaughnessy has performed the duties of President of the Alcohol Company with efficiency and success and in good faith throughout his term as President of the Canadian Industrial Alcohol Company Limited, and defendant Shaughnessy, as President, and the other executive officers, enjoyed the confidence of the shareholders. Besides the shares of the capital stock of the Alcohol Company, held by the Incorporated Company, there are 473,180 other "A" shares and 67,106 other "B" shares held by third parties, and there are altogether about 6,500 shareholders of the Alcohol Company. The increase of defendant Shaughnessy's salary was one of the uniform and proportionate increases that were given at the same time to all the vice-presidents and the secretary-treasurer and most of the higher employees, none
40 of which were reported in the minutes in accordance with its uniform practice. During the presidency of the defendant Shaughnessy the Alcohol Company has experienced years showing better business results than ever before. Any depreciation in market value of the shares of said Company was due to conditions in the industry generally and was shared by all important companies engaged therein. Such communications as defendant Shaughnessy has received as President of the Alcohol Company with regard to a possible merger

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with other competitive interests have been treated by him in the proper and suitable manner.

75. Paragraph 110 is denied. The only directors (who were not salaried employees) who resigned were Honourable H. M. Marler, Mr. E. R. Decary and Mr. Henry Joseph, and those resignations were accompanied by the letters filed herewith as Defendants' Exhibits Nos. D-5, D-6, D-7 and D-8, which clearly show the falsity of the allegations contained in said paragraph.

10

76. As to paragraphs 115, 116, 117 and 118, defendant says that the Will must be interpreted according to its terms, and denies that plaintiffs have the pretended rights therein claimed or that they are entitled to any of the conclusions of their said petition.

And the defendant now pleading further alleges:—

77. The plaintiffs are not entitled in fact or in law to the conclusions of their declaration herein.

20

78. Under the terms of the Will of the late Sir Mortimer Davis (Plaintiffs' Exhibit No. 1) he nominated and appointed defendants and the female plaintiff the trustees and executors of his Estate under conditions that make it manifest that he intended and desired that the control and administration of said Estate should be entrusted more particularly to defendants.

79. Defendants alone were resident in the jurisdiction in which it was provided that said administration would be carried on and the female plaintiff was, at the time of the making of said Will and of the death of said testator, and is even yet, permanently resident in Europe and said Will clearly indicates that said testator contemplated that she would continue to reside there.

30

80. Article Twenty-third of the said Will specially charged the trustees and executors thereunder, to wit: the female plaintiff and defendants, to take an active and energetic interest in the management of the Estate and to carry out the policies he had laid down and particularly to conserve the capital of his Estate and not to sacrifice the same by premature liquidation, and practically all the complaints made by plaintiffs against defendants are for actions alleged to have been done or left undone by reason of the adherence of the defendants to the said instructions so contained in said Will.

40

81. In Article Fifteenth of said Will the testator expressly directed and required that the beneficiaries of his Will should not

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disturb by their demands or actions the carrying on of Sir Mortimer Davis, Incorporated, in any manner which in the opinion of the directors of that Company might be prejudicial to its interests.

10 82. At the time of the making of said Will and thereafter during the remaining lifetime of the testator, defendant Shaughnessy was a director and officer of Sir Mortimer Davis, Incorporated, and on or about 29th December, 1927, defendant Reaper also became a director of said Incorporated Company, of which he had previously been and continued thereafter to be an executive officer, both having been so appointed at the wish and with the concurrence of said testator, who owned a large percentage of the capital of said Company, whereas the female plaintiff was not at any time during the lifetime of Sir Mortimer Davis either a director or officer of said Company, nor was there any provision in said Will requiring, directing or suggesting that said female plaintiff should at any time be or become either a director or officer of said Company, although she was elected as such director after the death of Sir Mortimer Davis at the instance of
20 defendants.

30 83. Article Twenty-second of said Will particularly provided that the books and accounts of said Estate were to be kept in the office of Sir Mortimer Davis, Incorporated, and all meetings were to be held and business transacted in that office, until agreed to otherwise by all the trustees and executors, and it appears from other sections of said Will that it was the clear expectation of the testator that the female plaintiff would continue to reside in France, she having been given by Article Seventh of the Will the use, usufruct and enjoyment of any and all residences, country estates, apartments and properties of said testator situate in France, but no such provision was made as to the residences or properties of the testator in
Canada.

84. During the lifetime of Sir Mortimer Davis himself no dividends had been declared on the stock of said Incorporated Company.

40 85. Until the actual institution of proceedings herein neither of the plaintiffs at any time made any demand upon or suggestion to defendants that dividends should be declared upon the shares of said Sir Mortimer Davis, Incorporated.

86. On the 6th December, 1929, defendants summoned the female plaintiff to attend a meeting of the directors of said Incorporated Company for the purpose of considering its financial affairs and, if deemed advisable, of declaring dividends upon its shares and for the further purpose of reducing its capital stock, but the female

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plaintiff failed to attend said meeting which was thereupon and on several subsequent occasions adjourned for consideration of said business, but on no occasion, in spite of frequent notices to her, did female plaintiff appear either in person or by representative for the purpose of suggesting or co-operating with the other directors of said Company in that connection.

10 87. The books and records of the said Sir Mortimer Davis, Incorporated, and of the Estate have at all times been periodically and duly inspected and audited by Messrs. Price, Waterhouse & Company, Auditors, who had occupied that position of auditors for many years previous to the death of the late Sir Mortimer Davis.

20 88. Defendants and each of them have constantly and consistently since the death of the testator to the best of their ability and in good faith carried out and given effect to his desires and intentions throughout, both as expressed in his said Will and otherwise. They have paid all annuities payable to date under the Will, and have discharged all urgent debts, the amount of which was not disputed, including the claim of the female plaintiff for \$200,000 under her marriage settlement.

30 89. Both defendants were well known to Sir Mortimer Davis long before he made his Will and had occupied during many years intimate associations and relations with him and he had every opportunity of considering and estimating their integrity and business capacity and the soundness of their judgment and their fitness for the position of trustee and executor to which he subsequently appointed them, after due consideration of their qualifications aforesaid.

90. Defendant Shaughnessy was President and the active executive head of the Alcohol Company for several years before the death of the late Sir Mortimer Davis.

91. During all those years Sir Mortimer Davis himself was almost continuously absent from Canada and in large measure left the control of said Company to the defendant Shaughnessy.

40 92. The most successful years in the history of the Alcohol Company were during the years of such presidency and more particularly the period immediately following the death of Sir Mortimer Davis.

93. Latterly the competitive and other market conditions in the industry in which the Alcohol Company is engaged have been such as to make it desirable in the interests of the Alcohol Company and

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its shareholders to effect, if possible, a suitable merger on fair and satisfactory terms.

94. A merger of said Alcohol Company with other competing companies, on fair and suitable terms, offers a satisfactory solution of the difficult problems besetting the Estate of Sir Mortimer Davis, for the creation of which problems defendants have no responsibility.

10 95. The negotiations referred to were not in any respect surreptitious nor other than useful and proper and the plaintiff was herself advised on or about the 18th October last by defendant Shaughnessy of the probable institution of such negotiations and she declared herself satisfied that such negotiations should be entered upon and she was thereafter from time to time notified that such negotiations were in fact under way, and more particularly by letter from the undersigned attorneys to her attorney under date of January 17th, 1930, of which a copy is herewith filed as Defendants' Exhibit D-1.

20 96. Defendants never contemplated or intended to enforce the acceptance of said proposals or any resulting plans for a merger of the Alcohol Company against any reasonable objections by the female plaintiff who has not hitherto indicated any reason why proposals submitted by other parties interested in promoting such a merger should not be considered.

30 97. The present proceedings are an illegal attempt by plaintiffs to substitute themselves or their nominees to the defendants as the controlling trustees and executors of the Estate of the late Sir Mortimer Davis in violation of the desires of the said testator and notwithstanding the express provisions of his Will to the contrary, and notwithstanding the fact that the plaintiffs have neither the training, experience, knowledge, character or qualifications necessary for the management of the complicated affairs of this Estate.

40 98. Plaintiffs have concurrently with the present proceedings instituted without previous notice or complaint unfair and unfounded action against the defendant Shaughnessy for the purpose of depriving him of the compensation for which he stipulated in respect of his total change of career and occupation necessitated by his agreement (Plaintiff's Exhibit No. 13) and of the services rendered and to be rendered by him to the late Sir Mortimer Davis and Sir Mortimer Davis, Incorporated, in violation of the terms of his said agreement and of the wishes and desires of the said Sir Mortimer Davis, deceased.

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AND the defendant now pleading further alleges in answer to paragraphs 71(a), 71(b), 71(c), 71(d) and 71(e) of the "plaintiffs' declaration as amended by permission of the court":—

99. Paragraphs 71(a), 71(b), 71(c), 71(d) and 71(e) are denied.

100. The amounts of \$4,684.22 and \$2,875.82 referred to in paragraphs 71(a), 71(b), 71(c) and 71(e) of the said declaration represent accounts paid in the usual way by the Incorporated Company for the defendant Shaughnessy during the latter's absence in Europe on that Company's business, as well as the business of the Estate.

101. The defendant Shaughnessy refunded both the said amounts following his return in the usual manner.

102. The refunds of both the said amounts were received by the Incorporated Company from defendant Shaughnessy before that Company's books for the previous month had been closed and the respective credits for the said two amounts were therefore included in the entries made for the previous month at the closing of the books for that month along with other similar entries in the usual way.

103. Each of the said refunds was received by the Incorporated Company before any entry was made in respect thereof.

104. At the times referred to in paragraph 71(d) of the plaintiffs' declaration serial notes and shares of the Incorporated Company were held in trust for the defendant Shaughnessy under the terms of the agreement (Plaintiffs' Exhibit No. 13) which with the amount of \$217,461.65 standing at the credit of defendant Shaughnessy's trustees on the books of the Incorporated Company constituted valuable security.

WHEREFORE the defendant now pleading prays that the plaintiffs' action be dismissed with costs.

40 Montreal, 25th February, 1930.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Attorneys for defendant Lord Shaughnessy.

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ANSWER TO PLEA OF DEFENDANT SHAUGHNESSY

(A) Plaintiffs for Answer to the Plea of Defendant Shaughnessy herein made and fyled, say:—

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(1) Plaintiffs pray *acte* of the admissions contained in paragraphs 1, 2 and 3 of said Plea;

10 (2) Paragraph 4 is false and is denied; defendant Shaughnessy has not now, and has never had, any interest in his own right in the Capital Stock of the Incorporated Company, the 2,401 shares presently registered in his name being the absolute property of the Estate, as follows:—

20 (a) One of said shares was transferred into the name of defendant Shaughnessy by the late Sir Mortimer B. Davis, solely for the purpose of having the name of defendant Shaughnessy appear on the register as a shareholder with a view to electing him a Director of the Incorporated Company;

30 (b) 2,375 of said shares were transferred to defendant Shaughnessy without right, in the month of September last past, 1929, by the Honourable H. M. Marler and H. B. McLean under the circumstances set out in paragraphs 45, 46 and 47 of the Declaration herein, and plaintiffs, as alleged in and by paragraph 51 of the Declaration, have demanded that said 2,375 shares be declared to be the property of the Estate, and be registered accordingly;

40 (c) The remaining 25 of said shares were also transferred to Defendant Shaughnessy without right in the month of September last past, 1929, by the Honourable H. M. Marler and H. B. McLean under the circumstances set out in paragraphs 48, 49 and 50 and 52 of the Declaration herein, and as alleged in and by paragraph 51 of the Declaration, plaintiffs have demanded that said 25 shares be declared to be the property of the Estate, and be registered accordingly;

(3) Paragraph 5 is false and is denied;

(4) Paragraph 6 is false and is denied;

(a) Both defendants have been qualified as Directors of the Incorporated Company, as well before as since the death of the late Sir Mortimer Davis, upon the single shares transferred

into the name of each of them for that purpose, but of which the late Sir Mortimer B. Davis during his lifetime was the beneficial owner, and since his death such beneficial interest has been and is now vested in his Estate;

(b) Defendant Shaughnessy has not now, and has never had, any interest in his own right in the Capital Stock of the Incorporated Company, for the reasons set forth in paragraph (2) of this Answer;

10

(c) Plaintiffs under Article XIV of the Will are the owners, subject to substitution, of the whole of the Capital Stock of the Incorporated Company, apart from the 2,525 shares registered in the name of said Waddell;

20

(5) Paragraph 7 is denied; defendants not having any beneficial interest in the stock of the Incorporated Company, and being in office solely as a consequence of stock of the Estate held by them, disentitles them to assert their suggested duty towards the other shareholders, namely, said Waddell, and their attempt to do so under the circumstances is a pure quibble, and in no way justifies their conduct in office complained of throughout the Declaration;

(6) Paragraph 8 is denied; defendants gave female plaintiff to understand that the formalities for her appointment as a Director of the Incorporated Company had been complied with on or about April 25th, 1928; and if in point of fact such was not the case, defendants deceived her in the connection;

30

(7) Paragraph 9 is denied;

(8) Paragraph 10, as alleged, is denied;

(a) The connection of defendant Shaughnessy with the Alcohol Company during the lifetime of Sir Mortimer Davis was merely as the mandatory of the latter, and not otherwise;

40

(b) The only personal interest held by defendant Shaughnessy in the Alcohol Company is a comparatively small block of shares acquired either by way of bonus or upon liberal terms as to price and conditions of payment; and which is wholly insignificant in comparison with the 552,380 shares of Alcohol Stock, held by and for the Estate, and in virtue of which defendant Shaughnessy holds office in the Alcohol Company;

11;

(9) Plaintiffs join issue on the denial contained in paragraph

(10) Plaintiffs pray *acte* of the admission contained in paragraph 13;

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10 (11) Paragraphs 14 and 15, as alleged, are denied; it was thoroughly understood and agreed that the speculative marginal account with Bamberger Brothers could not be carried by the Estate and was to be closed out forthwith, and the Liggett & Myers shares, which were then being dealt in at or about 104, could and should have been sold by Defendants at or about that figure in May 1928 and again in January 1929, but at times said shares have sold as low as 80, representing a depreciation of approximately \$250,000, which the Estate has been exposed to lose;

(12) Paragraphs 16 and 17 are false and are denied;

(13) Paragraphs 18, 19 and 20, as alleged, are denied;

20 (14) Paragraphs 21, 22 and 23 are false and are denied; Jennison's name was never mentioned by defendant Shaughnessy to female plaintiff in London, and she never in any manner approved of the policy outlined to her by defendant Shaughnessy on that occasion;

(15) Paragraph 24 is false and is denied;

(16) Plaintiffs join issue on the denials contained in paragraph 25;

30 (17) Paragraph 26, as alleged, is denied;

(18) Paragraph 27 is denied, except as to the receipt by female plaintiff of the letter Exhibit D-3, which is admitted;

(19) Paragraphs 28 and 29 are false and are denied;

(20) Plaintiffs pray *acte* of the admission contained in paragraph 30; otherwise said paragraph is false and is denied;

40 (21) Plaintiffs pray *acte* of the admission contained in paragraph 31; otherwise said paragraph is denied;

(a) On November 26th, 1929, prior to the writing of the letter Exhibit D-4, the undersigned Attorney interviewed defendants' Attorneys and Counsel, and informed them fully as to practically all of the matters set out in plaintiffs' Declaration, which information was supplemented from time to time over a

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period of seven weeks following, during which plaintiffs forbore instituting proceedings for the removal of defendants from office;

10 (b) Immediately upon receipt of the letter Exhibit D-4, the undersigned communicated with defendants' Attorneys, and offered to give them the fullest possible information concerning the matters forming the basis of the present action, and on divers occasions thereafter, prior to the institution of suit on January 16th, 1930, the undersigned and Counsel associated for the plaintiffs gave and communicated to defendants' Attorneys the fullest possible information concerning the matters proposed to be urged in support of the present action and now set out in the Declaration;

(22) Plaintiffs join issue with defendants upon the denial contained in paragraph 32;

20 (23) Paragraph 33 is false and is denied;

(24) Paragraph 34 is wholly false and is denied;

(a) The pretense that the appropriation by defendant Shaughnessy of the furniture, &c., was "*in part satisfaction*" of the legacy of \$1,000 "*wherewith to purchase a memento*" is a mere afterthought, put forward by defendant Shaughnessy in bad faith, in an effort to shield himself from the consequences of his illegal conduct in the connection;

30 (b) On or about May 9th, 1928, defendant Shaughnessy declared to plaintiffs that he would not avail himself of the legacy of \$1,000, but desired in lieu thereof to receive from among the jewelry of the late Sir Mortimer Davies, all of which had been bequeathed to male plaintiff, some object which had been used personally by the Testator during his lifetime, and thereupon, male plaintiff gave and donated to defendant Shaughnessy the Testator's platinum watch, chain and match box, worth approximately \$1,000, which was accepted by defendant
40 Shaughnessy in lieu of said bequest of \$1,000;

(c) The appropriation by defendant Shaughnessy of the furniture, &c., complained of took place long after the adjustment of said \$1,000 legacy, as cited in the next preceding subparagraph;

(d) Moreover, the amount of said legacy of \$1,000 bears no

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proportion to the value of the furniture taken, not to speak of the depreciation caused to the salable value of the property as a furnished house; the dining room furniture in question having been specially designed to match the expensive panelling of the room;

(23) Paragraph 35 is wholly false and is denied;

10 (a) The pretense that said car was taken by defendant Shaughnessy "*for the purpose of verifying its condition and determining whether it could be put in sufficient repair to be used or disposed of,*" is but another afterthought on the part of defendant Shaughnessy, resorted to likewise in an effort to escape the consequences of his illegal conduct;

(b) The excuse offered by defendant Shaughnessy for having appropriated said car to his own use is frivolous on its very face;

20 (c) The said car was taken possession of by the defendant Shaughnessy immediately following the departure of female plaintiff for France, early in May 1928, and was in his possession, in continuous use by him, members of his family, and employees, from that time until on or about September last past, 1929, to wit: a period of a year and four months;

30 (d) Moreover, defendant Shaughnessy in the course of 1928 applied for the registration of said car in his own name as the owner thereof, and, upon the gross misrepresentation that he had acquired said car by purchase from the Estate, obtained the issue of a license for the said car, to himself as owner thereof, and this upon an application sworn to by defendant Shaughnessy;

(24) Paragraph 36 is false and is denied;

40 (a) Defendant Shaughnessy, with his family and relatives and friends, by and with his permission, occupied the Ste. Agathe property in the manner set out in the Declaration;

(b) Whatever courtesies were extended to defendant Shaughnessy by the late Sir Mortimer Davis during his lifetime in no manner justified the unlawful use and occupation of the property after his death by defendant Shaughnessy, his relatives and friends, gratuitously as aforesaid;

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(25) Paragraph 37 is denied, except the part thereof whereby it is admitted that plaintiffs have sued defendant Shaughnessy in case No. F-65140 of the records of this Court, as alleged in paragraph 51 of the Declaration, of which admission plaintiffs demand *acte*;

(a) The so-called Deed of Gift is wholly non-existent, being null and void *ab initio*, and plaintiffs are entitled to invoke such nullity, as they do in the present action;

10 (b) The Trustees in whose name said sum of \$217,461.65 was credited, were the Trustees of the late Sir Mortimer Davis, and after his death, of his Estate, and were never the Trustees of defendant Shaughnessy, as is falsely alleged in said paragraph;

(c) The credit to the said Trustees entered in the books of the Incorporated Company in no way validated the so-called gift which always remained void and of no effect;

20 (26) Paragraphs 38 and 39, as alleged, are denied;

(a) Defendant Shaughnessy was not a shareholder of the Incorporated Company at the time of the sale of the Marler shares, the single share then standing in his name and serving as his qualification as a Director being actually the property of the Estate as aforesaid;

30 (b) Defendant Shaughnessy had no right, under the By-Laws or otherwise, to purchase any part of the said Marler shares, and in point of fact did not purchase any thereof;

(c) Said Trustees did not purchase any of the said Marler shares, and never even heard a suggestion that they had done so, prior to the delivery to them on September 18th, 1929, of the letter of defendant Shaughnessy, plaintiff's Exhibit No. 17;

40 (d) Said 500 Marler shares were purchased and paid for by and with the funds of the Estate, which thereafter never legally divested itself of the 25 shares appropriated by defendant Shaughnessy to his own use and benefit in the manner alleged in the Declaration;

(e) Since the institution of the present action, plaintiffs, as alleged in paragraph 51 of the Declaration herein, have instituted appropriate proceedings at law, in that certain action bearing the number C-62341 of the records of this Court, to recover

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from defendant Shaughnessy, for the benefit of the Estate, said 25 so-called Marler shares, the whole as will more fully appear upon reference to a copy of the plaintiffs' Declaration in the suit last mentioned, herewith produced and filed to form part hereof as plaintiffs' Exhibit No. 25-A;

(27) Plaintiffs join issue on the denials contained in paragraph 40;

10 (28) Paragraph 41 is wholly false, and is denied;

(29) Article XXIII of the Will has no application whatever to the matters complained of by plaintiffs in paragraphs 53 to 58 (inclusive) of their Declaration, and, moreover, is clearly subordinate to the other clauses of the Will, whereby the Testator expressly directed his Trustees and Executors to pay his debts, as also all Succession Duties, legacies and annuities mentioned in said Will, and to pay over the residue of the revenues to plaintiffs;

20 (30) Plaintiffs pray *acte* of the admission contained in paragraph 43;

(31) Paragraph 44 is false and is denied;

30 (a) The conditions existing in December 1929, with respect to the claims against the Estate for Succession Duties and Income Tax, and with respect to the claim against the Incorporated Company by its bankers, were substantially the same as at all times since the death of the late Sir Mortimer B. Davis on March 22nd, 1928, and a distribution of capital by the Incorporated Company to enable, in part at least, the payment of the capital indebtedness of the Estate, could and should have been made at any time following the death of the Testator;

40 (b) The claims just referred to constitute capital indebtedness, payable from the capital assets of the Estate and of the Incorporated Company, and the existence of the same did not and does not justify or excuse for the failure of defendants to take effective steps to have the revenues and earnings of the Incorporated Company from the date of the death of said late Sir Mortimer B. Davis distributed to the Estate.

(c) Defendants failed and neglected to promptly and energetically take up and have determined and adjudicated said claims for Income Tax and Succession Duties, and thereupon

to pay and liquidate the same, as also to make adequate provision for the payment of the claim of the Bank, as they could and should have done; but on the contrary, delayed and procrastinated in dealing with the same, to the great prejudice of the Estate, of the legatees and of plaintiffs;

10 (d) A distribution of earnings or revenue of the Incorporated Company could and should have been made within a period of a few months following the death of the Testator, and periodically from time to time thereafter, thereby putting the Estate in funds wherewith to have met and paid all indebtedness chargeable to revenue, and to have provided a reasonable surplus of revenue for distribution to plaintiffs, as ordered by the Will;

20 (32) Plaintiffs pray *acte* of the admission contained in paragraph 45, as to defendants' proposals on December 4th and 6th, 1929, to proceed with a distribution of capital, and also to the declaration of a dividend by the Incorporated Company; and deny the remaining allegations of said paragraph as being false and untrue;

30 (a) The activities of defendants upon these matters in December 1929, occurred only after their resignations as Executors and Trustees, and as officers and directors of the Incorporated Company, had been demanded by female plaintiff, and while plaintiffs were forbearing the entry of the present suit to remove defendants from office; and under the circumstances female plaintiff was fully justified in declining to accept any responsibility at that stage for the proposals of defendants and which they have not seen fit to since carry out.

(33) Paragraph 46 is denied;

(a) The pretended arrangement between defendants was and is wholly fictitious and non-existent;

40 (b) The first intimation of said pretended arrangement received by female plaintiff was in and by the Notice of December 4th, 1929, calling a Meeting of Directors of the Incorporated Company, (plaintiff's Exhibit No. 20), and which was subsequent to her demand for the resignation of defendants;

(c) If any such arrangement was ever entered into between defendants, which is not admitted but is denied, the same would not serve to give to defendant Shaughnessy any

rights in the shares of the Incorporated Company, which were otherwise non-existent, and the only effect thereof would be to further establish that plaintiffs' complaint as to the failure of defendants to distribute the surplus and earnings of the Incorporated Company, was and is well founded.

(34) Paragraph 47 is denied.

10 (35) Plaintiffs join issue on the denials contained in para-
graph 48.

(36) Paragraph 49 is false and is denied.

(37) Paragraph 50 is denied as being unfounded in law and in fact.

(38) Paragraph 51 as alleged is denied;

20 (a) The so-called bonus therein referred to as having been received by defendant Shaughnessy from the Incorporated Company at the end of the calendar years 1925, 1926 and 1927 were pure gratuities made to him by the late Sir Mortimer B. Davis, who was to all intents and purposes the sole owner of the Incorporated Company, and the same created no precedent to support the unlawful, wrongful and fraudulent conduct of defendant Shaughnessy complained of in the action;

30 (b) In particular, defendant Shaughnessy had no right, power or authority at the end of 1928, while exercising the office of Director of the Incorporated Company merely as the mandatory of the Estate and without any disclosure to female plaintiff as his co-Executrix and co-Director, to appropriate to himself the sum of \$5,000 from and out of the funds of the Incorporated Company under the guise of a bonus of that amount, or to authorize and thereafter to appropriate to himself the pretended increase of \$5,000 in his salary for the next current year, more especially in view of the fact that he was then receiving \$5,000 additional per annum from the Estate for his services as Executor;

40 (38) Paragraph 52 is denied, the increase of \$2,500 in the salary of defendant Reaper, which purports to have been authorized on December 31st, 1928, was made wholly without right for the same reasons as assigned in the next preceding paragraph, and moreover was further unwarranted by reason of the fact that defendant Reaper was also at the time in receipt of \$5,000 per annum additional compensation from the Estate as an Executor.

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(39) Paragraphs 53 and 55 are denied. The serial notes, shares and credit \$217,461.65 referred to were and are the sole property of the Estate and not of defendant Shaughnessy, and were never in fact or in law held for his account, and could not and did not serve in any manner as collateral security for the sums of \$50,000 and/or \$10,000 referred to, neither of which amounts have ever been repaid by defendant Shaughnessy to the Incorporated Company and the latter holds no security whatever for the payment thereof.

10 (40) Paragraph 54 is false and is denied.

(41) Paragraph 56 is false and is denied, plaintiffs specially reiterating in answer thereto the allegations of Paragraph 26 hereof.

(42) Plaintiffs join issue on the denials contained in Paragraph 57.

20 (43) Paragraph 58 is false and is denied, except as to the admission of defendant Shaughnessy that the Exhibits therein referred to must be interpreted by their terms, of which admission plaintiffs demand *acte*.

(a) The deficits shown by said Exhibits are actually as set out in the Declaration;

30 (b) Among other direct results of the unlawful conduct of defendants in the particular under discussion the Estate has been unjustly compelled to pay interest to the Incorporated Company on the amount advanced by the latter by way of loans, and the plaintiffs have been deprived of their right to receive the normal and regular surplus revenue of the Estate, and the continuation for the future of defendants' unlawful, wrongful and fraudulent acts in the particular under discussion, would prevent plaintiffs from ever receiving from the Estate, in any year, any sum in excess of the amount of the annuities of \$67,000 mentioned in Article X of the Will;

40 (c) As already set forth activities of defendants with reference to a distribution of capital and the declaration of a dividend took place only after their resignation as Executors and Trustees and as officers of the Incorporated Company had been demanded by female plaintiff, and while plaintiffs were forbearing the entry of the present suit to remove them from office, and under the circumstances female plaintiff was fully justified in declining to accept any responsibility at that stage for the proposals of defendants which they have not seen fit to since carry out.

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(44) Paragraph 59 as alleged is denied. The Succession Duties in France and in England were of comparatively trivial amounts, and the Succession Duties in Canada could and should have been paid and adjusted within the first few months after defendants took office.

10 (45) Paragraph 60 is denied as being unfounded in law and in fact. As already alleged defendant failed and neglected to promptly and energetically take up and have determined and adjudicated said claims for Income Tax and Succession Duties and thereupon to pay the same within a reasonable delay, as they could and should have done, but on the contrary, procrastinated in dealing with the same, to the great prejudice of the Estate, of the legatees, and of plaintiffs.

(46) Paragraph 61 is false and is denied. Such offers as were communicated to female plaintiff, and not approved by her, were not reasonably sufficient for the property concerned;

20 (47) Paragraphs 62 and 63 are denied;

(a) Defendants failed and neglected to take any adequate means to dispose of the McNish debentures, forming the principal collateral of the Bank loan, or to dispose of the Alcohol " B " stock, as they could and should have done;

30 (b) As a consequence of such neglect and failure on the part of defendants, the Incorporated Company, the Estate and plaintiffs have suffered great loss and injury by the depreciation of the market value of said McNish debentures and Alcohol " B " stock;

40 (48) Paragraph 64 is false and is denied. Female plaintiff was under no obligation to suggest the sale of the Asbestos shares to defendants, more especially in view of the fact that they held her Power of Attorney, and had assumed to administer the Estate, largely, if not entirely, without reference to her, and of the further fact that defendant Shaughnessy was at all times a member of the Boards of Directors of both the Asbestos Corporation and of Consolidated Asbestos Limited;

(49) Paragraph 65 is false and is denied;

(50) Paragraph 66 is false and is denied. The use of the funds of the Estate made in the connection was wholly unjustifiable. The Estate by and through the Incorporated Company owned outright

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some 16,000 shares in excess of one-half of the Voting Stock of the Alcohol Company, and, accordingly, there was no occasion whatever in the interest of the Incorporated Company or of the Estate for defendants to risk the funds of the Estate in the hazardous and speculative undertakings of supporting the market for Alcohol " A " shares while making no attempt to do so as to the " B " stock;

10 (51) Plaintiffs join issue on the denials contained in paragraphs 67 and 68;

(52) Paragraph 69 is false and is denied;

(53) Paragraph 70 as alleged is denied;

20 (a) The financial condition of both the Estate and of the Incorporated Company at the time of the assumption of the obligations arising out of the promotion and/or financing of Cadillac Coal Company was such as to render the disbursement of funds for any such purpose wholly unjustifiable;

(b) What was done by defendants in the connection was in no way validated by the pretended approval given by them to their own acts, while purporting to act as a Board of Directors of the Incorporated Company;

30 (54) Paragraph 71 is denied. The disbursements made in the connection under discussion were wholly unjustifiable as an investment of funds of an estate;

(55) Paragraphs 72 and 73 are denied. The manner in which the late Sir Mortimer Davis during his lifetime may have dealt with the interest on said \$3,000,000 Serial Notes or with the redemption of the entire issue thereof, is wholly irrelevant, and furnishes no excuse or justification for the failure and neglect of defendants complained of in respect thereto;

(56) Paragraph 74 is denied;

40 (a) The By-Laws of the Alcohol Company required that the remuneration of defendant Shaughnessy should be fixed by the Board of Directors;

(b) The showing of the Alcohol Company prior to and in the years 1928 and 1929 reflected the personal direction of its affairs by the late Sir Mortimer Davis, while the present and altered condition of the Company is due to the incapacity and

total unfitness of the defendant Shaughnessy to discharge the duties of President thereof;

10 (c) Under the circumstances defendant Shaughnessy was bound before taking any steps whatever upon the subject of any proposals for any sale or merger of the Alcohol Company which would cause the Estate and the Incorporated Company to lose control thereof, to have first communicated the same to female plaintiff as his co-Executor and co-Director of the Incorporated Company, but, in place of doing so, defendant Shaughnessy proceeded with negotiations to the point of discussing and offering prices, terms, conditions and stipulations in return for which control of the Alcohol Company would permanently pass into other hands;

(57) Paragraph 75 is denied;

20 (58) Plaintiffs pray *acte* of the admission contained in paragraph 76 to the effect that the Will must be interpreted according to its terms, and join issue on the denials contained in said paragraph;

(59) Paragraphs 77 and 78 are denied;

(60) Paragraph 79 is irrelevant, except insofar as the circumstances sought to be invoked by defendant render the more reprehensible their breaches of trust complained of;

30 (61) Plaintiffs pray *acte* of the recital of Article XXIII of the Will, referred to in paragraph 80; and deny the remaining allegations thereof as being wholly false and untrue;

(62) Paragraph 81 is wholly irrelevant;

(a) In invoking Article XV of the Will, defendants are attempting without right to shield themselves from the consequences of their acts and omissions in office, as set out in the Declaration;

40 (b) Plaintiffs' action herein in no manner disturbs the carrying on of the Incorporated Company in the manner contemplated by the Testator, but, on the contrary, has been brought for the express purposes of ensuring that it be so carried on;

(63) Paragraph 82 is wholly irrelevant, and moreover same forms no answer to the grounds upon which the removal of the

defendants from office is demanded by the Declaration, all of which are based on facts subsequent to the death of the Testator;

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(64) Paragraph 83 is likewise irrelevant to the issue;

10 (65) Paragraph 84 is wholly irrelevant. Under the existing circumstances the declaration of dividends by the Incorporated Company was and is imperative for the due carrying out of the Will of the Testator, including the payment to the plaintiffs of the residue of revenues annually;

(66) Paragraph 85 is false and is denied;

(67) Paragraph 86 as alleged is denied. The action by the defendants alluded to therein is the same as that referred to in paragraphs 45 and 58, and in respect thereof plaintiffs reiterated the allegations of paragraphs 32 and 43 (c) of the present answer;

20 (68) Paragraph 87 is irrelevant and is denied. Serious irregularities and manipulations occurred concerning which the Auditors were deliberately deceived by defendants, and who, moreover, ignored other matters pointed out in the Auditors' Reports;

(69) Paragraph 88 is false and is denied, except as to the payment of the annuities and the marriage settlement therein referred to;

30 (70) Paragraph 89 is false and is denied, and, moreover, is wholly irrelevant and is no answer whatever to the matters set out in the Declaration;

(71) Paragraph 90 is denied; defendant Shaughnessy's connection with the Alcohol Company before the death of Sir Mortimer Davis was solely as his mandatory;

40 (72) Paragraph 91 is false and is denied; although frequently absent from Canada, the late Sir Mortimer Davis always kept in close touch with the affairs of the Alcohol Company, and no move was made therein by defendant Shaughnessy save as ordered and directed by the Testator;

(73) Paragraph 92 is false and is denied; the success which attended the Alcohol Company following the death of the late Sir Mortimer Davis was solely due to his control and direction thereof during his lifetime;

(74) Paragraph 93 is false and is denied;

(a) The enormous depreciation in the market value of the securities of the Alcohol Company is, in the main, due to the complete loss of confidence of the Shareholders and of the public in the management of the Company under the presidency of defendant Shaughnessy;

10 (b) The unprecedented reduction in the sales of the Alcohol Company in the past year could and would have been avoided, in great part at least, under efficient and proper management;

(c) A merger of the Alcohol Company with its competitors, under existing conditions, would inevitably prejudice the interests of the Shareholders at large, and the Estate in particular, as owning the control thereof;

20 (d) Moreover the Testator had devoted upwards of 20 years of his life to developing the business now the Alcohol Company, and to obtaining and retaining the absolute control thereof, and had invested therein the great bulk of the fortune possessed by him at the time of making his Will and at his death, and it was that investment in particular at which he aimed by Article XXIII of his Will, whereby he charged his Executors and Trustees to carry out the policies he had laid down and to conserve the capital of his Estate and not to sacrifice the same by premature liquidation, and any sale or merger involving the surrender of the control of the Alcohol Company, on such terms as could be obtained under existing conditions, would be a direct violation of the intention of the Testator clearly expressed in the clause of the Will just referred to;

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(75) Paragraph 94 is false and is denied; a merger of the Alcohol Company with its competitors on any terms obtainable under the present conditions would merely intensify and render permanent the enormous loss already suffered by the Shareholders at large, and by the Estate in particular, due to the gross mismanagement thereof by defendant Shaughnessy to date;

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(76) Paragraph 95 is false and is denied;

(a) Plaintiffs reiterate that defendant Shaughnessy has been negotiating with a view to disposing of the control of the Alcohol Company without informing female plaintiff with respect thereto; and far from having advised her on October 18th last, with respect to such negotiations, defendant Shaughnessy

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on that occasion emphatically declared that there was no foundation whatever for the rumour that negotiations were then being carried on;

(b) Female plaintiff was never thereafter advised by defendants, or either of them, of any negotiations for a merger or sale of the Alcohol Company, or of its shares, until two days after the institution of the present suit, that is to say, by the receipt of the letter of defendants' attorneys on January 18th, 1930, at 10:40 A.M. at the very moment when the Writ was being handed to the bailiff for service;

(77) Paragraph 96 is false and is denied; defendants have never up to the time of the filing of the present Answer supplied female plaintiff with any information as to the parties concerned, terms or conditions of their negotiations, and she has never been placed in the position to consider the same;

(78) The anxiety of defendant Shaughnessy to consummate some form of sale or merger, even though the same involve the loss of identity of the Alcohol Company and the control thereof by the Estate, is an ill-timed attempt by him to cover his colossal failure as administrator of the affairs of the Estate, including those of the Alcohol Company;

(79) Plaintiffs believe that under proper and efficient management the position of the Alcohol Company can be saved from the disaster which now threatens, and ultimately restored to its standing at the time of the death of the late Sir Mortimer Davis;

(80) Paragraph 97 is false and unfounded in law; the sole object of plaintiffs in bringing the present action is to end the menace of the continued maladministration by defendants of the property held by and for the Estate, and to preserve the same and to prevent the complete frustration of the Will of the Testator;

(81) Paragraph 98 is false and is, moreover, wholly unfounded in law; long prior to the institution of the said suit defendant Shaughnessy was fully advised of the intention of plaintiffs to bring the same, which is well founded in law and in fact and is an appropriate substitute for the rights which the Testator could himself have exercised under the terms of the Agreement in question had he survived and viewed the conduct of defendant Shaughnessy in the premises;

(82) Plaintiffs join issue on the denials contained in paragraph 99;

(83) Paragraph 100 is denied;

(a) The majority of the cheques which served in the appropriation of the Incorporated Company's funds by and to the use of defendant Shaughnessy were signed by him, and all of said cheques were signed and delivered by and under his instructions and in connivance with defendant Reaper;

10 (b) Said appropriations by defendant Shaughnessy of \$4,684.22 and \$2,875.82 had not the remotest connection with any remuneration due him either by the Incorporated Company or the Estate, for services, or for outlays of any description made by him for the account of either the Incorporated Company or the Estate;

(84) Paragraph 101 is denied;

20 (a) The return of the funds so appropriated in no way validated the acts of defendant Shaughnessy in having diverted the same to his own use while acting in a fiduciary capacity towards both the Incorporated Company and the Estate, or relieved either defendants in the slightest degree from the consequences of their acts in the connection;

30 (b) The return of the funds was made on both occasions because an audit of the books of the Incorporated Company was imminent, and in order to avoid said appropriations becoming known to female plaintiff by and from the Auditors' Statements and Reports;

(c) Defendant Shaughnessy was in Montreal continuously from June 1st, 1929, at which date he had appropriated to his own use practically all of said sum of \$2,875.82, and the return of that amount was not made until three months thereafter, to wit, until September 4th, 1929, and was only made then because of the audit demanded by female plaintiff and which was proceeding or about to proceed as of date August 31st, 1929;

40 (85) Paragraph 102 is denied as being unfounded in law and in fact;

(a) Defendants had no right to make any entry in the books of the Incorporated Company otherwise than in strict conformity with the true facts, and their acts in entering under fictitious dates the return by defendant Shaughnessy of the amounts appropriated by him to his own use were in no way justified by

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the excuse now offered by them to the effect that the books for the previous months "*had not been closed*" at the time the repayments were actually made;

(86) Plaintiffs ignore paragraph 103, and aver that same is moreover wholly irrelevant;

(87) Paragraph 104 is false and is denied;

10 (a) In further answer thereto plaintiffs reiterate the allegations of paragraphs 25 (b) and 39 of the present Answer.

WHEREFORE, plaintiffs, reiterating the conclusions of their Declaration herein, pray the dismissal of the Plea of the defendant Shaughnessy with costs.

Montreal, February 24th, 1930.

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W. K. McKEOWN,
Attorney for Plaintiffs.

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REPLY OF DEFENDANT LORD SHAUGHNESSY TO
PLAINTIFFS' ANSWER TO HIS PLEA

The defendant Lord Shaughnessy for reply saith:—

No. 4.
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nessy's
Reply,
20th March
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10 1. That he denies paragraphs 2, 4, 5, 6, 8, 11, 14, 21, both paragraphs numbered 23, and both paragraphs numbered 24, 25, 26, 29, 31, 32, 33, both paragraphs numbered 38, 39, 43, 44, 45, 46, 47, 48, 50, 53, 54, 55, 56, 60, 62, 63, 65, 67, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 83, 84, 85 and 86 of the plaintiffs' answer to the plea of the defendant now pleading.

2. That he joins issue with the plaintiffs upon all the allegations of all the other paragraphs of the said answer to his plea.

20 3. That with further reference to the first of the two paragraphs marked 24 in the said answer to his plea what occurred with regard to the watch concerning which false allegations are made was that a few weeks after the death of the late Sir Mortimer Davis, his son, the plaintiff, M. B. Davis, was in hospital at New York and when the defendant Shaughnessy called upon him there the plaintiff M. B. Davis expressed the desire and intention to give defendant Shaughnessy the watch as a mark of appreciation from the plaintiff M. B. Davis himself and when the defendant Shaughnessy was reluctant to accept a part of the plaintiff M. B. Davis' own property, the latter insisted upon his accepting it from him, which defendant Shaughnessy did and the gift so made by the plaintiff M. B. Davis to defendant Shaughnessy did not have and could not have any bearing or
30 effect whatsoever upon defendant Shaughnessy's rights under the legacy to him contained in the will of the late Sir Mortimer Davis.

WHEREFORE the defendant Lord Shaughnessy prays that the said answer to his plea be dismissed, with costs.

Montreal, 20th March, 1930.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Attorneys for Defendant Lord Shaughnessy.

PLAINTIFFS' SUR-REPLY

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No. 5.
Plaintiffs'
Sur-Reply,
20th March
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Plaintiffs, for Sur-Reply to the Reply of defendant Shaughnessy to plaintiffs' Answer to plea herein, saith:—

(1) Plaintiffs join issue upon the denials contained in paragraph 1 of said Reply;

10 (2) Paragraph 3 of said Reply is wholly false and is denied.

WHEREFORE, plaintiffs, reiterating the allegations of their Answer to Plea of defendant Shaughnessy, pray the dismissal of said Reply with costs.

Montreal, March 20th, 1930.

W. K. McKEOWN,
Attorney for Plaintiffs.

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AMENDED PLEA OF DEFENDANT A. M. REAPER

Defendant A. M. Reaper for plea to plaintiffs' action saith:—

1. Paragraph 1 of the declaration is admitted and defendant invokes and relies upon the provisions of the said Will (Plaintiffs' Exhibit No. 1), which must be interpreted by its terms.

10 2. As to paragraphs 2, 3, 4 and 5, defendant says that the Will must be interpreted by its terms and denies the allegations of the said paragraphs in so far as they are not in accordance therewith.

3. Paragraph 6 is admitted.

4. Paragraph 7 as alleged is denied. In addition to said Waddell, defendant Shaughnessy is the owner of approximately five per cent of said issued capital stock.

20 5. Paragraph 8 as alleged is denied, but it is true that the late Sir Mortimer Davis in bequeathing his shares in the Incorporated Company to his trustees, of whom the defendants are the majority, thereby put them in a position to control the management of the said Incorporated Company, and in fact the defendants have administered the affairs thereof in harmony with the interests and requirements of said Estate.

30 6. Paragraph 9 as alleged is denied. Defendants were both officers of the said Incorporated Company during the lifetime of the late Sir Mortimer Davis, and defendant Shaughnessy alleges that he has a substantial personal stock interest therein, while the female plaintiff only became a director subsequent to the death of the late Sir Mortimer Davis and has no stock interest therein other than as trustee under his Will.

40 7. Paragraph 10 as alleged is denied in fact and in law. Defendants in their capacity of officers and directors of the said Incorporated Company have a duty to all the shareholders of that Company and not only to the Estate.

8. Paragraph 11 as alleged is denied. The female plaintiff on the 4th May, 1928, was qualified with one share of the said Incorporated Company in her quality of trustee of the Estate of the late Sir Mortimer Davis and in that quality became a director of said Company on the 31st December, 1928.

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9. As to paragraph 12, defendant says that the most important asset of Sir Mortimer Davis, Incorporated, is its investment in the shares of the Alcohol Company and the Estate's holdings of shares of Sir Mortimer Davis, Incorporated, constitute an important asset of the Estate of the late Sir Mortimer Davis, otherwise said paragraph is denied.

10. Paragraph 13 is denied. Defendant Shaughnessy was elected to the board of directors and was President of the Alcohol Company several years before the death of the late Sir Mortimer Davis.

11. Paragraph 14 is denied.

20. 12. The statement referred to in paragraph 15 (Plaintiffs' Exhibit No. 2) is also the first sheet of the statements contained in Plaintiffs' Exhibit No. 8 and must be interpreted by the terms of the whole of the said Exhibit No. 8, of which it forms a part, otherwise the said paragraph is denied.

13. The documents referred to in paragraphs 16, 17, 18, 19 and 20 must be interpreted by their terms; otherwise said paragraphs are denied.

30. 14. Paragraphs 21 and 22 as alleged are denied. On or about the 25th day of April, 1928, a meeting of the trustees under the Will of the late Sir Mortimer Davis was held at the office of the Incorporated Company and a true copy of the minutes of said meeting is herewith produced to form part of the Defendants' Exhibit D-2.

15. At said meeting it was particularly agreed by all the trustees, including the female plaintiff, that the shares of stock of Liggett & Myers Limited should not be sold, but should be held for an anticipated improvement in the market price thereof and the other shares that were carried by Bamburger Brothers were in fact forthwith sold.

40. 16. There was no available market for the sale and disposition of any such quantity of Canadian Alcohol B stock at any such price as is indicated or any other reasonable price at that time, and any attempt by the trustees (who held the controlling interest of the voting shares of said Company) to sell any substantial quantity of shares of the Alcohol Company would have been fatal to all the holdings of the Estate in said Company and would have caused the entire collapse of the market for the shares of said Company.

17. The sum loaned on call by the Incorporated Company was

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loaned at remunerative rates of interest and on ample, safe, marketable securities and it was to the advantage of said Company to leave said money on loan until it was required for other legitimate purposes.

10 18. The power of attorney referred to in paragraph 23 must be interpreted by its terms. Otherwise said paragraph is denied. The female plaintiff voluntarily offered said power of attorney because she desired to absent herself from the City of Montreal, where the affairs of said Company are carried on.

19. Paragraph 24 is denied. Defendants have supplied plaintiff from time to time with all statements which she desired to have and which statements were apparently satisfactory to her, as she made no comment thereon or asked for further information in reference thereto. Plaintiff continued said power of attorney in force until 5th October, 1929.

20 20. Paragraph 25 as alleged is denied. The female plaintiff did leave Montreal and return to France, where she had been accustomed to reside for many years, and delegated to her co-executors and co-trustees her duties in connection with the administration and management of the Estate and of the Incorporated Company, but defendants kept her informed of such administration and management as fully as she required them to do.

30 21. Paragraph 26 as alleged is denied, but defendant now pleading is informed and believes that defendant Shaughnessy did discuss with female plaintiff entering into certain financial arrangements with said Jennison, to which arrangements she then agreed.

22. Paragraph 27 is denied. The arrangements proposed with said Jennison would have in no way affected said provisions of said Will or the rights of plaintiffs thereunder.

40 23. Paragraph 28 is denied. Defendant now pleading is informed and believes that at said interviews with defendant Shaughnessy in London the female plaintiff declared herself satisfied with the policy for the administration of the Estate and of the Incorporated Company laid before her and declared that she was proceeding to America for the purpose of being with a relative who was dangerously ill, but that it was doubtful if she would in fact be in or near Montreal during said visit to America.

24. Paragraph 29 is denied. The Estate was administered in conformity with the Will of the deceased testator and the principles applicable thereto.

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25. Paragraphs 30 and 31 are denied.

26. Paragraph 32 is denied. Up to the time of the delivery to the female plaintiff of statement Exhibit No. 6 she had not suggested the delivery to her of any further statements of said Estate or said Incorporated Company than those which she received and with which she was evidently satisfied.

10 27. Paragraph 33 as alleged is denied.

28. Paragraph 34 is denied. The said auditors' statements were prepared by the Company's auditors and delivered to female plaintiff by said auditors with all reasonable diligence following her request therefor, and at the same time as the said statements were received by defendants on October 7th, 1929.

20 29. Paragraphs 35 and 36 are denied. The said auditors' report and statement were prepared with the usual diligence and were delivered to the female plaintiff as soon as completed and certified by said auditors. Said statements properly interpreted show that the affairs of said Estate and the Incorporated Company were administered by defendants along the lines for many years laid down and adopted by the late Sir Mortimer Davis during his lifetime, and that the said administration has been in the best interest of the said Estate.

30 30. The document referred to in paragraph 37 must be interpreted by its terms. It was only shortly before said revocation that the female plaintiff made any complaint to defendants of the manner in which they had fulfilled their duties.

40 31. The document referred to in paragraph 38 must be interpreted by its terms. There was no justification or excuse for the demand therein made. At no time have defendants been able to obtain from the plaintiffs or their said attorney any statement in writing of their pretended causes of action until the service of the plaintiffs' declaration herein on the 18th January, 1930, and this in spite of repeated requests, including a letter dated November 26th, 1929, filed herewith as Exhibit D-4, to which no reply has been received.

32. Paragraphs 39 and 40 are false and malicious and are denied. Defendant reserves all rights and recourses against plaintiffs for the unfounded, false and defamatory statements therein contained.

33. Paragraph 41 as alleged is denied. The defendant now

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pleading is informed and believes that female plaintiff signed and executed the documents therein referred to of her own free will, with full knowledge of all the facts, and moreover the documents are improperly described, construed and interpreted by plaintiffs in said paragraph.

34. Paragraphs 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57 and 58 are denied.

10 35. Defendant Shaughnessy, by agreement with the other executors, including female plaintiff, received a dining room table, various chairs and a tabouret, in part satisfaction of the bequest made to him in Article Eighth, clause 4 of the Will, and it was agreed by the female plaintiff that the said articles of furniture were appropriate in part satisfaction of said legacy.

20 36. As to the property at Ste. Agathe, it was not leased because defendants were at all times endeavouring to find a purchaser and it was considered inadvisable and disadvantageous to lease it meanwhile.

37. The court records of the proceedings at law referred to in paragraph 51 speak for themselves.

38. The moneys required by the Estate were required in large part before the date when any dividend could be declared.

30 39. The late Sir Mortimer Davis, in Article Twenty-third of his Will (Plaintiffs' Exhibit No. 1) charged his Trustees and Executors "to carry out the policy he had laid down."

40. The requirements of the Estate consisted of capital disbursements and revenue disbursements.

40 41. The sum of \$217,461.65 was credited to the trustees of defendant Shaughnessy on the books of the Incorporated Company during the lifetime of Sir Mortimer Davis and was received by defendant Shaughnessy in strict accord with his rights under his said agreement of 17th September, 1924, and the said credit to said trustees was further confirmed by the late Sir Mortimer Davis during his lifetime as evidenced by the entries in all books and records of the Incorporated Company in reference thereto.

42. Defendant Shaughnessy consulted female plaintiff as to the wisdom of the purchase of said Marler shares and as to his right to take up the portion thereof accruing to him by the by-laws of the

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said Company, and she expressed her concurrence therein. Said shares were paid for by money standing at the credit of the defendant Shaughnessy's trustees and were thereafter held by them and were only delivered to the said Shaughnessy upon the complete fulfilment of the terms of the said agreement and upon the termination of the period stipulated in said agreement and in accordance with its said terms.

10 43. It was not advisable in the interests of the Estate to take action as to a capital distribution by the Incorporated Company to cover the said capital disbursements of the Estate, nor to declare a dividend for the revenue disbursements earlier than the month of December, 1929, particularly in view of the questions then under discussion between the Executors and the Province of Quebec and the Income Tax Department of the Dominion of Canada and the situation of the said Incorporated Company with respect to its indebtedness to its bankers.

20 44. Defendants took steps on the 4th and 6th December, 1929, to provide for the said requirements of the Estate by appropriate capital distribution and declaration of dividend by the Incorporated Company, but owing to female plaintiff's refusal to co-operate and by reason of the litigation now instituted, said meetings have not been held and the appropriate action by the Company with reference to the Estate's requirements has, therefore, not yet been taken, and the defendants declare that they have always been, and still are, willing to take appropriate action in this connection.

30 45. Defendant Shaughnessy arranged with the defendant
40 Reaper, who was Vice-President and Secretary-Treasurer of the Incorporated Company and a co-Executor, that whenever the Incorporated Company would declare any dividend an adjustment would be made between defendant Shaughnessy and the Estate of Sir Mortimer Davis by which that Estate would receive such proportion of the dividends upon the shares that defendant Shaughnessy had acquired under his agreement with the late Sir Mortimer Davis as would represent the dividend on those shares that would fairly and equitably have been payable out of surplus if dividends had been declared by the Company between the date of the death of the late Sir Mortimer Davis and the end of the contract period, namely: 17th September, 1929.

46. Paragraphs 59, 60, 61, 62, 63, 64, 65 and 66 are denied.

47. Defendants gave the female plaintiff more than the usual consideration and information (particularly in view of the power of

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attorney which she executed as aforesaid) and she was duly summoned to all meetings of directors of said Company whenever she was in Canada and there was any possibility of her attending.

48. On the 17th September, 1924, at a meeting at which both the plaintiff M. B. Davis and the late Sir Mortimer Davis were present the directors of Sir Mortimer Davis, Incorporated, resolved to engage the defendant Shaughnessy as its general counsel at a salary of \$20,000.00 a year "and on such terms and conditions as may be agreed to," and on the 1st December, 1925, approved the payment of a bonus of \$5,000.00 to the defendant Shaughnessy in addition to his said salary. On the 25th January, 1927, at a meeting at which the plaintiff M. B. Davis was present the payment of a bonus of \$10,000.00 "as recommended by Sir Mortimer B. Davis" was approved and ratified by the said directors, and a bonus of \$5,000.00 for each of the years 1927 and 1928 was also paid. By resolution of the directors of the said Company on the 31st December, 1928, it was resolved that in place of paying an annual bonus to Lord Shaughnessy, he (being then President as well as General Counsel) be placed on a straight salary basis of \$25,000.00 per annum, which was done.

49. Paragraph 67 is false and malicious and is denied. On the 23rd February, 1926, the defendant Reaper was appointed Secretary-Treasurer of Sir Mortimer Davis, Incorporated, at a salary of \$6,000.00 a year, payable from the 1st February, 1926. On the 25th January, 1927, at a meeting at which the plaintiff M. B. Davis was present the defendant Reaper's salary as Secretary-Treasurer was increased to \$7,500.00 a year. Defendant Reaper became a director of Sir Mortimer Davis, Incorporated, on the 29th December, 1927, and at the annual meeting of Sir Mortimer Davis, Incorporated, held on the 31st December, 1928, defendant Reaper was again elected a director, and at the subsequent directors' meeting was elected Vice-President and Secretary-Treasurer of that Company, and his salary was increased to \$10,000.00 a year to commence on the 1st of the following January.

50. Paragraphs 68, 69, 70, 71, 72, 73, 74, 75 and 76 are denied.

51. During Sir Mortimer Davis' lifetime at a meeting of the directors of Sir Mortimer Davis, Incorporated, at which the plaintiff M. B. Davis was present, it was reported that, with the approval of the late Sir Mortimer Davis, a loan of \$50,000.00 had been made to defendant Shaughnessy at an interest of six per cent (6%) per annum. At the time of the said loan Serial Notes and shares of Sir Mortimer Davis, Incorporated, were held in trust for the defendant Shaughnessy under the terms of the agreement (Plaintiffs' Exhibit

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No. 13) and in addition the amount of \$217,461.65, standing at the credit of defendant Shaughnessy's trustees on the books of said Incorporated Company, constituted further valuable collateral security to the said loan. Said loan has been duly paid and discharged by the defendant Shaughnessy, both as to capital and interest, and was dealt with throughout with the full knowledge of the late Sir Mortimer Davis and the Company's directors and was duly and clearly shown in the Company's periodical statements.

10 52. Said loans were made upon the instructions of the late Sir Mortimer Davis and were duly and clearly shown in the periodical statements of the Company, and the interest on the bonds and dividends on the shares have more than covered the interest due on the said loans, and the surplus was also duly credited against the said loans.

20 53. The loan of \$10,000.00 with interest was duly repaid on the 25th September, 1929, and the Serial Notes and shares of Sir Mortimer Davis, Incorporated, which were held by the trustees for the defendant Shaughnessy, as aforesaid, and the amount of \$217,461.65 standing at the credit of the said trustees on the books of the Incorporated Company, constituted complete and effective collateral security for the amount of said indebtedness.

30 54. The said shares were purchased by the trustees for defendant Shaughnessy, who had the right to purchase and did purchase said shares in accordance with the by-laws of the Incorporated Company, and said shares were duly charged against and paid for out of the amount standing at the credit of said trustees on the books of said Company.

40 55. Paragraphs 77, 78, 79, 80, 81, 82 and 83 are denied. The exhibits therein referred to must be interpreted according to their terms, which when properly construed do not bear the interpretation put upon them by plaintiffs. The said apparent deficits were merely bookkeeping entries resulting from the continuation by the directors of the Incorporated Company of the policies which had prevailed during the lifetime of Sir Mortimer Davis and which at any time could be wiped out and replaced by further offsetting entries on the books of said Incorporated Company and of the Estate as soon as the appropriate time arrived for the directors of the said Incorporated Company and the Executors of the said Estate to take such action either by way of declaration of dividends or by way of reduction in capital or both, and the female plaintiff, before the institution of these proceedings, was notified to attend meetings of directors of said Incorporated Company in order that she might co-operate with the

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defendants in taking such steps as were necessary to that end, but she has hitherto failed and neglected to do so.

56. Paragraph 84 is denied. The succession duties in France and in England have been paid while the amount of the succession duties in Canada is not yet finally ascertained as the duties payable are still under discussion with the proper authorities in the endeavour to secure further reductions in addition to those already obtained.

10 57. Paragraphs 85, 86 and 87 are denied. Said legacies and donations could not properly be paid until settlement of the succession duties to the Province of Quebec and the final disposal of certain contested claims for alleged arrears of income tax in Canada.

20 58. Paragraphs 88 and 89 are denied. Appropriate steps were taken by defendants to procure purchasers for both the said properties in accordance with the established custom of real estate brokers in dealing with properties of such classes respectively. Various offers to purchase were communicated to female plaintiff from time to time to which she refused to agree and the said properties were administered in the meantime as they had been during the lifetime of the late Sir Mortimer Davis when he was not in Canada.

59. The debt referred to in paragraph 90 was incurred by the Incorporated Company before the death of the late Sir Mortimer Davis and with his consent and approval and constituted an additional reason why it was injudicious prematurely to declare dividends on the stock of the said Incorporated Company.

30 60. Paragraphs 91 and 92 are denied. There was no reasonable opportunity of disposing of said debentures or shares under the market conditions prevailing for such securities since the death of Sir Mortimer Davis, and any attempt to dispose of them in large quantity would have resulted in further depreciation of the market value of such securities. As many of said securities as the market would absorb without undue depreciation of the market price were, in fact, sold by defendants.

40 61. Paragraphs 93 and 94 are denied. The 5,000 shares of Asbestos Corporation stock were purchased by the Company during the lifetime of Sir Mortimer Davis upon his express instructions and with the idea that they should be carried as a long-term investment, and, in any event, there was not thereafter, since the death of Sir Mortimer Davis, any satisfactory market in which the said shares could have been sold, nor was their sale ever suggested by plaintiffs. The interest in the shares of Consolidated Asbestos Limited therein

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referred to was likewise acquired by Sir Mortimer Davis, Incorporated, long before the death of Sir Mortimer Davis, and there has been no market for said shares since the date of his death nor was the sale thereof ever suggested by plaintiffs.

62. Paragraphs 95 and 96 are denied. Defendants' conduct and administration as directors of the Incorporated Company has always been in the interests of that Company and its shareholders.

10 63. Paragraph 97 is denied. Certain shares of the Alcohol Company were purchased from time to time by the Incorporated Company following its previous practice and in an attempt to support the market for said shares.

64. Paragraph 98 is denied.

65. Paragraph 99 is denied. The letter (Plaintiffs' Exhibit No. 18) clearly shows the falsity of the plaintiffs' allegations.

20 66. Paragraph 100 is denied. The shares therein referred to have depreciated less in value in the general fall in securities than many other reputable securities and the Company's purchase of those shares was reasonable and justifiable under the circumstances and was in accordance with the principles laid down by Sir Mortimer Davis in his lifetime.

30 67. Paragraphs 101 and 102 are denied. The late Sir Mortimer Davis during his lifetime acquired a coal property (called the "Federal Coal Property") which formed part of his Estate at the time of his death, and he discussed and considered with the Incorporated Company and the defendants further investments in coal properties and their more active and extensive operation and exploitation in that connection, which he favoured, and before the date of the Plaintiffs' Exhibit 19, namely, on the 31st December, 1928, the matter was referred to the board of directors of the Incorporated Company who approved what was afterwards done. Sir Mortimer Davis, Incorporated, is the owner of ninety per cent of all the issued capital stock of the Cadillac Coal Company Limited, and the securities called for by
40 said contract will be delivered in due course.

68. Paragraph 103 is false and malicious and is denied. All such disbursements were made in connection either with properties which were acquired during the lifetime of Sir Mortimer Davis or properties or leases subsequently acquired or investigated under instructions or in accordance with the principles laid down by him during his lifetime.

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69. Paragraph 104 is denied. The \$3,000,000.00 of Serial Notes were handed over to trustees by the late Sir Mortimer Davis in 1922 and during the lifetime of Sir Mortimer Davis the interest on said Notes was credited to him personally on the books of the Incorporated Company, while since his death the same interest has been similarly credited to the trustees, who have never demanded payment thereof.

10 70. Paragraph 105 is denied. On the 26th September, 1919, the issue was authorized of \$5,000,000.00 of the Serial Notes in question, which were duly issued, and although the by-law authorizing that issue contemplated that at least \$100,000.00 (Par value) of the Notes would be redeemed each year, the only redemptions of Notes that occurred during the ten years that elapsed up to the death of the late Sir Mortimer Davis took place on or about the 11th June, 1923, when certain Notes were redeemed.

20 71. Paragraphs 106, 107, 108, 109, 111, 112, 113 and 114 are false and malicious and are denied. Defendant Shaughnessy has performed the duties of President of the Alcohol Company with efficiency and success and in good faith throughout his term as President of the Canadian Industrial Alcohol Company Limited. Besides the shares of the capital stock of the Alcohol Company, held by the Incorporated Company, there are 473,180 other "A" shares and 67,106 other "B" shares held by third parties, and there are altogether about 6,500 shareholders of the Alcohol Company. The increase of defendant Shaughnessy's salary was one of the uniform and proportionate increases that were given at the same time to all the vice-presidents and the secretary-treasurer and most of the higher employees, none of which were reported in the minutes in accordance with its uniform practice. During the presidency of the defendant Shaughnessy the Alcohol Company has experienced years showing better business results than ever before. Any depreciation in market value of the shares of said Company was due to conditions in the industry generally and was shared by all important companies engaged therein. Such communications as defendant Shaughnessy has received as President of the Alcohol Company with regard to a possible merger with other competitive interests have been treated
30
40 by him in the proper and suitable manner.

72. Paragraph 110 is denied. The only directors (who were not salaried employees) who resigned were Honourable H. M. Marler, Mr. E. R. Decary and Mr. Henry Joseph, and those resignations were accompanied by the letters filed herewith as Defendants' Exhibits Nos. D-5, D-6, D-7 and D-8, which clearly show the falsity of the allegations contained in said paragraph.

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73. As to paragraphs 115, 116, 117 and 118, defendant says that the Will must be interpreted according to its terms, and denies that plaintiffs have the pretended rights therein claimed or that they are entitled to any of the conclusions of their said petition.

And the defendant now pleading further alleges:—

74. The plaintiffs are not entitled in fact or in law to the conclusions of their declaration herein.

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75. Under the terms of the Will of the late Sir Mortimer Davis (Plaintiffs' Exhibit No. 1) he nominated and appointed defendants and the female plaintiff the trustees and executors of his Estate under conditions that make it manifest that he intended and desired that the control and administration of said Estate should be entrusted more particularly to defendants.

76. Defendants alone were resident in the jurisdiction in which it was provided that said administration would be carried on and the female plaintiff was, at the time of the making of said Will and of the death of said testator, and is even yet, permanently resident in Europe, and said Will clearly indicates that said testator contemplated that she would continue to reside there.

20

77. Article Twenty-third of the said Will specially charged the trustees and executors thereunder; to wit: the female plaintiff and defendants, to take an active and energetic interest in the management of the Estate and to carry out the policies he had laid down and particularly to conserve the capital of his Estate and not to sacrifice the same by premature liquidation, and practically all the complaints made by plaintiffs against defendants are for actions alleged to have been done or left undone by reason of the adherence of the defendants to the said instructions so contained in said Will.

30

78. In Article Fifteenth of said Will the testator expressly directed and required that the beneficiaries of his Will should not disturb by their demands or actions the carrying on of Sir Mortimer Davis, Incorporated, in any manner which in the opinion of the directors of that Company might be prejudicial to its interests.

40

79. At the time of the making of said Will and thereafter during the remaining lifetime of the testator, defendant Shaughnessy was a director and officer of Sir Mortimer Davis, Incorporated, and on or about 29th December, 1927, defendant Reaper also became a director of said Incorporated Company, of which he had previously been and continued thereafter to be an executive officer, both having

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been so appointed at the wish and with the concurrence of said testator, who owned a large percentage of the capital of said Company, whereas the female plaintiff was not at any time during the lifetime of Sir Mortimer Davis either a director or officer of said Company, nor was there any provision in said Will requiring, directing or suggesting that said female plaintiff should at any time be or become either a director or officer of said Company, although she was elected as such director after the death of Sir Mortimer Davis at the instance of defendants.

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80. Article Twenty-second of said Will particularly provided that the books and accounts of said Estate were to be kept in the office of Sir Mortimer Davis, Incorporated, and all meetings were to be held and business transacted in that office, until agreed to otherwise by all the trustees and executors, and it appears from other sections of said Will that it was the clear expectation of the testator that the female plaintiff would continue to reside in France, she having been given by Article Seventh of the Will the use, usufruct and enjoyment of any and all residences, country estates, apartments and properties of said testator situate in France, but no such provision was made as to the residences or properties of the testator in Canada.

20

81. During the lifetime of Sir Mortimer Davis himself no dividends had been declared on the stock of said Incorporated Company.

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82. Until the actual institution of proceedings herein, neither of the plaintiffs at any time made any demand upon or suggestion to defendants that dividends should be declared upon the shares of said Sir Mortimer Davis, Incorporated.

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83. On the 6th December, 1929, defendants summoned the female plaintiff to attend a meeting of the directors of said Incorporated Company for the purpose of considering its financial affairs and if deemed advisable declaring dividends upon its shares and for the further purpose of reducing its capital stock, but the female plaintiff failed to attend said meeting, which was thereupon and on several subsequent occasions adjourned for consideration of said business, but on no occasion, in spite of frequent notices to her, did female plaintiff appear either in person or by representative for the purpose of suggesting or co-operating with the other directors of said Company in that connection.

84. The books and records of the said Sir Mortimer Davis, Incorporated, and of the Estate have at all times been periodically

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and duly inspected and audited by Messrs. Price, Waterhouse & Company, Auditors, who had occupied that position of auditors for many years previous to the death of the late Sir Mortimer Davis.

85. Defendants and each of them have constantly and consistently since the death of the testator, to the best of their ability and in good faith, carried out and given effect to his desires and intentions throughout, both as expressed in his said Will and otherwise.

10 86. Both defendants were well known to Sir Mortimer Davis long before he made his Will and had occupied during many years intimate associations and relations with him and he had every opportunity of considering and estimating their integrity and business capacity and the soundness of their judgment and their fitness for the position of trustee and executor to which he subsequently appointed them, after due consideration of their qualifications aforesaid.

20 87. Defendant Shaughnessy was President and the active executive head of the Alcohol Company for several years before the death of the late Sir Mortimer Davis.

88. During all those years Sir Mortimer Davis himself was almost continuously absent from Canada and in large measure left the control of said Company to the defendant Shaughnessy.

30 89. The most successful years in the history of the Alcohol Company were during the years of such presidency and more particularly the period immediately following the death of Sir Mortimer Davis.

90. Latterly the competitive and other market conditions in the industry in which the Alcohol Company is engaged have been such as to make it desirable in the interests of the Alcohol Company and its shareholders to effect, if possible, a suitable merger on fair and satisfactory terms.

40 91. A merger of said Alcohol Company with other competing companies, on fair and suitable terms, offers a satisfactory solution of the difficult problems besetting the Estate Sir Mortimer Davis, for the creation of which problems defendants have no responsibility.

92. The negotiations referred to were not in any respect surreptitious nor other than useful and proper and the plaintiff was herself advised on or about the 18th October last by defendant Shaughnessy of the probable institution of such negotiations and she

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declared herself satisfied that such negotiations should be entered upon and she was thereafter from time to time notified that such negotiations were in fact under way, and more particularly by letter from the undersigned attorneys to her attorney under date of January 17th, 1930, of which a copy is herewith filed as Defendants' Exhibit D-1.

10 93. Defendants never contemplated or intended to enforce the acceptance of said proposals or any resulting plans for a merger of the Alcohol Company against any reasonable objections by the female plaintiff who has not hitherto indicated any reason why proposals submitted by other parties interested in promoting such a merger should not be considered.

20 94. The present proceedings are an illegal attempt by plaintiffs to substitute themselves or their nominees to the defendants as the controlling trustees and executors of the Estate of the late Sir Mortimer Davis in violation of the desires of the said testator and notwithstanding the express provisions of his Will to the contrary, and notwithstanding the fact that the plaintiffs have neither the training, experience, knowledge, character or qualifications necessary for the management of the complicated affairs of this Estate.

AND the defendant now pleading further alleges in answer to paragraphs 71(a), 71(b), 71(c), 71(d) and 71(e) of the "plaintiffs' declaration as amended by permission of the court":—

30 95. Paragraphs 71(a), 71(b), 71(c), 71(d) and 71(e) are denied.

96. The amounts of \$4,684.22 and \$2,875.82 referred to in paragraphs 71(a), 71(b), 71(c) and 71(e) of the said declaration represent accounts paid in the usual way by the Incorporated Company for the defendant Shaughnessy during the latter's absence in Europe on that Company's business as well as the business of the Estate.

97. The defendant Shaughnessy refunded both the said amounts following his return in the usual manner.

40 98. The refunds of both the said amounts were received by the Incorporated Company from defendant Shaughnessy before that Company's books for the previous month had been closed and the respective credits for the said two amounts were therefore included in the entries made for the previous month at the closing of the books for that month along with other similar entries in the usual way.

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99. Each of the said refunds was received by the Incorporated Company before any entry was made in respect thereof.

100. At the times referred to in paragraph 71(d) of the plaintiffs' declaration serial notes and shares of the Incorporated Company were held in trust for the defendant Shaughnessy under the terms of the agreement (Plaintiffs' Exhibit No. 13) which with the amount of \$217,461.65 standing at the credit of defendant Shaughnessy's trustees on the books of the Incorporated Company constituted
10 valuable security.

WHEREFORE the defendant now pleading prays that the plaintiffs' action be dismissed with costs.

MONTREAL, 25th February, 1930.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Attorneys for defendant A. M. Reaper.

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ANSWER TO PLEA OF DEFENDANT REAPER

(A) Plaintiffs for Answer to the Plea of Defendant Reaper herein made and fyled, say:—

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ary 1930.

(1) Plaintiffs pray *acte* of the admissions contained in paragraphs 1, 2 and 3 of said Plea;

10 (2) Paragraph 4 is false and is denied; Defendant Shaughnessy has not now, and has never had, any interest in his own right in the Capital Stock of the Incorporated Company, the 2,401 shares presently registered in his name being the absolute property of the Estate, as follows:—

20 (a) One of said shares was transferred into the name of Defendant Shaughnessy by the late Sir Mortimer B. Davis, solely for the purpose of having the name of Defendant Shaughnessy appear on the register as a shareholder with a view to electing him a Director of the Incorporated Company;

30 (b) 2,375 of said shares were transferred to Defendant Shaughnessy without right, in the month of September last past, 1929, by the Honourable H. M. Marler and H. B. McLean under the circumstances set out in paragraphs 45, 46 and 47 of the Declaration herein, and Plaintiffs, as alleged in and by paragraph 51 of the Declaration, have demanded that said 2,375 shares be declared to be the property of the Estate, and be registered accordingly;

40 (c) The remaining 25 of said shares were also transferred to Defendant Shaughnessy without right in the month of September last past, 1929, by the Honourable H. M. Marler and H. B. McLean under the circumstances set out in paragraphs 48, 49 and 50 and 52 of the Declaration herein, and as alleged in and by paragraph 51 of the Declaration, Plaintiffs have demanded that said 25 shares be declared to be the property of the Estate, and be registered accordingly;

(3) Paragraph 5 is false and is denied;

(4) Paragraph 6 is false and is denied;

(a) Both Defendants have been qualified as Directors of the Incorporated Company, as well before as since the death of the late Sir Mortimer Davis, upon the single shares transferred

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into the name of each of them for that purpose, but of which the late Sir Mortimer B. Davis during his lifetime was the beneficial owner, and since his death such beneficial interest has been and is now vested in his Estate;

(b) Defendant Shaughnessy has not now, and has never had, any interest in his own right in the Capital Stock of the Incorporated Company, for the reasons set forth in paragraph (2) of this Answer;

(c) Plaintiffs under Article XIV of the Will are the owners, subject to substitution, of the whole of the Capital Stock of the Incorporated Company, apart from the 2,525 shares registered in the name of said Waddell;

20 (5) Paragraph 7 is denied; Defendants not having any beneficial interest in the stock of the Incorporated Company, and being in office solely as a consequence of stock of the Estate held by them, disentitles them to assert their suggested duty towards the other shareholders, namely, said Waddell, and their attempt to do so under the circumstances is a pure quibble, and in no way justifies their conduct in office complained of throughout the Declaration;

(6) Paragraph 8 is denied; Defendants gave Female Plaintiff to understand that the formalities for her appointment as a Director of the Incorporated Company had been complied with on or about April 25th, 1928; and if in point of fact such was not the case, Defendants deceived her in the connection;

30 (7) Paragraph 9 is denied;

(8) Paragraph 10, as alleged, is denied; the connection of Defendant Shaughnessy with the Alcohol Company during the lifetime of Sir Mortimer Davis was merely as the mandatory of the latter, and not otherwise;

(9) Plaintiffs join issue on the denial contained in paragraph 11;

40 (10) Plaintiffs pray *acte* of the admissions contained in paragraphs 12 and 13;

(11) Paragraphs 14 and 15, as alleged, are denied; it was thoroughly understood and agreed that the speculative marginal account with Bamberger Brothers could not be carried by the Estate and was to be closed out forthwith, and the Liggett & Myers shares, which were then being dealt in at or about 104, could and should have been

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sold by Defendants at or about that figure in May 1928 and again in January 1929, but at times said shares have sold as low as 80, representing a depreciation of approximately \$250,000, which the Estate has been exposed to lose;

(12) Paragraphs 16 and 17 are false and are denied;

(13) Paragraphs 18, 19 and 20, as alleged, are denied;

10 (14) Paragraphs 21, 22 and 23 are false and are denied; Jennison's name was never mentioned by Defendant Shaughnessy to Female Plaintiff in London, and she never in any manner approved of the policy outlined to her by Defendant Shaughnessy on that occasion;

(15) Paragraph 24 is false and is denied;

20 (16) Plaintiffs join issue on the denials contained in paragraph 25;

(17) Paragraph 26, as alleged, is denied;

(18) Plaintiffs join issue on the denial contained in paragraph 27;

(19) Paragraphs 28 and 29 are false and are denied;

30 (20) Plaintiffs pray *acte* of the admission contained in paragraph 30; otherwise said paragraph is false and is denied;

(21) Plaintiffs pray *acte* of the admission contained in paragraph 31; otherwise said paragraph is denied;

40 (a) On November 26th, 1929, prior to the writing of the letter Exhibit D-4, the undersigned Attorney interviewed Defendants' Attorneys and Counsel, and informed them fully as to practically all of the matters set out in Plaintiffs' Declaration, which information was supplemented from time to time over a period of seven weeks following, during which Plaintiffs forbore instituting proceedings for the removal of Defendants from office;

(b) Immediately upon receipt of the letter Exhibit D-4, the undersigned communicated with Defendants' Attorneys, and offered to give them the fullest possible information concerning the matters forming the basis of the present action, and on divers

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occasions thereafter, prior to the institution of suit on January 16th, 1930, the undersigned and Counsel associated for the Plaintiffs gave and communicated to Defendants' Attorneys the fullest possible information concerning the matters proposed to be urged in support of the present action and now set out in the Declaration;

10 (22) Plaintiffs join issue on the denials contained in paragraph 32;

(23) Paragraph 33 is false and is denied;

(24) Plaintiffs join issue on the denials contained in paragraph 34;

(25) Paragraph 35 is wholly false and is denied;

20 (a) The pretense that the appropriation by Defendant Shaughnessy of the furniture, &c., was "*in part satisfaction*" of the legacy of \$1,000 "*wherewith to purchase a memento*" is a mere afterthought, put forward in bad faith, in an effort to shield Defendant Shaughnessy from the consequences of his illegal conduct in the connection;

30 (b) On or about May 9th, 1928, Defendant Shaughnessy declared to Plaintiffs that he would not avail himself of the legacy of \$1,000, but desired in lieu thereof to receive from among the jewelry of the late Sir Mortimer Davis, all of which had been bequeathed to Male Plaintiff, some object which had been used personally by the Testator during his lifetime, and thereupon, Male Plaintiff gave and donated to Defendant Shaughnessy the Testator's platinum watch, chain and match box, worth approximately \$1,000, which was accepted by Defendant Shaughnessy in lieu of said bequest of \$1,000;

40 (c) The appropriation by Defendant Shaughnessy of the furniture, &c., complained of took place long after the adjustment of said \$1,000 legacy, as recited in the next preceding subparagraph;

(d) Moreover, the amount of said legacy of \$1,000 bears no proportion to the value of the furniture taken, not to speak of the depreciation caused to the salable value of the property as a furnished house; the dining room furniture in question having been specially designed to match the expensive panelling of the room;

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(26) Paragraph 36 is false and is denied; Defendant Shaughnessy, with his family and relatives and friends, by and with his permission, occupied the Ste. Agathe property in the manner set out in the Declaration;

(27) Plaintiffs pray *acte* of the admission contained in paragraph 37;

10 (28) Paragraph 38 is wholly false, and is denied;

(29) Paragraph 39 is admitted, but Plaintiffs aver that Article XXIII of the Will has no application whatever to the matters complained of by Plaintiffs in paragraphs 53 to 58 (inclusive) of their Declaration, and, moreover, is clearly subordinate to the other clauses of the Will, whereby the Testator expressly directed his Trustees and Executors to pay his debts, as also all Succession Duties, legacies and annuities mentioned in said Will, and to pay over the residue of the revenues to Plaintiffs;

20 (30) Plaintiffs pray *acte* of the admission contained in paragraph 40;

(31) Paragraph 41 is denied;

30 (a) The Trustees in whose name said sum of \$217,461.65 was credited, were the Trustees of the late Sir Mortimer Davis, and after his death, of his Estate, and were never the Trustees of Defendant Shaughnessy, as is falsely alleged in said paragraph;

(b) The credit to the said Trustees entered in the books of the Incorporated Company in no way validated the so-called gift which always remained void and of no effect;

(32) Paragraph 42, as alleged, is denied;

40 (a) Defendant Shaughnessy was not a shareholder of the Incorporated Company at the time of the sale of the Marler shares, the single share then standing in his name and serving as his qualification as a Director being actually the property of the Estate as aforesaid;

(b) Defendant Shaughnessy had no right, under the By-Laws or otherwise, to purchase any part of the said Marler shares, and in point of fact did not purchase any thereof;

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(c) Said Trustees did not purchase any of the said Marier shares, and never even heard a suggestion that they had done so, prior to the delivery to them on September 18th, 1929, of the letter of Defendant Shaughnessy, Plaintiffs' Exhibit No. 17;

(d) Said 500 Marler shares were purchased and paid for by and with the funds of the Estate, which thereafter never legally divested itself of the 25 shares appropriated by Defendant Shaughnessy to his own use and benefit in the manner alleged in the Declaration;

(e) Since the institution of the present action, Plaintiffs, as alleged in paragraph 51 of the Declaration herein, have instituted appropriate proceedings at law, in that certain action bearing the number C-62341 of the records of this Court, to recover from Defendant Shaughnessy, for the benefit of the Estate, said 25 so-called Marler shares, the whole as will more fully appear upon reference to a copy of the Plaintiffs' Declaration in the suit last mentioned, herewith produced and filed to form part hereof as Plaintiffs' Exhibit No. 25-A;

(33) Paragraph 43 is false and is denied;

(a) The conditions existing in December 1929, with respect to the claims against the Estate for Succession Duties and Income Tax, and with respect to the claim against the Incorporated Company by its bankers, were substantially the same as at all times since the death of the late Sir Mortimer B. Davis on March 22nd, 1928, and a distribution of capital by the Incorporated Company to enable, in part at least, the payment of the capital indebtedness of the Estate, could and should have been made at any time following the death of the Testator;

(b) The claims just referred to constitute capital indebtedness, payable from the capital assets of the Estate and of the Incorporated Company, and the existence of the same did not and does not justify or excuse for the failure of Defendants to take effective steps to have the revenues and earnings of the Incorporated Company from the date of the death of said late Sir Mortimer B. Davis distributed to the Estate.

(c) Defendants failed and neglected to promptly and energetically take up and have determined and adjudicated said claims for Income Tax and Succession Duties, and thereupon to pay and liquidate the same, as also to make adequate pro-

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vision for the payment of the claim of the Bank, as they could and should have done; but on the contrary, delayed and procrastinated in dealing with the same, to the great prejudice of the Estate of the legatees and of Plaintiffs;

(d) A distribution of earnings or revenue of the Incorporated Company could and should have been made within a period of a few months following the death of the Testator, and periodically from time to time thereafter, thereby putting the Estate in funds wherewith to have met and paid all indebtedness chargeable to revenue, and to have provided a reasonable surplus of revenue for distribution to Plaintiffs, as ordered by the Will;

(34) Plaintiffs pray *acte* of the admission contained in paragraph 44, as to Defendants' proposals on December 4th and 6th, 1929, to proceed with a distribution of capital, and also to the declaration of a dividend by the Incorporated Company; and deny the remaining allegations of said paragraph as being false and untrue;

(a) The activities of Defendants upon these matters in December 1929, occurred only after their resignations as Executors and Trustees, and as officers and directors of the Incorporated Company, had been demanded by Female Plaintiff, and while Plaintiffs were forbearing the entry of the present suit to remove Defendants from office; and under the circumstances Female Plaintiff was fully justified in declining to accept any responsibility at that stage for the proposals of Defendants and which they have not seen fit to since carry out.

(35) Paragraph 45 is denied;

(a) The pretended arrangement between Defendants was and is wholly fictitious and non-existent;

(b) The first intimation of said pretended arrangement received by Female Plaintiff was in and by the Notice of December 4th, 1929, calling a Meeting of Directors of the Incorporated Company, (Plaintiff's Exhibit No. 20), and which was subsequent to her demand for the resignation of Defendants;

(c) If any such arrangement was ever entered into between Defendants, which is not admitted but is denied, the same would not serve to give to Defendant Shaughnessy any rights in the shares of the Incorporated Company, which were

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otherwise non-existent, and the only effect thereof would be to further establish that Plaintiffs' complaint as to the failure of Defendants to distribute the surplus and earnings of the Incorporated Company, was and is well founded.

(36) Plaintiffs join issue on the denials contained in paragraph 46;

10 (37) Paragraph 47 is false and is denied;

(38) Paragraph 48, as alleged, is denied;

20 (a) The so-called bonus therein referred to as having been received by Defendant Shaughnessy from the Incorporated Company at the end of the calendar years 1925, 1926 and 1927 were pure gratuities made to him by the late Sir Mortimer B. Davis, who was to all intents and purposes the sole owner of the Incorporated Company, and the same created no precedent to support the unlawful, wrongful and fraudulent conduct of Defendant Shaughnessy complained of in the action;

30 (b) In particular, Defendant Shaughnessy had no right, power or authority at the end of 1928, while exercising the office of Director of the Incorporated Company merely as the mandatory of the Estate and without any disclosure to Female Plaintiff as his co-Executrix and co-Director, to appropriate to himself the sum of \$5000 from and out of the funds of the Incorporated Company under the guise of a bonus of that amount, or to authorize and thereafter to appropriate to himself the pretended increase of \$5,000 in his salary for the next current year, more especially in view of the fact that he was then receiving \$5,000 additional per annum from the Estate for his services as Executor;

40 (39) Paragraph 49 is denied; the increase of \$2,500 in the salary of Defendant Reaper, which purports to have been authorized on December 31st, 1928, was made wholly without right for the same reasons as assigned in the next preceding paragraph, and moreover was further unwarranted by reason of the fact that Defendant Reaper was also at the time in receipt of \$5,000 per annum additional compensation from the Estate as an Executor.

(39a) Plaintiffs join issue on the denials contained in paragraph 50;

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(40) Paragraphs 51 and 53 are denied. The serial notes, shares and credit \$217,461.65 referred to were and are the sole property of the Estate and not of Defendant Shaughnessy, and were never in fact or in law held for his account, and could not and did not serve in any manner as collateral security for the sums of \$50,000 and/or \$10,000 referred to, neither of which amounts have ever been repaid by Defendant Shaughnessy to the Incorporated Company and the latter holds no security whatever for the payment thereof.

10 (41) Paragraph 52 is false and is denied.

(42) Paragraph 54 is false and is denied, Plaintiffs specially reiterating in answer thereto the allegations of Paragraph 32 hereof.

(43) Paragraph 55 is false and is denied, except as to the admission of Defendant Shaughnessy that the Exhibits therein referred to must be interpreted by their terms, of which admission Plaintiffs demand *acte*.

20 (a) The deficits shown by said Exhibits are actually as set out in the Declaration;

30 (b) Among other direct results of the unlawful conduct of Defendants in the particular under discussion the Estate has been unjustly compelled to pay interest to the Incorporated Company on the amount advanced by the latter by way of loans, and the Plaintiffs have been deprived of their right to receive the normal and regular surplus revenue of the Estate, and the continuation for the future of Defendants' unlawful, wrongful and fraudulent acts in the particular under discussion, would prevent Plaintiffs from ever receiving from the Estate, in any year, any sum in excess of the amount of the annuities of \$67,000 mentioned in Article X of the Will;

40 (c) As already set forth activities of Defendants with reference to a distribution of capital and the declaration of a dividend took place only after their resignation as Executors and Trustees and as officers of the Incorporated Company had been demanded by Female Plaintiff, and while Plaintiffs were forbearing the entry of the present suit to remove them from office, and under the circumstances Female Plaintiff was fully justified in declining to accept any responsibility at that stage for the proposals of Defendants which they have not seen fit to since carry out.

(44) Paragraph 56 as alleged is denied. The Succession Duties

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in France and in England were of comparatively trivial amounts, and the Succession Duties in Canada could and should have been paid and adjusted within the first few months after Defendants took office.

10 (45) Paragraph 57 is denied as being unfounded in law and in fact. As already alleged Defendant failed and neglected to promptly and energetically take up and have determined and adjudicated said claims for Income Tax and Succession Duties, and thereupon to pay the same within a reasonable delay, as they could and should have done, but on the contrary, procrastinated in dealing with the same, to the great prejudice of the Estate, of the legatees, and of Plaintiffs.

(46) Paragraph 58 is false and is denied. Such offers as were communicated to Female Plaintiff, and not approved by her, were not reasonably sufficient for the property concerned.

20 (47) Paragraphs 59 and 60 are denied.

(a) Defendants failed and neglected to take any adequate means to dispose of the McNish debentures, forming the principal collateral of the Bank loan, or to dispose of the Alcohol " B " stock, as they could and should have done;

30 (b) As a consequence of such neglect and failure on the part of Defendants, the Incorporated Company, the Estate and Plaintiffs have suffered great loss and injury by the depreciation of the market value of said McNish debentures and Alcohol " B " stock.

40 (48) Paragraph 61 is false and is denied. Female Plaintiff was under no obligation to suggest the sale of the Asbestos shares, to Defendants, more especially in view of the fact that they held her Power of Attorney, and had assumed to administer the Estate, largely, if not entirely, without reference to her, and of the further fact that Defendant Shaughnessy was at all times a member of the Boards of Directors of both the Asbestos Corporation and of Consolidated Asbestos Limited.

(49) Paragraph 62 is false and is denied.

(50) Paragraph 63 is false and is denied. The use of the funds of the Estate made in the connection was wholly unjustifiable. The Estate by and through the Incorporated Company owned outright some 16,000 shares in excess of one-half of the Voting Stock of

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the Alcohol Company, and accordingly, there was no occasion whatever in the interest of the Incorporated Company or of the Estate for Defendants to risk the funds of the Estate in the hazardous and speculative undertakings of supporting the market for Alcohol "A" shares while making no attempt to do so as to the "B" stock.

10 (51) Plaintiffs join issue on the denials contained in paragraphs 64 and 65.

(52) Paragraph 66 is false and is denied.

(53) Paragraph 67 as alleged is denied;

20 (a) The financial condition of both the Estate and of the Incorporated Company at the time of the assumption of the obligations arising out of the promotion and/or financing of Cadillac Coal Company, was such as to render the disbursement of funds for any such purpose wholly unjustifiable;

(b) What was done by Defendants in the connection, was in no way validated by the pretended approval given by them to their own acts, while purporting to act as a Board of Directors of the Incorporated Company.

(54) Paragraph 68 is denied. The disbursements made in the connection under discussion were wholly unjustifiable as an investment of funds of an estate.

30 (55) Paragraphs 69 and 70 are denied. The manner in which the late Sir Mortimer Davis during his lifetime may have dealt with the interest on said \$3,000,000 Serial Notes or with the redemption of the entire issue thereof, is wholly irrelevant, and furnishes no excuse or justification for the failure and neglect of Defendants complained of in respect thereto.

(56) Paragraph 71 is denied;

40 (a) The By-Laws of the Alcohol Company required that the remuneration of Defendant Shaughnessy should be fixed by the Board of Directors;

(b) The showing of the Alcohol Company prior to and in the years 1928 and 1929 reflected the personal direction of its affairs by the late Sir Mortimer Davis, while the present and altered condition of the Company is due to the incapacity and

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total unfitness of the Defendant Shaughnessy to discharge the duties of President thereof;

(c) Under the circumstances Defendant Shaughnessy was bound before taking any steps whatever upon the subject of any proposals for any sale or merger of the Alcohol Company which would cause the Estate and the Incorporated Company to lose control thereof, to have first communicated the same to Female Plaintiff as his co-Executor and co-Director of the Incorporated Company, but, in place of doing so, Defendant Shaughnessy proceeded with negotiations to the point of discussing and offering prices, terms, conditions and stipulations in return for which control of the Alcohol Company would permanently pass into other hands.

(57) Paragraph 72 is denied.

20 (58) Plaintiffs pray *acte* of the admission contained in Paragraph 73 to the effect that the Will must be interpreted according to its terms, and join issue on the denials contained in said Paragraph.

(59) Paragraphs 74 and 75 are denied.

(60) Paragraph 76 is irrelevant, except insofar as the circumstances sought to be invoked by Defendant render the more reprehensible their breaches of trust complained of.

30 (61) Plaintiffs pray *acte* of the recital of ARTICLE XXIII of the Will, referred to in Paragraph 77; and deny the remaining allegations thereof, as being wholly false and untrue.

(62) Paragraph 78 is wholly irrelevant;

(a) In invoking ARTICLE XV of the Will, Defendants are attempting without right to shield themselves from the consequences of their acts and omissions in office, as set out in the Declaration;

40

(b) Plaintiffs' action herein in no manner disturbs the carrying on of the Incorporated Company in the manner contemplated by the Testator, but, on the contrary has been brought for the express purposes of ensuring that it be so carried on.

(63) Paragraph 79 is wholly irrelevant, and moreover same

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forms no answer to the grounds upon which the removal of the Defendants from office is demanded by the Declaration, all of which are based on facts subsequent to the death of the Testator.

(64) Paragraph 80 is likewise irrelevant to the issue.

10 (65) Paragraph 81 is wholly irrelevant. Under the existing circumstances the declaration of dividends by the Incorporated Company was and is imperative for the due carrying out of the Will of the Testator, including the payment to the Plaintiffs of the residue of revenues annually.

(66) Paragraph 82 is false and is denied.

(67) Paragraph 83 as alleged is denied. The action by the Defendants alluded to therein is the same as that referred to in Paragraphs 44 and 55, and in respect thereof Plaintiffs reiterated the allegations of Paragraphs 34 and 43 (c) of the present answer;

20 (68) Paragraph 84 is irrelevant and is denied. Serious irregularities and manipulations occurred concerning which the Auditors were deliberately deceived by Defendants, and who, moreover, ignored other matters pointed out in the Auditors' Reports;

(69) Paragraph 85 is false and is denied;

30 (70) Paragraph 86 is false and is denied, and, moreover, is wholly irrelevant and is no answer whatever to the matters set out in the Declaration;

(71) Paragraph 87 is denied; Defendant Shaughnessy's connection with the Alcohol Company before the death of Sir Mortimer Davis was solely as his mandatory;

40 (72) Paragraph 88 is false and is denied; although frequently absent from Canada, the late Sir Mortimer Davis always kept in close touch with the affairs of the Alcohol Company, and no move was made therein by Defendant Shaughnessy save as ordered and directed by the Testator;

(73) Paragraph 89 is false and is denied; the success which attended the Alcohol Company following the death of the late Sir Mortimer Davis was solely due to his control and direction thereof during his lifetime;

(74) Paragraph 90 is false and is denied;

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(a) The enormous depreciation in the market value of the securities of the Alcohol Company is, in the main, due to the complete loss of confidence of the Shareholders and of the public in the management of the Company under the presidency of Defendant Shaughnessy;

(b) The unprecedented reduction in the sales of the Alcohol Company in the past year could and would have been avoided, in great part at least, under efficient and proper management;

(c) A merger of the Alcohol Company with its competitors, under existing conditions, would inevitably prejudice the interests of the Shareholders at large, and the Estate in particular, as owning the control thereof;

20

(d) Moreover the Testator had devoted upwards of 20 years of his life to developing the business now the Alcohol Company, and to obtaining and retaining the absolute control thereof, and had invested therein the great bulk of the fortune possessed by him at the time of making his Will and at his death, and it was that investment in particular at which he aimed by Article XXIII of his Will, whereby he charged his Executors and Trustees to carry out the policies he had laid down and to conserve the capital of his Estate and not to sacrifice the same by premature liquidation, and any sale or merger involving the surrender of the control of the Alcohol Company, on such terms as could be obtained under existing conditions, would be a direct violation of the intention of the Testator clearly expressed in the clause of the Will just referred to.

30

(75) Paragraph 91 is false and is denied; a merger of the Alcohol Company with its competitors on any terms obtainable under the present conditions would merely intensify and render permanent the enormous loss already suffered by the Shareholders at large, and by the Estate in particular, due to the gross mismanagement thereof by Defendant Shaughnessy to date;

(76) Paragraph 92 is false and is denied;

40

(a) Plaintiffs reiterate that Defendant Shaughnessy has been negotiating with a view to disposing of the control of the Alcohol Company without informing Female Plaintiff with respect thereto; and far from having advised her on October 18th last, with respect to such negotiations, Defendant Shaughnessy on that occasion emphatically declared that there was no foundation whatever for the rumour that negotiations were then being carried on;

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(b) Female Plaintiff was never thereafter advised by Defendants, or either of them, of any negotiations for a merger or sale of the Alcohol Company, or of its shares, until two days after the institution of the present suit, that is to say, by the receipt of the letter of Defendants' Attorneys on January 18th, 1930, at 10:40 A.M. at the very moment when the Writ was being handed to the Bailiff for service;

10 (77) Paragraph 93 is false and is denied; Defendants have never up to the time of the filing of the present Answer supplied Female Plaintiff with any information as to the parties concerned, terms or conditions of their negotiations, and she has never been placed in the position to consider the same;

20 (78) The anxiety of Defendant Shaughnessy to consummate some form of sale or merger, even though the same involve the loss of identity of the Alcohol Company and the control thereof by the Estate, is an ill-timed attempt by him to cover his colossal failure as administrator of the affairs of the Estate, including those of the Alcohol Company;

(79) Plaintiffs believe that under proper and efficient management the position of the Alcohol Company can be saved from the disaster which now threatens, and ultimately restored to its standing at the time of the death of the late Sir Mortimer Davis;

30 (80) Paragraph 94 is false and unfounded in law; the sole object of Plaintiffs in bringing the present action is to end the menace of the continued maladministration by Defendants of the property held by and for the Estate, and to preserve the same and to prevent the complete frustration of the Will of the Testator;

(81) Plaintiffs join issue on the denials contained in paragraph 95;

(82) Paragraph 96 is denied;

40 (a) The majority of the cheques which served in the appropriation of the Incorporated Company's funds by and to the use of Defendant Shaughnessy, were signed by him, and all of said cheques were signed and delivered by and under his instructions and in connivance with Defendant Reaper;

(b) Said appropriations by Defendant Shaughnessy of \$4,684.22 and \$2,875.82 had not the remotest connection with any remuneration due him either by the Incorporated Company,

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or the Estate, for services, or for outlays of any description made by him for the account of either the Incorporated Company or the Estate;

(83) Paragraph 97 is denied;

10 (a) The return of the funds so appropriated in no way validated the acts of Defendant Shaughnessy in having diverted the same to his own use while acting in a fiduciary capacity towards both the Incorporated Company and the Estate, or relieved either Defendants in the slightest degree from the consequences of their acts in the connection;

(b) The return of the funds was made on both occasions because an audit of the books of the Incorporated Company was imminent, and in order to avoid said appropriations becoming known to Female Plaintiff by and from the Auditors' Statements and Reports;

20

(c) Defendant Shaughnessy was in Montreal continuously from June 1st, 1929, at which date he had appropriated to his own use practically all of said sum of \$2,875.82, and the return of that amount was not made until three months thereafter, to wit, until September 4th, 1929, and was only made then because of the audit demanded by Female Plaintiff and which was proceeding or about to proceed as of date August 31st, 1929;

30 (84) Paragraph 98 is denied as being unfounded in law and in fact;

(a) Defendants had no right to make any entry in the books of the Incorporated Company otherwise than in strict conformity with the true facts, and their acts in entering under fictitious dates the return by Defendant Shaughnessy of the amounts appropriated by him to his own use were in no way justified by the excuse now offered by them to the effect that the books for the previous months "*had not been closed*" at the time the repayments were actually made;

40

(85) Plaintiffs ignore paragraph 99, and aver that same is moreover wholly irrelevant;

(86) Paragraph 100 is false and is denied;

(a) In further answer thereto Plaintiffs reiterate the allegations of paragraphs 31 (a) and 40 of the present Answer.

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WHEREFORE, Plaintiffs, reiterating the conclusions of their Declaration herein, pray the dismissal of the Plea of the Defendant Reaper with costs.

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continued.

MONTREAL, February 24th, 1930.

W. K. McKEOWN,
Attorney for Plaintiffs.

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*In the
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REPLY OF DEFENDANT A. M. REAPER TO PLAINTIFFS'
ANSWER TO HIS PLEA

The defendant A. M. Reaper for reply saith:—

1. That he denies paragraphs 2, 4, 5, 6, 8, 11, 14, 21, 25, 26, 29,
31, 32, 33, 34, 35, 38, 39, 40, 43, 44, 45, 46, 47, 48, 50, 53, 54, 55, 56, 60,
62, 63, 65, 67, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 82, 83, 84 and
10 85 of the plaintiffs' answer to the plea of the defendant now pleading.

2. That he joins issue with the plaintiffs upon all the allega-
tions of all the other paragraphs of the said answer to his plea.

WHEREFORE the defendant A. M. Reaper prays that the said
answer to his plea be dismissed, with costs.

Montreal, 20th March, 1930.

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MEREDITH, HOLDEN, HEWARD & HOLDEN,
Attorneys for Defendant A. M. Reaper.

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*In the
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No. 9.
Plaintiffs'
Petition for
Sequestra-
tor,
18th Janu-
ary 1930.

AMENDED PETITION FOR APPOINTMENT OF
SEQUESTRATOR

(A) To the Superior Court in and for the District of Montreal, or to any one of the Honourable Judges of said Court, sitting in the Practice Division thereof, for matters in and for said District;

10 (B) The Petition of said Plaintiffs

RESPECTFULLY SHOWETH:

1. That the principal action herein has been brought by the Plaintiffs, for the removal of the Defendants from the offices of Joint Executors and Trustees under the Last Will of the late Sir Mortimer Barnet Davis, who died on March 22nd, 1928, duly probated said Will by this Court under date April 18th, 1928;

20 2. That the Female Plaintiff is the widow of said late Sir Mortimer Barnet Davis, and is one of the residuary legatees, and an Executrix under said Will, and she is also a Shareholder and Director of Sir Mortimer Davis Incorporated, referred to throughout the Plaintiffs' Declaration as "the Incorporated Company";

3. That the Male Plaintiff is the only son of the said late Sir Mortimer Barnet Davis, and is the other residuary legatee, under the Will of his said late father;

30 4. That the Incorporated Company is merely an arm of the Estate, which owns approximately 95% of the Capital Stock thereof;

5. That the principal asset of the Estate, held through the medium of the Incorporated Company, is the controlling interest of Canadian Industrial Alcohol Company Limited, referred to in the Declaration as "the Alcohol Company";

40 6. That Defendants, in virtue of their offices as Executors and Trustees under said Will, have been appointed and are acting as Directors of the Incorporated Company; and the Defendant Shaughnessy because of the same circumstances, has been elected as Director and President of the Alcohol Company;

7. That in law, Defendants are answerable and accountable as such Executors and Trustees, for their acts as Directors of the Incorporated Company and/or of the Alcohol Company;

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8. That the Plaintiffs' said demand for the removal of the said Defendants from said offices of Executors and Trustees is based upon the following grounds:

(a) That they have failed and neglected to do and perform the acts required of them, as well by said Will as by law;

(b) That they have infringed their duties as such Executors and Trustees;

(c) That they have dissipated and wasted the property of both the Estate and the Incorporated Company;

(d) That their administration of the property of the Estate and of the Incorporated Company exhibits their incapacity, dishonesty and total unfitness to hold and exercise such offices as Executors and Trustees;

20 the whole as fully set forth in the Declaration, to which reference is hereby made to form part hereof as effectually as though the same was restated verbatim in the present Petition.

9. That, in particular, Defendants are surreptitiously, at the present time, conducting negotiations with a view to a merger of the Alcohol Company, which was founded by the late Sir Mortimer Davis, and for many years conducted under his direction with conspicuous success, and which constitutes the chief asset of the Estate, with other competitive interests, whereby the control of the Alcohol Company, presently owned and held by the Estate, would be forever 30 lost to the latter.

10. That under existing circumstances, any such merger with the other interests involved would cause great and irreparable loss and injury to the Estate.

11. That the Defendants' administration of the affairs of the Estate and of the Incorporated Company has resulted disastrously and in the state of chaos set forth in the Plaintiffs' Declaration, and 40 if permitted to continue, will terminate in irrevocable loss and damage to the Estate in general and the Plaintiffs in particular.

12. That it is imperative in the interests of the Plaintiffs and of justice, that until the Court shall have finally adjudicated upon the principal action herein, the Defendants be deprived of all possession, control and administration of the property, whether directly held by the Estate or held by it through the medium of the Incorpo-

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continued.

rated Company, and that the whole of said property be judicially sequestrated, in order that the same and each and every part thereof may be administered by a Sequestrator to be duly named, and who shall exercise, jointly with the Female Plaintiff, all of the rights heretofore exercised by Defendants as such Executors and Trustees.

10 WHEREFORE your Petitioners, said Plaintiffs, pray that the parties be held to proceed before the said Court, or one of the Honourable Judges thereof, within such delay as may be fixed, to the nomination of a Sequestrator, who shall have the possession, control and administration, in lieu of Defendants, of all the property of the Estate, whether directly held by the Estate or held by it through the medium of the Incorporated Company; all such property to be judicially sequestrated, and each and every part to be administered by such Sequestrator under the direction of the Court, with authority to exercise, jointly with the Female Plaintiff, all of the rights heretofore exercised by Defendants as such Executors and Trustees, and who shall render an account of his administration, following the rendering of the final Judgment in the principal action herein, or at such other
20 time as he may, by law, be required to do so, and that provisional execution be ordered of any and all judgments which may be rendered upon the present Petition, notwithstanding the entry of any Appeal from such judgments, subject to the giving of such security, if any, as may be fixed.

THE WHOLE WITH COSTS RESERVED.

30 W. K. McKEOWN,
Attorney for Plaintiffs-Petitioners.

AFFIDAVIT

40 No. 10.
Affidavit of
Lady Davis
for Plain-
tiffs,
18th Janu-
ary 1930.

I, LADY DAVIS (DAME ELEANOR CURRAN), of Cannes, in the Republic of France, presently residing at the Ritz-Carlton Hotel, 1228 Sherbrooke Street West, in the City and District of Montreal, widow of the late Sir Mortimer Barnet Davis, Knight, being duly sworn, depose and say:

1. I am one of the Plaintiffs-Petitioners in the present action;

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Affidavit of
Lady Davis
for Plain-
tiffs,
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continued.

2. The facts alleged and set forth in the foregoing Petition are, to the best of my knowledge and belief, true and well founded.

And I have signed:

ELEANOR DAVIS.

SWORN, TAKEN and ACKNOWLEDGED before
me at the City and District of Montreal, this 18th
10 day of January, 1930.

F. G. BUSH,

Sworn Commissioner of Superior Court
for District of Montreal.

NOTICE

20 TO:

THE RIGHT HONOURABLE LORD SHAUGHNESSY
(WILLIAM JAMES SHAUGHNESSY)

AND

ALEXANDER M. REAPER,

Said Defendants,

30

AND

THE FEDERATION OF JEWISH PHILANTHROPIES
OF MONTREAL,

Mis-en-Cause.

SIRS:

YOU AND EACH OF YOU ARE HEREBY NOTIFIED OF
THE FOREGOING PETITION AND OF THE AFFIDAVIT IN
SUPPORT THEREOF, and that said Petition will be presented for
40 allowance to the said Superior Court, sitting in the Practice Division
thereof, in Room No. 31 in the Court House in the City and District
of Montreal, on Monday, January 20th, 1930, at the hour of 10:30
of the clock in the forenoon, or so soon thereafter as Counsel may
be heard; AND YOU ARE REQUIRED TO GOVERN YOUR-
SELVES ACCORDINGLY.

W. K. McKEOWN,
Attorney for Plaintiffs-Petitioners.

*In the
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Court,
District of
Montreal.*

No. 11.
Defendants'
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ANSWER TO PETITION FOR SEQUESTRATION

The defendants-respondents, Lord Shaughnessy and Alexander M. Reaper, for answer to the petition say:—

- 10 1. The petition for sequestration is unfounded in law and in fact for the reasons (amongst others) set forth in the following paragraphs:—
2. The provisions of law relied upon by the petitioners in support of their petition have no application to the defendants or the facts of this case.
- 20 3. The property of the Estate of the late Sir Mortimer Davis, for which the petition purports to apply for sequestration, is not possessed by defendants or either of them, but by the female plaintiff and defendants jointly in undivided possession and there is no such possession in defendants alone as could give rise to the remedy sought.
4. The granting of the prayer of said petitioners would in effect prejudice the merits of plaintiffs' principal action and demand herein without adequate trial of the merits thereof and to the serious loss and prejudice of the defendants and of the said Estate Sir Mortimer Davis.
- 30 5. Under the terms of the Will of the late Sir Mortimer Davis (Plaintiffs' Exhibit No. 1) he nominated and appointed defendants and the female plaintiff the trustees and executors of his Estate under conditions that make it manifest that he intended and desired that the control and administration of said Estate should be entrusted more particularly to defendants.
- 40 6. Defendants alone were resident in the jurisdiction in which it was provided that said administration would be carried on and the female plaintiff was, at the time of the making of said Will and of the death of said testator, and is even yet, permanently resident in Europe and said Will clearly indicates that said testator contemplated that she would continue to reside there.
7. Article Twenty-third of the said Will specially charged the trustees and executors thereunder, to wit, the female plaintiff and defendants, to take an active and energetic interest in the management of the Estate and to carry out the policies he had laid down and

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particularly to conserve the capital of his Estate and not to sacrifice the same by premature liquidation, and practically all the complaints made by plaintiffs against defendants are for actions alleged to have been done or left undone by reason of the adherence of the defendants to the said instructions so contained in said Will.

8. In Article Fifteenth of said Will the testator expressly directed and required that the beneficiaries of his Will should not disturb by their demands or actions the carrying on of Sir Mortimer Davis, Incorporated, in any manner which in the opinion of the directors of that Company might be prejudicial to its interests.

9. At the time of the making of said Will and thereafter during the remaining lifetime of the testator, defendant Shaughnessy was a director and officer of Sir Mortimer Davis, Incorporated, and on or about 29th December, 1927, defendant Reaper also became a director of said Incorporated Company, of which he had previously been and continued thereafter to be an executive officer, both having been so appointed at the wish and with the concurrence of said testator, who owned a large percentage of the capital of said Company, whereas the female plaintiff was not at any time during the lifetime of Sir Mortimer Davis either a director or officer of said Company, nor was there any provision in said Will requiring, directing or suggesting that said female plaintiff should at any time be or become either a director or officer of said Company, although she was elected as such director after the death of Sir Mortimer Davis at the instance of defendants.

10. Article Twenty-second of said Will particularly provided that the books and accounts of said Estate were to be kept in the office of Sir Mortimer Davis, Incorporated, and all meetings were to be held and business transacted in that office, until agreed to otherwise by all the trustees and executors, and it appears from other sections of said Will that it was the clear expectation of the testator that the female plaintiff would continue to reside in France, she having been given by Article Seventh of the Will the use, usufruct and enjoyment of any and all residences, country estates, apartments and properties of said testator situate in France, but no such provision was made as to the residences or properties of the testator in Canada.

11. During the lifetime of Sir Mortimer Davis himself no dividends had been declared on the stock of said Company.

12. Until the actual institution of proceedings herein neither of the plaintiffs at any time made any demand upon or suggestion to

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defendants that dividends should be declared upon the shares of said Sir Mortimer Davis, Incorporated.

10 13. On 6th December, 1929, defendants summoned the female plaintiff to attend a meeting of the directors of said Incorporated Company for the purpose of considering its financial affairs and of declaring dividends upon its shares and for the further purpose of reducing its capital stock, but the female plaintiff failed to attend said meeting which was thereupon and on several subsequent occa-
sions adjourned for consideration of said business, but on no occasion, in spite of frequent notices to her, did female plaintiff appear either in person or by representative for the purpose of suggesting or co-operating with the other directors of said Company in that connection.

20 14. The books and records of the said Sir Mortimer Davis, Incorporated, and of the Estate have at all times been periodically and duly inspected and audited by Messrs. Price, Waterhouse & Company, Auditors, who had occupied that position of auditors for many years previous to the death of the late Sir Mortimer Davis.

15. Defendants and each of them have constantly and consistently since the death of the testator to the best of their ability and in good faith carried out and given effect to his desires and intentions throughout, both as expressed in his said Will and otherwise.

30 16. Both defendants were well known to Sir Mortimer Davis long before he made his Will and had occupied during many years intimate associations and relations with him and he had every opportunity of considering and estimating their integrity and business capacity and the soundness of their judgment and their fitness for the position of trustee and executor to which he subsequently appointed them, after due consideration of their qualifications aforesaid.

40 17. The present proceedings are an illegal attempt by plaintiffs to substitute themselves or their nominees to the defendants as the controlling trustees and executors of the Estate of the late Sir Mortimer Davis in violation of the desires of the said testator and notwithstanding the express provisions of his Will to the contrary, and notwithstanding the fact that the plaintiffs have neither the training, experience, knowledge, character or qualifications necessary for the management of the complicated affairs of this Estate.

18. Plaintiffs have concurrently with the present proceedings instituted without previous notice or complaint unfair and un-

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founded action against the defendant Shaughnessy for the purpose of depriving him of the compensation for which he stipulated in respect of his total change of career and occupation necessitated by his agreement (Plaintiffs' Exhibit No. 13) and of the services rendered and to be rendered by him to the late Sir Mortimer Davis and Sir Mortimer Davis, Incorporated, in violation of the terms of his said agreement and of the wishes and desires of the said Sir Mortimer Davis, deceased.

10 19. The improper and illegal spirit and intention of these proceedings are made manifest by the fact that the petitioners do not ask for a sequestrator to replace all three of the executors and trustees of the late Sir Mortimer Davis, but that the sequestrator have "authority to exercise, jointly with the female plaintiff, all of the rights heretofore exercised by defendants as such executors and trustees," notwithstanding the litigation that has been instituted by the female plaintiff in her violent attacks upon the defendants in their office of executors and trustees.

20 20. The allegations of the petition and of the declaration in the action which is incorporated in the said petition are false and unfounded in so far as they pretend to allege facts purporting to justify the conclusion of said petition.

21. Defendants therefore should not be interfered with in the exercise of their powers and duties as two of the trustees and executors of said Estate unless and until they be ousted and dismissed from those positions by an order of court for due and sufficient cause after proof and hearing on the merits.

30

AND WITHOUT WAIVER OF THE FOREGOING, DEFENDANTS-RESPONDENTS FURTHER ANSWER:—

22. The proceedings referred to in the first paragraph of the petition speak for themselves, but are unfounded in fact and in law.

23. As to the second and third paragraphs thereof, the Will of the late Sir Mortimer Davis must be interpreted according to its terms, and the defendants say that the female plaintiff is a shareholder and director of Sir Mortimer Davis, Incorporated, but only
40 in her quality of trustee and executrix and without any direct personal interest therein.

24. Paragraph 4 as alleged is denied. There are at least two other shareholders in the Company who have substantial personal interest in it, which interest must be recognized in the administration of the affairs of the Company.

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25. As to paragraph 5—it is admitted that the Incorporated Company owns a majority of the voting shares of the Alcohol Company, otherwise this paragraph is denied.

26. Paragraph 6 as alleged is denied. Both defendants were directors and officers of the Incorporated Company during the lifetime of the late Sir Mortimer Davis and defendant Shaughnessy was also a director and President of Canadian Industrial Alcohol Company during that lifetime and has a substantial personal interest as a shareholder in that Company.

27. Paragraph 7 is denied in fact and in law.

28. As to paragraph 8, defendants say the plaintiffs' declaration must be interpreted by its terms, but the truth and sufficiency of the allegations therein made are denied in fact and in law.

29. Paragraph 9 as alleged is denied and the facts are:—

20

(a) That defendant Shaughnessy was President and the active executive head of the Alcohol Company for several years before the death of the late Sir Mortimer Davis;

(b) That during all those years Sir Mortimer Davis himself was almost continuously absent from Canada and in large measure left the control of said Company to the defendant Shaughnessy;

30

(c) That the most successful years in the history of the Alcohol Company were during the years of such presidency and more particularly the period immediately following the death of Sir Mortimer Davis;

(d) That latterly the competitive and other market conditions in the industry in which the Alcohol Company is engaged have been such as to make it desirable in the interests of the Alcohol Company and its shareholders to effect, if possible, a suitable merger on fair and satisfactory terms;

40

(e) That a merger of said Alcohol Company with other competing companies, on fair and suitable terms, offers a satisfactory solution of the difficult problems besetting the Estate Sir Mortimer Davis, for the creation of which problems defendants have no responsibility;

(f) That the negotiations referred to were not in any

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respect surreptitious nor other than useful and proper and the plaintiff was herself advised on or about the 18th October last by defendant Shaughnessy of the probable institution of such negotiations and she declared herself satisfied that such negotiations should be entered upon and she was thereafter from time to time notified that such negotiations were in fact under way, and more particularly by letter from the undersigned attorneys to her attorney under date of January 17th, 1930, of which a copy is herewith filed as Defendants' Exhibit D-1;

10

(g) That defendants never contemplated or intended to enforce the acceptance of said proposals or any resulting plans for a merger of the Alcohol Company against any reasonable objections by the female plaintiff who has not hitherto indicated any reason why proposals submitted by other parties interested in promoting such a merger should not be considered.

30. Paragraph 10 is denied.

20

31. Paragraph 11 and 12 are false and malicious and are denied.

And the defendants in answer to the allegations of the declaration served upon them and referred to in paragraph 8 further allege:—

32. Paragraph 1 of the declaration is admitted and defendants invoke and rely upon the provisions of the said Will (Plaintiffs' Exhibit No. 1) which must be interpreted by its terms.

30

33. As to paragraphs 2, 3, 4 and 5, defendants say that the Will must be interpreted by its terms and they deny the allegations of the said paragraphs in so far as they are not in accordance therewith.

34. Paragraph 6 is admitted.

35. Paragraph 7 as alleged is denied. In addition to said Waddell, defendant Shaughnessy is the owner of approximately five per cent of said issued capital stock.

40

36. Paragraph 8 as alleged is denied, but it is true that the late Sir Mortimer Davis in bequeathing his shares in the Incorporated Company to his trustees, of whom the defendants are the majority, thereby put them in a position to control the management of the said Incorporated Company, and in fact the defendants have administered the affairs thereof in harmony with the interests and requirements of said Estate.

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37. Paragraph 9 as alleged is denied and defendants reiterate that they were both officers of the said Incorporated Company during the lifetime of the late Sir Mortimer Davis, and moreover the defendant Shaughnessy alleges that he has a substantial personal stock interest therein, while the female plaintiff only became a director subsequent to the death of the late Sir Mortimer Davis and has no stock interest therein other than as trustee under his Will.

10 38. Paragraph 10 as alleged is denied in fact and in law. Defendants in their capacity of officers and directors of the said Incorporated Company have a duty to all the shareholders of that Company and not only to the Estate.

39. Paragraph 11 as alleged is denied. The female plaintiff on the 4th May, 1928, was qualified with one share of the said Incorporated Company in her quality of trustee of the Estate of the late Sir Mortimer Davis and in that quality became a director of said Company on the 31st December, 1928.

20 40. As to paragraph 12, defendants say that the most important asset of Sir Mortimer Davis, Incorporated, is its investment in the shares of the Alcohol Company and its holdings of shares of Sir Mortimer Davis, Incorporated, constitute an important asset of the Estate of the late Sir Mortimer Davis, otherwise said paragraph is denied.

30 41. Paragraph 13 is denied. Defendant Shaughnessy was elected to the board of directors and as President of the Alcohol Company several years before the death of the late Sir Mortimer Davis and has in said Alcohol Company a substantial personal interest and investment.

42. Paragraph 14 is denied.

40 43. The statement referred to in paragraph 15 (Plaintiffs' Exhibit No. 2) is also the first sheet of the statements contained in Plaintiffs' Exhibit No. 8 and must be interpreted by the terms of the whole of the said Exhibit No. 8, of which it forms a part, otherwise the said paragraph is denied.

44. The documents referred to in paragraphs 16, 17, 18, 19 and 20 must be interpreted by their terms and said paragraphs are otherwise denied.

45. Paragraphs 21 and 22 as alleged are denied. On or about the 25th day of April, 1928, a meeting of the trustees under the Will

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of the late Sir Mortimer Davis was held at the office of the Incorporated Company and a true copy of the minutes of said meeting is herewith produced to form part of the Defendants' Exhibit D-2.

46. At said meeting it was particularly agreed by all the trustees, including the female plaintiff, that the shares of stock of Liggett & Myers Limited should not be sold but should be held for an anticipated improvement in the market price thereof and the other shares that were carried by Bamburger Brothers were in fact
10 forthwith sold.

47. There was no available market for the sale and disposition of any such quantity of Canadian Alcohol B stock at any such price as is indicated or any other reasonable price at that time, and any attempt by the trustees (who held the controlling interest of the voting shares of said Company) to sell any substantial quantity of shares of the Alcohol Company would have been fatal to all the holdings of the Estate in said Company and would have caused the
20 entire collapse of the market for the shares of said Company.

48. The sum loaned on call by the Incorporated Company was loaned at remunerative rates of interest and on ample, safe, marketable securities, and it was to the advantage of said Company to leave said money on loan until it was required for other legitimate purposes.

49. The power of attorney referred to in paragraph 23 must be interpreted by its terms. Otherwise said paragraph is denied. The
30 female plaintiff voluntarily offered said power of attorney because she desired to absent herself from the City of Montreal where the affairs of said Company are carried on.

50. Paragraph 24 is denied. Defendants have supplied plaintiff from time to time with all statements which she desired to have and which statements were apparently satisfactory to her as she made no comment thereon or asked for further information in reference thereto. Plaintiff continued said power of attorney in force until
40 5th October, 1929.

51. Paragraph 25 as alleged is denied. The female plaintiff did leave Montreal and return to France, where she had been accustomed to reside for many years, and delegated to her co-trustees her duties in connection with the administration and management of the Estate and of the Incorporated Company, but defendants kept her informed of such administration and management as fully as she required them to do.

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52. Paragraph 26 as alleged is denied, but defendant Shaughnessy did discuss with female plaintiff entering into certain financial arrangements with said Jennison, to which arrangements she then agreed.

53. Paragraph 27 is denied. The arrangements proposed with said Jennison would have in no way affected said provisions of said Will or the rights of plaintiffs thereunder.

10 54. Paragraph 28 is denied. At said interviews with defendant Shaughnessy in London the female plaintiff declared herself satisfied with the policy for the administration of the Estate and of the Incorporated Company laid before her and declared that she was proceeding to America for the purpose of being with a relative who was dangerously ill, but that it was doubtful if she would in fact be in or near Montreal during said visit to America.

20 55. Paragraph 29 is denied. The Estate was administered in conformity with the Will of the deceased testator and the principles applicable thereto.

56. Paragraphs 30 and 31 are denied.

57. Paragraph 32 is denied. Up to the time of the delivery to the female plaintiff of statement Exhibit No. 6 she had not suggested the delivery to her of any further statements of said Estate or said Incorporated Company than those which she received and with which she was evidently satisfied.

30 58. Paragraph 33 as alleged is denied. Defendant Shaughnessy, in spite of the unreasonable extent and peremptory manner of the demands contained in female plaintiff's letter of the 15th August (part of Exhibit No. 7), wrote her a letter dated August 21st, 1920, a copy of which is herewith filed as Exhibit D-3, in reply to which he received her peremptory and offensive letter dated August 23rd, also forming part of Plaintiffs' Exhibit No. 7.

40 59. Paragraph 34 is denied. The said auditors' statements were prepared by the Company's auditors and delivered to female plaintiff by said auditors with all reasonable diligence following her request therefor, and at the same time as the said statements were received by defendants on October 7th, 1929.

60. Paragraphs 35 and 36 are denied. The said auditors' report and statement were prepared with the usual diligence and was delivered to the female plaintiff as soon as it was completed and certified

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by said auditors. Said statements properly interpreted show that the position of affairs of said Estate and the Incorporated Company were administered by defendants along the lines for many years laid down and adopted by the late Sir Mortimer Davis during his lifetime, and that the said administration has been in the best interest of the said Estate.

10 61. The document referred to in paragraph 37 must be interpreted by its terms. It was only shortly before said revocation that the female plaintiff made any complaint to defendants of the manner in which they had fulfilled their duties.

20 62. The document referred to in paragraph 38 must be interpreted by its terms. There was no justification or excuse for the demand therein made. At no time have defendants been able to obtain from the plaintiffs or their said attorney any statement in writing of their pretended causes of action until the service of the plaintiffs' declaration herein on the 18th January, 1930, and this in spite of repeated requests, including a letter dated November 26th, 1929, filed herewith as Exhibit D-4, to which no reply has been received.

63. Paragraphs 39 and 40 are false and malicious and are denied. Defendants reserve all rights and recourses against plaintiffs for the unfounded, false and defamatory statements therein contained.

30 64. Paragraph 41 as alleged is denied. The female plaintiff signed and executed the documents therein referred to of her own free will, with full knowledge of all the facts, and moreover the documents are improperly described, construed and interpreted by plaintiffs in said paragraph.

40 65. Paragraph 42 is false and malicious and is denied. Defendant Shaughnessy by agreement with the other executors, including female plaintiff, received a dining-room table, various chairs and a tabouret, in part satisfaction of the bequest made to him in Article 8, clause 4 of the Will, wherein he was bequeathed a legacy of \$1,000.00 "wherewith to purchase a memento," and it was agreed by the female plaintiff that the said articles of furniture were appropriate in part satisfaction of said legacy, and furthermore the female plaintiff not only declared her consent and approval before the removal of the said articles of furniture, but on frequent occasions thereafter, when visiting the residence of defendant Shaughnessy and viewing the said articles declared her entire approval and concurrence in what had been done.

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66. Paragraph 43 is false and malicious and is denied. Said car was a model of the year 1912 or 1913 and such use as defendant Shaughnessy made of the said car was for the purpose of verifying its condition and determining whether it could be put in sufficient repair to be used or disposed of, and after such use said defendant ascertained that the said car was incapable of being repaired or made use of except at a cost that was prohibitive, and defendant has at all times been prepared to sell the said car to any buyer at any reasonable price.

10

67. Paragraph 44 is false and malicious and is denied. Defendant Shaughnessy on two or three occasions visited said property for periods of a few days in accordance with the previous practice which had existed during the lifetime of the late Sir Mortimer Davis, during which the defendant Shaughnessy was frequently invited to make such use of the said property and did so at the invitation and with the knowledge and consent of the late Sir Mortimer Davis. Said property was not leased by reason of the fact that defendants were at all times endeavouring to find a purchaser for it and it was considered inadvisable and disadvantageous to lease it meanwhile.

20

68. Paragraph 45 and sub-paragraphs (a), (b), (c), (d), (e), (f) and (g) thereof, and paragraphs 46, 47, 48 and 52 are denied. Said paragraphs are the subject matter of a further action between the said plaintiffs and defendant Shaughnessy (Case No. 65140 of the records of this Court) and referred to in paragraph 51 of the plaintiffs' declaration herein, in which the rights of the defendant Shaughnessy in respect to the said notes and shares and cash are at length discussed and will be decided, and the said rights cannot properly be put in issue in this cause. Moreover, the said sum of \$217,461.65 was credited to the trustees of defendant Shaughnessy on the books of the Incorporated Company during the lifetime of Sir Mortimer Davis and was received by defendant Shaughnessy in strict accord with his rights under his said agreement of 17th September, 1924, and the said credit to said trustees was further confirmed by the late Sir Mortimer Davis during his lifetime as evidenced by the entries in all books and records of the Incorporated Company in reference thereto.

30

40

69. Paragraph 49 is false and malicious and is denied. Defendant Shaughnessy consulted female plaintiff as to the wisdom of the purchase of said Marler shares and as to his right to take up the portion thereof accruing to him by the by-laws of the said Company, and she expressed her concurrence therein. Said shares were paid for by money standing at the credit of the defendant Shaughnessy's trustees and were thereafter held by them and were only delivered to

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the said Shaughnessy upon the complete fulfilment of the terms of the said agreement and upon the termination of the period stipulated in said agreement and in accordance with its said terms.

70. Paragraph 50 is denied. Said shares were purchased by the trustees for the defendant Shaughnessy from Honourable H. M. Marler in accordance with the provisions of the By-laws of the Company.

10 71. That paragraphs 53, 54, 55, 56, 57 and 58 are false and malicious and are denied. The facts are as follows:—

(a) The moneys required by the Estate were required in large part before the date when any dividend could be declared;

(b) The late Sir Mortimer Davis, in Article Twenty-third of his Will (Exhibit No. 1) charged his Trustees and Executors "to carry out the policy he had laid down";

20 (c) The requirements of the Estate consisted of capital disbursements and revenue disbursements;

(d) It was not advisable in the interests of the Estate to take action as to a capital distribution by the Incorporated Company to cover the said capital disbursements of the Estate, nor to declare a dividend for the revenue disbursements earlier than the month of December, 1929, particularly in view of the questions then under discussion between the Executors and the Province of Quebec and the Income Tax Department of the Dominion of Canada and the situation of the said Incorporated Company with respect to its indebtedness to its bankers.

30 (e) Defendants took steps on the 4th and 6th December, 1929, to provide for the said requirements of the Estate by appropriate capital distribution and declaration of dividend by the Incorporated Company, but owing to female plaintiff's refusal to co-operate and by reason of the litigation now instituted, said meetings have not been held and the appropriate action by the Company with reference to the Estate's requirements has, therefore, not yet been taken, and the defendants declare that they have always been, and still are, willing to take appropriate action in this connection;

40 (f) Defendant Shaughnessy arranged with the defendant Reaper, who was Vice-President and Secretary-Treasurer of the Incorporated Company and a co-Executor, that whenever the

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10 Incorporated Company would declare any dividend an adjustment would be made between defendant Shaughnessy and the Estate of Sir Mortimer Davis by which that Estate would receive such proportion of the dividends upon the shares that defendant Shaughnessy had acquired under his agreement with the late Sir Mortimer Davis as would represent the dividend on those shares that would fairly and equitably have been payable out of surplus if dividends had been declared by the Company between the date of the death of the late Sir Mortimer Davis and the end of the contract period, namely: 17th September, 1929.

72. That paragraph 59 is denied. All expenditures or donations for philanthropy were payments of obligations incurred by the late Sir Mortimer Davis in his lifetime and were necessary and appropriate under the circumstances.

73. That paragraphs 60 and 61 are denied.

20 74. Paragraphs 62, 63 and 64 are false and malicious. Defendants gave the female plaintiff more than the usual consideration and information particularly in view of the power of attorney which she executed as aforesaid and she was duly summoned to all meetings of directors of said Company whenever she was in Canada and there was any possibility of her attending.

30 75. Paragraph 65 is false and malicious and is denied and defendants reserve all rights and remedies in respect of the unfounded and libellous statements therein contained. The consideration by defendant Shaughnessy, as President of the Alcohol Company, of the communications and suggestions made to him by other parties with regard to a merger was necessary and appropriate in the interests of that Company and of all its shareholders.

40 76. Paragraph 66 is false and malicious and is denied. On the 17th September, 1924, at a meeting at which both the plaintiff M. B. Davis and the late Sir Mortimer Davis were present the directors of Sir Mortimer Davis, Incorporated resolved to engage the defendant Shaughnessy as its general counsel at a salary of \$20,000.00 a year "and on such terms and conditions as may be agreed to," and on the 1st December, 1925, approved the payment of a bonus of \$5,000.00 to the defendant Shaughnessy in addition to his said salary. On the 25th January, 1927, at a meeting at which the plaintiff M. B. Davis was present the payment of a bonus of \$10,000.00 "as recommended by Sir Mortimer B. Davis" was approved and ratified by the said directors, and a bonus of \$5,000.00 for each of the years 1927 and 1928 was also paid. By resolution of the directors of the said

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Company on the 31st December, 1928, it was resolved that in place of paying an annual bonus to Lord Shaughnessy, he being President as well as General Counsel, that he be placed on a straight salary basis of \$25,000.00 per annum, which was done.

77. Paragraph 67 is false and malicious and is denied. On the 23rd February, 1926, the defendant Reaper was appointed Secretary-Treasurer of Sir Mortimer Davis, Incorporated at a salary of \$6,000.00 a year, payable from the 1st February, 1926. On the 25th January, 1927, at a meeting at which the defendant, M. B. Davis, was present the defendant Reaper's salary as Secretary-Treasurer was increased to \$7,500.00 a year. Defendant Reaper became a director of Sir Mortimer Davis, Incorporated, on the 29th December, 1927, and at the annual meeting of Sir Mortimer Davis, Incorporated, held on the 31st December, 1928, defendant Reaper was again elected a director, and at the subsequent directors' meeting was elected Vice-President and Secretary-Treasurer of that Company, and his salary was increased to \$10,000.00 a year to commence on the 1st of the following January.

78. Paragraph 68 is false and malicious and is denied. During Sir Mortimer Davis' lifetime at a meeting of the directors of Sir Mortimer Davis, Incorporated, at which the plaintiff M. B. Davis was present, it was reported that, with the approval of the late Sir Mortimer Davis, a loan of \$50,000.00 had been made to defendant Shaughnessy at an interest of six per cent (6%) per annum. At the time of the said loan Serial Notes and shares of Sir Mortimer Davis, Incorporated, were held in trust for the defendant Shaughnessy under the terms of the agreement (Plaintiffs' Exhibit No. 13) and in addition the amount of \$217,461.65, standing at the credit of defendant Shaughnessy's trustees on the books of said Incorporated Company, constituted further valuable collateral security to the said loan. Said loan has been duly paid and discharged by the defendant Shaughnessy, both as to capital and interest and was dealt with throughout with the full knowledge of the late Sir Mortimer Davis and the Company's directors and was duly and clearly shown in the Company's periodical statements.

79. That paragraphs 69 and 70 are false and malicious and are denied. Said loans were made upon the instructions of the late Sir Mortimer Davis and were duly and clearly shown in the periodical statements of the Company, and the interest on the bonds and dividends on the shares have more than covered the interest due on the said loans, and the surplus was also duly credited against the said loans.

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80. Paragraph 71 is denied. The loan of \$10,000.00 with interest was duly repaid on the 25th September, 1929, and the Serial Notes and shares of Sir Mortimer Davis, Incorporated, which were held by the trustees for the defendant Shaughnessy, as aforesaid, and the amount of \$217,461.65 standing at the credit of the said trustees on the books of the Incorporated Company, constituted complete and effective collateral security for the amount of said indebtedness.

10 81. Paragraph 72 is denied. The said shares were purchased by the trustees for defendant Shaughnessy, who had the right to purchase and did purchase said shares in accordance with the by-laws of the Incorporated Company, and said shares were duly charged against and paid for out of the amount standing at the credit of said trustees on the books of said Company.

82. Paragraphs 73, 74, 75 and 76 are false and malicious and are denied.

20 83. Paragraphs 77, 78, 79, 80, 81, 82 and 83 are denied. The exhibits therein referred to must be interpreted according to their terms, which when properly interpreted do not bear the interpretation put upon them by plaintiffs.

84. Paragraph 84 is denied. The succession duties in France and in England have been paid while the succession duties in Canada are still under discussion with the proper authorities in the endeavour to secure further reductions in addition to those already
30 obtained.

85. Paragraphs 85, 86 and 87 are denied. Said legacies and donations could not properly be paid until settlement of the succession duties in Canada.

86. Paragraphs 88 and 89 are denied. Appropriate steps were taken by defendants to procure purchasers for both the said properties in accordance with the established custom of real estate brokers in dealing with properties of such classes respectively,
40 various offers to purchase were communicated to female plaintiff from time to time to which she refused to agree and the said properties were administered in the meantime as they had been during the lifetime of the late Sir Mortimer Davis when he was not in Canada.

87. The debt referred to in paragraph 90 was incurred by the Incorporated Company before the death of the late Sir Mortimer

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Davis and constituted an additional reason why it was injudicious heretofore to declare dividends on the stock of the said Incorporated Company.

10 88. Paragraphs 91 and 92 are denied. There was no reasonable opportunity of disposing of said debentures or shares under the market conditions prevailing for such securities since the death of Sir Mortimer Davis, and any attempt to dispose of them in large quantity would have resulted in further depreciation of the market value of such securities. As many of said securities as the market would absorb without undue depreciation of the market price were, in fact, sold by defendants.

20 89. Paragraphs 93 and 94 are denied. The facts are that the 5,000 shares of Asbestos Corporation stock were purchased by the Company during the lifetime of Sir Mortimer Davis upon his express instructions and with the idea that they should be carried as a long-term investment, and, in any event, there was not thereafter, since the death of Sir Mortimer Davis, any satisfactory market in which the said shares could have been sold, nor was their sale ever suggested by plaintiffs. The interest in the shares of Consolidated Asbestos Limited therein referred to was likewise acquired by Sir Mortimer Davis Incorporated, long before the death of Sir Mortimer Davis, and there has been no market for said shares since the date of his death nor was the sale thereof ever suggested by plaintiffs.

30 90. Paragraphs 95 and 96 are denied. Defendants' conduct and administration as directors of the Incorporated Company has always been in the interests of that Company and its shareholders.

91. Paragraph 97 is denied. Certain shares of the Alcohol Company were purchased from time to time by the Incorporated Company following its previous practice and in an attempt to support the market for said shares.

92. Paragraph 98 is denied.

40 93. Paragraph 99 is denied and is a malicious misrepresentation of the letter (Plaintiffs' Exhibit No. 18) which clearly shows the falsity of the plaintiffs' allegations.

94. Paragraph 100 is denied. The shares therein referred to have depreciated less in value in the general fall in securities than many other reputable securities and the Company's purchase of those shares was reasonable and justifiable under the circumstances and

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was in accordance with the principles laid down by Sir Mortimer Davis in his lifetime.

10 95. Paragraphs 101 and 102 are denied. The late Sir Mortimer Davis during his lifetime acquired a coal property (called the "Federal Coal Property") which formed part of his Estate at the time of his death, and he discussed and considered with the Incorporated Company and the defendants further investments in coal properties and the more active and extensive operation and exploitation in that connection, which he favoured, and before the date of the Plaintiffs' Exhibit 19, namely on the 31st December, 1928, the matter was referred to the board of directors of the Incorporated Company who approved and confirmed what was afterwards done. Sir Mortimer Davis, Incorporated is the owner of ninety per cent of all the issued capital stock of the Cadillac Coal Company Limited, and the securities called for by said contract will be delivered in due course.

20 96. Paragraph 103 is false and malicious and is denied. All such disbursements were made in connection either with properties which were acquired during the lifetime of Sir Mortimer Davis or properties or leases subsequently acquired or investigated under instructions or in accordance with the principles laid down by him during his lifetime.

30 97. Paragraph 104 is denied. The \$3,000,000.00 of Serial Notes were handed over to trustees by the late Sir Mortimer Davis in 1922 and during the lifetime of Sir Mortimer Davis the interest on said Notes was credited to him personally on the books of the Incorporated Company, while since his death the same interest has been similarly credited to the trustees, who have never demanded payment thereof.

40 98. Paragraph 105 is denied. On the 26th September, 1919, the issue was authorized of \$5,000,000.00 of the Serial Notes in question, which were duly issued, and although the by-law authorizing that issue contemplated that at least \$100,000.00 (par value) of the Notes would be redeemed each year, the only redemptions of Notes that occurred during the ten years that elapsed up to the death of the late Sir Mortimer Davis took place on or about the 11th June, 1923, when certain Notes were redeemed.

99. Paragraphs 106, 107, 108, 109, 111, 112, 113 and 114 are false and malicious and are denied. Defendant Shaughnessy has performed the duties of President of the Alcohol Company with efficiency and success and in good faith throughout his term as

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10 President of the Canadian Industrial Alcohol Company Limited. Besides the shares of the capital stock of the Alcohol Company, held by the Incorporated Company, there are 473,180 other "A" shares and 67,106 other "B" shares held by third parties, and there are altogether about 6,500 shareholders of the Alcohol Company. The increase of defendant Shaughnessy's salary was one of the uniform and proportionate increases that were given at the same time to all the vice-presidents and the secretary-treasurer and most of the higher employees, none of which were reported in the minutes in accordance with its uniform practice. During the presidency of the defendant Shaughnessy the Alcohol Company has experienced years showing better business results than ever before. Any depreciation in market value of the shares of said Company was due to conditions in the industry generally and was shared by all important companies engaged therein. Such communications as defendant Shaughnessy has received as President of the Alcohol Company with regard to a possible merger with other competitive interests have been treated by him in the proper and suitable manner.

20 100. Paragraph 110 is denied. The only directors (who were not salaried employees) who resigned were Honourable H. M. Marler, Mr. E. R. Decary and Mr. Henry Joseph, and those resignations were accompanied by the letters filed herewith as Defendants' Exhibits Nos. D-5, D-6, D-7 and D-8, which clearly show the falsity of the allegations contained in said paragraph.

30 101. As to paragraphs 115, 116, 117 and 118, defendants say that the Will must be interpreted according to its terms, and they deny that plaintiffs have the pretended rights therein claimed or that they are entitled to any of the conclusions of their said petition.

WHEREFORE defendants-respondents pray for the dismissal of the petition of plaintiffs-petitioners with costs.

Montreal, 27th January, 1930.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Attorneys for Defendants-Respondents.

40

No. 12.
Affidavit
of Lord
Shaugh-
nessy for
Defendants,
27th Janu-
ary 1930.

AFFIDAVIT

I, WILLIAM JAMES, BARON SHAUGHNESSY, of Montreal, residing at 3547 Peel Street, being duly sworn, do depose and say:—

*In the
Superior
Court,
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Montreal.*

No. 12.
Affidavit
of Lord
Shaugh-
nessy for
Defendants,
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continued.

1. I am one of the defendants-respondents herein.

2. I have read the foregoing answer of defendants-respondents to the petition of the petitioners for the appointment of a sequestrator, and all the allegations of fact therein contained are true to the best of my knowledge and belief.

And I have signed:

SHAUGHNESSY.

10 Sworn to before me at the City of
Montreal, in the Province of Quebec
this twenty-seventh day of January,
1930.

J. WOOD,

Commissioner of the Superior
Court for the District of Mont-
real.

20

AFFIDAVIT

I, ALEXANDER MORRISON REAPER, of Montreal, residing at 391
Melrose Avenue, being duly sworn, do depose and say:—

1. I am one of the defendants-respondents herein.

30 2. I have read the foregoing answer of defendants-respondents to the petition of the petitioners for the appointment of a sequestrator, and all the allegations of fact therein contained are true to the best of my knowledge and belief.

And I have signed:

A. M. REAPER.

40 Sworn to before me at the City of
Montreal, in the Province of Quebec
this twenty-seventh day of January,
1930.

J. WOOD,

Commissioner of the Superior
Court for the District of Mont-
real.

*In the
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Montreal.*

No. 14.
Plaintiffs'
Replication
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REPLICATION TO ANSWER TO PETITION FOR
SEQUESTRATION

(A) Plaintiffs-Petitioners, for reply to defendant's Answer to their Petition for Sequestration herein, say:—

10 (1) Paragraphs 1, 2, 3 and 4 are denied as being unfounded in law and in fact;

(2) Except insofar as paragraphs 5, 6, 7, 8, 9 and 10 agree with the terms of the Will of the late Sir Mortimer Davis, the same are denied, and form no answer, in law or in fact, to the grounds invoked in the Petition, all of which were subsequent to the death of the said Testator;

(3) Paragraphs 11 and 12 are denied;

20 (4) Plaintiffs aver that the notice of meeting referred to in paragraph 13 was only issued by defendants after female plaintiff had demanded their resignation as Executors and Trustees, and also as Directors and Officials of the Incorporated and Alcohol Companies, and having been theretofore kept uninformed by defendants as to the position of the Incorporated Company, female plaintiff was justified in refusing at that stage to accept any responsibility for the consequences of defendant's conduct and the meeting in question was never proceeded with;

30 (5) The facts alleged in paragraph 14 are irrelevant to the demand for Sequestration, and moreover, defendants ignored serious irregularities pointed out in the reports of the Auditors;

(6) Paragraph 15 is denied;

(6) Paragraph 16 is irrelevant to the demand for Sequestration;

40 (8) Paragraph 17 is denied as being unfounded in law and in fact. The sole object of the Petition for Sequestration is to preserve the direct and indirect assets of the Estate;

(9) Paragraph 18 is denied, and moreover, is wholly irrelevant;

(10) Paragraphs 19, 20 and 21 are denied as being unfounded in law and in fact.

(11) Paragraphs 22 and 23 are denied;

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(12) Paragraph 24 is denied;

(13) Plaintiffs pray *acte* of the admission contained in Paragraph 25;

(14) In answer to paragraph 26, plaintiffs aver that during the lifetime of Sir Mortimer Davis, defendants' connection with the Incorporated and Alcohol Companies was only as his mandataries, and not otherwise;

10

(15) Plaintiffs join issue upon the denials contained in paragraphs 27 and 28 of the Answer;

(16) Plaintiffs deny paragraph 29 (a). Defendant Shaughnessy's connection with the Alcohol Company before the death of Sir Mortimer Davis was solely as his mandatary;

20

(17) Plaintiffs deny paragraph 29 (b). Although frequently absent from Canada, the late Sir Mortimer Davis kept in close touch with the affairs of the Alcohol Company and directed every move made therein by the defendant Shaughnessy;

(18) Plaintiffs deny paragraph 29 (c). The success which attended the Alcohol Company following the death of the late Sir Mortimer Davis was solely due to the latter's control and direction during his lifetime;

30

(19) Plaintiffs deny paragraph 29 (d). A merger of the Alcohol Company with its competitors under existing conditions would inevitably prejudice the interests of its Shareholders at large, and of the Estate in particular as owning the control thereof;

(20) Plaintiffs deny paragraph 29 (e). A merger of the Alcohol Company with its competitors on any terms obtainable under the present conditions would only intensify and render permanent the loss suffered by the Estate due to the gross mismanagement thereof by the defendants to date;

40

(21) Plaintiffs deny paragraph 29 (f), and reiterate that defendants have been negotiating with a view to disposing of the control of the Alcohol Company without informing the female plaintiff with respect thereto, and so far from having advised on October 18th last with respect to such negotiations, defendant Shaughnessy, on that occasion, emphatically declared that there was no foundation whatever for the rumour that negotiations were being carried on at that time, nor was she thereafter ever advised by defendants of any

negotiations until after the institution of the principal action herein, that is to say by the receipt of the letter of their Attorneys on January 18th, 1930, at 10:40 a.m., which was two days subsequent to the issue of the principal action herein, and at the very moment when the same was being handed to the Bailiff for service;

10 (22) Paragraph 29 (g) is denied. Defendants, up to this moment, have never supplied female plaintiff with any information as to the parties concerned, terms or conditions of their negotiations, and she has never been in a position to consider the same;

(23) Plaintiffs join issue on the denials contained in paragraphs 30 and 31.

(24) Plaintiffs pray *acte* of the admissions contained in paragraphs 32, 33 and 34;

(25) Paragraph 35 is false and is denied;

20 (26) Paragraphs 26, 37, 38 and 39 are denied;

(27) Paragraph 40 as alleged is denied;

(28) Paragraph 41 is denied; and defendants reiterate the allegations of paragraph 14 of this Reply.

(29) Plaintiffs join issue on the denial contained in paragraph 42;

30 (30) Paragraph 43 is admitted;

(31) Plaintiffs pray *acte* of the admission contained in paragraph 44;

40 (32) Paragraphs 45 and 46 as alleged are denied. It was thoroughly understood and agreed that the speculative marginal account with Bamberger Brothers was to be closed out forthwith, and the Liggett & Myers stocks which were then being dealt in at or about 104 could have been sold by defendants at or about that figure in May 1928 and in January 1929, but at times has been as low as 80, representing a depreciation of approximately \$250,000, which the Estate has been exposed to lose;

(33) Paragraphs 47 and 48 are false and are denied;

(34) Paragraphs 49, 50 and 51 are false and are denied;

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(35) Paragraphs 52, 53 and 54 are false and are denied. Jen-
nison's name was never mentioned by defendant Shaughnessy in
London to female plaintiff, and she never in any manner approved
of the policy outlined to her by defendant Shaughnessy on that
occasion;

(36) Paragraph 55 is false and is denied;

10 56; (37) Plaintiffs join issue on the denials contained in paragraph

(38) Paragraph 57 as alleged is denied;

(39) Paragraph 58 is denied, except as to the receipt by female
plaintiff of the letter Exhibit No. D-3, which is admitted;

(40) Paragraphs 59 and 60 are false and are denied;

20 (41) Plaintiffs pray *acte* of the admission contained in para-
graph 61; otherwise said paragraph is false and is denied;

(42) Plaintiffs pray *acte* of the admission contained in para-
graph 62; otherwise said paragraph is denied. On or about Nov-
ember 26th, 1929, the undersigned Attorney interviewed defendants'
Attorneys and Counsel, and informed them fully as to practically
all of the matters set out in plaintiffs' declaration, which informa-
tion was supplemented from time to time over a period of the seven
weeks following, during which plaintiffs forbore instituting proceed-
30 ings for the removal of defendants from office.

(43) Plaintiffs join issue with defendants upon the denials con-
tained in paragraph 63;

(44) Paragraph 64 is false and is denied;

(45) Paragraph 65 is wholly false and is denied;

40 (a) the pretense that the appropriation by defendant
Shaughnessy of the furniture, etc., "*in part satisfaction*" of the
legacy of \$1,000 "*wherewith to purchase a memento*," is a mere
afterthought, put forward by defendant Shaughnessy in bad
faith in an effort to shield himself from the consequences of
his illegal conduct in the connection;

(b) on or about May 9th, 1928, defendant Shaughnessy
declared to female plaintiff that he would not avail himself of

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the legacy of \$1,000 but desired, in lieu thereof, to receive from among the jewellery of the late Sir Mortimer Davis, (all of which was bequeathed to male plaintiff), some object which had been used personally by the Testator during his lifetime, and thereupon, at the instance of female plaintiff, male plaintiff gave and donated to defendant Shaughnessy the Testator's platinum watch and chain, worth approximately \$1,000, which was accepted by defendant Shaughnessy in lieu of said bequest of \$1,000;

10

(c) the appropriation of defendant Shaughnessy of the furniture, etc. complained of, took place subsequently to the adjustment of said \$1,000 legacy recited in the next preceding sub-paragraph;

20

(d) moreover, the sum of \$1,000 bears no proportion to the value of the furniture taken, not to speak of the depreciation caused to the saleable value of the property as a furnished house; the dining-room furniture in question having been especially designed to match the expensive panelling of the room;

30

(46) Paragraph 66 is wholly false and is denied. The pretense that the said car was taken by the defendant Shaughnessy "for the purpose of verifying its condition and determining whether it could be put in sufficient repair to be used or disposed of" is another mere afterthought on the part of the defendant Shaughnessy, and resorted to by him likewise in an effort to escape the consequence of his illegal conduct;

(47) Paragraph 67 is false and is denied; and in any event, acts of courtesy by the late Sir Mortimer B. Davis during his lifetime did not justify defendant Shaughnessy in occupying and making use of, with his family and others, the property in question;

(48) Paragraph 68 is denied. The so-called Deed of Gift is non-existent, being void *ab initio*, and plaintiffs are entitled to invoke such nullity as they do in the present action;

40

(49) Paragraph 69 and 70 as alleged are denied. Female plaintiff never agreed to any purchase of the Marler stock by the defendant Shaughnessy, and the same were never purchased by the Trustee referred to, but on the contrary, were purchased by and always remained the property of the Estate;

(50) Paragraph 71 (a) is false and is denied;

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(51) As to paragraph 71 (b): Article XXIII of the Will therein referred to was subordinate to the other clauses of the Will, whereby the Testator directed the payment of his debts, Succession Duties, legacies, annuities and residue of revenue;

(52) Paragraph 71 (c) is admitted;

(53) Paragraph 71 (d) is false and is denied;

10 (54) As to paragraph 71 (e): Plaintiffs aver that the same constitute an admission of their complaint against defendants for failing to distribute the surplus and/or earnings of the Incorporated Company, following the death of the late Sir Mortimer Davis on March 22nd, 1928; and further aver that the activities of the defendants in that connection in December 1929 were, after their resignation had been demanded, and while the plaintiffs were forbearing entering suit for their removal from office;

20 (55) Paragraph 71 (f) is denied. The first intimation received by female plaintiff as joint Executrix of the Estate, was in December 1929, after she had demanded the resignation of the defendants. In any event, the pretended arrangement therein alluded to, if true, would be but a further acknowledgment of the plaintiffs' complaint as to the failure of defendants to distribute the surplus of the Incorporated Company for the benefit of the Estate, following the death of the late Sir Mortimer Davis, was well-founded;

(56) Paragraph 72 is denied;

30 (57) Plaintiffs join issue on the denials contained in paragraph 73;

(58) Paragraph 74 is false and is denied;

(59) Paragraph 75 is denied as being unfounded in law and in fact;

40 (60) Paragraph 76 as alleged is denied. The so-called bonuses received by the defendant Shaughnessy from the funds of the Incorporated Company at the end of the calendar years 1925, 1926 and 1927 were pure gratuities to him from the late Sir Mortimer B. Davis, who was virtually the sole owner of the Incorporated Company; but defendant Shaughnessy had no right, with the connivance and assistance of the other defendant, and without any disclosure to the female plaintiff, at the end of 1928, while exercising the office of Director of the Incorporated Company as a mandatory of the Estate,

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to appropriate to himself the sum of \$5,000 from the funds of the Incorporated Company under the guise of a bonus of that amount, or to make the pretended increase of \$5,000 in his salary for the next current year; more especially in view of the fact that he was then receiving \$5,000 additional from the Estate for his services as Executor;

10 (61) Paragraph 77 as alleged is denied. The \$2,500 increase of the salary of defendant Reaper, which purports to have been made on December 31st, 1928, was made wholly without right, for the reasons assigned in the next preceding paragraph, and moreover, was further unjustified by reason of the fact that the defendant Reaper was also at the time in receipt of \$5,000 additional compensation as an Executor of the Will;

20 (62) Paragraphs 78 and 80 are denied. The Serial Notes, Shares and the amount of \$217,461.65 were the property of the Estate, and not of the defendant Shaughnessy, and were never, in law or in fact, held for his account, and could not and did not serve as collateral security for the loans of \$50,000 and/or \$10,000 referred to, neither of which have ever been repaid to the Company by the defendant Shaughnessy, and the Company holds no collateral for the payment of either thereof;

(63) Paragraph 79 is denied;

(64) Paragraph 81 is false and is denied: The said Marler shares were purchased and paid for by the Estate;

30 (65) Plaintiffs join issue on the denials contained in paragraph 82;

(66) Paragraph 83 is false and is denied;

40 (67) Paragraph 84 as alleged is denied: The Succession Duties in France and in England were of comparatively trivial amount, and the Succession Duties in Canada could and should have been adjusted and paid within the first few months after the defendants took office;

(68) Paragraph 85 is denied as being unfounded in law and in fact;

(69) Paragraph 86 as alleged is denied. Such offers as were communicated to, and not approved by female plaintiff, were not reasonably sufficient for the property concerned;

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(70) Paragraphs 87 and 88 are denied. Defendants neglected to take any adequate means to dispose of the McNish debentures, forming the principal collateral of the original loan, or of the Alcohol " B " stock, and in the meantime said securities have depreciated enormously, to the great prejudice of the Incorporated Company and the Estate;

(71) Paragraph 89 as alleged is denied;

10 (72) Paragraph 90 is false and is denied;

(73) Paragraph 91 is denied. There was no occasion whatsoever for defendants to attempt to support the market for Alcohol " A " shares, and no attempt was made to do so as to Alcohol " B " shares;

(74) Plaintiffs join issue on the denials contained in paragraphs 92 and 93;

(75) Paragraph 94 is denied;

20

(76) Paragraph 95 as alleged is denied. In any event, the financial condition of the Estate and the Incorporated Company was such as to render wholly unjustified the disbursement of any funds for the promotion and/or financing of Cadillac Coal Company, and what was done was in no way altered by the pretended approval of defendants, purporting to act as a Board of Directors of the Incorporated Company;

30 (77) Paragraph 96 is denied. The disbursements made were and are wholly unjustified;

(78) Paragraphs 97 and 98 are denied. The manner of dealing with either the interest on said \$3,000,000 Serial Notes or the redemption of the entire issue thereof, during the lifetime of said late Sir Mortimer Davis is wholly irrelevant, and furnishes no excuse for the negligence of defendants complained of in respect thereto;

(79) Paragraph 99 as alleged is denied;

40

(80) Paragraphs 100 and 101 are denied;

WHEREFORE plaintiffs reiterating the allegations of their Petitions for the Appointment of a Sequestrator, pray the dismissal of said Answer with costs.

Montreal, January 30th, 1930.

W. K. McKEOWN,
Attorney for Plaintiffs-Petitioners.

AFFIDAVIT

*In the
Superior
Court,
District of
Montreal.*

No. 15.
Affidavit of
Lady Davis
for Plain-
tiffs,
30th Janu-
ary 1930.

I, LADY DAVIS (Dame Eleanor Curran), residing at the Ritz-Carlton Hotel, No. 1228 Sherbrooke Street, West, in the City and District of Montreal, have duly sworn, depose and say:

1. I am one of the plaintiffs-petitioners herein;

10 2. I have read the foregoing Replication of plaintiffs-petitioners to defendants' Answer to the Petition of the plaintiffs-petitioners for "the Appointment of a Sequestrator," and all of the allegations of fact contained in said Replication are true to the best of my knowledge and belief.

And I have signed,

ELEANOR DAVIS.

20 Sworn, taken and acknowledged before me at the City and District of Montreal, this 30th day of January, 1930.

H. W. JACKSON,

Sworn Commissioner of the Superior Court for the District of Montreal.

30 REPLY TO REPLICATION UPON PETITION FOR SEQUESTRATION

1. Defendants deny paragraphs 2, 4, 5, 8, 14, 16, 17, 18, 19, 20, 21, 22, 32, 35 and 42 of the said replication.

2. Clauses (a), (b), (c) and (d) of paragraph 45 of the said replication are false and malicious and are denied.

40 3. What occurred with regard to the watch concerning which false allegations are made in paragraph 45 of the replication was that a few weeks after the death of the late Sir Mortimer Davis, his son, the plaintiff M. B. Davis, was in hospital at New York and when the defendant Shaughnessy called upon him there the plaintiff M. B. Davis expressed the desire and intention to give defendant Shaughnessy the watch as a mark of appreciation from the plaintiff M. B. Davis himself and when the defendant Shaughnessy was reluctant to accept a part of the plaintiff M. B. Davis' own property, the latter

No. 16.
Defendants'
Reply to
Replication
re Seques-
tration
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4th Febru-
ary 1930.

*In the
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No. 16.
Defendants'
Reply to
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ary 1930—
continued.

insisted upon his accepting it from him, which defendant Shaughnessy did and the gift so made by the plaintiff M. B. Davis to defendant Shaughnessy did not have and could not have any bearing or effect whatsoever upon defendant Shaughnessy's rights under the legacy to him contained in the Will of the late Sir Mortimer Davis.

4. Defendants deny paragraphs 46, 47, 48, 49, 51, 54, 55, 60, 61, 62, 67, 69, 70, 73, 76 and 78 of the said replication.

10 5. Defendants join issue upon all the other allegations of the said replication.

WHEREFORE defendants pray that plaintiffs' replication be dismissed with costs.

Montreal, 4th February, 1930.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Attorneys for Defendants.

20

SUR-REPLY TO REPLY UPON THE PETITION FOR
SEQUESTRATION

No. 17.
Plaintiffs'
Sur-Reply
re Petition
for Seques-
tration,
12th Febru-
ary 1930.

(A) Plaintiffs, for Sur-Reply to the Reply of defendants to plaintiffs' Replication upon the Petition for Sequestration, aver:—

30 (1) Plaintiffs join issue with defendants upon the denials contained in paragraphs 1 and 2 of said Reply;

(2) Paragraph 3 of said Reply is wholly false and is denied;

(3) Plaintiffs join issue upon the denials contained in paragraph 4 of said Reply.

WHEREFORE, plaintiffs pray the dismissal of defendants' said Reply with costs.

40 Montreal, February 12th, 1930.

W. K. McKEOWN,
Attorney for Plaintiffs-Petitioners.

*In the
Superior
Court,
District of
Montreal.*

No. 18.
Plaintiffs'
Motion to
further
Amend
Petition for
Sequestra-
tion,
14th June
1930.

MOTION TO FURTHER AMEND PETITION FOR
APPOINTMENT OF SEQUESTRATOR

THAT Plaintiffs-Petitioners be permitted *seance tenante* to further amend the Conclusions of their Petition herein for the appointment of a Sequestrator in the manner and form as follows, to wit:

- 10 1st. By striking from the Conclusions thereof the following words:
- (a) "*in lieu of Defendants*";
 - (b) "*jointly with the Female Plaintiff*"; and
 - (c) "*Defendants as*";

2nd. By adding after the words "*and each and every part to be*" the following words, namely, "*delivered into the possession of ana to be effectively placed and registered in the name of, and to be*";

- 20 3rd. By adding after the words "*exercised by such Executors and Trustees*" the following words, "*either alone or jointly with the Female Plaintiff, as may be ordered*";

The whole with costs.

MONTREAL, June 14th, 1930.

W. K. McKEOWN,
Attorney for Plaintiffs-Petitioners.

30

NOTICE

To:
MESSRS. MEREDITH, HOLDEN, HEWARD & HOLDEN,
Attorneys for Defendants;

and to:

MESSRS. GOLDSTEIN & ENGEL,
Attorneys for Mis-en-Cause.

40 Sirs:

YOU ARE HEREBY NOTIFIED *seance tenante* of the foregoing Motion which will be presented forthwith and you are required to govern yourselves accordingly.

MONTREAL, June 14th, 1930.

W. K. McKEOWN,
Attorney for Plaintiffs-Petitioners.

PETITION FOR INTERLOCUTORY INJUNCTION

(A) To the Superior Court in and for the District of Montreal, or to any one of the Honourable Judges of said Court, sitting in the Practice Division thereof, for matters in and for said District;

(B) The Petition of said Plaintiffs

*In the
Superior
Court,
District of
Montreal.*

No. 19.
Plaintiffs'
Petition for
Inter-
locutory
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21st Janu-
ary 1930.

10

RESPECTFULLY SHOWETH:

I

1. THAT as appears by the Writ of Summons herein issued on January 16th, instant, 1930, and by the subjoined Declaration, the principal action has been brought by the Plaintiffs to remove Defendants from the offices of Joint Executors and Trustees under the Last Will of the late Sir Mortimer Barnet Davis, who died on March 22nd, 1928, duly probated, said Will, by this Court under
20 date April 18th, 1928: (See Declaration, Paragraph 1, and Conclusions);

2. THAT as appears by the return of the Bailiff endorsed upon said Writ of Summons, said action was duly served upon Defendants and the Mis-en-Cause on January 18th, 1930, and was duly returned on January 20th, 1930, and is now pending before said Court;

30 3. THAT as further appears by said Declaration, Female Plaintiff is the widow of said late Sir Mortimer Barnet Davis, and is one of the residuary legatees, and an Executrix under said Will, and she is also a Shareholder and Director of Sir Mortimer Davis Incorporated, referred to throughout Plaintiffs' Declaration as "the Incorporated Company": (See Declaration, Pars. 2 and 3);

4. THAT as further appears by said Declaration, Male Plaintiff is the only son of said late Sir Mortimer Barnet Davis, and is the other residuary legatee, under the Will of his said late father:
40 (See Declaration, Par. 4);

II

5. THAT as further appears by said Declaration, the Plaintiffs' said demand for the removal of Defendants from said offices of Executors and Trustees is based upon the following grounds:

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(a) that they have failed and neglected to do and perform the acts required of them, as well by said Will as by law;

(b) that they have infringed their duties as such Executors and Trustees;

(c) that they have dissipated and wasted the property of both the Estate and the Incorporated Company;

10 (d) that their administration of the property of the Estate and of the Incorporated Company exhibits their incapacity, dishonesty and total unfitness to hold and exercise such offices as Executors and Trustees; reference being hereby made insofar as the same may be necessary or useful, to the several allegations of said Declaration, with the same effect as though all of such allegations were re-stated *verbatim* in the present Petition: (See Declaration, Pars. 39 and 40);

III

20

6. THAT as further appears by said Declaration, the Incorporated Company is merely an arm of the Estate, which owns approximately 95% of the Capital Stock thereof: (See Declaration, Pars, 6, 7 and 8);

30 7. THAT as further appears by said Declaration, the principal asset of said Estate, held through the medium of the Incorporated Company, is the controlling interest of Canadian Industrial Alcohol Company, Limited, referred to in the Declaration as "the Alcohol Company": (See Declaration, Par. 12);

8. THAT as further appears by said Declaration, Defendants hold office as Directors and officers of the Incorporated Company only in virtue of the fact of their appointments as Executors and Trustees under said Last Will, the Estate being the beneficial owner of the qualifying shares upon which they were so appointed such Directors: (See Declaration, Par. 9);

40 9. THAT as further appears by said Declaration, Defendants, likewise in virtue of and by reason of their offices as such Executors and Trustees, and of their intermediate offices of Directors of the Incorporated Company, and for no other reason whatsoever, have been elected or appointed to the Board of Directors of the Alcohol Company, Defendant Shaughnessy being also the President thereof: (See Declaration, Par. 13);

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10. THAT as further appears by said Declaration, Defendants hold and exercise such offices of Directors and officers of both the Incorporated and Alcohol Companies only as the agents and mandatories of the Estate, and in so holding and exercising such offices, are in a fiduciary capacity towards the Estate: (See Declaration, Par. 10);

11. THAT as further appears by said Declaration, in law, Defendants are answerable and accountable, as such Executors and
10 Trustees, for their acts as Directors of the Incorporated Company and/or of the Alcohol Company; (See Declaration, Pars. 14 and 63);

12. THAT as further appears by said Declaration, the control of the Alcohol Company, so held by the Incorporated Company for the Estate, is represented as follows:

496,300 "A" shares, No Par value, entered at . . . \$9,926,000
56,080 "B" shares entered at \$1,121,600,

20 forming together a total of \$11,047,800, which exceeds in amount the combined Capital and Surplus of the Incorporated Company, of \$10,116,763.96, as of date September 30th, 1929: (See Declaration, Par. 107);

13. THAT as further appears by said Declaration, the value of \$11,047,600, so placed upon the shares of the Alcohol Company, so held by the Incorporated Company for the Estate, is based upon \$20.00 per share, although as a matter of fact, said shares have, since the death of the late Sir Mortimer Barnet Davis, been dealt in at
30 very much higher figures, the "A" stock having sold above 50 and the "B" stock above 47, at which latter quotations the value of said Alcohol shares would be represented by the sum of \$27,450,760: (See Declaration, Par. 108);

14. THAT as further appears by said Declaration, Defendants have systematically kept Female Plaintiff uninformed with respect to the administration of the direct and indirect assets of the Estate, and have withheld from her important information with reference to both the Incorporated and Alcohol Companies, in particular: (See
40 Declaration, Pars. 60, 64 and 65);

15. THAT on October 4th, 1929, in reply to an inquiry by Female Plaintiff for information respecting rumours which had reached her to the effect that Defendant Shaughnessy was then carrying on negotiations for a sale or merger of the Alcohol Company, Defendant Shaughnessy, in denying the same, gave his undertaking in the following terms:

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“ To my certain knowledge, there has not even been a sug-
“ gession of negotiating with any one concerning the sale of the
“ Alcohol Shares and during my absence, apart from
“ interviewing the Liquor Commissioners in the various prov-
“ inces, I have not seen any one even remotely connected with
“ the business.

10 “ This rumour must therefore be added to the many which
“ have adorned the press recently, and for which I am at a loss
“ to account. I can assure you, however, that *not even a com-
“ mencement of discussion will ever take place without you
“ being fully consulted and advised.*”

20 16. THAT as further appears by said Declaration, Female
Plaintiff, on November 21st, 1929, formally demanded that Defend-
ants resign, as well as Executors and Trustees, as Directors and offi-
cials of the Incorporated and Alcohol Companies, and informed them
of her determination to apply to the Courts for their removal if such
demands were not complied with: (See Declaration, Par. 38);

17. THAT Defendants, on and since January 13th, 1930, have
had reason to know, and did know, that the institution of the prin-
cipal action herein for their removal as Executors and Trustees was
imminent, and that the same was actually listed from said Court on
January 16th, 1930;

30 18. THAT as further appears by said Declaration, Plaintiffs
have reason to believe, and now allege, that notwithstanding the
premises, and in particular the facts hereinabove set forth in para-
graphs 15, 16 and 17, Defendants, for some time past, have been
carrying on negotiations with persons, firms, corporations or inter-
ests, whose identity is still unknown to Female Plaintiff, for some
kind of a sale, exchange, consolidation, merger or other kindred
transaction, all of the terms and conditions of which Defendants
have, however, purposely kept hidden from and undisclosed to
Female Plaintiff: (See Declaration, Pars. 65 and 113);

40 19. THAT the only semblance of a disclosure with respect to
such negotiations made to Female Plaintiff, by Defendants, was by
way of a letter from their Counsel, addressed to the undersigned, and
delivered at 10.40 A.M. on Saturday last, January 18th, containing,
in the vaguest language conceivable, reference to such negotiations;
it being obvious that the Defendants caused said letter to be for-
warded in an attempt to deter Plaintiffs from proceeding with the
principal action herein, which had issued two days earlier and was,

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at that very moment, being handed to the Bailiff, with instructions for service;

10 20. THAT Plaintiffs have good reason to believe, and now allege that Defendant, while keeping their co-Executor (Female Plaintiff) absolutely in the dark upon the subject, have proceeded with said negotiations, at least to a point of discussing and offering prices, terms, conditions and stipulations, in return for which, the control of the Alcohol Company, presently held by and for the Estate as aforesaid, would permanently pass into other hands;

21. THAT as appears by said Declaration, the 352,380 Shares representing the control of the Alcohol Company, have already suffered a depreciation of approximately \$20,000,000 from the value of the same, based upon the quotations at which the said Shares were dealt in since Defendants took office and began their administration of the affairs of the Estate and of the Incorporated and Alcohol Companies: (See Declaration, Par. 112);

20 22. THAT while wholly uninformed as to the nature and terms of the proposed transaction, Plaintiffs are satisfied that in view of the known condition of the industry as also to the general financial depression, the present is a most unpropitious time for the Estate to engage in any transaction involving any change of ownership in the control of the Alcohol Company, and that any such attempt would inevitably produce great and irreparable injury, damage and prejudice to the Estate in general and to the Plaintiffs in particular;

30 23. THAT moreover, Defendants in so conducting negotiations without the knowledge or participation of Female Plaintiff are uselessly depreciating the value of the Shares representing said control of the Alcohol Company and are seriously prejudicing all future dealings with the same by and on behalf of the Estate, and are thereby causing and producing waste and great and irreparable injury to the Estate in general, and to the Plaintiffs in particular;

40 24. THAT the Annual General Meeting of the Alcohol Company, called for December 17th, 1929, stands adjourned until January 22nd, instant, 1930, at 2 P.M., in the Company's Head Office in the City of Montreal;

25. THAT following the institution of the principal action, Plaintiffs duly applied for the appointment of a Sequestrator, which application is being resisted by Defendants, and has been fixed for proof and hearing on January 31st, instant, 1930, and in the meantime, Defendants are continuing to exercise said offices as Executors

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and Trustees under said Will, and as Directors and Officers of said Incorporated and Alcohol Companies;

26. THAT Plaintiffs have just cause to fear, and they now allege that Defendants are about to violate Plaintiffs' rights in the principal action herein by consummating the transaction, the out-growth of said negotiations, in whatever form the same may take, but having for effect to irretrievably lose to the Estate the control of the Alcohol Company, and that Defendants propose either at the said adjourned Annual or other Meeting of the Alcohol Company, to further abuse the fiduciary positions held by them as the agents and mandataries of the Estate, to put, or cause to be put, before the Shareholders of the Alcohol Company, the proposal resulting from said negotiations, and to vote and use said control of the Alcohol Company so held by and for the Estate through the Incorporated Company, to support such proposal;

27. THAT under the circumstances, either the sale of said share control of the Alcohol Company, or any merger of that Company with any other corporation, or any exchange of Shares or any sale of the Assets of the Alcohol Company, or any other kindred transaction by or through Defendants, would constitute a violation of the rights of Plaintiffs, respecting the subject matter of the principal action, and would be of a nature to render the final Judgment therein ineffectual;

28. THAT Plaintiffs are entitled to demand that pending the final adjudication upon the principal action, the *status quo* be maintained;

29. THAT without the benefit of the issue of the Interlocutory Injunction hereby prayed for, Plaintiffs, in addition to suffering great and irreparable injury, loss and damage as aforesaid, will be further prejudiced by the fact that the final Judgment to be rendered upon the principal action will be rendered ineffectual;

30. THAT Plaintiffs are entitled to the issue of such Interlocutory Injunction, and pending the granting of the same, to the issue of an Interim Injunction to like effect, to remain in force during the time therein specified;

31. THAT Defendants have no personal interest in the said share control of the Alcohol Company, and will suffer no damage, loss or injury whatever by the issue of such Interlocutory Injunction, whereas, if the same is refused, Plaintiffs, as already alleged, will suffer great and irreparable loss, injury and damage, and will be

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deprived in large part of their rights sought to be exercised by the principal action, and the balance of convenience is altogether in favour of Plaintiffs;

32. THAT Plaintiffs make express reservation of such other and further recourse as they may have against Defendants and all others concerned, in the premises;

10 WHEREFORE Plaintiffs-Petitioners pray, that seeing the affidavit hereunto annexed, and in view of the security which Plaintiffs-Petitioners declare themselves ready and willing to furnish in accordance with such Order touching the same as may be made upon the present Petition, that an Interlocutory Injunction be issued, to be served along with the Petition and pursuant to C.P. 965, to restrain Defendants, their servants, agents, and employees, and all others, under pain of all legal penalties and forfeitures, from changing, varying, modifying, disturbing and compounding, in any manner or by any means whatsoever, each, all and every of the rights as at present
20 existing of the Estate of said late Sir Mortimer Barnet Davis in any manner attaching to or flowing from the 496,530 Common or Class "A" Shares and 56,080 Class "B" Shares, all without nominal or par value, of Canadian Industrial Alcohol, constituting the control of that Corporation and presently registered in the name of Sir Mortimer Davis Incorporated and without derogation from the generality of the foregoing to specially restrain Defendants from any and all acts in the exercise of any authority, directly or indirectly resulting from their offices as Executors and Trustees of the Last Will of said late Sir Mortimer Barnet Davis as in their qualities of Shareholders,
30 Directors and/or Officers of said Sir Mortimer Davis Incorporated and/or Canadian Industrial Alcohol Company Limited by way of either negotiating, promoting or offering any species of undertaking, agreement, dealing or contract whatsoever for the sale, alienation, barter, exchange, consolidation, merger or other trafficking or dealing in said Shares representing the control of said Canadian Industrial Alcohol Company Limited, as also from voting or facilitating by means of the issue, granting and/or use of any proxy of said Shares so constituting such control of said Canadian Industrial Alcohol Company Limited; the whole in such a manner that until otherwise
40 ordered *on justice* the *status quo* shall be maintained with respect to the Shares constituting such control; and that it be further ordered that said Interlocutory Injunction, when issued, be served upon the Defendants along with the Petition; and further that said Interlocutory Injunction be by the final judgment to be rendered in said action, confirmed and made absolute, and permanent, and that a permanent and perpetual Injunction be granted Plaintiffs-Petitioners in the premises, and that the proceedings upon said Interlocutory Injunc-

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No. 19.
Plaintiffs'
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locutory
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continued.

10

tion be joined to the said action, insofar as same may be necessary and useful; and that pending the granting of said Interlocutory Injunction, an Interim Injunction to the same effect be granted Plaintiffs-Petitioners, to remain in force during such time as may be fixed, subject to being continued from time to time thereafter as may be ordered until the present Petition for an Interlocutory Injunction shall have been adjudicated upon or until otherwise ordered, and requiring said Defendants to appear before one of the Honourable Judges of said Court at such time and place as may be fixed to show cause, if any there be, why such Interlocutory Injunction should not be granted unto Plaintiffs-Petitioners, seeing the present Petition and sub-joined Affidavit and the security offered by Plaintiffs-Petitioners; the whole upon such conditions as to security, costs and otherwise as it may please your Lordship to order.

Montreal, January 21st, 1930.

W. K. McKEOWN,
Attorney for Plaintiffs-Petitioners.

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AFFIDAVIT

No. 20.
Affidavit of
Lady Davis
for Plain-
tiffs,
21st Janu-
ary 1930.

30

I, LADY DAVIS (DAME ELEANOR CURRAN), of Cannes, in the Republic of France, presently residing at the Ritz-Carlton Hotel, 1288 Sherbrooke Street West, in the City and District of Montreal, widow of the late Sir Mortimer Barnet Davis, Knight, being duly sworn, depose and say:

1. I am one of the Plaintiffs in the present action, and Petitioners in the foregoing Petition for the issue of an Interlocutory Injunction;

2. The facts alleged and set forth in the foregoing Petition are, to the best of my knowledge and belief, true and well founded.

AND I HAVE SIGNED:

40

ELEANOR DAVIS.

SWORN, TAKEN and ACKNOWLEDGED before me at the City and District of Montreal, this 21st day of January, 1930.

F. G. BUSH,
Sworn Commissioner of Superior Court
for District of Montreal.

NOTICE

TO:

THE RIGHT HONOURABLE LORD SHAUGHNESSY
(WILLIAM JAMES SHAUGHNESSY),

*In the
Superior
Court,
District of
Montreal.*

AND

ALEXANDER M. REAPER,

Said Defendants,

AND TO:

THE FEDERATION OF JEWISH PHILANTHROPIES
OF MONTREAL,

Mis-en-Cause.

SIRS:

20 YOU AND EACH OF YOU ARE HEREBY NOTIFIED of the
foregoing Petition and of the Affidavit in support thereof, and that
on Wednesday, January 22nd, 1930, at the hour of 10:30 of the clock
in the forenoon, or so soon thereafter as Counsel may be heard,
Plaintiffs-Petitioners will apply to one of the Honourable Judges of
the said Superior Court, sitting in the Practice Division thereof, in
Room No. 31 in the Court House in the City and District of Mont-
real, for matters in and for said District, for the granting of the
Interim Injunction as prayed for by said Petition; AND YOU ARE
30 FURTHER NOTIFIED that the Plaintiffs-Petitioners will then
and there be prepared to furnish and provide good and sufficient
security to the satisfaction of such Honourable Judge, that they will
pay all costs and damages which the Respondents may suffer by the
issue of such Interim Injunction and that the Surety which Plain-
tiffs-Petitioners will then and there bring forward to sign the Surety
Bond for such purpose is UNITED STATES FIDELITY & GUAR-
ANTY COMPANY, a corporation created and existing under the
laws of the State of Maryland, one of the United States of America,
and having its head office in the City of Baltimore in said State, and
also having an office and place of business in Montreal aforesaid, and
duly authorized and qualified according to law to become such
40 Surety; and that the solvency and sufficiency of such Surety will
then and there be justified if so required; and you are required to
govern yourselves accordingly.

Montreal, January 21st, 1930.

W. K. McKEOWN,
Attorney for Plaintiffs-Petitioners.

No. 20.
Affidavit of
Lady Davis
for Plain-
tiffs,
21st Janu-
ary 1930—
continued.

ANSWER TO PETITION FOR INJUNCTION

*In the
Superior
Court,
District of
Montreal.*

No. 21.
Defendants'
Answer to
Petition for
Injunction,
28th, Janu-
ary 1930.

The defendants-respondents for answer to plaintiffs' petition herein for interlocutory injunction say:—

10 1. The plaintiffs' declaration referred to in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of their petition must be interpreted by its terms, but defendants specially deny that the allegations of said paragraphs of said petition or of the plaintiffs' declaration therein referred to are well founded in fact or in law.

20 2. The document referred to in paragraph 15 must be interpreted by its terms and defendants allege that on the date when said document was written there were in fact no suggestions or negotiations with anyone concerning the sale of the Alcohol shares as far as defendants were aware and female plaintiff was in fact advised when discussions did late commence and female plaintiff has at no time expressed to defendants any objection to such discussions.

3. The declaration referred to in paragraph 16 must be interpreted by its terms, but defendants specially deny that its allegations are well founded in fact or in law.

4. Paragraph 17 as alleged is denied.

30 5. Paragraph 18 as alleged is denied. Female plaintiff has been informed by or on behalf of defendant Shaughnessy that certain purely tentative and preliminary discussions of the character mentioned have recently taken place, but such discussions are not sufficiently advanced or definite to warrant their disclosure by defendant Shaughnessy in his quality as President of the Canadian Industrial Alcohol Company Limited—in which quality alone he participated in any such discussions—and any further present disclosure by defendant Shaughnessy than was actually made would have been imprudent and unwise and against the interests of the said Canadian Industrial Alcohol Company Limited and its shareholders.

40 6. Paragraph 19 is denied. The letter therein referred to was written by defendants' attorneys in a further effort to prevent the injury that has been done and will be done to the Canadian Industrial Alcohol Company Limited and its shareholders and the Estate Sir Mortimer Davis by reason of the institution of litigation of the character of the litigation now pending at the instance of the plaintiffs.

*In the
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No. 21.
Defendants'
Answer to
Petition for
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28th Janu-
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7. Paragraph 20 is false and is specially denied. Defendants never contemplated any proposals for the disposition of the shares of Canadian Industrial Alcohol Company Limited held by Sir Mortimer Davis, Incorporated, without previous due and adequate discussion thereof with the female plaintiff and appropriate action by the board of directors and shareholders of the said Incorporated Company.

10 8. Paragraph 21 is denied. The allegations of plaintiffs' declaration referred to in paragraph 21 must be interpreted by their terms, but defendants specially allege that said allegations are unfounded in fact and that any depreciation in the market value of said shares was attributable to the changed conditions prevailing for the last year or more in the said industry as well as to general conditions and was shared by all other important companies engaged in the same line of business.

20 9. Paragraphs 22 and 23 are specially denied. Defendants believe that it is in the interests of the said Alcohol Company and of its shareholders and of the Estate of the late Sir Mortimer Davis that a merger of the said Alcohol Company with other competing companies be negotiated and if possible achieved on fair and suitable terms, but defendants have never contemplated or intended enforcing the acceptance of any such proposals or any resulting plans for a merger of the Alcohol Company against any reasonable objections by the female plaintiff who has not hitherto expressed any reason why proposals submitted by other parties interested in promoting such a merger should not be considered.

30 10. The adjournment referred to in paragraph 24 was arranged with the consent and concurrence of female plaintiff and the said annual general meeting has been further adjourned by order of this Honourable Court until the 26th February, 1930, at the instance of the plaintiffs herein.

11. The proceedings referred to in paragraph 25 are matter of record in this cause and speak for themselves.

40 12. Paragraph 26 is false and malicious and is denied and defendants reiterate the allegations of paragraph 9 hereof.

13. Paragraphs 27, 28, 29, 30 and 31 are denied.

WHEREFORE defendants-respondents pray the dismissal of plaintiffs petition with costs.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Attorneys for Defendants-Respondents.

AFFIDAVIT

*In the
Superior
Court,
District of
Montreal.*

I, WILLIAM JAMES, BARON SHAUGHNESSY, of Montreal, residing at 3547 Peel Street, being duly sworn, do depose and say:—

1. I am one of the defendants-respondents herein.

2. I have read the foregoing answer of defendants-respondents to the petition of the petitioners for interlocutory injunction, and all the allegations of fact therein contained are true to the best of my knowledge and belief.

And I have signed,

SHAUGHNESSY.

Sworn to before me at the City of Montreal, in the Province of Quebec, this twenty-eighth day of January, 1930.

H. W. SHEARER,
Commissioner of the Superior Court
for the District of Montreal.

AFFIDAVIT

I, ALEXANDER MORRISON REAPER, of Montreal, residing at 391 Melrose Avenue, being duly sworn, do depose and say:—

1. I am one of the defendants-respondents herein.

2. I have read the foregoing answer of defendants-respondents to the petition of the petitioners for interlocutory injunction, and all the allegations of fact therein contained are true to the best of my knowledge and belief.

And I have signed,

A. M. REAPER.

Sworn to before me at the City of Montreal, in the Province of Quebec, this twenty-eighth day of January, 1930.

H. W. SHEARER,
Commissioner of the Superior Court
for the District of Montreal.

No. 22.
Affidavit
of Lord
Shaugh-
nessy for
Defendants,
28th Janu-
ary 1930.

No. 23.
Affidavit
of A. M.
Reaper for
Defendants,
28th Janu-
ary 1930.

*In the
Superior
Court,
District of
Montreal.*

No. 24.
Plaintiffs'
Replication
to Answer
re Injunc-
tion Pe-
tition,
30th Janu-
ary 1930.

REPLICATION TO ANSWER TO PETITION FOR
INJUNCTION

(A) Plaintiffs-petitioners for reply to defendants' answer to their petition for an interlocutory injunction herein, say:—

10 (1) Plaintiffs join issue with defendants upon the denials contained in paragraph 1 of said Answer;

(2) Paragraph 2 is false and is denied;

(3) Plaintiffs join issue with defendants upon the denial contained in paragraphs 3 and 4;

(4) Paragraph 5 is false and is denied;

20 (a) Defendant Shaughnessy as a Director and Officer of the Alcohol Company, was in a fiduciary capacity towards the Estate of the late Sir Mortimer Davis, and was bound to disclose to the female plaintiff, as his Co-Executrix, any and all facts affecting the direct or indirect interests of the Estate in and concerning the shares representing the control of the Alcohol Company;

(b) This was more particularly so for the reason that the negotiations complained of would have resulted in the loss by the Estate of control of the Alcohol Company;

30 (5) Paragraph 6 is false and is denied; defendant Shaughnessy is solely responsible for any injury which has resulted, or which may result to the Alcohol Company, its Shareholders, or the Estate, due to the litigation which the plaintiffs have been compelled to institute for the protection of the rights of all concerned;

(6) Paragraph 7 is false and is denied;

(7) Paragraph 8 is false and is denied;

40 (8) Paragraph 9 is false and is denied; a merger of the Alcohol Company with its competitors, on any terms obtainable, under the existing conditions, would inevitably prejudice the interests of the shareholders at large of that Company, and in particular of the Estate as owning the control of the stock, and would intensify and render permanent the loss already suffered by the Estate, due to the gross mismanagement thereof by the defendants to date;

*In the
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Court,
District of
Montreal.*

No. 24.
Plaintiffs'
Replication
to Answer
re Injunc-
tion Pe-
tition,
30th Janu-
ary 1930—
continued.

(9) Paragraphs 10 and 11 are admitted;

(10) Plaintiffs join issue with defendants upon the denial contained in paragraphs 12 and 13;

WHEREFORE plaintiffs reiterating the allegations of their Petition for the issue of an interlocutory injunction, pray the dismissal of said Answer with costs.

10 Montreal, January 30th, 1930.

W. K. McKEOWN,
Attorneys for Plaintiffs-Petitioners.

AFFIDAVIT

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I, LADY DAVIS (Dame Eleanor Curran), residing at the Ritz-Carlton Hotel, No. 1228 Sherbrooke Street, West, in the City and District of Montreal, have duly sworn, depose and say:

No. 25.
Affidavit of
Lady Davis
for Plain-
tiffs,
30th Janu-
ary 1930.

1. I am one of the plaintiffs-petitioners herein;

2. I have read the foregoing Replication of plaintiffs-petitioners to defendants' Answer to the Petition of the plaintiffs-petitioners for the issue of an interlocutory injunction, and all of the allegations of fact contained in said Replication are true to the best of my knowledge and belief.

30

And I have signed,

ELEANOR DAVIS.

Sworn, taken and acknowledged before me at the City and District of Montreal, this 30th day of January, 1930.

40

H. W. JACKSON,
Sworn Commissioner of the Superior
Court for the District of Montreal.

REPLY TO REPLICATION UPON PETITION FOR
INJUNCTION

*In the
Superior
Court,
District of
Montreal.*

No. 26.
Defendants'
Reply to
Replication
re Injunc-
tion,
4th Febru-
ary 1930.

1. Defendants deny clauses (a) and (b) of paragraph 4 and paragraph 5 and paragraph 8 of the said replication.

2. Defendants join issue upon all the other allegations of the said replication.

10

WHEREFORE defendants pray that plaintiffs' replication be dismissed with costs.

Montreal, 4th February, 1930.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Attorneys for Defendants.

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