

The first of the series of sales agency contracts with McKesson appears to have been entered into on March 12, 1930, with Charles Manning & Company, Limited. In view of the reliance placed by the auditors upon these contracts as explaining the basis for the differences in the manner of handling all the fictitious foreign crude drug transactions they must be considered in some detail. The first contract with Charles Manning & Company, Limited was summarized in one of Price, Waterhouse & Co.'s papers as follows:

“MCKESSON & ROBBINS, INCORPORATED (CONNECTICUT)—  
EXTRACTS FROM MANNING AGREEMENT

\* \* \* \* \*

Dated: March 12, 1930.

Parties: Charles Manning & Company, Limited, 1396 St. Catherine St., West, Montreal, Canada, 1st party. McKesson & Robbins, Incorporated, McKesson & Robbins, Limited, 2nd parties.

Compensation: 2nd party to pay 1st party \$12,000.00 for services during 1930.

Service: 1st party agrees to give 2nd party preference on all purchase inquiries in their line, and whenever requested to handle shipping and forwarding.

Credits and guaranty. The acceptance or rejection of an order to be at discretion of 2nd party but 1st party unconditionally guarantees the full payment of all orders booked through them, in case of any default, upon 30 days notice from 2nd party in writing of such default, said liability to be limited to \$150,000.00. This guaranty to remain in full force and effect at all times that any sales made through 1st party remain outstanding and unpaid.

Term: One year from date.

Signed by CHAS. MANNING, *President*.

NOTE.—Balance sheet of the Manning Co. certified by the president shows net worth at Dec. 31, 1929 of \$582,404.65.<sup>165</sup>

In a supplement to the memorandum on accounts of the Connecticut Company for 1930, Thorn described the arrangement as follows:

“The orders covering the sales of bulk crude drugs are received from Manning & Co., Ltd., Montreal. Manning is the purchasing agent for several hundred retailers and jobbers throughout the British Empire. Manning's clients place all their foreign buying orders with him and he in turn places the order with a seller with whom he has a contract. He does not charge either party any commission. The buyer and seller each pay him a flat fee annually. In the case of McKesson & Robbins, they pay a fee of \$12,000.00 per year.”<sup>166</sup>

On or about August 1, 1931, there was a shift in the reputed sales agency arrangement from Manning to Smith and, in this connection, there were three separate documents in the contract file at Bridgeport.<sup>167</sup>

The first was an unsigned copy of an agreement dated August 1, 1931, between Manning & Company, a co-partnership of Montreal, Canada, and McKesson & Robbins, Incorporated (of Connecticut) and McKesson & Robbins, Limited (of Canada) to which was attached an unsigned copy of an agreement also dated August 1, 1931 between W. W. Smith & Company, Inc., and McKesson & Robbins, Incor-

<sup>165</sup> Ex. 89.

<sup>166</sup> Ex. 83.

<sup>167</sup> Ex. 206, 215, 216; R. 4348, 4459-4461.

porated (of Connecticut) and McKesson & Robbins, Limited (of Canada).<sup>168</sup>

The second was a separate copy of the agreement dated August 1, 1931, between W. W. Smith & Company, Inc., and McKesson & Robbins, Incorporated (of Connecticut) and McKesson & Robbins, Limited (of Canada) referred to above but signed by James Lamont as president of W. W. Smith & Company, Inc.<sup>169</sup>

The third was a digest of an agreement also dated August 1, 1931, which stated that—

“W. W. Smith & Co., a co-partnership of Liverpool, England unconditionally guarantees the performance of the contract entered into on August 1, 1931, by W. W. Smith & Co., Inc., \* \* \* insofar as the performance of W. W. Smith & Co., Inc., is concerned.”

The digest had been stamped “cancelled.”<sup>170</sup>

The first document, the copy of the agreement with Manning & Company dated August 1, 1931 first stated that—

“WHEREAS, the Connecticut Company for the joint and several benefit of itself and the Canadian Company did on March 12, 1930, enter into a contract with Charles Manning & Company, Limited, a Canadian corporation and whereby the latter agreed for the considerations therein set forth to render certain services in promoting the foreign trade of the Connecticut and of the Canadian Company and said contract has since been renewed for a period extending to March 12, 1932, and

“WHEREAS, the assets and business of the said Charles Manning & Company, Limited, have been acquired by said Manning & Company, which has assumed all of the liabilities of said Charles Manning & Company, Limited, and which has caused all the foreign and domestic buying and selling offices and agencies formerly owned and conducted by said Charles Manning & Company, Limited, to be transferred to W. W. Smith & Company, Inc., a New York corporation which it has caused to be organized for the purpose of acquiring the same and the said Manning & Company have requested the Connecticut Company and the Canadian Company to execute a new agreement with said W. W. Smith & Company, Inc., in lieu of said contract of March 12, 1930, as renewed and extended, all being in furtherance of the plans of said Manning & Company to conserve, for the benefit of said W. W. Smith & Company, Inc. (one hundred per cent (100%)), of the stock of which it owns, and indirectly for its own benefit the business and good will of said Charles Manning & Company, Limited;”<sup>171</sup>

and then provided in part that—

“3. Manning & Company expressly represent that it has acquired all of the foreign exchange and banking business formerly conducted by said Charles Manning & Company, Limited, and that hereafter such business will be conducted by it under its own name.

“4. Manning & Company hereby unconditionally guarantees the complete and prompt performance by W. W. Smith & Company, Inc., of all of the obligations

<sup>168</sup> Ex. 216.

<sup>169</sup> Ex. 206.

<sup>170</sup> Ex. 215. The auditors were apparently unaware of the first of the three documents just mentioned but assume the third to be in force during its term. See pages 63, 203-204 *infra*.

<sup>171</sup> Ex. 216.

and undertakings of the latter under and by virtue of the contract entered into between W. W. Smith & Company, Inc., with the Connecticut Company and the Canadian Company, a copy of which is hereto attached \* \* \*.

"5. The guarantee of Manning & Company of the said contract between the McKesson Companies and W. W. Smith & Company, Inc., extends to and includes the agreements of W. W. Smith & Company, Inc., with respect to the guaranteeing to the McKesson Companies the accounts of purchasers of goods under said contract \* \* \*.

"6. Manning & Company hereby further agree that they will at the request of the McKesson Companies, or either of them, at any time during the period of this contract, place at the disposal of the Connecticut Company, and/or the Canadian Company, credit accommodations on commercial credits not to exceed in the aggregate at any one time the sum of one million dollars (\$1,000,000) United States dollars, or the equivalent thereof in the currency of Great Britain, France, Germany, Italy, Austria, Sweden or Norway, said commercial letters and credits to be issued against shipments of merchandise and to be made available by bills of exchange payable at sight, or with maturities not to exceed one hundred eighty (180) days sight.

"The rates of commission to be charged by Manning & Company for the granting of such credits to be as follows:

Sight Credits.....	1/20 of 1%
30 days sight.....	1/40 of 1%
60 " ".....	1/8 of 1%
90 " ".....	1/4 of 1%
120 " ".....	1/2 of 1%
180 " ".....	3/4 of 1%

"It is understood and agreed that the above rates shall be subject to change from time to time to conform to the lowest schedule and prevailing market rates established from time to time by recognized commercial banks and bankers, and it is further understood and agreed that the proportion of said total of one million dollars (\$1,000,000) to be outstanding at one time shall be made available to the two McKesson Companies in such proportions as to each as the Connecticut Company may from time to time direct.

"7. The term of this agreement shall be for a period of two years beginning August 1, 1931 \* \* \*." 172

The second document, a copy of which was attached to the Manning agreement, was a contract between W. W. Smith & Company, Inc. (New York), and McKesson & Robbins, Incorporated (Connecticut), and McKesson & Robbins, Limited (Canada), and was also dated August 1, 1931.

First, it recited the same two "WHEREAS" clauses above quoted in the Manning & Company agreement which referred to the prior contract with Charles Manning & Company, Limited, the acquisition of that firm by Manning & Company, and the formation by Manning & Company of W. W. Smith & Company, Inc., the New York Company, as a wholly owned subsidiary, and then provided: 173

"NOW, THEREFORE, it is agreed between the parties hereto as follows:

"1. The New York Company expressly represents that it has acquired and now owns and controls all of the domestic and foreign buying and selling offices,

172 Ex. 216.

173 In view of the basic nature of this contract, its remaining provisions are set forth in full.

agencies and facilities formerly owned by Charles Manning & Company, Limited, and located in Canada, New York City, Australia, London (England), Hamburg (Germany), Hong Kong (China), Ceylon (India), Yokohama (Japan), Genoa (Italy), Bergen (Norway), and Marseilles (France), and that it will continue to conduct such offices and agencies under the corporate name of W. W. Smith & Company, Inc.

"2. All purchase inquiries received by the New York Company for drugs, chemicals and any other commodities dealt in by the McKesson Companies, or either of them, will be submitted to either or both of said McKesson Companies to enable them to submit prices and quotations on the same and in the event that the prices, quality, terms and conditions of sale quoted by the Connecticut and/or Canadian Company are as favorable as others received by the New York Company in the open market, the latter will grant a preference to the McKesson Company which has quoted such price and will place all such business with it.

"3. Whenever requested so to do by either of the McKesson Companies the New York Company will as forwarding agents and at its own expense, attend to and assume responsibility for the proper shipping, storing, forwarding, withdrawal, weighing, handling and insuring of all such goods and the securing of consular invoices or other documents convenient or necessary to expedite or insure the delivery thereof, all expense thereby incurred by the New York Company to be for the account of and billed to the purchaser by the New York Company as forwarding agents' charges, it being the intent hereof that delivery by the McKesson Companies shall consist of delivery f. o. b. New York.

"4. Neither the Connecticut Company nor the Canadian Company shall be obligated hereby to submit bids or prices in response to inquiries of the New York Company and either of them shall have the option to accept or reject, with or without cause, any order which the New York Company may seek to place with it.

"5. In consideration of a premium of one-half of one per cent (in addition to the service charge hereinafter provided for) of the total amount of any order placed under the provisions hereof, the New York Company will, if requested so to do in writing, unconditionally guaranty the full and prompt payment therefor by the purchaser in dollars, it being understood that the liability under this guaranty will become absolute thirty (30) days after written notice to the New York Company that such purchaser has defaulted payment in whole or in part, provided, however, that the total of accounts so guaranteed shall not at any time exceed the sum of \$350,000. The liability of the New York Company hereunder shall not be affected by the fact that the guaranty premium shall not have been actually paid in advance, it being the intention of the parties that such premium items shall be billed monthly to the McKesson Companies. In the event the New York Company is required to and does re-imburse either of the McKesson Companies as herein provided, then it shall be entitled to an assignment in its favor of the claim of such company against the defaulting purchaser.

"6. It is understood that the New York Company will transact business in other commodities than those dealt in by the McKesson Companies and with respect thereto may have occasion to make guaranties similar to those above referred to, but the New York Company hereby agrees that at no time while this contract is in effect will the total amount so guaranteed by it, under this contract and otherwise, exceed the sum of \$500,000.

"7. Inasmuch as the New York Company in its capacity as purchasing agent for foreign principals is precluded from collecting directly or indirectly any brokerage or commission from any seller, it hereby agrees that it will charge no brokerage or commission to either of the McKesson Companies on orders placed

by it with such companies but that the latter will bill to the purchaser at the actual net price such orders as are accepted.

"8. The McKesson Companies in full consideration of the services to be rendered by the New York Company hereunder (except the guaranty of accounts) will jointly pay to the New York Company a service charge at the rate of \$18,000. a year, the same to be payable in equal monthly installments of \$1,500. each, the first of such installments to become due thirty days after the date hereof, it being understood that the aforesaid service charge shall be payable regardless of the amount of business that shall accrue to the McKesson Companies hereunder. The McKesson Companies shall divide said total service charge of \$1,500. a month between them in such manner as they deem proper.

"9. The McKesson Companies will bill all purchasers in terms of dollars and wherever herein the term 'dollar' or its symbol is used the United States dollar is thereby intended.

"10. All sales made by the McKesson Companies hereunder shall be made direct to the purchaser and in no case to the New York Company (unless this be varied by written instructions to the contrary) and all documents representing the proceeds of such sales shall be in the name of either the Connecticut Company or the Canadian Company, provided, however, that nothing contained in this paragraph shall be construed to alter the liability assumed by the New York Company under Paragraph 3 hereof with respect to the forwarding, delivery and insuring of the shipments.

"11. The McKesson Companies agree that they or neither of them will while this contract is in effect solicit orders from any other brokers or commission merchants in any country where the New York Company maintains offices or agencies except in the United States and that they or either of them will not accept or execute orders from customers in any such country (other than the United States) and whose orders have at any time been referred by the New York Company to either of the McKesson Companies.

"12. This agreement shall remain in force for a period of two years from the date hereof, but the same may be cancelled by either party on ninety (90) days notice in writing, provided, however, that the termination hereof, either by expiration or cancellation, shall not alter the liability of the New York Company for outstanding commitments.

"13. The New York Company hereby assumes all of the outstanding liability of Charles Manning & Company under said contract of March 12, 1930, as renewed and extended and agrees to hold the McKesson Companies harmless on account of any future liability of the McKesson Companies or either of them thereunder."<sup>174</sup>

The third document, the digest of agreement with W. W. Smith & Co. also dated August 1, 1931, read as follows:

#### "DIGEST OF CONTRACT

"1. W. W. Smith & Co., a co-partnership of Liverpool, England, unconditionally guarantees the performance of contract entered into on August 1, 1931 by W. W. Smith & Co., Inc., and McKesson & Robbins, Inc. (Conn.) and/or McKesson & Robbins, Limited, insofar as the performance of W. W. Smith & Co. Inc. is concerned.

"2. McKesson & Robbins, Inc. (Conn.) and/or McKesson & Robbins, Ltd., have the right to enforce guarantee by an action against the co-partnership,

without first proceeding against or having execution returned unsatisfied against said W. W. Smith & Co. Inc." 175

In this connection, the minutes of a special meeting of the Board of Directors of McKesson & Robbins, Incorporated (Connecticut) held on September 3, 1931, recited that:

"The President stated to the meeting that the experience of the Company in its foreign business had demonstrated that it was inadvisable to maintain extensive branch offices or selling organizations in such countries and that such business could be more efficiently and cheaply handled by enlisting the services of reputable foreign buying commissionnaires and brokers and that this was the practice with a number of large American companies which had extensive foreign business. He pointed out that the Company thereby obtained the best informed advice as to foreign accounts and credits which it would be impossible for the Company to obtain directly in view of the practice in foreign countries in this respect. He added that this Company had used this method in the past with excellent results, especially with respect to the avoidance of credit losses, and that the expense represented by the commissions of such foreign commissionnaires, including their charges for the guaranteeing of accounts was fully justified and a great benefit to the Company. He stated that the officers of this Company had, therefore, negotiated a contract with Manning & Co. a co-partnership of Montreal, Canada and a subsidiary contract with W. W. Smith, Inc. a New York corporation, for the purpose of obtaining foreign representation of the kind hereinabove described. The President exhibited copies of said contracts to the meeting and explained that the amount to be paid to Manning & Co. was somewhat higher than that formerly paid but that in his opinion the charge was entirely reasonable and proper.

"On motion duly made and seconded and by the affirmative vote of all present the following resolution was adopted:

"RESOLVED, That the system of foreign representation as explained to the meeting by the President has the entire approval of this Board of Directors and that the action of the President and of the other executive officers of this Company in negotiating, executing and delivering, in the name of this Company, a contract with Manning Co., a co-partnership of Montreal, Canada, and of a subsidiary contract with W. W. Smith, Inc., a New York corporation, dated as of the first day of August, 1931 and in the form submitted to this meeting be, and the same hereby is approved, ratified and confirmed." 176

The minutes of a directors' meeting of the Canadian Company, also held on September 3, 1931, contained an identical recital.<sup>177</sup> These resolutions would appear clearly to refer to the first and second documents set forth above, the agreement with Manning & Company

<sup>175</sup> Ex. 215.

<sup>176</sup> Ex. 180.

<sup>177</sup> Ex. 179. Cf.

"You will probably recall that at the last meeting of the directors of McKesson & Robbins Ltd., which was preceded by a meeting of the directors of McKesson & Robbins Inc., the two meetings overlapped in such a way that it was hard to tell when the first was over and the second had begun, with the result that Mr. Coster did not know whether the directors of the Limited Company understood that he intended the resolution having to do with foreign representation by foreign commissionnaires to be passed by the Boards of both companies. I am writing to see if you so understood, and if you have any objection to the inclusion of the same resolution in the minutes of both companies. I have reached the other directors by telephone and they have all agreed." Ex. 204, letter of Jonathan Grout to Rowley W. Phillips, Sept. 16, 1931. With one exception at this time, the same men served on the board of both companies. Pages 119-120 *infra*.

and the agreement with W. W. Smith & Company, Inc., “\* \* \* a New York corporation which it [Manning & Company] has caused to be organized \* \* \* one hundred percent (100%) of the stock of which it owns \* \* \*,” and offer no explanation for the purported guaranty by the Liverpool partnership of W. W. Smith & Co.<sup>178</sup>

A Bradstreet's report, dated October 14, 1931, was obtained from McKesson by Price, Waterhouse & Co. in connection with the 1931 audit.<sup>179</sup> This report was reputedly on W. W. Smith & Co. and stated that this firm was “Established originally in 1857 \* \* \* at London \* \* \*” and “\* \* \* that in July 1931 this firm organized a corporation under the laws of the State of New York as W. W. Smith & Co., Inc. \* \* \*.”<sup>180</sup> A reproduction of this report is set forth on the following page.<sup>181</sup>

In later years, succeeding credit reports were also obtained on W. W. Smith & Co. These reports were similar to the first, reproduced herein, except that no reference was made to W. W. Smith & Company, Inc. and that the alleged financial resources of W. W. Smith & Co. increased appreciably.

Report	Date	Alleged resources of W. W. Smith & Co.
Ex. 207	Oct. 14, 1931	over \$ 2,000,000
Ex. 217	Jan. 30, 1934	between \$3-5,000,000
Ex. 218	Jan. 31, 1935	over \$ 5,300,000
Ex. 219	Jan. 30, 1936	over \$ 5,000,000
Ex. 52	Jan. 28, 1937	over \$ 6,000,000
Ex. 51	Jan. 29, 1938	almost \$ 7,000,000

The first two reports indicated an investigation at the W. W. Smith & Co. branch office, 191 Montague Street, Brooklyn, N. Y. and later reports indicated an investigation at the branch office at 1405 Bishop Street, Montreal, Canada. The first report was headed “Bradstreet's”, the next three “Consolidated Report, Foreign Departments, Dun & Bradstreet, Inc. National Credit Office”, and the last two “Dun & Bradstreet of Canada, Limited, Continuous Service.” All of these reports were forgeries.<sup>182</sup>

According to an abstract in the files of Price, Waterhouse & Co., the agreement “\* \* \* between W. W. Smith & Co. Inc. (N. Y.) and McKesson & Robbins, Inc. (Conn.) and McKesson & Robbins, Ltd. (Canada)” was extended for 2 years from August 1, 1933 to July 31, 1935, with the following changes: The guaranty premium was fixed at  $\frac{3}{4}$  of 1% instead of  $\frac{1}{2}$  of 1%. “The total of accounts of the McKesson Companies permitted to be guaranteed by the New York Company shall be \$700,000 instead of \$350,000.” Provision

<sup>178</sup> Ex. 216, 206.

<sup>179</sup> R. 568.

<sup>180</sup> Ex. 207.

<sup>181</sup> Ex. 207.

<sup>182</sup> R. 2081-2082, 4462.

## BRADSTREET'S

296- 9--23--31

W.W.SMITH &amp; CO.

William W. Smith

Howard C. Smith

George A. Smith

James Lamont

Walter C. Brown

PARTNERS

Oscar Smith ( Special Partner )

COMMISSION MERCHANTS  
PURCHASING, FORWARDING  
STEAMSHIP AGENTS.

(Branch Office)

191 Montague Street

Also Brooklyn N.Y.

Montreal, Hamburg, Genoa,

Liverpool, Marseilles,

Melbourne, Geylon, Bombay

Honkong.

Established originally in 1857 as traders and guaranty brokers in general merchandise at London, the firm are in an important way operating also at Lloyds as brokers in general Insurance, maintain a general forwarding and shipping service for clients located at the principal centers on the Continent as well as the Orient South and Central America the major part of their operations it is said by authorities consulted is with British Colonies and Possessions.

Their principal business being to act as purchasing agents and forwarders for a large number of important firms located in the vicinity of their branch offices. Employ at present a staff of about 900 which includes some 600 salesmen and special representatives.

While a definite estimate of resources is not obtained those consulted in the trade express the opinion that the financial responsibility of this firm would run well over Two Million Dollars. Nothing is being done involving commercial credit in a general sense, however the ability to successfully meet its contracts and engagements is conceded without hesitation.

The individual partners are favorably regarded, considered able and reliable in their field and reputed to be individually wealthy outside of their business investment. The record shows that in July 1931 this firm organized a corporation under the Laws of the State of New York as W.W. Smith & Co. Inc. with a nominal capital of \$10,000.-L.C. Wilson Chief Clerk stated to our reporter that this had been done as a matter of convenience to facilitate important trade in the United States heretofore handled through brokers, and special agents, that it was not the policy of the firm to issue financial statements and that no credit accommodations were sought. In August 1931 the firm is known to have acquired the business of Chas. Manning Ltd. of Montreal engaged in a general merchandise brokerage business no details of the acquisition are available. Are authorized Lloyds Agents.

FIRE RECORD No Fires Reported

TRADE OPINIONS

Favorably,--Regarded reliable and responsible for their engagements not known to seek credit accommodations.

56--g.--63

G, Aa

Oct. 14, 1931

\$ 1,000,000.00  
Highland Ave. del.



was also made that "W. W. Smith [were] to maintain such records in Montreal as McKesson's may request at a cost not to exceed \$40 per week for clerical hire. Any additional clerks or bookkeepers, shall be authorized by McKesson's and the expense thereof shall be borne by them." The abstract also noted that "No mention is made with respect to the flat fee of \$18,000 but Mr. G. Dietrich advises that upon advice of counsel, they have continued to make same."<sup>183</sup>

Attached to this abstract there was also an "Abstract of Guaranty Agreement by W. W. Smith & Co. (co-partnership) to McKesson Robbins, Inc. et al. Date July 31, 1933" which read:

"W. W. Smith & Co. by its duly authorized partner James Lamont, unconditionally guarantees the complete and prompt performance of all of the obligations and undertakings of W. W. Smith & Co. Inc. under and by virtue of an agreement between it and the McKesson Co.'s dated 7/31/33. Nothing contained in guaranty agreement dated 8/1/31 shall be altered or effected by this new agreement.

W. W. SMITH & Co.

(Signed) (by) JAMES LAMONT

*Resident Partner and Authorized Agent*

"In the presence of—

MAE L. ERLAND (JOHNSON) (Signed)

WILLIAM BROWN (Signed)

Signature Guaranteed:

THE CHASE NATL. BANK

OF THE CITY OF N. Y.

HAMILTON TRUST BRANCH

(Signed) By T. D.?

*Vice President.*<sup>184</sup>

In connection with the absorption of the business of the Connecticut Company by the Maryland Company in October 1934, Marsh, Stoddard & Day, Bridgeport attorneys, whose name appeared on the covers of the various Manning and Smith contracts referred to herein, advised Sullivan & Cromwell, New York attorneys for the Maryland company, that, in their opinion, the "\* \* \*" agreement and guaranty between the [Connecticut] company and W. W. Smith & Company, Inc., and W. W. Smith & Co., and to which McKesson & Robbins, Limited is a party" has "\* \* \*" been validly assigned and transferred to McKesson & Robbins, Incorporated, a Maryland Corporation."<sup>185</sup>

Under date of August 1, 1935, a new agreement was entered into between W. W. Smith & Company, Inc. (New York), and McKesson & Robbins, Incorporated (Maryland), and McKesson & Robbins, Limited (Canada). First the agreement provided that:

"WHEREAS, W. W. SMITH & Co. a co-partnership of Liverpool, England has a substantial financial interest in the New York Company and has requested the McKesson Companies to enter into this agreement because said partnership

<sup>183</sup> Ex. 56.

<sup>184</sup> Ex. 56.

<sup>185</sup> Ex. 173.

will derive some share of the profits accruing to the New York Company therefrom; and

"WHEREAS, the McKesson Companies desire to secure the services of the New York Company in promoting the foreign trade of the McKesson Companies and the New York Company is willing to render such services upon the terms and conditions and for the consideration hereinafter set forth;

"NOW THEREFORE, it is mutually agreed as follows:

"1. The New York Company expressly represents that W. W. SMITH & Co., a co-partnership of Liverpool, England, by reason of a substantial interest in the New York Company will directly benefit from any profits realized by the New York Company under this agreement and the New York Company further represents that it has acquired and now owns and controls all of the foreign and domestic buying and selling offices and agencies formerly owned and controlled by Charles Manning & Company, Limited, a Canadian corporation and that it now owns, controls and operates the selling offices and facilities located in Canada, New York City, Australia, London (England), Hamburg (Germany), Hong Kong (China), Ceylon (India), Yokohama (Japan), Genoa (Italy), Bergen (Norway), and Marseilles (France).

"2. The New York Company agrees that it will continue to conduct the aforesaid offices but that this agreement shall apply with like effect to offices and facilities now or hereafter operated or provided by the New York Company in other foreign countries." 186

Then followed provisions like those contained in the 1931 agreement with W. W. Smith & Company, Inc., above quoted, as amended by the 1933 extension above referred to, except that the Maryland Company was substituted for the Connecticut Company, the limit of accounts guaranteed at any time was raised to \$900,000, the provision in respect to the limit of guaranties by the New York Company to other than the McKesson Companies was dropped, and it was provided that the agreement was to remain in force for 5 years. The agreement concluded:

"14. It is mutually agreed that the execution of this agreement shall in no respect alter the rights of the parties hereto under a previous agreement between them dated August 1, 1931, and which has been extended and will expire at midnight on July 31, 1935, at which time this present agreement shall become effective.

"IN WITNESS WHEREOF, the parties hereto have caused this agreement and three counterparts hereof to be executed and their corporate seals affixed.

W. W. SMITH & COMPANY, INC.

By (s) JAMES LAMONT

*Its President*

McKESSON & ROBBINS, INCORPORATED

By (s) F. D. COSTER

*Its President*

McKESSON & ROBBINS, LIMITED

By (s) F. D. COSTER

*Its Vice President"* 187

Attached to this agreement there was a "Guaranty of Agreement" by W. W. Smith & Co., which read as follows:

"WHEREAS under date of August 1, 1935, a certain agreement, duplicate original copy of which is attached hereto, was entered into between W. W. SMITH & COMPANY, INC., a corporation organized under the laws of the State of New York, (hereinafter sometimes referred to as the 'New York Company'); McKESSON & ROBBINS, INCORPORATED, a corporation organized and existing under the laws of the State of Maryland (hereinafter sometimes referred to as the 'Maryland Company') and McKESSON & ROBBINS, LIMITED, a corporation organized and existing under the laws of the Dominion of Canada, (hereinafter sometimes referred to as the 'Canadian Company'), (The said Maryland Company and the said Canadian Company being sometimes referred to jointly as the 'McKesson Companies'); and

"WHEREAS, W. W. SMITH & Co. is a co-partnership having its principal office at Liverpool, England and composed of GEORGE A. SMITH, HOWARD C. SMITH, WILLIAM W. SMITH, JAMES LAMONT and WALTER C. BROWN as General Partners, and OSCAR SMITH as a Special Partner, and the said JAMES LAMONT as such General Partner is duly authorized on behalf of said partnership to execute this agreement; and

"WHEREAS, said co-partnership of W. W. SMITH & Co. has a substantial financial interest in the New York Company and will share directly or indirectly in any profits derived by the New York Company under said agreement and on that account the said Guarantor has specially requested the McKesson Companies to enter into such agreement, but the latter were unwilling to do so unless such agreement was supported by the written guarantee of the said co-partnership of W. W. SMITH & Co.

"NOW THEREFORE, in consideration of the execution by the McKesson Companies of said contract of even date herewith between the McKesson Companies and the New York Company, the undersigned partnership of W. W. SMITH & Co. does hereby unconditionally guarantee the complete and prompt performance by the said New York Company of all of its obligations and undertakings under and by virtue of said contract hereto attached and in view of the close relationship which exists between the New York Company and the undersigned co-partnership, the undersigned hereby agrees that its liability under this guarantee shall not be altered or affected in any way by reason of any modification or waiver of any of the provisions of said agreement without notice to the undersigned Guarantor, or by reason of the fact that the McKesson Companies or either of them shall fail to promptly assert and notify the undersigned Guarantor of any breach of any of the provisions of said contract and the undersigned Guarantor further agrees that this guarantee shall be deemed to be an absolute one so that the McKesson Companies or either of them shall have the right to enforce the same by an action or actions directed against such Guarantor and without the necessity of any legal proceedings of any description against the said New York Company, it being further agreed by the Guarantor that this contract, both as to its construction and legal remedies, shall be governed by the laws of the State of Connecticut, and that nothing herein contained shall alter or affect in any way the liability of the undersigned as Guarantor of a certain similar agreement between the McKesson Companies and the New York Company dated August 1, 1933, and which by its terms terminates at midnight on the 31st day of July, 1935.

W. W. SMITH & Co.

By (s) JAMES LAMONT

*Its Resident Partner and  
Authorized Agent.*"<sup>188</sup>

The last agreement and guaranty above referred to had until July 31, 1939 to run and were believed to be in effect at the time of the appointment of the receivers.<sup>189</sup>

Despite the agreements with W. W. Smith & Company, Inc. referred to above, whereby the latter was supposed to act as sales agent for the McKesson Companies, the McKesson Companies also purportedly continued to purchase goods from W. W. Smith & Co. at least through 1934. Price, Waterhouse & Co.'s memorandum on accounts of the Connecticut Company for 1932 stated that "Practically all of the Company's sales of crude drugs and heavy chemicals are made \* \* \* through the firm of W. W. Smith & Co. \* \* \*" and also referred to W. W. Smith & Co. as the concern " \* \* \* from whom the bulk of their [Connecticut Company's] crude stocks are purchased \* \* \*." <sup>190</sup> A supplement to the 1933 memorandum on the Canadian Company stated "Negotiations for the purchases are made principally through agents, one of which is Smith & Company \* \* \*. Sales are negotiated through the same agents as arrange for the purchases."<sup>191</sup> The inventory price test schedules for 1934 showed W. W. Smith & Co. as the vendor on three of the invoices included in the inventory at the year end.<sup>192</sup>

Another vendor from whom fictitious purchases were made, both immediately before and after the August 1, 1931 sales agency contract with W. W. Smith & Company, Inc., was J. P. Meyer & Co., Inc.<sup>193</sup> Referring to the inventory of the Canadian Company on December 31, 1931, the memorandum on accounts stated:

"All the merchandise was purchased from J. P. Meyer & Co., Inc., of Brooklyn whose address is the same as that of Smith & Co., mentioned above."<sup>194</sup>

This would appear to be the same J. P. Meyer who appeared as an account receivable on the books of Girard & Co., Inc.,<sup>195</sup> and to whom, in 1925, the Girard plant at Mt. Vernon was " \* \* \* finally disposed of for \$20,000 cash \* \* \*." <sup>196</sup>

The August 1, 1931 contracts, previously quoted, referred to the acquisition of Charles Manning & Company, Limited by Manning & Company and to the transfer by the latter of " \* \* \* all the foreign

<sup>189</sup> R. 362. Although the auditors and others were unaware of its existence (R. 844, 2072; Ex. 26), there was introduced at the trial, *U. S. of America v. George Musica, et al.* (footnote 23 *supra*), a signed copy of an agreement dated January 3, 1936 which stated that W. W. Smith & Company, Inc. had assumed the contract of W. W. Smith & Company, Inc. dated August 1, 1935 with the approval of W. W. Smith & Co. which was stated to have a similar substantial financial interest in W. W. Smith & Company, Ltd. as it had in W. W. Smith & Company, Inc., all of whose assets had been acquired by W. W. Smith & Company, Ltd. At the trial there were also introduced signed copies of all of the agreements hereinabove referred to, based on Ex. 89, 216, 206, 215, 56, 50.

<sup>190</sup> Ex. 81. See also R. 1239.

<sup>191</sup> Ex. 75.

<sup>192</sup> Ex. 42 (D 34, D 37).

<sup>193</sup> R. 4581.

<sup>194</sup> Ex. 76. See also Ex. F.

<sup>195</sup> Ex. 170.

<sup>196</sup> Ex. 176.

and domestic buying and selling offices and agencies formerly owned and conducted by said Charles Manning & Company, Limited \* \* \* to W. W. Smith & Company, Inc., a New York corporation, which it has caused to be organized for the purpose of acquiring the same \* \* \* (one hundred per cent (100%) of the stock of which it owns) \* \* \*." 197 Price, Waterhouse & Co., in their memorandum on accounts of the Connecticut Company for 1931, stated that " \* \* \* Manning Co. during the year \* \* \* went into the private banking business exclusively and sold its export business to W. W. Smith & Co., whose main office is in Liverpool \* \* \*." 198 It appears that it was at this time that the McKesson accounts with the pretended bank of Manning & Company were established. Manning & Company purported to effect payment for purchases and to receive remittances for goods sold for the account of the respective McKesson Companies. After the establishment of Manning & Company in this capacity, the use of actual cash in payment for fictitious purchases and in receipt of fictitious receivables steadily diminished until at the time of the receivership it had disappeared and all purchases and sales of foreign crude drugs were being cleared through Manning & Company.<sup>199</sup>

Concerning the nature of McKesson's account with Manning & Company, there is a note in the Price, Waterhouse & Co. work papers in 1931, the year the account was opened, stating:

"We satisfied ourselves that this account is payable in U. S. dollars. This is a collection account rather than a deposit account. Bills and accounts payable in U. S. dollars as collected through Manning who remits in U. S. dollar. Manning does not remit as collected, but when requested to by the company. Checks are not drawn on this account. We investigated a transfer of \$50,000 to a New York bank in November and found that Manning charged that amount to the account."<sup>200</sup>

In addition, the usual bank confirmation requested by the auditors from Manning & Company on the Connecticut Company, as at December 31, 1931, recited a "Commercial Letter of Credit-B-2830-\$250,000. Revolving, dated August 5th, 1931 expiring August 5, 1932. No unpaid acceptances outstanding thereunder."<sup>201</sup> Thorn, however, testified that this was a sight draft letter of credit.<sup>202</sup> There was also a similar letter of credit for \$150,000 confirmed to

<sup>197</sup> Ex. 216, 206.

<sup>198</sup> Ex. 82.

<sup>199</sup> See pages 46 ff. *supra*.

<sup>200</sup> " \* \* \* and in December there was a cash transfer of \$120,000 to a New York bank." R. 691-692. See also R. 951-952, 1176. There were also similar transfers to bank accounts of the Canadian Company. R. 4404, 4123. In all \$2,260,800 was deposited in McKesson bank accounts as coming from Manning & Company, the greatest part between December 1931 and December 1933, inclusive. The last cash received was in 1933 for the Connecticut Company and in 1936 for the Canadian Company. As to the source of these funds see footnote 407 *infra*.

<sup>201</sup> Ex. O; R. 691.

<sup>202</sup> R. 1138.

the Canadian Company.<sup>203</sup> These are the only references to letters of credit, all other transactions apparently being effected by Manning & Company debiting the accounts of the respective McKesson Companies on drafts drawn by the five Canadian vendors pursuant to McKesson authorization.<sup>204</sup> No checks were drawn on Manning<sup>205</sup> and it was not included in the list of banks on the daily cash report.<sup>206</sup>

However, at a meeting of the Board of Directors of the Canadian Company, held on April 4, 1935, it was resolved:

"That Manning & Co. of Montreal, Canada and branch of Manning & Co. in New York be and they hereby are appointed bank depositaries for McKesson & Robbins, Limited, et cetera," and "\* \* \* that the foregoing resolution shall from this day on supersede so much of the resolution adopted at the meeting of the Board of Directors held September 3, 1931 with respect to the appointment of Manning & Company in Montreal, Canada as a bank depositary for this company as is inconsistent therewith."<sup>207</sup>

### 3. Purchases of Foreign Crude Drugs by the Connecticut Division at the Time of the 1937 Audit, and How They Were Handled

The first document apparently involved in a purchase of foreign crude drugs at the time of the 1937 audit was a letter requesting quotations on five different products. Similar letters were supposedly sent to all five Canadian vendors, A. H. Raymond & Company, D. C. Reynolds & Company, P. Pierson & Company, B. Miller & Company and H. Monroe & Company, and, upon receipt of replies from them,<sup>208</sup> the prices offered were scheduled, with underscoring to indicate the lowest bid on each product.<sup>209</sup> A copy of a purported request for quotations, a supposed reply thereto, and the applicable schedule are reproduced herein; the request and reply on the following pages and the schedule as an insert.<sup>210</sup>

The existence of this purported practice was apparently not generally known prior to the receivership, for McGlooin, the comptroller, testified that he was not aware of it prior to December 10, 1938, when the carbon copies of requests for quotations, original replies and schedules were first discovered in the files of Robert Dietrich.<sup>211</sup>

<sup>203</sup> Ex. P.

<sup>204</sup> R. 734-735, 1139.

<sup>205</sup> R. 951, 4407.

<sup>206</sup> R. 1642-1643; Ex. 228.

<sup>207</sup> R. 695. For resolution of September 3, 1931, see page 60 *supra*.

<sup>208</sup> As previously stated, the five Canadian vendors, Smith, and Manning would now appear to be entirely fictitious or to the extent that they had any reality were mere blinds used by Coster for his fictitious transactions. After the 1937 audit was completed, three new fictitious Canadian vendors appeared: R. D. Backer & Company, J. C. Conway & Company, and C. H. Williams & Company. Ex. 30. For the manner in which the documents referred to in this and in the following subsections which purportedly emanated from these pretended concerns were prepared under the direction of George Vernard (in reality Coster's brother) see subsection D *infra*.

<sup>209</sup> Ex. 238.

<sup>210</sup> Ex. 238 A. The present record does not contain a complete set of documents pertaining to a single transaction and, therefore, in this and succeeding subsections, the documents exhibited are to be taken as typical of the kind used rather than as arising from the same transaction. For an illustration of the letter-heads of all five Canadian vendors, see pages 102-103 *infra*.

<sup>211</sup> R. 1587-1588, 1669-1670, 4496. Cf.: R. 1346.

R. J. DIETRICH: BMP

April 26, 1938

B. Miller & Company,  
Southam Bldg.,  
Montreal, Canada

Gentlemen:

Kindly quote on the following items:

320 Cases Procain  
Packed 25 - 1 lb. tins to a case

500 Kegs Salol Powder U.S.P.  
Packed 200 lbs. to a keg

400 Drums Amidopyrine  
Packed 50 lbs. net to a drum

260 Cases Santonine Crystals  
Packed 17 lbs. to a case

460 Cases Antipyrine Crystals  
Packed 100 lbs. net to a case

Trusting in an early reply and with kindest regards, we remain,

Very truly yours,

McKESSON & ROBBINS, INCORPORATED

---

Purchasing Agent

# B. MILLER & COMPANY

IMPORTERS AND BROKERS

Telephone LANCASTER 4298

SOUTHAM BUILDING, MONTREAL, CANADA

April 30, 1938

McKesson & Robbins, Inc.  
Bridgeport,  
Connecticut

Gentlemen:

We are glad to offer the following items:

Procerin	\$ 12.60 lb.
Salol Powder U.S.P.	.87 lb.
Amidopyrine	3.40 lb.
Santonine Crystals	20.00 lb.
Antipyrene Crystals	1.91 lb.

in reply to your quotation of April 26th, 1938.

Hoping we will be favored with your orders,  
we remain,

Truly yours,

B. MILLER & COMPANY



RC



Form Trade Drug Quotations

April 26-1938

Quantity	Item	Source	Price	Price	Price
320 Cases	Procaine	Cashway 25-1 lb. tin to a case	B. Miller, H. Home 12.60 lb.	P. Brown, G. Raymond, D. F. Reynolds 10.00 lb.	11.50 lb.
500 kgps	Sabal Powder 480	200 lbs. to a bag	87 lb.	93 lb.	91 lb.
400 drums	Umidopyrine	50 lbs net to a drum	3.40 lb.	3.56 lb.	3.58 lb.
260 Cases	Amphetamine Sulfate	17 lbs to a case	20.00 lb.	18.20 lb.	19.00 lb.
460 Cases	Antipyrine Sulfate	170 lbs net to a case	1.91 lb.	1.98 lb.	1.87 lb.
					1.70 lb.

The purported variation in the prices quoted, as summarized on the schedules, presents an interesting comparison with the relative stability of prices on purchases actually consummated, as indicated by the inventory price test schedules.<sup>212</sup> Also in view of such variation in the quotations, the length of time purportedly taken in consummating these purchases through this exchange of letters presents an interesting comparison with the way Charles Hermann, of the Cliff Street office, did his business.

"He will call up four or five brokers [on the telephone] and get a bid on the items that he is considering buying and he will make his purchase that afternoon or he will give up the idea and wait until some other date."<sup>213</sup>

Supposedly upon the basis of the foregoing quotations, a McKesson purchase order would be initialed and released by George Dietrich.<sup>214</sup> Each purchase order would cover only one product and would be addressed to one of the five Canadian vendors. The terms were stated as "Cash against Documents Net No Discount U. S. Cy. F. O. B. Bridgeport or New York, U. S. A."<sup>215</sup> A reproduction of an accounting department copy of such a purchase order follows:<sup>216</sup>

1-37 500 Pads

ACCOUNTING DEPT.

**McKESSON & ROBBINS**

BRIDGEPORT CONNECTICUT

U. S. A.

Date DECEMBER 27, 1937 N<sup>o</sup> 5634

M D.C. REYNOLDS & COMPANY,  
192 BANK STREET,  
OTTAWA, CANADA

FOR

DEPT.

Kindly enter our order for the following and ship to  
Marked:

Via

Mail Invoices, B/L and all Shipping Documents to McKesson & Robbins, Incorporated, Bridgeport, Conn.

QUANTITY	DESCRIPTION	PRICE	UNIT
310 CADYS	MUSK PODS 20 ozs. net to each cady	@ 12.00	per oz.
Delivery on this order to be made as follows:			

CASH AGAINST DOCUMENTS NET NO  
DISCOUNT U.S. CY. F.O.B. BRIDGEPORT  
OR NEW YORK U.S.A.

Remarks.....

McKESSON & ROBBINS  
Incorporated

PER J. E. DIETRICH

EXHIBIT 12B.—Accounting department copy of a purported purchase order for foreign crude drugs. (Size 8½" x 7¼")

<sup>212</sup> See pages 104-105 *infra*.

<sup>213</sup> Testimony of John H. McGloon, R. 1672.

<sup>214</sup> R. 1588, 1347. For part played by Coster in this connection see footnote 139 *supra*.

<sup>215</sup> Ex. 12B.

<sup>216</sup> Ex. 12B.

Eugene A. Johnson, Jr., office manager for McKesson at Bridgeport, testified, as follows, concerning the number of copies of McKesson purchase orders prepared and their distribution:

"Q. [By Mr. GALPEER.] Do you know how many copies of those purchase orders were prepared?

A. Four.

Q. Do you know where they went?

A. The Accounting Division received one copy for the accounts payable; the other three copies I would not know where they went. The original was to be mailed. The third copy was to go to the receiving department. The fourth copy should be retained by the man making out the purchase order."<sup>217</sup>

A covering letter was then supposedly dictated by George Dietrich forwarding the original McKesson purchase order to the vendor and authorizing draft on Manning & Company for the amount of the charge.<sup>218</sup> A copy of one of these purported letters is reproduced on the opposite page.<sup>219</sup>

At the same time George Dietrich also supposedly dictated a letter to Manning & Company instructing them to honor the draft.<sup>220</sup> A copy of one of these purported letters is reproduced on page 74.<sup>221</sup>

Carbon copies of the foregoing letters were found in George Dietrich's files.<sup>222</sup> Johnson, the office manager, testified that he had never seen or heard of them even after the receivership, when he looked for all documents pertaining to the Manning account.<sup>223</sup>

A few days after the McKesson purchase order was purportedly sent out the purchase invoice from the vendor was supposedly received<sup>224</sup> with other incoming mail all of which, as previously stated, first went to the desk of George Dietrich.<sup>225</sup> The terms were stated the same as on the purchase order "Cash against documents Net No Discount—U. S. Cy. F. O. B.—Bridgeport or New York, U. S. A."<sup>226</sup> A reproduction of one of these purchase invoices is inserted opposite page 75.<sup>227</sup>

Concerning the disposition of the invoice, Johnson testified:

"Q. [By Mr. GALPEER.] From where would the invoice come to the accounts payable department?

A. Well, it would be in the mail rack; in the accounts payable [box], which was in George Dietrich's office.

Q. These invoices, were they marked 'hold, do not pay'?

<sup>217</sup> R. 1347.

<sup>218</sup> Ex. 230.

<sup>219</sup> Ex. 230.

<sup>220</sup> Ex. 231.

<sup>221</sup> Ex. 231.

<sup>222</sup> R. 4469-4471.

<sup>223</sup> R. 1351-1353, 1402-1403.

<sup>224</sup> R. 1588.

<sup>225</sup> See footnote 140 *supra*.

<sup>226</sup> Ex. 12A.

<sup>227</sup> Ex. 12A.

December 27, 1937

Messrs. D. C. Reynolds & Company,  
192 Bank Street,  
Ottawa, Canada

Gentlemen:

Enclosed you will find purchase order for 310 cadys of Musk Pods, 20 ozs. net to each cady at \$12.00 per oz.

We hereby authorize you to draw a sight draft on Manning & Company, Montreal, Canada for the full amount of your charge.

Yours truly,

McKESSON & ROBBINS, INC.

---

GED'ck  
ENC.

December 27, 1937

Messrs. Manning & Company  
Montreal, Canada

Gentlemen:

We have instructed Messrs. D.C. Reynolds & Company to draw against our a/c sight draft in amount of \$74,400.00.

Will you please honor same and charge our current account with you, under advice to our Bridgeport Office.

Yours truly,

McKESSON & ROBBINS, INC.

---

---

GED:ck

EXHIBIT 231.—Copy of a purported letter authorizing payment of a vendor's draft. (Size 8½" x 11")

INVOICE

FORM NO. 100-10-34

**D. C. STEVENS & COMPANY**

COMMISSION MERCHANTS

192 BANK STREET  
OTTAWA, CANADA

December 27, 1937

SOLD TO McEason & Robbins, Inc., Connecticut Division  
Bridgeport, Conn.

TERMS: Cash against documents Net No Discount - U.S. Cy.  
F.O.B. - Bridgeport or New York, U.S.A.

QUANTITIES	DESCRIPTION	PRICE	GROSS AMOUNT	DISCOUNT	NET TOTAL
310	Cady's Musk Pods 20 ozs. net to each cady 6,200 ozs. @ \$12.00 per oz.		\$74	400	00

REGISTERED  
DEC 31 1937

INVOICE NO. - 33716  
INVOICE REC'D JAN 3 1938  
PRICE O. K.  
TERMS  
F. O. B. POINT  
F. O. B. FRT. (EXP.) PAID  
DIMENSIONS  
RECEIVING REPORT  
CHARGE  
APPROVED  
DATE DUE

ENTERED-DETAIL LEDGER

do

Not Pay

copy

EXHIBIT 12A.—A purported purchase invoice for foreign crude drugs. (Size 8½" x 11".)

A. No, the accounts payable clerk would put that on when they matched them with the purchase order.

\* \* \* \* \*

The EXAMINER. Would it be customary for the accounts payable clerk to mark all invoices that were against documents, 'hold, do not pay'?

A. Yes.

\* \* \* \* \*

Q. [By Mr. GALPEER.] You just said that the invoice recited, 'cash against document'; did your department ever see the documents referred to in such an invoice?

A. No.

Q. Do you know what those documents were supposed to be?

A. No.

\* \* \* \* \*

Q. What would the next step be in connection with those purchases?

A. Well, the invoices would go to accounts payable; they would register it and it would be posted to the accounts payable ledger."<sup>228</sup>

In this connection an accounts payable voucher also was prepared.<sup>229</sup>  
A reproduction of one of these vouchers follows.<sup>230</sup>

D. C. Reynolds & Co.

VOUCHER NO.  
CHECK NO. Bank Charge  
DATE PAID  
CORRECT  
APPROVED  
VOUCHERED BY  
ok

DISTRIBUTION

DATE	INVOICE AMT	DEDUCTIONS			DISTRIBUTION	
		REMITTANCE	DISCOUNT	AMOUNT	ACCOUNT NO.	
12-29-37	74,400.00			74,400.00		

EXHIBIT 12C.—Accounts payable voucher. (Size 8¼" x 6¾".)

It will be noted that nothing on any of these three documents, the McKesson purchase order, the purchase invoice, or the voucher

<sup>228</sup> R. 1348-1350.

<sup>229</sup> Ex. 12C.

<sup>230</sup> Ex. 12C.

gives any indication that the goods were not to be shipped to McKesson but were to be held by the suppliers.<sup>231</sup>

However, in connection with each purported purchase, there was prepared a receiving ticket.<sup>232</sup> A reproduction of one of these is inserted facing page 77.<sup>233</sup>

The receiving tickets which were stamped "Held at Suppliers, No Other Charges," were prepared in Robert Dietrich's department and were then sent to the accounting office.<sup>234</sup> The initials like "J. W." <sup>235</sup> were put on merely to make the tickets conform with those covering non-foreign crude drug transactions.<sup>236</sup> The tickets themselves could have been prepared from copies of the McKesson purchase orders which were sent regularly to the receiving department on all goods.<sup>237</sup>

About the same time as the purported receipt of the purchase invoice from the vendor, an "Advice of Debit" was also supposedly received from Manning & Company informing McKesson that its account had been charged for a draft drawn by the vendor under McKesson's letter of authority.<sup>238</sup> A reproduction of one of these is inserted facing this page.<sup>239</sup>

The advice of debit would purportedly be received with other mail in George Dietrich's office <sup>240</sup> and would be routed by him to the cashier's office where, before being entered as a cash disbursement, it would be checked with the previous record in the accounts payable department.<sup>241</sup> At the end of the month the main accounting office would receive from the cashier's office the cash disbursement book, which would furnish the basis of canceling the liability set up on the accounts payable ledger. The advice of debit itself would apparently be retained by the cashier's department.<sup>242</sup>

Apparently, no documents came with or were attached to the advice of debit.<sup>243</sup> Thorn thought that the word "documents" referred to in the phrase "cash against documents" as used in the McKesson purchase order and purchase invoice meant the purchase order itself which the vendor upon receipt from McKesson would attach to the draft drawn on Manning & Company.<sup>244</sup>

<sup>231</sup> R. 159.

<sup>232</sup> Ex. 20.

<sup>233</sup> Ex. 20.

<sup>234</sup> R. 1348, 1710.

<sup>235</sup> Ex. 20. John White, who testified in this proceeding. R. 1471-1564. See also pages 108-113 *infra*.

<sup>236</sup> R. 1561 ff.

<sup>237</sup> Ex. 17, p. 10, item 4; R. 1241. Apparently each purchase order was filed as a single transaction. Cf. Ex. 20 and Ex. 265.

<sup>238</sup> Ex. 33.

<sup>239</sup> Ex. 33.

<sup>240</sup> R. 1589.

<sup>241</sup> R. 696, 722-723, 12.

<sup>242</sup> R. 1350-1351. See also Ex. M-27.

<sup>243</sup> R. 457, 739.

<sup>244</sup> R. 1187.



# Manning & Company

Montreal, Canada

HEAD OFFICE  
LIVERPOOL, ENGLAND

ORIGINAL  
ADVICE OF DEBIT

MAY 5, 1938

To MCKESSON & ROBBINS, INC., CONNECTICUT DIVISION  
BRIDGEPORT, CONN.

Please be informed that your account has been Charged for the following:

PARTICULARS

AMOUNT

SIGHT DOCUMENTARY DRAFT DRAWN BY P. PIERSON & COMPANY  
UNDER YOUR LETTER OF AUTHORITY

\$71,280.00

U.S. CY.

Remarks:

Yours very truly,

*Manning & Company*

by J. L.

34-

P. O. No. 5634

# McKESSON & ROBBINS

R. T. No. 22837

## RECEIVING TICKET

Complete Delivery  Partial Delivery  Balance  Over Run

Received from D. L. Reynolds & Co Date 12-31-37

Address Atlanta - Canada

Through and How Received HELD AT SUPPLIERS, NO OTHER CHARGES

Received at McK. & R. Receiving Department at 700 BPT. Bldg

Received by JLB at their warehouse

Charges Paid

- DISPOSITION
- General Mdise. Stock
  - Finishing Supply Stores
  - Petty Storage Dept.
  - Adv. Display Literature
  - Our Bonded Warehouse
  - Public Warehouse
  - 79 Cliff Street, General
  - Spanish and Export
  - Return Goods Dept.
  - Research Dept.
  - Plant Equipment
  - Coal Stores
  - Office Supplies
  - Reshipped to

MARKS AND NUMBERS	QUANTITY	DESCRIPTION OF MERCHANDISE, WEIGHTS, MEASURE, COUNT, ETC.
		310 leads 20 exp net ea - Munks Pods - 6200 gms net

*[Handwritten signatures]*

In connection with the foreign crude drug items, two sets of perpetual inventory cards were maintained; one in Robert Dietrich's office and the other in the cost department in the general accounting office.<sup>245</sup> The receiving ticket was the source for the entry of acquisitions on the cost department cards<sup>246</sup> and, presumably, either the receiving ticket or the source of the receiving ticket<sup>247</sup> furnished the basis of the entry on Robert Dietrich's set.

#### 4. Sales of Foreign Crude Drugs by the Connecticut Division at the Time of the 1937 Audit, and How They Were Handled

The first document apparently involved in a sale of foreign crude drugs at the time of the 1937 audit was a "Purchase Order" headed "W. W. Smith & Co., \* \* \* Liverpool, 3, England," reading, "Kindly enter the order listed below sold by us for your account."<sup>248</sup> One of these is reproduced on the following page.<sup>249</sup>

McKesson next purportedly received a "Notice of Shipment" also headed "W. W. Smith & Co., \* \* \* Liverpool, 3, England," dated 3 days later than the purchase order, reading: "We beg to advise having shipped for your account and risk and in accordance with your instructions \* \* \* the merchandise listed below for which enclosed please find Documents as noted."<sup>250</sup> One of these is reproduced on the second page following.<sup>251</sup>

The notice of shipment, like the purchase order from W. W. Smith & Co., was supposed to have been received through the mail and routed by George Dietrich in the regular way.<sup>252</sup> No evidence was developed however, showing any tangible means by which the price quoted or the sale itself purported to be made by W. W. Smith & Co. for McKesson was accepted or approved by the latter, nor how the former knew or was advised from which of the various Canadian vendors, who were thought to be holding the inventories in question, the goods were supposed to have been shipped. Neither the W. W. Smith & Co. notice of shipment nor any of the subsequent documents prepared by McKesson as set forth herein indicated from which vendor the goods were supposed to have been taken or from what point they were supposed to have been shipped.

In the lower left-hand corner of the notice of shipment there is printed "Documents enclosed," underneath which there is a box in

<sup>245</sup> R. 1368, 1421-1422. The cards in Robert Dietrich's office would, in form, appear to be like Ex. 107 and Ex. A. R. 724, 1478, 1509. For a description of the cost department cards, in relation to Ex. 107 and Ex. A, see R. 4531-4533.

<sup>246</sup> R. 1423. The initials "A. U. G." also appearing on Ex. 20 would appear to be those of the cost clerk who did the posting. R. 4530.

<sup>247</sup> The documents in evidence would indicate either the purchase order or the purchase invoice.

<sup>248</sup> Ex. 7, 8B, 11C.

<sup>249</sup> Ex. 11C.

<sup>250</sup> Ex. 8C, 11B.

<sup>251</sup> Ex. 11B.

<sup>252</sup> R. 1588-1589.

Purchase Order

No 17738

W. W. Smith &amp; Co.

Commission Merchants

Purchasing, Forwarding &amp; Shipping Agents

Liverpool, S. England

JANUARY 28, 1938

To: MCKESSON &amp; ROBBINS, INC., CONNECTICUT DIVISION, BRIDGEPORT, CONN.

Kindly enter the order listed below sold by us for your account Terms 180 DAYS DATE

Quantity	Description	Price
331	CASES GUM CAMPHOR, SLABS 100 LBS. TO A CASE 33,100 LBS. NET @	.44
SILVERTON TANNERY LTD. Add to - VICTORIA, SO. AFRICA		

Please render invoice in Duplicate

Exchange <sup>96</sup>

Quantity 331 of 17738

*Notice of Shipment*

*W. W. Smith & Co.*  
*Commission Merchants*  
*Purchasing, Forwarding & Shipping Agents*  
*Liverpool, 3, England*

JANUARY 31, 1938

*To* MCKESSON & ROBBINS, INC., CONNECTICUT DIVISION  
BRIDGEPORT, CONN.

*Dear Sirs*

*We beg to advise having shipped for your account and risk and in accordance with your instructions to*

SILVERTON TANNERY LTD.

PRETORIA, SO. AFRICA

*the merchandise listed below for which enclosed please find Documents as noted.*

*Very truly yours*

*W. W. Smith & Co.*

*By*



*Agent*

*Documents enclosed*

- Bill of Lading*
- Consular Invoice*
- Invoice*
- Warehouse Receipt*
- Insurance Certificate*

*Merchandise*

331 CASES GUM CAMPHOR, SLABS

front of each of the following: "Bill of Lading," "Consular Invoice," "Invoice," "Warehouse Receipt," and "Insurance Certificate." All the boxes except the one in front of "Warehouse Receipt" were checked.<sup>253</sup> Neither the comptroller, office manager, assistant head of the billing department, or anyone else who testified in the present hearings remembered ever having seen any of the documents checked as enclosed.<sup>254</sup>

The next step in the purported transaction apparently rested on a regular McKesson "Factory Order."<sup>255</sup> A reproduction of one of these is inserted facing page 83.<sup>256</sup>

This factory order was the source of the preparation of a regular McKesson sales invoice. As typed, the terms on the sales invoice would be stated as 180 or 120 days from date,<sup>257</sup> but the "F. O. B." and "VIA" spaces would be left blank. The designations "FROM" and "SALESMAN" would be filled in "BPT" (Bridgeport) and "WWS" (W. W. Smith), respectively.<sup>258</sup> A copy of one of these invoices is reproduced on the opposite page.<sup>259</sup>

In addition to the notations appearing on the copy of the invoice reproduced, the original was stamped by a checker in the billing department, "Payment for this invoice must be made in U. S. currency."<sup>260</sup>

Helen Freer, assistant to the head of the billing department, gave the following comparison between the handling of factory orders and invoices on regular orders and on foreign crude drug orders:

"Q. [By Mr. GALPEER.] Now, will you please tell me in detail, \* \* \* what the routine of the billing department was in handling regular bills on shipments made?

\* \* \* \* \*

A. Well, when an original customer's order would come into the department, Mr. Bonsby would note the terms, the f. o. b. points, the salesman, and the price on the order. He would then give it to me, and I in turn would type it, on an order form, which consisted of three copies.

Q. Was that a factory order form?

A. Yes, that was a pink, a blue, and a white. The pink, blue, and white would be numbered and then they would be separated. The pink and blue would go out to Mr. Robert Dietrich's department for shipping. The customer's order would be attached to the white copy, and then filed in the billing department.

After the order was shipped, the pink copy [of the factory order] would come back into the billing department, and \* \* \* the corresponding white copy would be pulled out of the file, and then it would be put through for billing.

The weights and the quantities shipped and everything would [already] be noted [on the pink copy of the factory order] \* \* \* and then an invoice

<sup>253</sup> Ex. 8C, 11B.

<sup>254</sup> R. 1354, 1411-1413, 1696-1697, 4360, 4372.

<sup>255</sup> Ex. 7, 8A, 9, 10, 11A.

<sup>256</sup> Ex. 11A.

<sup>257</sup> R. 1589.

<sup>258</sup> Ex. 7, 8D, 11D.

<sup>259</sup> Ex. 11D.

<sup>260</sup> Ex. 229; R. 4361, 4469.

Consolidated Division of  
**McKESSON & ROBBINS**  
 Incorporated



BRIDGEPORT, CONN., U. S. A.

Established 1832

YOUR ORDER

INVOICE NO. **131239**  
 DATE **1-31-38**

CHECKED BY

FOR CUSTOMER'S USE ONLY

Sold To **SILVERTON TANNERY LTD.**  
**PRETORIA, SO. AFRICA**

SHIPPED TO

PREPAID OR COLLECT

TERMS **100 DAYS**  
 F. O. B. **FROM DATE**  
 VIA

FROM **BPT**

SALESMAN

**WWS**

QUANTITY	DESCRIPTION	PRICE	GROSS AMOUNT	DISCOUNT	NET TOTAL
		<b>OUR ORDER 2993</b>			
<b>331 CASES</b>	<b>OLIV CAMPHOR, SLABS</b> <b>100 LBS TO A CASE</b> <b>33,100 LBS NET</b>	<b>44</b>	<b>14 564 00</b>		<b>14 564 00</b>

**IMPORTANT**—Bills not paid when due will be subject to draft with exchange on New York. After obtaining a receipt for merchandise, as "Shipped in Good Order," we are not responsible for any damage or loss that may occur in transportation. All claims must be made within five days after receipt of merchandise.

WE GUARANTEE THE MERCHANDISE ENTERED HEREIN, MANUFACTURED BY MCKESSION & ROBBINS, TO COMPLY WITH THE FEDERAL FOOD AND DRUGS ACT AND REQUIREMENTS THERETO, AND THAT THEY WERE PRODUCED OR MANUFACTURED, IN ACCORDANCE WITH THE FEDERAL CHILD LABOR ACT OF SEPT. 1, 1916.

EXHIBIT 11D.—Duplicate copy of an invoice for a purported sale of foreign crude drugs. (Size 8½" x 11".)

number would be put on. That would be given to the billing clerk, and she in turn would bill the order.

\* \* \* \* \*  
 \* \* \* the invoice form consisted of three whites, a pink, a blue, and a yellow. They would be separated. [The proper number of white copies together with the bill of lading if the bill of lading was attached to the factory order when it came back from Robert Dietrich's department would be mailed to the customer by the checking girl.] The pinks would be totaled and handed to the inventory department. The blues would be made up into ledgers, and they would be given to the bookkeeping department and the yellows we used to keep for posting records.

\* \* \* \* \*  
 \* \* \* at the end of the day all the orders that were billed would be given to me \* \* \* and I would take out the orders that applied on contract, making the withdrawals against the different contracts, and then I in turn would give all the orders to another girl, who used to put the invoice number opposite the order number in the order register book, and she in turn would send them out to file.

Q. Now, when you prepared the factory orders, in pink, blue and white, you said that you put a number on that, or that a number was put on in your department. Would that be the order number, so-called?

A. That is right, yes sir.

Q. Now, when the pink copy of the factory order came back to you, from what department did that come back? I think you stated that you sent it out to Robert Dietrich's department originally?

A. Yes.

Q. Did it come back from that department?

A. No, I think it came in to Mr. Osterhout. He was in charge of the inventory department. He used to separate the orders. I meant to tell you that.

He used to separate the orders, separate [regular] crude drug orders from health helps. The health helps used to be sent in to Mr. Borchers, who used to enter them, and the [regular] crude drugs used to be entered in our own department, and then Mr. Borchers, after he reviewed them, would send them in to our department to be billed.

Q. I see. So that they would come through Mr. Osterhout, and through Mr. Borchers from Robert Dietrich?

A. That is right.

Q. Now, when the pink factory orders came back to you, were they in the same form, with the same notations as when you originally sent them out?

A. No, we sent them out typed up, with all the necessary information on them, and just the order number on them.

Q. When they came back, what additional appeared on them?

A. The weights, and the bill of lading was attached, and if the quantity was changed or increased or decreased, they would always make that notation.

Q. Would there be a stamp of the shipping department on it?

A. Oh, yes.

Q. What sort of a stamp would that be?

A. It was just a square stamp put on the order in the upper right hand corner. It said, 'Shipped,' and the date, and 'per R. J. D.'

Q. Then, these factory orders already contained the order number, and it was after the factory order came back, when the bill was prepared, that you would give it additionally an invoice number?

A. Yes.

\* \* \* \* \*



50c Paid 11-17 C. P.  
FORM NO. 109

**McKESSON & ROBBINS**  
INCORPORATED  
**FACTORY ORDER**

INVOICE NO. 131239  
2993

ORDER NO. \_\_\_\_\_

ENTRY DATE \_\_\_\_\_

SALESMAN W. W. B.

CUSTOMER'S ORDER NO. \_\_\_\_\_

DATE 1/31/38

TERMS 180 days FROM date APPROVED FOR CREDIT BY \_\_\_\_\_

P. O. B. \_\_\_\_\_

CHARGE TO—NAME SILVERTON TANNERY LTD.

ADDRESS \_\_\_\_\_

CITY PRETORIA STATE SO. AFRICA

SHIP TO—NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE JAN 31 1938

**SHIPPED**  
JAN 31 1938  
PER R. J. D.

PREPAID

COLLECT

ROUTE \_\_\_\_\_

REMARKS \_\_\_\_\_

Cases and Packer's Marks	Weight of Cases and Shippers' Marks	Total Weight	Quantity to be Back Ord.	Quantity	Description	Price	Unit	Extension
				331	CASES GUM CAMPHOR, SLABS			
					100 lbs. to a case			
					33,100 lbs. net @	.44		14564.0
<b>PAID</b> JAN 31 1938 Per 41375-8275-33100 OR 331 cases								