

To all to whom these Presents shall come or may Concern

Greeting: Know Ye, That I, CATHRINE CURTIS,

for and in consideration of the sum of Two Thousand (\$2000) Dollars,

~~xxxxxx (\$xxxxxxxxxx)~~

lawful money of the United States of America ~~xxxxxxxxxxxxxxxxxxxx~~

and other valuable considerations, to me in hand paid by

Watterson R. Rothacker and John D. Williams,

the receipt whereof is hereby acknowledged, have remised, released and forever discharged,
and by these presents do for myself, my heirs, executors
and administrators, remise, release and forever discharge the said Watterson R.
Rothacker and John D. Williams, their

heirs, executors and administrators, of and from all, and all manner of action and actions,
cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills,
specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses,
damages, judgments, extents, executions, claims and demands whatsoever, in law or in
equity which against them

I ever had, now have or which
my heirs, executors or administrators, hereafter
can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever
from the beginning of the world to the day of the date of these presents.

In Witness whereof, I have hereunto set my hand and seal
the _____ day of April, in the year one
thousand nine hundred twenty-three

Sealed and delivered in the presence of

State of NEW YORK

ss:

County of...New York.....

On this.....day of.....April,.....1923 before me personally appeared.....CATHRINE CURTIS..... to me known, and known to me to be the same person described in and who executed the within instrument and.....she.....acknowledged to me that.....she..... executed the same.

CATHRINE CURTIS

-TO-

WATERSON R. ROTHACKER and
JOHN D. WILLIAMS,

General Release.

JOHN T. MCGOVERN,
Attorney at law,
No. 2 Rector Street,
New York City.

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County of New York

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CATHRINE CURTIS

-TO-

WATERSON R. ROTHACKER and
JOHN D. WILLIAMS,

General Release.

JOHN T. MCGOVERN,
Attorney at law,
No. 2 Rector Street,
New York City.

SUPREME COURT : NEW YORK COUNTY

- - - - -X

CATHRINE CURTIS, :

Plaintiff, :

-against- :

STIPULATION

WATTERSON R. ROTHACKER and JOHN :
D. WILLIAMS, :

Defendants. :

- - - - -X

It is hereby and herein stipulated between the plaintiff and the defendants herein, that the above entitled action be settled as follows:

I. The plaintiff, upon the signing and sealing of this instrument, will receive from the defendants the sum of Two Thousand (\$2000) Dollars, the receipt whereof is hereby acknowledged, and at the same time the plaintiff gives to the defendants a general release on any and all causes of action named by the plaintiff against the defendants in this action, the receipt of which general release is hereby acknowledged by the defendants. It is understood, however, that the aforesaid general release is given only in the event the other conditions of this agreement are carried out by the defendants or their representatives herein.

II. The defendant Williams agrees that immediately upon the execution of this agreement he will procure for the plaintiff from the defendant Rothacker the motion picture rights of A. Conan Doyle's story "The Lost World" for a sum not to exceed Thirty Thousand (\$30,000) Dollars and that he will procure and furnish the amount necessary to pay for such motion picture rights. To this amount shall be added the sum of Eighteen Thousand Five

Hundred (\$18,500) Dollars and interest referred to in Paragraph "VI" hereof and the aggregate shall be the cost of procuring said motion picture rights. In said agreement, the defendant Rothacker is to guarantee the plaintiff and/or her representatives against any litigation which may take place in connection with the use of the pre-historic animal manikins, which manikins will be used in the making of the picture, "The Lost World". Said defendant Williams is to immediately make arrangements for the signing of the agreement aforesaid.

III. The defendant Williams is to immediately obtain sufficient finances for the production of the picture, "The Lost World", and an agreement with the financial interests is to be made, whereby the financial interests are to receive the return of their money and fifty percent (50%) of the profits of said picture, the other fifty percent (50%) to go to the plaintiff.

IV. The defendant Williams is to immediately obtain a distribution contract for the picture, "The Lost World", from the Ritz Pictures Corporation on a distribution basis of 65/35.

V. In all the agreements which will be made, as herein alleged, the production of the picture, "The Lost World", is to be a Cathrine Curtis Production and the plaintiff is to have entire charge of the management of this production and any and all publicity on said production shall be to this effect. The plaintiff and the defendant Williams, however, are to immediately agree in the selection of a director of said picture and upon the final endorsement of the scenario and continuity of said picture.

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Five Hundred (\$18,500) Dollars, with interest, said sum of Eighteen Thousand Five Hundred (\$18,500) Dollars being reimbursement to her of the sum previously paid by the plaintiff to the defendant Rothacker, the interest being computed from the date or dates of the payments made by the plaintiff or her assignor to the defendant Rothacker to the date when the money is returned to the plaintiff herein. This money together with the sum of Two Thousand (\$2,000) Dollars which the plaintiff is to receive upon the signing of this stipulation is to be made payable to the order of Cathrine Curtis, plaintiff and is to be paid to the said or to her attorney, John T. McGovern, 2 Rector St. Cathrine Curtis at the Vanderbilt Hotel, /Borough of Manhattan, City of New York. The aforesaid sum of Eighteen Thousand Five Hundred (\$18,500) Dollars and interest are to be added to the cost of the purchase price of the story rights and charged to General Production Costs.

VII. Immediately upon the entry and signing of all the agreements specified in this stipulation, this action is to be discontinued without costs against either party and without further notice and, if necessary, the attorney for the plaintiff, upon receiving word from the plaintiff that all of the agreements have been satisfactorily entered into as provided herein, shall give to the attorneys for the defendants a separate stipulation to this effect.

Dated, New York, April 26th, 1923.

..... Plaintiff in person. Attorney for Plaintiff.
..... Defendant in person Attorney for Defendant, Rothacker
..... Defendant in person. Attorney for Defendant, Williams

CITY, COUNTY AND STATE OF NEW YORK : SS.:

On this day of April, 1923, before
me personally appeared CATHRINE CURTIS, WATTERSON R.
ROTHACKER and JOHN D. WILLIAMS, to me known and known to
me to be the persons mentioned and described in, and who
duly and severally executed the foregoing instrument,
and they duly and severally acknowledged to me that they
executed the same.

S U P R E M E

Court

NEW YORK COUNTY

Take notice that the within is a
copy of.....
in within entitled.....
this day duly filed and entered in the office of
the Clerk of.....

Dated New York,.....192

JOHN T. McGOVERN,

Attorney for.....

2 Rector Street,
New York, N. Y.

To.....

CATHRINE CURTIS,
Plaintiff,

-against-

WATTERSON R. ROTHACKER and
JOHN D. WILLIAMS,

Defendants.

S T I P U L A T I O N .

JOHN T. McGOVERN,

Attorney for **Plaintiff,**.....

NO. 2 RECTOR STREET

NEW YORK, N. Y.

Due and timely service of a copy of within.....
.....is hereby admitted.

Dated,.....192

Attorney for.....

SUPREME COURT : NEW YORK COUNTY

- - - - -X

CATHRINE CURTIS, :
Plaintiff, :

-against- : STIPULATION

WATTERSON R. ROTHACKER and JOHN :
D. WILLIAMS, :
Defendants. :

- - - - -X

It is hereby and herein stipulated between the plaintiff and the defendants herein, that the above entitled action be settled as follows:

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II. The defendant Williams agrees that immediately upon the execution of this agreement he will procure for the plaintiff from the defendant Rothacker the motion picture rights of A. Conan Doyle's story "The Lost World" for a sum not to exceed Thirty Thousand (\$30,000) Dollars and that he will procure and furnish the amount necessary to pay for such motion picture rights. To this amount shall be added the sum of Eighteen Thousand Five

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III. The defendant Williams is to immediately obtain sufficient finances for the production of the picture, "The Lost World", and an agreement with the financial interests is to be made, whereby the financial interests are to receive the return of their money and fifty percent (50%) of the profits of said picture, the other fifty percent (50%) to go to the plaintiff.

IV. The defendant Williams is to immediately obtain a distribution contract for the picture, "The Lost World", from the Ritz Pictures Corporation on a distribution basis of 65/35.

V. In all the agreements which will be made, as herein alleged, the production of the picture, "The Lost World", is to be a Cathrine Curtis Production and the plaintiff is to have entire charge of the management of this production and any and all publicity on said production shall be to this effect. The plaintiff and the defendant Williams, however, are to immediately agree in the selection of a director of said picture and upon the final endorsement of the scenario and continuity of said picture.

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Dated, New York, April 26th, 1923.

..... Plaintiff in person. Attorney for Plaintiff.
..... Defendant in person Attorney for Defendant, Rothacker
..... Defendant in person. Attorney for Defendant, Williams

CITY, COUNTY AND STATE OF NEW YORK : SS.:

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Dated New York,.....192

JOHN T. McGOVERN,

Attorney for.....

2 Rector Street,

New York, N. Y.

To.....

S U P R E M E

Court

NEW YORK COUNTY

CATHRINE CURTIS,

Plaintiff,

-against-

WATTERSON R. ROTHACKER and
JOHN D. WILLIAMS,

Defendants.

S T I P U L A T I O N .

JOHN T. McGOVERN,

Attorney for **Plaintiff,**.....

No. 2 RECTOR STREET

NEW YORK, N. Y.

Due and timely service of a copy of within.....

.....is hereby admitted.

Dated,.....192

Attorney for.....

SUPREME COURT : NEW YORK COUNTY

- - - - -X

CATHRINE CURTIS, :

Plaintiff, :

-against- :

STIPULATION

WATTERSON R. ROTHACKER and JOHN :

D. WILLIAMS, :

Defendants. :

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Dated, New York, April 26th, 1923.

.....
Plaintiff in person.

.....
Attorney for Plaintiff.

.....
Defendant in person

.....
Attorney for Defendant,
Rothacker

.....
Defendant in person.

.....
Attorney for Defendant,
Williams

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and they duly and severally acknowledged to me that they
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SONDRA ET AL BOND

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in within entitled.....

this day duly filed and entered in the office of

the Clerk of.....

Dated New York,..... 192

JOHN T. McGOVERN,

Attorney for.....

2 Rector Street,

New York, N. Y.

To.....

S U P R E M E

Court

NEW YORK COUNTY

CATHRINE CURTIS,

Plaintiff,

-against-

WATTERSON R. ROTHACKER and
JOHN D. WILLIAMS,

Defendants.

COPY

S T I P U L A T I O N .

JOHN T. McGOVERN,

Attorney for Plaintiff,.....

NO. 2 RECTOR STREET

NEW YORK, N. Y.

Due and timely service of a copy of within.....

..... is hereby admitted.

Dated,..... 192

Attorney for.....

SUPREME COURT : NEW YORK COUNTY

- - - - -X

CATHRINE CURTIS, :
Plaintiff, :

-against- : STIPULATION

WATTERSON R. ROTHACKER and JOHN :
D. WILLIAMS, :
Defendants. :

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Dated, New York, April 26th, 1923.

.....
Plaintiff in person.

.....
Attorney for Plaintiff.

.....
Defendant in person

.....
Attorney for Defendant,
Rothacker

.....
Defendant in person.

.....
Attorney for Defendant,
Williams

CITY, COUNTY AND STATE OF NEW YORK : SS.:

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me personally appeared CATHRINE CURTIS, WATTERSON R.
ROTHACKER and JOHN D. WILLIAMS, to me known and known to
me to be the persons mentioned and described in, and who
duly and severally executed the foregoing instrument,
and they duly and severally acknowledged to me that they
executed the same.

SONCRAFT BONE

CITY AND COUNTY OF

ss.:

being sworn deposes and says that he is for the above named the attorney 192 he served the within herein. That on the day of

upon by depositing a true copy of the same securely enclosed in a post-paid wrapper in the Post-Office—a Branch Post-Office—a Post-Office Box regularly maintained by the United States Government at in said County of at No. address within the state designated by h for that purpose upon the preceding papers in this ac- tion, or the place where h then kept an office, between which places there then was and now is a regular communication by mail. Deponent is over the age of years.

Sworn to before me this day of 192

}

File No. 192.... SUPREME COURT - NEW YORK COUNTY

CATHRINE CURTIS, Plaintiff,

-against-

WATTERSON R. ROTHACKER and JOHN D. WILLIAMS, Defendants.

STIPULATION AND ORDER OF SUBSTITUTION

O'GORMAN, McDONALD & FUTTER

Attorneys for plaintiff (Office and Post Office Address) 165 Broadway

Borough of Manhattan New York City

To Esq . Attorney for

Service of a copy of the within

is hereby admitted

Dated, N. Y., 192

Attorney for

Sir : PLEASE NOTE that the within is a true copy of a

this day duly filed and entered in the office of the Clerk of the

Dated, N. Y., 192

Yours, &c.,

O'GORMAN, McDONALD & FUTTER

Attorneys for (Office and Post Office Address) 165 Broadway

Borough of Manhattan New York City

To Esq .

Sir : PLEASE NOTE that

of which the within is a true copy, will be presented for settlement and entry herein to Mr. Justice one of the Justices of the within named Court at

Borough of in the City of New York,

on the day of 192 at o'clock in the forenoon.

Dated, N. Y., 192

Yours, &c.,

O'GORMAN, McDONALD & FUTTER

Attorneys for (Office and Post Office Address) 165 Broadway

Borough of Manhattan New York City

To Esq .

Fold here J. Meyers Stat. & Print. Co., Inc., 301 Broadway, N. Y.

INDIVIDUAL VERIFICATION

STATE OF NEW YORK,
COUNTY OF

} ss.:

he is the , being duly sworn, deposes and says that
read the foregoing in the within action; that he has
the same is true to h own knowledge, except as to the matters therein stated to be alleged on
information and belief, and that as to those matters he believes it to be true.

Sworn to before me, this
day of 192

CORPORATION VERIFICATION

STATE OF NEW YORK,
COUNTY OF

} ss.:

he is the of the , being duly sworn, deposes and says that
that he has read the foregoing herein
and knows the contents thereof, and that the same is true to h own knowledge, except as to the
matters herein stated to be alleged upon information and belief, and as to those matters he be-
lieves it to be true.

Deponent further says that the reason this verification is made by deponent and not by the
is because the said
is a corporation, and deponent an officer thereof, to wit its

Sworn to before me, this
day of 192

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF

} ss.:

and says that he is over the age of being duly sworn, deposes
day of 192 , at No. years; that on the
in the Borough of , City of , he served the foregoing
upon
in this action, by delivering to and leaving personally with said
a true copy thereof.

Deponent further says, that he knew the person served as aforesaid, to be
the person mentioned and described in said
as the therein.

Sworn to before me, this
day of 192

M. Hitchcock

SUPREME COURT
NEW YORK COUNTY

CATHRINE CURTIS, :

Plaintiff :

-against- :

WATERSON R. ROTHACKER and :

JOHN D. WILLIAMS, :

Defendants. :

MEMORANDUM OF PLAINTIFF'S CAUSE OF ACTION.

On July 8, 1920 The Cathrine Curtis Corporation entered into a contract with Waterson R. Rothacker by which Waterson R. Rothacker sold to the corporation the motion picture rights to A. Conan Doyle's story "The Lost World. The price to be paid by the corporation was \$37,500, payable in the following installments:

- 25% upon the signing of the contract;
 - 25% upon the delivery of properly executed assignments of the rights to Sir Arthur Conan Doyle's story;
 - 50% upon the completion of the picture.
- With a further agreement that Rothacker should receive 50% of the profits.

The contract recited that Rothacker had acquired the ex-

clusive right to manufacture and distribute the motion picture based upon the story "The Lost World" by Sir Arthur Conan Doyle and that he was the owner of a collection of mannikins representing prehistoric animals and had the exclusive right to use them for the manufacture and distribution of motion pictures throughout the world and further that he had under contract the exclusive services of one Willis H. O'Brien to design, prepare and manufacture prehistoric animals and that he was the owner of the models designed by said Willis H. O'Brien and had the exclusive right to use them for the manufacture and distribution of motion pictures throughout the world.

The corporation agreed to use the services of said O'Brien in the production of the picture and to produce the picture in from five to seven reels based upon a scenario approved by Rothacker and to begin work upon the picture within thirty days after the delivery of the written approval by Rothacker of the scenario and to complete the picture within six months thereafter.

The last clause of the contract gave Rothacker the right to terminate the contract upon thirty days written notice to the corporation in the event that the corporation should have failed to perform any of the terms and should have further failed to remedy any default after notice.

The corporation was induced to enter into this contract by certain representations made by John D. Williams who was then the general manager of the First National Exhibitors Circuit, Inc. and Associated First National Pictures, Inc. and by Rothacker.

Williams represented to Miss Cathrine Curtis, an officer of the corporation, that the First National Exhibitors Exchange, Inc. and Associated First National Pictures, Inc. were willing to enter into a releasing contract and might even be counted on for cash advances toward the production of the picture.

When the corporation entered into the contract with Rothacker it paid \$9,000 upon the signing of the contract. Thereafter, two payments of \$4,687.50 each were made. The corporation also entered into a contract with Willis H. O'Brien by which it acquired the right to the services of O'Brien in the production of the picture and agreed to pay him a salary of \$100 per week. The corporation also entered into negotiations with one, Selig, for the production of the picture and failing to obtain a satisfactory contract with Selig, subsequently entered into a contract with Thomas H. Ince for the production of the picture. Charles Logue was engaged to write a scenario.

Before work on the picture was begun, it was necessary to exhibit to Mr. Ince a film showing the models of the prehistoric animals which were to be used in the production of "The Lost World". After some difficulty O'Brien was finally induced to exhibit such a film. The film obtained was "The Ghost of Slumber Mountain" which was loaned to O'Brien by the World Film Exchange. When Miss Curtis, president of the corporation, viewed the picture she noticed that the opening title carried the name of Herbert Dawley and that the name of Willis H. O'Brien did not

appear. At the time the contract was signed, Mr. Rothacker had represented to Miss Curtis that O'Brien was the original owner and maker of the models of the prehistoric animals and that he had the exclusive right to operate such models and to use them in the manufacture of motion pictures.

In 1921 Miss Curtis discovered that Dawley had released a second prehistoric animal picture entitled "Along the Moonbeam Trail". The opening title to this picture carried Dawley's name and stated that the process was invented and patented by Dawley. Miss Curtis also discovered that no attempt had ever been made by Rothacker or O'Brien to enjoin this picture or to contest the right of Dawley to use the prehistoric models. Mr. Dawley stated to Miss Curtis that O'Brien had at one time worked for him but had subsequently been discharged. About this time Miss Curtis also discovered that Rothacker had once attempted to sell the story of "The Lost World", combined with the O'Brien animal models, to Robert Rubin and Lewis Mayer for \$9,000 and a third interest in the profits and that at that time he had stated that the First National Exhibitors Circuit, Inc. and Associated First National Pictures, Inc. would give a contract for distribution. Mr. Rubin thereupon came East, interviewed the officials of the First National and was refused a contract. This was prior to the time when Williams made his representations to Miss Curtis.

Fearing to risk further money in the production of a picture which might result in patent litigation, the corporation refused to go on with the picture. Thereupon in the summer of 1921 Rothacker notified the corporation in writing that the contract had been

defaulted although he promised that he would return the money in the event that he negotiated a contract with any other people.

Miss Curtis, who had acquired by assignment all the rights of the corporation under the contract, thereupon brought suit in October 1922 against Rothacker and Williams. The complaint set up a cause of action in tort for damages resulting from fraud and deceit. The complaint alleged that the corporation was induced to enter into a certain contract with Rothacker and Williams by misrepresentations made by Rothacker and Williams.

Briefly summarized the misrepresentations alleged in the complaint were as follows:

1. That the First National Exhibitors Circuit, Inc. and Associated First National Pictures, Inc., two corporations of which the defendant, Williams, was an officer and general manager, were willing to enter into a releasing contract with the corporation, when as a matter of fact the two corporations which Williams purported to control would not have entered into such a releasing contract and further had already refused to enter into a releasing contract.

2. That Rothacker was the owner of the prehistoric models and had the exclusive right to use the same when as a matter of fact one Dawley had originated the process and had procured patents on them.

3. That Rothacker had a valid assignment from Sir Arthur Conan Doyle of the motion picture rights to "The Lost World" when as a matter of fact Rothacker never had such an assignment.

Answers were interposed by both defendants denying the allegations in plaintiff's complaint.

An action was also begun by Willis H. O'Brien against the Cathrine Curtis Corporation in the City Court of the City of New York for \$700 which the said O'Brien claimed to be due him for work, labor and services and for breach of contract by the corporation. The contract with O'Brien had been terminated when it was discovered that Dawley was the owner of the process by which the models of prehistoric animals were operated.

In addition to the payments made to Rothacker under the contract, the corporation had expended large sums on work preliminary to the production of the picture.

The total amount lost by the corporation by reason of the misrepresentations of Rothacker and Williams was \$64,277.01.

At a Special Term, Part II
of the Supreme Court, New York
County held in and for the County
of New York at the County Court-
house, Borough of Manhattan, on
the day of December, 1924.

PRESENT:

HON. JOSEPH PROSKAUER,

JUSTICE.

.....X

CATHRINE CURTIS, :

Plaintiff, :

-against- :

WATERSON R. ROTHACKER and JOHN D. :
WILLIAMS, :

Defendants. :

.....X

On the annexed consent, it is hereby

ORDERED that O'Gorman, McDonald & Futter, of
165 Broadway, Borough of Manhattan, be and hereby are
substituted as attorneys for the plaintiff in the above
entitled action in place of Chadbourne, Hunt, Jaeckel
& Brown.

Enter,

J.S.C.

Mr McGowan's Secretary

Please put this clause
I have written between
the marks in paragraph
II.

I have added a couple
of words through the balance
of the contract which you
will please note
Arthur Curtis

IV The defendant Williams agrees that immediately upon the execution of this agreement he will procure for the plaintiff from the defendant Rathbun the motion picture rights of a. Owen Boyd's story "The Last Word" for a sum not to exceed \$3000 and that he will procure and furnish the amount necessary to pay for such motion

picture rights. To this
amount shall be added
the sum of \$12500 and
interest referred to in
Paragraph VI hereof and
the aggregate shall be the
cost of procuring said
motion picture rights -

Continue on ~~the~~ from
here -

They cannot add what is ^{Green} represented + stated in contract he signed last

SUPREME COURT
NEW YORK COUNTY

CATHRINE CURTIS, :
Plaintiff :
-against- :
WATERSON R. ROTHACKER and :
JOHN D. WILLIAMS, :
Defendants. :

MEMORANDUM OF PLAINTIFF'S CAUSE OF ACTION.

On July 8, 1920 The Cathrine Curtis Corporation entered into a contract with Waterson R. Rothacker by which Waterson R. Rothacker sold to the corporation the motion picture rights to ~~2~~ Conan Doyle's story "The Lost World. The price to be paid by the corporation was \$37,500, payable in the following installments:

- 25% ^(amount) upon the signing of the contract;
 - 25% ^(amount) upon the delivery of properly executed assignments of the rights to Sir Arthur Conan Doyle's story;
 - 50% ^L upon the completion of the picture.
- With a further agreement that Rothacker should receive 50% of the profits.

Current Production Cost

The contract recited that Rothacker had acquired the ex-

Should add the change in terms agreed in letter

2

clusive right to manufacture and distribute the motion picture based upon the story "The Last World" by Sir Arthur Conan Doyle and that he was the owner of a collection of mannikins representing prehistoric animals and had the exclusive right to use them for the manufacture and distribution of motion pictures throughout the world, ~~and~~ further that he had under contract the exclusive services of one Willis H. O'Brien to design, prepare and manufacture prehistoric animals and that he was the owner of the models designed by said Willis H. O'Brien and had the exclusive right to use them for the manufacture and distribution of motion pictures throughout the world.

The corporation agreed to use the services of said O'Brien in the production of the picture and to produce the picture in from five to seven reels based upon a scenario approved by Rothacker and to begin work upon the picture within thirty days after the delivery of the written approval by Rothacker of the scenario and to complete the picture within six months thereafter.

The last clause of the contract gave Rothacker the right to terminate the contract upon thirty days written notice to the corporation in the event that the corporation should have failed to perform any of the terms and should have further failed to remedy any default after notice.

The corporation was induced to enter into this contract by certain representations made by John D. Williams who was then the general manager of the First National Exhibitors Circuit, Inc. and Associated First National Pictures, Inc., and by Rothacker.

He here
specific about to
cash advances
quote letter

Williams represented to Miss Cathrine Curtis, an officer of the corporation, that the First National Exhibitors ^{agent} Exchange, Inc. and Associated First National Pictures, Inc. were willing to enter into a releasing contract and might even be counted on for cash advances toward the production of the picture.

U. Braun contract
exclusive
unique

When the corporation entered into the contract with Rothacker it paid \$9,000 upon the signing of the contract. Thereafter, two payments of \$4,687.50 each were made. The corporation also entered into a contract with Willis H. O'Brien by which it acquired the right to the services of O'Brien in the production of the picture and agreed to pay him a salary of

beginning?

\$100 per week. The corporation also entered into negotiations with Col. Selig, for the production of the picture, ^{of him having it and come from to be in connection with the picture} and failing to obtain a satisfactory contract with Selig, subsequently entered into a contract with Thomas H. Ince for the production of the picture. ^{Last World} Charles Logue was engaged to write a scenario.

engaged America
with J. state
logue's talent etc on
Curtis trip
to Los Angeles - with
scenario with + scenario

~~Before work on the picture was begun, it was necessary to exhibit to Mr. Ince a film showing the models of the prehistoric animals which were to be used in the production of "The Lost World". After some difficulty O'Brien was finally induced to exhibit such a film. The film obtained was "The Ghost of Slumber Mountain" which was loaned to O'Brien by the World Film Exchange.~~ ^{the contract with Ince has possible of negotiation}

application to
last material
through Bellhaus
in contact as
discussed

When Miss Curtis, president of the corporation, viewed the picture she noticed that the opening title carried the name of Herbert Dawley and that the name of Willis H. O'Brien did not

through the press as promised stated
 appear, At the time the contract was signed, Mr. Rothacker had represented to Miss Curtis that O'Brien was the original owner and maker of the models of the prehistoric animals and that he had the exclusive right to operate such models and to use them in the manufacture of motion pictures.

In 1921 Miss Curtis discovered that Dawley had released a second prehistoric animal picture entitled "Along the Moonbeam Trail". *showing the same prehistoric animals* The opening title to this picture carried Dawley's name and stated that the process was invented and patented by Dawley. Miss Curtis also discovered that no attempt had ever been made by Rothacker or O'Brien to enjoin *either* this picture or to contest the right of Dawley to use the prehistoric models. Mr. Dawley *produced by Dawley* stated to Miss Curtis that O'Brien had at one time worked for him but had subsequently been discharged. *Further investigation* TP About this time Miss Curtis also discovered that Rothacker had once attempted to sell the story of "The Lost World", combined with the O'Brien animal models, to Robert Rubin and Lewis Mayer for \$9,000 and a third interest in the profits and that at that time he had stated that the First National Exhibitors Circuit, Inc. and Associated First National Pictures, Inc. would give a contract for distribution. *for public distribution by films showing said prehistoric animals under his name* Mr. Rubin thereupon came East, interviewed the officials of the First National and was refused a contract. This was prior to the time when Williams made his representations to Miss Curtis.

Schmitt

Fearing to risk further money in the production of a picture which might result in patent litigation, the corporation refused to go on with the picture. *make further payments* Thereupon in the summer of 1921 Rothacker notified the corporation in writing that the contract had been

5
R-
*from various times
it was promised
late III*

defaulted, ~~although he promised that he would return the money in the event that he negotiated a contract with any other people.~~

Miss Curtis, who had acquired by assignment all the rights of the corporation under the contract, thereupon brought suit in October 1922 against Rothacker and Williams. The complaint set up a cause of action in tort for damages resulting from fraud and deceit. The complaint alleged that the corporation was induced to enter into a certain contract with Rothacker and Williams by misrepresentations made by Rothacker and Williams.

Briefly summarized the misrepresentations alleged in the complaint were as follows:

1. That the First National Exhibitors Circuit, Inc. and Associated First National Pictures, Inc., two corporations of which the defendant, Williams, was an officer and general manager, were willing to enter into a releasing contract with the corporation, when as a matter of fact the two corporations which Williams purported to control would not have entered into such a releasing contract and further had already refused to enter into a releasing contract. *in actual control*

2. That Rothacker was the owner of the prehistoric models and had the exclusive right to use the same when as a matter of fact one Dawley had originated the process and had procured patents on them.

3. That Rothacker had a valid assignment from Sir Arthur Conan Doyle of the motion picture rights to "The Lost World" when as a matter of fact Rothacker never had such an assignment.

6

Answers were interposed by both defendants denying the allegations in plaintiff's complaint.

An action was also begun by Willis H. O'Brien against the ~~Catharine~~ Curtis Corporation in the City Court of the City of New York for \$700 which the said O'Brien claimed to be due him for work, labor and services and for breach of contract by the corporation. The contract with O'Brien had been terminated when it was discovered that Dawley was the owner of the process by which the models of prehistoric animals were operated.

also payment to you of approx \$2000

In addition to the payments made to Rothacker under the contract, the corporation had expended large sums on work preliminary to the production of the picture.

The total amount lost by the ^{Curtis} corporation by reason of the misrepresentations of Rothacker and Williams was \$64,277.01.

Salary upon time taken detail - all supplied by Curtis personally

Note I

During this investigation Carter
~~did~~ learned that ^{letters} ~~the~~ patent
covering said prehistoric animals
had ^{already} been issued to said Herbert
Lawley in 1920 — and that
~~there~~ no letters patent ~~had~~
covering prehistoric animal
members of any kind had
ever been issued to Miller —
o'Brien —

Note II in Feb - Mar. 1920 ^{offered} ~~later~~
to sell the last part to a certain ^{person}
in connection picture producer for
1920 and 33% of the profits

Note II that if he sold the
property he would ~~return~~ return
to Curtis money already paid
to him — or should give Curtis
an interest in picture equipment
to amount of his investment.

- CURTIS v. ROTHACKER and WILLIAMS -

Outline for Examination of Mr. Rothacker

1. Dictate the following title for the minutes:

Examination of the defendant Watterson R. Rothacker taken pursuant to notice dated July 1 1924 and stipulations dated September 30 1924, and October 9, 1924, at the office of Chadbourne, Hunt, Jaeckel & Brown, the attorneys for plaintiff, No. 165 Broadway, Borough of Manhattan, New York City, on Thursday, October 9, 1924, at 10 A.M.

2. Note appearances.

3. Dictate the following title for the examination of Rothacker:

Watterson R. Rothacker, being first duly sworn, testified as follows:
Direct examination by Mr. Chadbourne.

4. Examine Rothacker as to the following matters:

(Note. The notice for the examination of Rothacker was drafted hastily in order to catch Rothacker before he left town. As it does not give a very broad scope for an examination, we may meet objections to some of

our questions. The questions call for answer, however, which are related to the matters specified in the notice and may be justified on the theory that they lay a foundation for testimony as to the matters specified in the notice.)

As to paragraph 2 of the Notice, viz: Whether Rothacker, together with the defendant, Williams, had acquired the exclusive right to manufacture and distribute a motion picture based upon a story "The Lost World" by Sir Arthur Conan Doyle, we should ask:

Whether Mr. Rothacker was acquainted with Mr. Williams in and prior to July, 1920?

Whether he knew Williams at that time was General Manager of Associated First National Pictures, Inc. and of First National Exhibitors-Circuit, Inc.?

Whether he acquired, prior to July 1920, the motion picture rights to a story by Sir Arthur Conan Doyle, entitled "The Lost World"?

Did Williams join with him in the acquisition of these motion picture rights?

(There was some relationship between Williams and Rothacker in the acquisition of motion picture rights).

We should try to discover:

1. Whether Williams made any financial investment.
2. What agreement existed between Williams and Rothacker.

By his agreement, Rothacker promised that evidence of same (viz: acquisition of motion picture rights) would be submitted upon the execution of the agreement.

What evidence of this did he have to submit?

He never did submit any.

Some time prior to July 1920 and in or about February 1920 Rothacker offered these motion picture rights to one Robert Rubin. Rubin tried to get Williams to advance money on behalf of the Associated First National Pictures, Inc. for the production of the picture. Williams submitted it to his companies, but they refused any advance.

Ask Rothacker whether he offered these rights to Robert Rubin in or about February 1920.

As to paragraph 5 of the notice, viz: whether the defendant John D. Williams shared in any part of the proceeds of the defendant, Watterson R. Rothacker from the contract with said Cathrine Curtis Corporation, we should ask:

What arrangement was there between Williams and Rothacker which lead Williams to try to interest Miss Curtis in the purchase of the motion picture rights?

Was Williams paid anything out of the proceeds of the contract with Cathrine Curtis Corporation?

(The signing of this contract and its terms are admitted by the answer.)

Under paragraph 1 of the notice, we should ask the following:

At the time Rothacker signed the contract with Cathrine Curtis Corporation, he knew that one, Herbert Dawley, claimed the exclusive rights to the process of manufacturing and operating models of pre-historic animals.

He knew Dawley had applied for a patent on the process.

He knew that Willis H. O'Brien had formerly been employed by Dawley.

He knew that Dawley had produced and exhibited pictures showing pre-historic animals in action.

The process used in those pictures was the same as that used by O'Brien.

Dawley had produced two pictures, "The Ghost of Slumber Mountain" and "Along the Moonbeam Trail".

The production of both these pictures required the use of models of pre-historic animals similar to those manufactured and operated by Willis H. O'Brien. No attempt was ever made by Rothacker to enjoin or restrain Dawley in the use of the models of pre-historic animals.

- CATHERINE CURTIS v. ROTHACKER -

Outline for Examination
of
John D. Williams.

H.G.H.

October 4, 1924.

1. Dictate the following title for the minutes:

Examination of John D. Williams, taken pursuant to notice dated June 11, 1924 and stipulations dated September 30, 1924 and October 9, 1924 at the office of Chadbourne, Hunt, Jaeckel & Brown, attorneys for Plaintiff, No. 165 Broadway, Borough of Manhattan, New York City, on Thursday, October 9, 1924 at 10 A.M.

2. Note the appearances.

3. Dictate the following title for the examination of Williams:

John D. Williams, having been first duly sworn, testified as follows:

Direct examination by Mr. Chadbourne.

4. Examine Williams as to the following matters:

In July 1920 he was General Manager of the Associated First National Pictures, Inc.?

In July 1920 he was General Manager of First National Exhibitors-Circuit, Inc.?

How long prior to that time had he been General Manager of those corporations?

Did he join with Mr. Watterson R. Rothacker in acquiring from Sir Arthur Conan Doyle the motion picture rights to the story "The Lost World"?

Did Mr. Rothacker acquire the motion picture rights?

Was Williams financially interested in the acquisition of such rights?

Did he make any investments?

Was he associated with Mr. Rothacker in offering these motion picture rights to various motion picture producers?

Did he have any business relations of any sort in connection with the motion picture rights to "The Lost World"?

When did Mr. Rothacker acquire these rights?

In June 1920 he had a conversation with Miss Curtis about "The Lost World"?

At that time he showed her a film illustrating the use of certain models of pre-historic animals necessary to the production of the picture?

Where did he procure this film?

What was it, etc?

Did he not state at that time that the models were exclusively owned, invented and operated by Willis H. O'Brien?

Did he not state that Mr. O'Brien was then in the employ of Mr. Rothacker?

Did he make any representations?

What was said, etc?

Did he not tell Miss Curtis: (quote exactly) that a one real picture featuring pre-historic animals had been released and run at a Broadway Theatre but had been stopped by Mr. Rothacker?

He made an offer to Miss Curtis on behalf of the First National, to advance money to her upon a released contract?

What was the offer?

Did he not tell Miss Curtis that the First National would enter into a contract if Miss Curtis' corporation produced it?

Did he not tell Miss Curtis that the First National would agree to make a cash advance of from \$150,000 to \$200,000 in the event that Miss Curtis' corporation undertook to produce the picture?

Was it not a fact that at this time the First National had already rejected a proposal that it distribute "The Lost World" and make a cash advance?

Details of prior offer:

(In or about February 1920 one Robert Rubin was offered the rights to The Lost World but when he sought a releasing contract from the First National, it was refused.)

Did the First National have negotiations with a Mr. Rubin in February 1920 in regard to the production of "The Lost World"?

What negotiations?

Result?

How much money did he receive from Mr. Rothacker as the proceeds of the contract between the Cathrine Curtis Corporation and Watterson R. Rothacker?

Show him letter dated July 2, 1920. That letter was signed by him and sent to Miss Curtis as President of the Cathrine Curtis Corporation. (Exhibit A).

Ditto letter of June 29, 1920. (Exhibit B).

Ditto letter of September 3, 1920 to Mr. Ernest Shipman as agent of Cathrine Curtis Corporation. (Exhibit C.)

Ditto letter of October 19, 1920. (Exhibit D).

Ditto letter of October 26, 1920. (Exhibit E.)

Ditto letter of November 26, 1920. (Exhibit F.)

Ditto letter of December 1, 1920 to Mr. F. J. Ward, Treasurer of Cathrine Curtis Corporation. (Exhibit G.)

- CATHRINE CURTIS v. ROTHACKER -

Outline for Examination
of
John D. Williams.

H.G.H.

October 4, 1924.

1. Dictate the following title for the minutes:

Examination of John D. Williams, taken pursuant to notice dated June 11, 1924 and stipulations dated September 30, 1924 and October 9, 1924 at the office of Chadbourne, Hunt, Jaeckel & Brown, attorneys for Plaintiff, No. 165 Broadway, Borough of Manhattan, New York City, on Thursday, October 9, 1924 at 10 A.M.

2. Note the appearances.

3. Dictate the following title for the examination of Williams:

John D. Williams, having been first duly sworn, testified as follows:

Direct examination by Mr. Chadbourne.

4. Examine Williams as to the following matters:

In July 1920 he was General Manager of the Associated First National Pictures, Inc.?

In July 1920 he was General Manager of First National Exhibitors-Circuit, Inc.?

How long prior to that time had he been General Manager of those corporations?

Did he join with Mr. Watterson R. Rothacker in acquiring from Sir Arthur Conan Doyle the motion picture rights to the story "The Lost World"?

Did Mr. Rothacker acquire the motion picture rights?

Was Williams financially interested in the acquisition of such rights?

Did he make any investments ^{in the picture}?

Was he associated with Mr. Rothacker in offering these motion picture rights to various motion picture producers?

Did he have any business relations of any sort in connection with the motion picture rights to "The Lost World"?

When did Mr. Rothacker acquire these rights?

In June 1920 he had a conversation with Miss Curtis about "The Lost World"?

At that time he showed her a film illustrating the use of certain models of pre-historic animals necessary to the production of the picture?

Where did he procure this film?

What was it, etc?

Did he not state at that time that the models were exclusively owned, invented and operated by Willis H. O'Brien?

Did he not state that Mr. O'Brien was then in the employ of Mr. Rothacker?

Did he make any representations?

What was said, etc?

Did he not tell Miss Curtis: (quote exactly) that a one real picture featuring pre-historic animals had been released and run at a Broadway Theatre but had been stopped by Mr. Rothacker?

He made an offer to Miss Curtis on behalf of the First National, to advance money to her upon a released^{ing} contract?

What was the offer?

Did he not tell Miss Curtis that the First National would enter into a ^{distribution} contract, if Miss Curtis' corporation produced it?

Did he not tell Miss Curtis that the First National would agree to make a cash advance of from \$150,000 to \$200,000 in the event that Miss Curtis' corporation undertook to produce the picture?

Was it not a fact that at this time the First National had already rejected a proposal that it distribute "The Lost World" and make a cash advance?

Details of prior offer:



(In or about February 1920 one ^{Louis Mayer}~~Robert Rubin~~ was offered the rights to The Lost World but when he sought a releasing contract from the First National, it was refused.)

Did the First National have negotiations with a Mr. ^{Mayer}~~Rubin~~ in February 1920 in regard to the production of "The Lost World"?

What negotiations?

Result?

How much money did he ^{Williams} receive from Mr. Rothacker as the proceeds of the contract between the Cathrine Curtis Corporation and Watterson R. Rothacker?

Show him letter dated July 2, 1920. That letter was signed by him and sent to Miss Curtis as President of the Cathrine Curtis Corporation. (Exhibit A).

Ditto letter of June 29, 1920. (Exhibit B).

Ditto letter of September 3, 1920 to Mr. Ernest Shipman as agent of Cathrine Curtis Corporation. (Exhibit C.)

Ditto letter of October 19, 1920. (Exhibit D).

Ditto letter of October 26, 1920. (Exhibit E.)

Ditto letter of November 26, 1920. (Exhibit F.)

Ditto letter of December 1, 1920 to Mr. F. J. Ward, Treasurer of Cathrine Curtis Corporation. (Exhibit G.)

SUPREME COURT
NEW YORK COUNTY

CATHERINE CURTIS, :
Plaintiff :
-against- :
WATERSON R. ROTHACKER and :
JOHN D. WILLIAMS, :
Defendants. :

MEMORANDUM OF PLAINTIFF'S CAUSE OF ACTION.

On July 8, 1920 the Cathrine Curtis Corporation entered into a contract with Waterson R. Rothacker by which Rothacker sold to the corporation, the motion picture rights to Conan Doyle's story "The Lost World." The price to be paid by the Curtis Corporation was \$37,500, payable in the following installments:

25% (\$9,375.00) upon the signing of the contract:

25% (\$9,375.00) upon the delivery of properly executed assignments of the rights to Sir Arthur Conan Doyle's story;

50% (\$18,750.00) upon the completion of the picture.

With a further agreement that Rothacker should receive 50% of the profits.

The Curtis Corporation was to be liable for the financing of the production up to the amount of \$150,000.00.

The contract recited that Rothacker had acquired the exclusive right to manufacture and distribute the motion picture based upon the story "The Lost World" by Sir Arthur Conan Doyle and that he was the owner of a collection of mannikins representing prehistoric animals and had the exclusive right to use them for the manufacture and distribution of motion pictures throughout the world.

Further, that he had under contract the exclusive services of one, Willis H. O'Brien, to design, prepare and manufacture prehistoric animal mannikins, and that he was the owner of the models designed by said Willis H. O'Brien and had the exclusive right to use them for the manufacture and distribution of motion pictures throughout the world.

The Curtis Corporation agreed to use the services of said O'Brien in the production of the picture and to produce the picture in from five to seven reels based upon a scenario approved by Rothacker and to begin work upon the picture within thirty days after the delivery of the written approval by Rothacker of the scenario and to complete the picture within six months thereafter.

The last clause of the contract gave Rothacker the right to terminate the contract upon thirty days written notice to the Curtis Corporation, in the event that the corporation should have failed to perform any of the terms and should have further failed to remedy any default after notice.

The Curtis Corporation was induced to enter into this

contract by certain representations made by John D. Williams who was then the general manager of the First National Exhibitors Circuit, Inc., and Associated First National Pictures, Inc., and by Rothacker.

Williams represented to Miss Cathrine Curtis, an officer of the Curtis Corporation, that the First National Exhibitors, Circuit, Inc., and Associated First National Pictures, Inc., were willing to enter in to a pre-release contract, stating a specific sum to be paid as negative advance and also stating that First National would even be willing to make cash advances toward the production of the picture.

Quote letters (?)

When the Curtis Corporation entered into the contract with Rothacker, it paid \$9,375.00 upon signing of the contract. Thereafter, two payments of \$4,687.50 each were made. The Corporation also entered into a contract with Willis H. O'Brian by which it acquired the right to the services of O'Brian in the production of the picture and agreed to pay him a salary of \$100.00 a week, commencing with August 1, 1920, and a bonus of \$2,000 payable upon the completion of the picture.

The Curtis Corporation immediately set to work on the general details necessary to ~~commence~~ production. It had various

negotiations with agents, directors, etc. There were countless telegrams exchanged with agents in California regarding cast, talent, etc. Curtis engaged Charles Logue to do the scenerio for "the Lost World" and there was a great deal of time spent in discussing various details of the story with him. In the early Fall of 1920, Curtis left for Los Angeles, accompanied by her secretary and Logue, who was continuing work on the scenerio and who was to act as assistant director on the production. It was Mr. Rothacker's wish that Logue should be taken to the Coast in order that he might absorb all ideas possible from ~~that~~ Rothacker, Wainwright, O'Brien, Col. Selig and others.

Before starting for California, Curtis applied to Associated First National Pictures and Williams for a release contract to "The Lost World" in accordance with previous agreements and representations. ^W ~~A contract was refused to Curtis at this time.~~

strengthen Upon arriving in Los Angeles, Curtis Corporation also entered into negotiations with Col. Selig ^{a director-producer} for the production of "The Lost World". After considerable time and expense, including legal fees, Curtis was unable to obtain a satisfactory contract from Selig and went to the extra expense of having Mr. Ward, the Treasurer of the Curtis Corporation, make the trip to Los Angeles in the hopes that he might be able to secure a satisfactory contract. The Selig contract was never consummated and shortly after, the Curtis Corporation entered into a contract with Thomas Ince for the production of "The Lost World."

2

Before ~~the~~ contract with Ince was possible of negotiation, it was necessary to exhibit to Ince a film showing the models of the prehistoric animal mannikins, which were to be used in the production of "The Lost World." After some difficulty, O'Brien was finally induced to exhibit such a film. The film obtained was "The Ghost of Slumber Mountain" which was loaned to O'Brien by the World Film Exchange, ^{and was actually the property of Dawley} When Miss Curtis viewed the picture she noticed that the opening title carried the name of Herbert Dawley and that the name of Willis H. O'Brien did not appear thereon as previously stated by Williams, Rothacker and O'Brien. At the time the contract was signed Rothacker had represented to Curtis that O'Brien was the original owner, maker and inventor of the models of the prehistoric animals and that he had the exclusive right to operate such models and to use them exclusively in the manufacture of motion pictures.

The contract signed by O'Brien stated that his services could be termed "unique and extraordinary," and "that the use of said models and the construction thereof was known only to the said Operator," (O'Brien). This was deliberate misrepresentation by O'Brien for he knew Dawley had ^{distributed} ~~completed~~ a picture using said animal mannikins and that he, O'Brien, had worked for Dawley and ^{knew} that Dawley did, of course, have ^{full & complete} ~~intimate~~ knowledge of the construction ^{of said animal mannikins} of said animal mannikins.

In 1921, Curtis discovered that Dawley had released a second animal picture, entitled "Along the Moonbeam Trail," showing the same prehistoric animals. The opening title of this

picture carried Dawley's name and stated that the process was invented and patented by Dawley. Curtis, after considerable investigation, also discovered that no attempt had ever been made by Rothacker or O'Brien to enjoin either picture produced by Dawley or to contest the right of Dawley to use the prehistoric animal models. Further investigation showed that O'Brien had never released ^{under his own name} for distribution any films showing prehistoric animals ~~under his own name~~.

During this investigation, Curtis learned that letters patent covering said prehistoric animals, had already been issued to said Herbert Dawley in 1920 and that ^{July 27} no letters patent covering prehistoric animal manikins of any kind, had ever been issued to Willis H. O'Brien. Dawley stated to Curtis that O'Brien had ^{before signing of} ~~at~~ ^{Curtis} ~~one-time~~ worked for him but had subsequently been discharged. ^{O'Brien} ^{contract}

Curtis also discovered that in February, -March, 1920 Rothacker offered to sell "The Lost World" and O'Brien's animals and services to a certain motion picture producer for approximately \$9,000 cash and 33% of the profits of the picture, representing to him that First National would be willing to give a pre-production contract for distribution.

Application was made to First National by said producer and they refused to contract for the distribution of the production. Because of this, the motion picture producer discontinued negotiations with Rothacker. About six weeks afterwards, Rothacker, through Williams, entered into negotiations with Curtis for the sale of the identical property at a price of \$37,500.00 and 50%

of the profits - reiterating the representations that First National would enter into a distribution contract for "The Lost World" and with full knowledge on the part of Williams and Rothacker of the former refusal by First National to contract with the aforesaid motion picture producer. Rothacker and Williams accepted the three installment payments on said contract from Curtis, regardless of the above mentioned facts, ~~and~~ Rothacker ^{however} never at any time delivered to Curtis Corporation a copy of the properly assigned rights from Sir Arthur Conan Doyle as required under the Rothacker-Curtis contract.

Fearing to risk further money in the production of a picture which might result in patent litigation, ^{because of adverse claim} the Curtis ^{to title} Corporation refused to go on with the picture or to make further payments. Thereupon, in the summer of 1921, Rothacker notified the Curtis Corporation in writing that the contract had been defaulted. However, at previous times ⁺ thereafter, Rothacker promised that if he sold the property, he would return to Curtis money already paid to him or would give Curtis an interest in "the Lost World" production equivalent to the amount of her investment.

Curtis, who had acquired by assignment all the rights of the corporation under the contract, thereupon brought suit in October 1922 against Rothacker and Williams. The complaint set up a cause of action in tort for damages resulting from fraud and deceit. The complaint alleged that the corporation was induced to enter into a certain contract with Rothacker and Williams by

mistepresentations made by Rothacker and Williams.

Briefly summarized, the misrepresentations alleged in the complaint were as follows:

1. That the First National Exhibitors Circuit, Inc. and Associated First National Pictures, Inc., two corporations of which the defendant, Williams, was an officer and general manager and in active control, were willing to enter into a releasing contract with the corporation, when as a matter of fact the two corporations which Williams purported to control would not have entered into such a releasing contract and further had already refused to enter into a releasing contract.

2. That Rothacker was the owner of the prehistoric models and had the exclusive right to use the same, when as a matter of fact one, Dawley, had originated the process and had procured patents on them.

3. That Rothacker had a valid assignment from Sir Arthur Conan Doyle of the motion picture rights to "The Lost World" when as a matter of fact Rothacker never had such an assignment.

Answers were interposed by both defendants denying the allegations in plaintiff's complaint.

An action was also begun by Willis H. O'Brien against the Curtis Corporation in the City Court of the City of New York for \$700, which the said O'Brien claimed to be due him for work, labor and services and for breach of contract by the corporation. The contract with O'Brien had been terminated after payment to him of approximately \$2,000, and when it was discovered that Dawley, and not O'Brien, was the owner of the process by which the models of prehistoric animals were operated.

In addition to the payments made to Rothacker under the contract, the corporation had expended large sums on work preliminary to the production of the picture. Miss Curtis had spent an endless amount of time and a large amount of money both in New York and on her trip to Los Angeles, arranging details of production at that time.

The total amount lost by Curtis by reason of the misrepresentations of Rothacker and Williams was \$64,277.01.

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- CATHERINE CURTIS v. ROTHACKER -

Outline for Examination
of
John D. Williams

H.G.H.

October 4, 1924.

1. Dictate the following title for the minutes:

Examination of John D. Williams, taken pursuant to notice dated June 11, 1924 and stipulations dated September 30, 1924 and October 9, 1924 at the office of Chadbourne, Hunt, Jaeckel & Brown, attorneys for Plaintiff, No. 165 Broadway, Borough of Manhattan, New York City, on Thursday, October 9, 1924 at 10 A.M.

2. Note the appearances.

3. Dictate the following title for the examination of Williams:

John D. Williams, having been first duly sworn, testified as follows:
Direct examination by Mr. Chadbourne.

4. Examine Williams as to the following matters:

In July 1920 he was General Manager of the Associated First National Pictures, Inc.?

In July 1920 he was General Manager of First National Exhibitors-Circuit, Inc.?

How long prior to that time had he been General Manager of those corporations?

Did he join with Mr. Watterson R. Rothacker in acquiring from Sir Arthur Conan Doyle the motion picture rights to the story "The Lost World"?

Did Mr. Rothacker acquire the motion picture rights?

Was Williams financially interested in the acquisition of such rights?

Did he make any investments?

Was he associated with Mr. Rothacker in offering these motion picture rights to various motion picture producers?

Did he have any business relations of any sort in connection with the motion picture rights to "The Lost World"?

When did Mr. Rothacker acquire these rights?

In June 1920 he had a conversation with Miss Curtis about "The Lost World"?

At that time he showed her a film illustrating the use of certain models of pre-historic animals necessary to the production of the picture?

Where did he procure this film?

What was it, etc?

Did he not state at that time that the models were exclusively owned, invented and operated by Willis H. O'Brien?

Did he not state that Mr. O'Brien was then in the employ of Mr. Rothacker?

Did he make any representations?

What was said, etc?

Did he not tell Miss Curtis: (quote exactly) that a one real picture featuring pre-historic animals had been released and run at a Broadway Theatre but had been stopped by Mr. Rothacker?

He made an offer to Miss Curtis on behalf of the First National, to advance money to her upon a released ^{by} contract?

What was the offer?

Did he not tell Miss Curtis that the First National would enter into a contract if Miss Curtis' corporation produced it?

distribution

Did he not tell Miss Curtis that the First National would agree to make a cash advance of from \$150,000 to \$200,000 in the event that Miss Curtis' corporation undertook to produce the picture?

Was it not a fact that at this time the First National had already rejected a proposal that it distribute "The Lost World" and make a cash advance?

Details of prior offer:

(In or about February 1920 one Robert Rubin was offered the rights to The Lost World but when he sought a releasing contract from the First National, it was refused.)

Did the First National have negotiations with a Mr. Rubin in February 1920 in regard to the production of "The Lost World"?

What negotiations?

Result?

How much money did he receive from Mr. Rothacker as the proceeds of the contract between the Cathrine Curtis Corporation and Watterson R. Rothacker?

Show him letter dated July 2, 1920. That letter was signed by him and sent to Miss Curtis as President of the Cathrine Curtis Corporation. (Exhibit A).

Ditto letter of June 29, 1920. (Exhibit B).

Ditto letter of September 3, 1920 to Mr. Ernest Shipman as agent of Cathrine Curtis Corporation. (Exhibit C.)

Ditto letter of October 19, 1920. (Exhibit D).

Ditto letter of October 26, 1920. (Exhibit E.)

Ditto letter of November 26, 1920. (Exhibit F.)

Ditto letter of December 1, 1920 to Mr. F. J. Ward, Treasurer of Cathrine Curtis Corporation. (Exhibit G.)

- CURTIS v. ROTHACKER and WILLIAMS -

Outline for Examination of Mr. Rothacker

1. Dictate the following title for the minutes:

Examination of the defendant Watterson R. Rothacker taken pursuant to notice dated July 1 1924 and stipulations dated September 30 1924, and October 9, 1924, at the office of Chadbourne, Hunt, Jaeckel & Brown, the attorneys for plaintiff, No. 165 Broadway, Borough of Manhattan, New York City, on Thursday, October 9, 1924, at 10 A.M.

2. Note appearances.

3. Dictate the following title for the examination of Rothacker:

Watterson R. Rothacker, being first duly sworn, testified as follows:
Direct examination by Mr. Chadbourne.

4. Examine Rothacker as to the following matters:

(Note. The notice for the examination of Rothacker was drafted hastily in order to catch Rothacker before he left town. As it does not give a very broad scope for an examination, we may meet objections to some of

our questions. The questions call for answer^s, however, which are related to the matters specified in the notice and may be justified on the theory that they lay a foundation for testimony as to the matters specified in the notice.)

As to paragraph 2 of the Notice, viz: Whether Rothacker, together with the defendant, Williams, had acquired the exclusive right to manufacture and distribute a motion picture based upon a story "The Lost World" by Sir Arthur Conan Doyle, we should ask:

Whether Mr. Rothacker was acquainted with Mr. Williams in and prior to July, 1920?

Whether he knew Williams at that time was General Manager of Associated First National Pictures, Inc. and of First National Exhibitors-Circuit, Inc.?

Whether he acquired, prior to July 1920, the motion picture rights to a story by Sir Arthur Conan Doyle, entitled "The Lost World"?

Did Williams join with him in the acquisition of these motion picture rights?

(There was some relationship between Williams and Rothacker in the acquisition of motion picture rights).

We should try to discover:

1. Whether Williams made any financial investment.
2. What agreement existed between Williams and Rothacker.

By his agreement, Rothacker promised that evidence of same (viz: acquisition of motion picture rights) would be submitted upon the execution of the agreement.

What evidence of this did he have to submit?

He never did submit any.

Some time prior to July 1920 and in or about February 1920 Rothacker offered these motion picture rights to one ^{Louis} ~~Robert~~ ^{Mayer} ~~Robert~~ ^{Mayer} ~~Robert~~ tried to get Williams to advance money on behalf of the Associated First National Pictures, Inc. for the production of the picture. Williams submitted it to his companies, but they refused any advance.

Ask Rothacker whether he offered these rights to ^{Louis} ~~Robert~~ ^{Mayer} ~~Robert~~ in or about February 1920.

As to paragraph 5 of the notice, viz: whether the defendant John D. Williams shared in any part of the proceeds of the defendant, Watterson R. Rothacker from the contract with said Cathrine Curtis Corporation, we should ask:

What arrangement was there between Williams and Rothacker which lead Williams to try to interest Miss Curtis in the purchase of the motion picture rights?

Was Williams paid anything out of the proceeds of the contract with Cathrine Curtis Corporation?

(The signing of this contract and its terms are admitted by the answer.)

Under paragraph 1 of the notice, we should ask the following:

At the time Rothacker signed the contract with Cathrine Curtis Corporation, he knew that one, Herbert Dawley, claimed the exclusive rights to the process of manufacturing and operating models of pre-historic animals.

He knew Dawley had applied for a patent on the process.

He knew that Willis H. O'Brien had formerly been employed by Dawley.

He knew that Dawley had produced and exhibited pictures showing pre-historic animals in action.

The process used in those pictures was the same as that used by O'Brien.

Dawley had produced two pictures, "The Ghost of Slumber Mountain" and "Along the Moonbeam Trail".

The production of both these pictures required the use of models of pre-historic animals similar to those manufactured and operated by Willis H. O'Brien. No attempt was ever made by Rothacker to enjoin or restrain Dawley in the use of the models of pre-historic animals.

- CURTIS v. ROTHACKER and WILLIAMS -

Outline for Examination of Mr. Rothacker

1. Dictate the following title for the minutes:

Examination of the defendant Watterson R. Rothacker taken pursuant to notice dated July 1 1924 and stipulations dated September 30 1924, and October 9, 1924, at the office of Chadbourne, Hunt, Jaeckel & Brown, the attorneys for plaintiff, No. 165 Broadway, Borough of Manhattan, New York City, on Thursday, October 9, 1924, at 10 A.M.

2. Note appearances.

3. Dictate the following title for the examination of Rothacker:

Watterson R. Rothacker, being first duly sworn, testified as follows:
Direct examination by Mr. Chadbourne.

4. Examine Rothacker as to the following matters:

(Note. The notice for the examination of Rothacker was drafted hastily in order to catch Rothacker before he left town. As it does not give a very broad scope for an examination, we may meet objections to some of

our questions. The questions call for answer, however, which are related to the matters specified in the notice and may be justified on the theory that they lay a foundation for testimony as to the matters specified in the notice.)

As to paragraph 2 of the Notice, viz: Whether Rothacker, together with the defendant, Williams, had acquired the exclusive right to manufacture and distribute a motion picture based upon a story "The Lost World" by Sir Arthur Conan Doyle, we should ask:

Whether Mr. Rothacker was acquainted with Mr. Williams in and prior to July, 1920?

Whether he knew Williams at that time was General Manager of Associated First National Pictures, Inc. and of First National Exhibitors-Circuit, Inc.?

Whether he acquired, prior to July 1920, the motion picture rights to a story by Sir Arthur Conan Doyle, entitled "The Lost World"?

Did Williams join with him in the acquisition of these motion picture rights?

(There was some relationship between Williams and Rothacker in the acquisition of motion picture rights).

We should try to discover:

1. Whether Williams made any financial investment.
2. What agreement existed between Williams and Rothacker.

By his agreement, Rothacker promised that evidence of same (viz: acquisition of motion picture rights) would be submitted upon the execution of the agreement.

What evidence of this did he have to submit?

He never did submit any.

Some time prior to July 1920 and in or about February 1920 Rothacker offered these motion picture rights to ~~Robert~~ ^{any} ~~Rubin~~. ^{Just temporary they} ~~Rubin~~ ^{Producer} tried to get Williams to advance money on behalf of the Associated First National Pictures, Inc. for the production of the picture. Williams submitted it to his companies, but they refused any advance.

~~A~~ Ask Rothacker whether he offered these rights to Robert Rubin in or about February 1920.

As to paragraph 5 of the notice, viz: whether the defendant John D. Williams shared in any part of the proceeds of the defendant, Watterson R. Rothacker from the contract with said Cathrine Curtis Corporation, we should ask:

What arrangement was there between Williams and Rothacker which lead Williams to try to interest Miss Curtis in the purchase of the motion picture rights?

Was Williams paid anything out of the proceeds of the contract with Cathrine Curtis Corporation?

(The signing of this contract and its terms are admitted by the answer.)

Under paragraph 1 of the notice, we should ask the following:

At the time Rothacker signed the contract with Cathrine Curtis Corporation, he knew that one, Herbert Dawley, claimed the exclusive rights to the process of manufacturing and operating models of pre-historic animals.

He knew Dawley had applied for a patent on the process.

He knew that Willis H. O'Brien had formerly been employed by Dawley.

He knew that Dawley had produced and exhibited pictures showing pre-historic animals in action.

The process used in those pictures was the same as that used by O'Brien.

Dawley had produced two pictures, "The Ghost of Slumber Mountain" and "Along the Moonbeam Trail".

The production of both these pictures required the use of models of pre-historic animals similar to those manufactured and operated by Willis H. O'Brien. No attempt was ever made by Rothacker to enjoin or restrain Dawley in the use of the models of pre-historic animals.

to the purchase of the picture, Mr. Rothacker accordingly represented that he was the owner of a collection of mannikins representing prehistoric animals and that he had the exclusive right to use them for the manufacture and distribution of motion pictures throughout the world, and, further, that he had under contract the exclusive services of one Willis H. O'Brien to design, prepare and manufacture prehistoric animals. Mr. O'Brien's models were the ones to which Mr. Rothacker had acquired the exclusive rights. All of these representations were formally incorporated into the contract, as will be seen by a reference to the contract, which is set forth in full as an exhibit attached to this memorandum.

The price to be paid by the Catharine Curtis Corporation was \$37,500, payable in the following installments:

25% upon the signing of the contract;

25% upon the delivery of properly executed assignments of the rights to Sir Arthur Conan Doyle's story;

50% upon the completion of the picture.

There was a further agreement that Rothacker should receive 50% of the profits after a credit to the corporation of \$150,000 as an allowance for the cost of production.

The corporation agreed to use the services of Willis H. O'Brien, the alleged inventor of the models of the prehistoric animals, in the production of the picture and to produce the picture in from five to seven reels based upon a scenario approved by Rothacker. Work was to be begun upon the picture within thirty days after the delivery of the written approval by

Rothacker of the scenario, and the picture to be completed within six months thereafter.

The last clause of the contract gave Rothacker the right to terminate the contract upon thirty days' written notice to the corporation in the event that the corporation should have failed to perform any of the terms and should have further failed to remedy any default after notice.

The Cathrine Curtis Corporation was induced to enter into this contract by certain representations made by John D. Williams, who was then the general manager of the First National Exhibitors Circuit, Inc. and Associated First National Pictures, Inc., as well as by Rothacker. Williams represented to Miss Cathrine Curtis, an officer of the corporation, that the First National Exhibitors Exchange, Inc. and Associated First National Pictures, Inc. were willing to enter into a pre-release contract. He named a specific sum to be paid as a negative advance and also stated that First National would even be willing to make cash advances toward the production of the picture.

When the Curtis Corporation entered into the contract with Rothacker it paid \$9,375 upon the signing of the contract. Thereafter, two payments of \$4,687.50 each were made. The corporation also entered into a contract with Willis H. O'Brien, by which it acquired the right to the services of O'Brien in the production of the picture and agreed to pay him a salary of \$100 per week, commencing August 1, 1920, and a bonus of \$2000,

paysble upon the completion of the picture.

The Curtis Corporation immediately set about making preparations for the production of the picture. Various negotiations were begun with agents and directors. Countless telegrams were exchanged between agents in California and the corporation officers in New York in regard to cast, talent and the details preliminary to production. Charles Logue was engaged to write the scenario for "The Lost World." A great deal of his time, as well as that of Miss Curtis, was spent in going over the details of the story. In the early Fall of 1920 Miss Curtis left for Los Angeles, accompanied by her secretary and Mr. Logue, who was then at work on the scenario and who was also to act as assistant director of the production. It was Mr. Rothacker's wish that Logue be taken to the Coast in order that he might benefit by conferences with Rothacker, Wainwright, O'Brien, Colonel Selig and others.

Upon arriving in Los Angeles Miss Curtis entered into negotiations with Col. Selig for the production of "The Lost World". After considerable time and expense, including legal fees, Miss Curtis was herself unable to make a satisfactory contract with Selig. She then incurred the extra expense of having Mr. Ward, the Treasurer of the Curtis Corporation, make the trip to Los Angeles in the hope that he might be able to make a satisfactory contract. This also proved impossible. All negotiations with Col. Selig were thereupon abandoned, and shortly after the

Curtis Corporation entered into a contract with Thomas Ince for the production of "The Lost World."

Before a contract with Ince was possible it was necessary to exhibit to Mr. Ince a film showing the models of the prehistoric animals which were to be used in the production of "The Lost World." After some difficulty O'Brien was finally induced to exhibit such a film. The film obtained was "The Ghost of Slumber Mountain", which was loaned to O'Brien by the World Film Exchange. It was the property of Major Herbert Dawley. When Miss Curtis viewed the picture she noticed that the opening title carried the name of Herbert Dawley and that the name of Willis H. O'Brien did not appear. At the time the contract was signed, Mr. Rothacker had represented to Miss Curtis that O'Brien was the original owner and maker of the models of the prehistoric animals and that he had the exclusive right to operate such models and to use them in the manufacture of motion pictures.

In 1921 Miss Curtis discovered that Dawley had released a second prehistoric animal picture entitled "Along the Moonbeam Trail". The opening title of this picture carried Dawley's name and stated that the process was invented and patented by Dawley. Miss Curtis also discovered that no attempt had ever been made by Rothacker or O'Brien to enjoin this picture or to contest the right of Dawley to use the prehistoric models. Investigation also showed that O'Brien never released under his own name any films showing prehistoric animals. Mr. Dawley

stated to Miss Curtis that O'Brien had at one time worked for him but had subsequently been discharged. About this time Miss Curtis also discovered that Rothacker had once attempted to sell the story of "The Lost World", combined with the O'Brien animal models, to another producer for \$9,000.00 and a third interest in the profits, and that at that time he had stated that the First National Exhibitors Circuit, Inc. and Associated First National Pictures, Inc. would give a contract for distribution. The producer thereupon came East, interviewed the officials of the First National and was refused a contract. This was prior to the time when Williams made his representations to Miss Curtis. It was only six weeks afterwards that Rothacker, through Williams, entered into negotiations with Curtis for the sale of the identical property at a price of \$37,500.00 and 50% of the profits - reiterating the representations that First National would enter into a distribution contract for "The Lost World", with full knowledge on the part of Williams and Rothacker of the former refusal by First National to make such a contract. Rothacker and Williams nevertheless accepted the three installment payments on said contract from the Curtis Corporation. Furthermore Rothacker never at any time delivered to Curtis Corporation a copy of the properly assigned rights from Sir Arthur Conan Doyle as required under the Rothacker-Curtis contract.

Fearing to risk farther money in the production of a picture which might result in patent litigation because of

Dawley's rights, the corporation refused to go on with the picture. Thereupon in the summer of 1921 Rothacker notified the corporation in writing that the contract had been defaulted, although he promised that he would return the money already paid or would give an equivalent interest in the production in the event that he negotiated a contract with any other people.

Miss Curtis, who had acquired by assignment all the rights of the corporation under the contract, thereupon brought suit in October 1922 against Rothacker and Williams. The complaint set up a cause of action in tort for damages resulting from fraud and deceit. The complaint alleged that the corporation was induced to enter into a certain contract with Rothacker by misrepresentations made by Rothacker and Williams.

Briefly summarized the misrepresentations alleged in the complaint were as follows:

1. That the First National Exhibitors Circuit, Inc. and Associated First National Pictures, Inc., two corporations of which the defendant, Williams, was an officer and general manager, were willing to enter into a releasing contract with the Curtis Corporation, when as a matter of fact the two corporations which Williams purported to control would not have entered into such a releasing contract and further had already refused to enter into such a releasing contract.

2. That Rothacker was the owner of the prehistoric models and had the exclusive right to use the same when as a matter of

fact one Dawley had originated the process and had procured patents on them, and had already released pictures showing such prehistoric animals.

3. That Rothacker had a valid assignment from Sir Arthur Conan Doyle of the motion picture rights to "The Lost World" when as a matter of fact Rothacker never had such an assignment.

Answers were interposed by both defendants denying the allegations in plaintiff's complaint.

An action was also begun by Willis H. O'Brien against the Cathrine Curtis Corporation in the City Court of the City of New York for \$700, which the said O'Brien claimed to be due him for work, labor and services and for breach of contract by the corporation. The contract with O'Brien had been terminated when it was discovered that Dawley was the owner of the process by which the models of prehistoric animals were operated. The contract with O'Brien stated that the use and construction of the models of prehistoric animals was known only to O'Brien. This was, of course, false and known to be false, since O'Brien had worked for Major Dawley and had assisted Major Dawley in the preparation of models for a picture afterwards produced and distributed by Major Dawley.

In addition to the payments made to Rothacker under the contract, the corporation had expended large sums on work preliminary to the production of the picture.

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The total amount lost by the corporation by reason of the misrepresentations of Rothecker and Williams was \$64,277.01.

SUPREME COURT
NEW YORK COUNTY

CATHRINE CURTIS, :
 :
 Plaintiff, :
 :
 -against- :
 :
 WATERSON R. ROTHACKER and :
 JOHN D. WILLIAMS, :
 :
 Defendants. :
 :

MEMORANDUM OF PLAINTIFF'S CAUSE OF ACTION.

On July 8, 1920, The Cathrine Curtis Corporation entered into a contract with Waterson R. Rothacker by which Rothacker sold to the corporation the motion picture rights to Sir Arthur Conan Doyle's story "The Lost World". "The Lost World" is a story dealing with the experiences of a party of English explorers in a country inhabited by dinosaurs and other prehistoric animals. To make an effective production of such a story it would, of course, be necessary to show the prehistoric animals in action. Without the prehistoric animals as a feature the motion picture rights to the story would be of little or no value. As an inducement

to the purchase of the picture, Mr. Rothacker accordingly represented that he was the owner of a collection of mannikins representing prehistoric animals and that he had the exclusive right to use them for the manufacture and distribution of motion pictures throughout the world, and, further, that he had under contract the exclusive services of one Willis H. O'Brien to design, prepare and manufacture prehistoric animals. Mr. O'Brien's models were the ones to which Mr. Rothacker had acquired the exclusive rights. All of these representations were formally incorporated into the contract, as will be seen by a reference to the contract, which is set forth in full as an exhibit attached to this memorandum.

The price to be paid by the Catharine Curtis Corporation was \$37,500, payable in the following installments:

25% upon the signing of the contract;

25% upon the delivery of properly executed assignments of the rights to Sir Arthur Conan Doyle's story;

50% upon the completion of the picture.

There was a further agreement that Rothacker should receive 50% of the profits after a credit to the corporation of \$150,000 as an allowance for the cost of production.

The corporation agreed to use the services of Willis H. O'Brien, the alleged inventor of the models of the prehistoric animals, in the production of the picture and to produce the picture in from five to seven reels based upon a scenario approved by Rothacker. Work was to be begun upon the picture within thirty days after the delivery of the written approval by

Rothacker of the scenario, and the picture to be completed within six months thereafter.

The last clause of the contract gave Rothacker the right to terminate the contract upon thirty days' written notice to the corporation in the event that the corporation should have failed to perform any of the terms and should have further failed to remedy any default after notice.

The Cathrine Curtis Corporation was induced to enter into this contract by certain representations made by John D. Williams, who was then the general manager of the First National Exhibitors Circuit, Inc. and Associated First National Pictures, Inc., as well as by Rothacker. Williams represented to Miss Cathrine Curtis, an officer of the corporation, that the First National Exhibitors Exchange, Inc. and Associated First National Pictures, Inc. were willing to enter into a pre-release contract. He named a specific sum to be paid as a negative advance and also stated that First National would even be willing to make cash advances toward the production of the picture.

When the Curtis Corporation entered into the contract with Rothacker it paid \$9,375 upon the signing of the contract. Thereafter, two payments of \$4,687.50 each were made. The corporation also entered into a contract with Willis H. O'Brien, by which it acquired the right to the services of O'Brien in the production of the picture and agreed to pay him a salary of \$100 per week, commencing August 1, 1920, and a bonus of \$2000,

paysble upon the completion of the picture.

The Curtis Corporation immediately set about making preparations for the production of the picture. Various negotiations were begun with agents and directors. Countless telegrams were exchanged between agents in California and the corporation officers in New York in regard to cast, talent and the details preliminary to production. Charles Logue was engaged to write the scenario for "The Lost World." A great deal of his time, as well as that of Miss Curtis, was spent in going over the details of the story. In the early Fall of 1920 Miss Curtis left for Los Angeles, accompanied by her secretary and Mr. Logue, who was then at work on the scenario and who was also to act as assistant director of the production. It was Mr. Rothacker's wish that Logue be taken to the Coast in order that he might benefit by conferences with Rothacker, Weinwright, O'Brien, Colonel Selig and others.

Upon arriving in Los Angeles Miss Curtis entered into negotiations with Col. Selig for the production of "The Lost World". After considerable time and expense, including legal fees, Miss Curtis was herself unable to make a satisfactory contract with Selig. She then incurred the extra expense of having Mr. Ward, the Treasurer of the Curtis Corporation, make the trip to Los Angeles in the hope that he might be able to make a satisfactory contract. This also proved impossible. All negotiations with Col. Selig were thereupon abandoned, and shortly after the

Curtis Corporation entered into a contract with Thomas Ince for the production of "The Lost World."

Before a contract with Ince was possible it was necessary to exhibit to Mr. Ince a film showing the models of the prehistoric animals which were to be used in the production of "The Lost World." After some difficulty O'Brien was finally induced to exhibit such a film. The film obtained was "The Ghost of Slumber Mountain", which was loaned to O'Brien by the World Film Exchange. It was the property of Major Herbert Dawley. When Miss Curtis viewed the picture she noticed that the opening title carried the name of Herbert Dawley and that the name of Willis H. O'Brien did not appear. At the time the contract was signed, Mr. Rothacker had represented to Miss Curtis that O'Brien was the original owner and maker of the models of the prehistoric animals and that he had the exclusive right to operate such models and to use them in the manufacture of motion pictures.

In 1921 Miss Curtis discovered that Dawley had released a second prehistoric animal picture entitled "Along the Moonbeam Trail". The opening title of this picture carried Dawley's name and stated that the process was invented and patented by Dawley. Miss Curtis also discovered that no attempt had ever been made by Rothacker or O'Brien to enjoin this picture or to contest the right of Dawley to use the prehistoric models. Investigation also showed that O'Brien never released under his own name any films showing prehistoric animals. Mr. Dawley

stated to Miss Curtis that O'Brien had at one time worked for him but had subsequently been discharged. About this time Miss Curtis also discovered that Rothacker had once attempted to sell the story of "The Lost World", combined with the O'Brien animal models, to another producer for \$9,000.00 and a third interest in the profits, and that at that time he had stated that the First National Exhibitors Circuit, Inc. and Associated First National Pictures, Inc. would give a contract for distribution. The producer thereupon came East, interviewed the officials of the First National and was refused a contract. This was prior to the time when Williams made his representations to Miss Curtis. It was only six weeks afterwards that Rothacker, through Williams, entered into negotiations with Curtis for the sale of the identical property at a price of \$37,500.00 and 50% of the profits - reiterating the representations that First National would enter into a distribution contract for "The Lost World", with full knowledge on the part of Williams and Rothacker of the former refusal by First National to make such a contract. Rothacker and Williams nevertheless accepted the three installment payments on said contract from the Curtis Corporation. Furthermore Rothacker never at any time delivered to Curtis Corporation a copy of the properly assigned rights from Sir Arthur Conan Doyle as required under the Rothacker-Curtis contract.

Fearing to risk further money in the production of a picture which might result in patent litigation because of

Dawley's rights, the corporation refused to go on with the picture. Thereupon in the summer of 1921 Rothacker notified the corporation in writing that the contract had been defaulted, although he promised that he would return the money already paid or would give an equivalent interest in the production in the event that he negotiated a contract with any other people.

Miss Curtis, who had acquired by assignment all the rights of the corporation under the contract, thereupon brought suit in October 1922 against Rothacker and Williams. The complaint set up a cause of action in tort for damages resulting from fraud and deceit. The complaint alleged that the corporation was induced to enter into a certain contract with Rothacker by misrepresentation made by Rothacker and Williams.

Briefly summarized the misrepresentations alleged in the complaint were as follows:

1. That the First National Exhibitors Circuit, Inc. and Associated First National Pictures, Inc., two corporations of which the defendant, Williams, was an officer and general manager, were willing to enter into a releasing contract with the Curtis Corporation, when as a matter of fact the two corporations which Williams purported to control would not have entered into such a releasing contract and further had already refused to enter into such a releasing contract.

2. That Rothacker was the owner of the prehistoric models and had the exclusive right to use the same when as a matter of

fect one Dawley had originated the process and had procured patents on them, and had already released pictures showing such prehistoric animals.

3. That Rothacker had a valid assignment from Sir Arthur Conan Doyle of the motion picture rights to "The Lost World" when as a matter of fact Rothacker never had such an assignment.

Answers were interposed by both defendants denying the allegations in plaintiff's complaint.

An action was also begun by Willis H. O'Brien against the Cathrine Curtis Corporation in the City Court of the City of New York for \$700, which the said O'Brien claimed to be due him for work, labor and services and for breach of contract by the corporation. The contract with O'Brien had been terminated when it was discovered that Dawley was the owner of the process by which the models of prehistoric animals were operated. The contract with O'Brien stated that the use and construction of the models of prehistoric animals was known only to O'Brien. This was, of course, false and known to be false, since O'Brien had worked for Major Dawley and had assisted Major Dawley in the preparation of models for a picture afterwards produced and distributed by Major Dawley.

In addition to the payments made to Rothacker under the contract, the corporation had expended large sums on work preliminary to the production of the picture.

The total amount lost by the corporation by reason of the misrepresentations of Rothacker and Williams was \$64,277.01.