

20, 1934

94 OF 1933

In the Privy Council

No. of 1933.

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

BETWEEN:

H. A. MORINE,

(Defendant) APPELLANT,

AND

LONDON LOAN ASSETS LIMITED and THE LONDON LOAN AND
SAVINGS COMPANY OF CANADA,

(Plaintiffs) RESPONDENTS,

AND BETWEEN:

LONDON LOAN ASSETS LIMITED and THE LONDON LOAN AND
SAVINGS COMPANY OF CANADA,

(Plaintiffs) APPELLANTS,

AND

G. A. P. BRICKENDEN and GEORGE G. McCORMICK, and H. A.
MORINE,

(Defendants) RESPONDENTS.

RECORD OF PROCEEDINGS

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London Wall,
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*For the Appellant and for the
Respondents by Cross-Appeal.*

LAWRENCE JONES & CO.,
3 & 4 Lime Street,
London, E.C.3.

*For the Respondents and for the
Appellants by Cross-Appeal.*

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252	Copy of Letter, London Loan & Savings Co. to H. A. Morine, Further Request for Final Statement..... <i>Printing objected to by Respondent London Loan et al.</i>	24th April, 1929.....	845
253	Letter, H. A. Morine to J. H. Hambly, Enclosing Final Statement..... <i>Printing objected to by Respondent London Loan et al.</i>	7th May, 1929.....	845
254	A—Letter, M. J. Kent, Manager, London Loan & Savings Co., to Martin, Currie & Co., re Buckingham Apartments..... B—Letter, M. J. Kent, Manager, London Loan & Savings Co., to Martin, Currie & Co., re Buckingham Apartments..... <i>Printing of both parts of this Exhibit objected to by Respondent London Loan et al.</i>	13th October, 1925...	673
255	Letter, London Loan & Savings Co., per Kent, to Martin, Currie & Co., re Buckingham <i>Printing objected to by Respondent London Loan et al.</i>	13th January, 1926...	683
256	Extracts from Letter, London Loan & Savings Co., per Hambly, to Martin, Currie & Co., re Buckingham..... <i>Printing objected to by Respondent London Loan et al.</i>	9th November, 1927.	802
257	Extracts from Letter, London Loan & Savings Co., per Hambly, to Martin, Currie & Co., re Buckingham..... <i>Printing objected to by Respondent London Loan et al.</i>	6th April, 1929.....	842
258	Letter, Department of Insurance to M. J. Kent.....	2nd October, 1923...	565
259	Copy of Letter, London Loan & Savings Co. to V. Evan Gray, Registrar Loan Corporations, Reply to Exhibit 258.....	5th October, 1923...	569
260	Extracts from Annual Report, London Loan & Savings Co. to Registrar Loan Corporations, for 1927.....	27th February, 1928..	814
261	Extracts from Annual Report, London Loan & Savings Co. to Registrar Loan Corporations, for 1928.....	27th February, 1929..	835

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262	Extracts from Annual Report, London Loan & Savings Co. to Registrar Loan Corporations, for 1929.....	23rd January, 1930...	875
263	A—Account, No. 8, of Mrs. Mabel Andrews in Stock Ledger of London Loan & Savings Co..... B—Account, No. 7, of Mrs. Clara Aikenhead in Stock Ledger of London Loan & Savings Co.....	No Date..... No Date.....	904 904
264	Stock Register, London Loan & Savings Co. NOT PRINTED BY CONSENT.	No Date.....	905
265	Extract from Letter, London Loan & Savings Co., Thomas Baker, Vice-Pres., to Martin, Currie & Co., re Buckingham.....	9th July, 1925.....	651
266	Copy of Letter, London Loan & Savings Co. to Department of Insurance..... NOT PRINTED BY CONSENT.	31st October, 1923...	571
267	Letter, M. J. Kent to Registrar Loan Corporations, Objections to Morine's Release <i>Printing objected to by Appellants Morine, Brickenden and McCormick.</i>	1st October, 1925...	669
268	Extracts from Letter, London Loan & Savings Co. to Martin, Currie & Co., re Loaning through Morine..... <i>Printing objected to by Appellants Morine, Brickenden and McCormick.</i>	28th September, 1927.	799
269	Extracts from Letter, Martin, Currie & Co. to J. H. Hambly, Reply to Exhibit 268. <i>Printing objected to by Appellants Morine, Brickenden and McCormick.</i>	22nd October, 1927...	800
270	Extract from Letter, London Loan & Savings Co. to Martin, Currie & Co., re Purchase Huron & Erie Mortgage.....	2nd May, 1928.....	823
271	Extracts from Certified Copy By-laws of London Loan & Savings Co., Sec. 13, 18, 26, 35, 36, 39, 47.....	No Date.....	905
272	Printed Circular Letter, Forwarding Amalgamation Agreement..... <i>Printing objected to by Appellants Morine, Brickenden and McCormick.</i>	30th July, 1929.....	865

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276	Ledger Sheet, London Loan Assets Ltd., Showing Application of \$50,000 Paid Huron & Erie Mortgage Corp..... NOT PRINTED BY CONSENT.	No Date.....	903
277	Statement of Amount Owing on First, Second and Third Mortgages, London Loan Assets Ltd.....	11th December, 1931.	893
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279	Letter, Oscar Hudson & Co. to Directors, London Loan & Savings Co., re Loaning Policy..... <i>Printing objected to by Appellants Morine, Brickenden and McCormick.</i>	6th October, 1924...	582
280	Copy of Letter, Oscar Hudson & Co. to George G. McCormick, re Loaning Policy..... <i>Printing objected to by Appellants Morine, Brickenden and McCormick.</i>	20th July, 1925.....	654
281	Letter, Oscar Hudson & Co. to Directors, London Loan & Savings Co., re Durno.. <i>Printing objected to by Appellants Morine, Brickenden and McCormick.</i>	6th October, 1925...	672
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284	Letter, M. W. Wilson to G. A. P. Brickenden & Co., Report on Injunction Proceedings <i>Printing objected to by Respondent London Loan et al.</i>	25th April, 1925	619
285	Receipt for Documents Received by London Loan & Savings Co. from G. A. P. Brickenden & Co., re Durno Sale <i>Printing objected to by Respondent London Loan et al.</i>	7th March, 1929	839
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289	Deposit Slip in London Loan & Savings Co. for \$400, Credit G. A. P. Brickenden <i>Printing objected to by Appellants Morine, Brickenden and McCormick.</i>	2nd March, 1923	531
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292	Extract from Solicitors' Book, London Loan & Savings Co., Page 7 (See Evidence, Pages 364, 365, 366) <i>Printing objected to by Appellants Morine, Brickenden and McCormick.</i>	22nd January, 1925	599

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297	Copy of Application for Loan, \$150,000, to Huron & Erie Mortgage Corp., with Valuation of P. B. Fetterley Attached . . NOT PRINTED—Same as Exhibit 282.	1st February, 1923	516
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299	H—Copy of Notice of Exercising Powers of Sale under \$20,000 Mortgage. NOT PRINTED—Same as Ex. 216.	13th February, 1925..	606
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305	Ledger Sheet of G. A. P. Brickenden..... <i>Printing objected to by Appellants Morine and McCormick, and by Respondent London Loan et al.</i>	1923.....	552
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309	Cheque, G. A. P. Brickenden to Fraser & Moore <i>Printing objected to by Appellants Morine and McCormick, and by Respondent London Loan et al.</i>	31st May, 1923	544
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311	Copy of Letter, London Loan & Savings Co. to Huron & Erie Mortgage Corp., re Paying off Mortgage NOT PRINTED—Same as Exhibit 148E.	5th November, 1927	801
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313	Charter of London Loan Assets, Ltd.	2nd July, 1929	854

No. 1
Statement of Claim

IN THE SUPREME COURT OF ONTARIO

(Writ issued November 6th, 1930)

BETWEEN:

LONDON LOAN ASSETS LIMITED and THE LONDON LOAN AND
SAVINGS COMPANY OF CANADA,

Plaintiffs,

ERRATA

Page 292, Line 34—Fourth word "it" should read "to".
Page 300, Line 43—"A" at beginning of line should be "Q".
Page 315, Line 28—"One or three" should read "two or three".
Page 311, Line 36—"A.B." should read "O.B."

JEN, and ROBERT S. DURNO,
CONSOLIDATED TRUSTS COR-

Defendants.

CLAIM.

1. The Plaintiff, London Loan Assets Limited, is a liquidating company, with head office in the City of London, incorporated under the law of Ontario, for the purpose of realizing upon certain assets formerly belonging to the Plaintiff, The London Loan and Savings Company. The Plaintiff, The London Loan and Savings Company of Canada, is a loan company, incorporated under
20 the law of Ontario, with head office in the City of London, which until 29th August, 1929, carried on business, in Ontario, under the Loan and Trust Corporations Act.

2. The Defendant, H. A. Morine, is a financial agent, or broker, residing in the City of Toronto, who prior to February, 1929, acted as representative, in Toronto, of the Plaintiff, The London Loan and Savings Company. The Defendant, G. A. P. Brickenden, is a solicitor, residing in the City of London, who from the year 1920 until February, 1929, was solicitor for the Plaintiff, The London Loan and Savings Company of Canada. The Defendant, R. S. Durno, whose present address is unknown to the Plaintiffs, was resident in
30 the City of Toronto during the year 1925 and was, at that time, an associate in business of the Defendant, Morine. The Defendant, George G. McCormick, who resides in the City of London, was, for many years prior to February, 1929, a Director and President of the Plaintiff, The London Loan and Savings Company. The Defendant, the Consolidated Trusts Corporation, is a trust company, with head office in the City of London, incorporated under the law of the Dominion of Canada, which until January 1st, 1930, carried on, in Ontario, the business of a trust company.

3. On or about the 7th day of February, 1923, the Defendant, H. A. Morine, was a partner of one S. B. Green, in the ownership, construction and
40 operation of a certain apartment house building in the City of Toronto, known

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—continued.

as The Buckingham Apartments, situated upon the lands and premises described as follows:

All and Singular that certain parcel or tract of land and premises, situate, lying and being in the City of Toronto, in the County of York, and Province of Ontario, being composed of parts of lots Numbers 2 and 3, according to a plan fyled as Number 512, in the Registry Office for East and West York and now in the Registry Office for the Registry Division of West Toronto, and of a part of Lot Number 16, according to a plan fyled as Number 457, in the said Registry Office for East and West York, and now in the said Registry Office for the Registry Division of West Toronto; and which said parcel is more particularly described as follows: COMMENCING at a point in the northerly limit of King Street West, which point is at the intersection of the Easterly limit of a parcel of land conveyed or intended so to be by one Thomas E. Scholes to Ann Jane Scholes, by Deed registered the 17th day of June, 1887, as Number 2388; thence westerly along the said limit of King Street West seventy-six feet (76'); thence northerly in a straight line one hundred and forty-one feet (141') more or less to a point in the southerly limit of Queen Street West, which point is distant seventy-six feet (76') measured westerly along the said limit of Queen Street West, from the said easterly limit of the parcel conveyed by Thomas E. Scholes to Ann Jane Scholes as aforesaid; thence easterly along the said limit of Queen Street West, seventy-six feet (76') to the said easterly limit of parcel conveyed by Thomas E. Scholes to Ann Jane Scholes as aforesaid; thence southerly along the last mentioned limit, one hundred and ninety-nine feet and four inches (199' 4'') more or less to the point of commencement;

and on or about the 8th day of June, 1923, the said Green conveyed his entire interest in the said lands and premises to the Defendant Morine, who thereby became the sole owner of the property.

4. On or about the 7th day of February, 1923, the said Defendant Morine, and the said Green, obtained a first mortgage loan from The Huron and Erie Mortgage Corporation of \$150,000., and executed a mortgage as security therefor, which was registered against the lands referred to in Paragraph 3 hereof, in the Registry Division of Toronto as Number 8317 W. F.

5. On or about the 13th day of February, 1923, the said Defendant Morine and the said Green obtained from the Plaintiff, The London Loan and Savings Company of Canada, a second mortgage loan upon the same premises, of \$35,000. and executed a mortgage as security therefor, which was duly registered against the lands described in Paragraph 3 hereof, as Number 8318 W. F.

6. On or about the 23rd day of May, 1923, the said Defendant Morine and the said Green obtained from the Plaintiff, The London Loan and Savings Company of Canada, a third mortgage loan upon the same premises for the sum of \$20,000. and executed a mortgage as security therefor, which was

No. 1

Statement of Claim

IN THE SUPREME COURT OF ONTARIO

(Writ issued November 6th, 1930)

BETWEEN:

LONDON LOAN ASSETS LIMITED and THE LONDON LOAN AND SAVINGS COMPANY OF CANADA,

Plaintiffs,

AND

10 H. A. MORINE, G. A. P. BRICKENDEN, and ROBERT S. DURNO,
GEORGE G. McCORMICK and CONSOLIDATED TRUSTS CORPORATION,*Defendants.*

STATEMENT OF CLAIM.

1. The Plaintiff, London Loan Assets Limited, is a liquidating company, with head office in the City of London, incorporated under the law of Ontario, for the purpose of realizing upon certain assets formerly belonging to the Plaintiff, The London Loan and Savings Company. The Plaintiff, The London Loan and Savings Company of Canada, is a loan company, incorporated under
20 the law of Ontario, with head office in the City of London, which until 29th August, 1929, carried on business, in Ontario, under the Loan and Trust Corporations Act.

2. The Defendant, H. A. Morine, is a financial agent, or broker, residing in the City of Toronto, who prior to February, 1929, acted as representative, in Toronto, of the Plaintiff, The London Loan and Savings Company. The Defendant, G. A. P. Brickenden, is a solicitor, residing in the City of London, who from the year 1920 until February, 1929, was solicitor for the Plaintiff, The London Loan and Savings Company of Canada. The Defendant, R. S. Durno, whose present address is unknown to the Plaintiffs, was resident in
30 the City of Toronto during the year 1925 and was, at that time, an associate in business of the Defendant, Morine. The Defendant, George G. McCormick, who resides in the City of London, was, for many years prior to February, 1929, a Director and President of the Plaintiff, The London Loan and Savings Company. The Defendant, the Consolidated Trusts Corporation, is a trust company, with head office in the City of London, incorporated under the law of the Dominion of Canada, which until January 1st, 1930, carried on, in Ontario, the business of a trust company.

3. On or about the 7th day of February, 1923, the Defendant, H. A. Morine, was a partner of one S. B. Green, in the ownership, construction and
40 operation of a certain apartment house building in the City of Toronto, known

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as The Buckingham Apartments, situated upon the lands and premises described as follows:

All and Singular that certain parcel or tract of land and premises, situate, lying and being in the City of Toronto, in the County of York, and Province of Ontario, being composed of parts of lots Numbers 2 and 3, according to a plan fyled as Number 512, in the Registry Office for East and West York and now in the Registry Office for the Registry Division of West Toronto, and of a part of Lot Number 16, according to a plan fyled as Number 457, in the said Registry Office for East and West York, and now in the said Registry Office for the Registry Division of West Toronto; and which said parcel is more particularly described as follows: COMMENCING at a point in the northerly limit of King Street West, which point is at the intersection of the Easterly limit of a parcel of land conveyed or intended so to be by one Thomas E. Scholes to Ann Jane Scholes, by Deed registered the 17th day of June, 1887, as Number 2388; thence westerly along the said limit of King Street West seventy-six feet (76'); thence northerly in a straight line one hundred and forty-one feet (141') more or less to a point in the southerly limit of Queen Street West, which point is distant seventy-six feet (76') measured westerly along the said limit of Queen Street West, from the said easterly limit of the parcel conveyed by Thomas E. Scholes to Ann Jane Scholes as aforesaid; thence easterly along the said limit of Queen Street West, seventy-six feet (76') to the said easterly limit of parcel conveyed by Thomas E. Scholes to Ann Jane Scholes as aforesaid; thence southerly along the last mentioned limit, one hundred and ninety-nine feet and four inches (199' 4") more or less to the point of commencement:

and on or about the 8th day of June, 1923, the said Green conveyed his entire interest in the said lands and premises to the Defendant Morine, who thereby became the sole owner of the property.

4. On or about the 7th day of February, 1923, the said Defendant Morine, and the said Green, obtained a first mortgage loan from The Huron and Erie Mortgage Corporation of \$150,000., and executed a mortgage as security therefor, which was registered against the lands referred to in Paragraph 3 hereof, in the Registry Division of Toronto as Number 8317 W. F.

5. On or about the 13th day of February, 1923, the said Defendant Morine and the said Green obtained from the Plaintiff, The London Loan and Savings Company of Canada, a second mortgage loan upon the same premises, of \$35,000. and executed a mortgage as security therefor, which was duly registered against the lands described in Paragraph 3 hereof, as Number 8318 W. F.

6. On or about the 23rd day of May, 1923, the said Defendant Morine and the said Green obtained from the Plaintiff, The London Loan and Savings Company of Canada, a third mortgage loan upon the same premises for the sum of \$20,000. and executed a mortgage as security therefor, which was

ERR/

Page 292, Line 34—Fourth word
Page 300, Line 43—"A" at bej
Page 315, Line 28—"One or th
Page 311, Line 36—"A.B." sh

registered against the said lands and premises described in Paragraph 3 hereof, as Number 8761 W. F.

7. The mortgage loans mentioned in Paragraphs 5 and 6, being second and third mortgage loans, were only obtained by the Defendant Morine by reason of his position as agent and valuator of the Plaintiff, The London Loan and Savings Company, and upon representations made by the Defendants McCormick and Brickenden, that the Defendant Morine would personally guarantee repayment of the said loans.

8. The said Defendants McCormick and Brickenden failed to obtain a
10 guarantee of the Defendant Morine for repayment of the said loans, but relied on the covenant in the mortgages that the Defendant Morine would pay the principal and interest of the said loans in lieu of such guarantee.

9. The Defendant Morine represented to the Plaintiff, The London Loan and Savings Company, that he, personally, would guarantee repayment of the principal and interest of the loans mentioned in Paragraphs 5 and 6 and in the said mortgages the said Defendant Morine covenanted to pay the principal and interest of the said loans and any additional advances, or charges, thereunder, according to the terms of the said mortgages.

10. On or about the 9th day of August, 1923, the Defendant Morine
20 purported to convey his interest in the said land to his son-in-law, Arthur W. Dyas, who was associated with the said Defendant in his business and his office, and who, in all matters pertaining to the said lands and mortgages, was the agent of the said Defendant Morine.

11. On or about the 10th day of August, 1923, the said Defendant Morine, in the name of the said Dyas, obtained a fourth mortgage loan from one Renton for \$46,000., for which a mortgage was executed and registered against the said lands and premises described in Paragraph 3 hereof, as Number 9085 W. F.

12. On or about the 27th day of October, 1924, the said Dyas purported
30 to give to the Defendant Morine a fifth mortgage for \$23,000. upon the said lands registered as Number 10302 W. F.

13. On the said 27th day of October, 1924, in addition to the said mortgages, there were Mechanics' Liens filed and registered against the said lands for large sums of money, and actions pending in the Supreme Court of Ontario in respect of the said Mechanics' Liens.

14. At the end of the year 1924, the said second and third mortgages held by the Plaintiff, The London Loan and Savings Company of Canada, were in arrears for payment of principal and interest and the said first mortgage held by The Huron and Erie Mortgage Corporation was also in arrears.

40 15. In January, 1925, the Manager of the Plaintiff, The London Loan and Savings Company, reported to the Directors of the said Plaintiff Company that the said second and third mortgages were in arrears for both principal and interest, and the Defendant Brickenden, as Solicitor for the Company, was instructed to collect the said arrears.

16. In or about the month of February, 1925, the Defendants Morine, Brickenden and McCormick entered into a conspiracy to defraud the Plaintiff, The London Loan and Savings Company, by a fictitious sale of the said lands

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and premises to the Defendant Durno, and a conveyance of the said lands and premises by the Defendant Durno to the Defendant, Consolidated Trusts Corporation, for the benefit of the Defendants Morine, Brickenden and McCormick, or some of them.

17. In pursuance of this fraudulent conspiracy, during or about the month of February, 1925, the Defendant Morine, who was the real owner of the property, in collusion with the Defendants Brickenden and McCormick, caused sale proceedings to be taken in the name of the Plaintiff, The London Loan and Savings Company of Canada, under the said third mortgage for \$20,000., (Number 8761 W. F.) held by the Plaintiff, The London Loan and Savings Company of Canada. 10

18. In pursuance of the said fraudulent conspiracy, the Defendants Brickenden and McCormick, without the knowledge or authority of the other members of the Board of Directors of the Plaintiff, The London Loan and Savings Company, caused moneys to be wrongfully and improperly paid out by the said Plaintiff Company for the purpose of discharging mechanics' liens, arrears of taxes, and other charges against the said lands.

19. After public sale proceedings under the said mortgage had proved abortive, the said Defendants Morine, Brickenden and McCormick fraudulently caused a private sale of the said lands to be made to the Defendant Durno, and fraudulently caused the said lands to be conveyed by the Plaintiff, The London Loan and Savings Company, to the Defendant Durno, by deed dated 1st June, 1925, and registered on the 8th day of July, 1925, as Number 11077 W. F., and the said Defendant Morine fraudulently caused a mortgage to be executed by the said Defendant Durno to the Plaintiff, The London Loan and Savings Company, for \$77,000. dated 1st June, 1925, and registered on the 8th day of July, 1925, as Number 11078 W. F., and the said Defendant Morine fraudulently caused a conveyance of the said lands to be executed by the said Defendant Durno to the Defendant, The Consolidated Trusts Corporation, in trust, which deed is dated 26th June, 1925, and was registered on the 8th day of July, 1925, as Number 11079 W. F. 20 30

20. The conveyance to the Defendant, Consolidated Trusts Corporation, in trust, was made without the knowledge or consent of the said trust company.

21. The Defendant Durno, who was a man of straw and without any financial resources, did not pay any cash or give any valuable consideration whatever for the purchase or conveyance of the said lands, and the Plaintiff, The London Loan and Savings Company of Canada, did not receive any cash or other valuable consideration of any kind for the sale or conveyance, and the covenant of the said Defendant Durno, in the mortgage made by him, had no pecuniary value. 40

22. The Defendant Durno was the agent, nominee or trustee of the Defendants Morine, Brickenden and McCormick, or some of them, in the transaction of June, 1925, affecting the said lands, and received and conveyed the title to the said lands and executed the said mortgage Number 11078 W. F., as agent, nominee or trustee, for the Defendants Morine, Brickenden and McCormick, or some of them.

23. Shortly after the completion of the said fraudulent transaction, the Defendant Durno removed from the City of Toronto and his present residence and post office address are unknown to the Plaintiffs.

24. The other members of the Board of Directors relied upon the Defendants McCormick and Brickenden to preserve the security and protect the interests of the Plaintiff, The London Loan and Savings Company, in respect of the said mortgage loans.

25. In pursuance of the said fraudulent conspiracy, the said Defendants Morine, Brickenden and McCormick, without the knowledge or authority
10 of the other Directors, of the Plaintiff Company, The London Loan and Savings Company, caused a discharge of mortgage Number 8318 W. F., to be executed under the seal of the said Corporation by persons who had no authority to execute documents on behalf of the Company, under seal, which Discharge of Mortgage is dated 3rd July, 1925, and registered as Number 11076 W. F.

26. The said Defendants Brickenden and McCormick fraudulently concealed from the other Directors of the Plaintiff, The London Loan and Savings Company, that the purpose of the said sale to the Defendant Durno was to release the Defendant Morine from his covenant and obligation to repay the loans and advances secured by the second and third mortgages,
20 Numbers 8318 W. F. and 8761 W. F., although the said Defendants well knew that the said loans and advances had been made on the security of the personal covenant and guarantee of the said Defendant Morine and that the value of the said mortgaged lands was uncertain and inadequate security for the amount of the Plaintiff's mortgages.

27. In June, 1925, the value of the mortgaged lands and premises was less than the amount of the advances which the Defendants Morine, Brickenden and McCormick caused to be made by the Plaintiff, The London Loan and Savings Company, and the prior encumbrances and charges on the said property. Since the said date the deficiency in the security of the Plaintiff,
30 The London Loan and Savings Company, has been increased by losses on the operation of the apartment house and additional charges and disbursements necessary to be made by the Plaintiffs for the protection of their security under the original mortgages given to the Plaintiff, The London Loan and Savings Company, and the Plaintiffs have suffered and will thereby suffer heavy loss and damage.

28. Notwithstanding the duty of the Defendant Brickenden, as Solicitor, and of the Defendant McCormick, as Director and President of the Plaintiff, The London Loan and Savings Company, to protect the said Plaintiff from imprudent and hazardous mortgage loans and to preserve all security held
40 for such loans, the said Defendants, negligently, fraudulently and dishonestly advised and induced the said Plaintiff Company to advance, by way of mortgage loan on the said lands, moneys greatly in excess of the amounts which should prudently and safely be advanced by the said Plaintiff Company, in any such loan, and negligently, fraudulently and dishonestly permitted the Defendant Morine to be released from his personal covenant to repay the said loans, and thereby caused the Plaintiffs heavy loss and damage.

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—continued.

29. The Defendants Brickenden and McCormick acted negligently, fraudulently and dishonestly in refraining from collecting or attempting to collect the principal and interest owing on the second and third mortgages made by the Defendant Morine to the Plaintiff Company, although the said Defendant Morine was well able to pay and discharge the sums of money owing under the said mortgages and thereby the Plaintiffs have suffered heavy loss and damage.

30. After the completion of the Durno transaction, above described, the Defendant Morine continued to manage and control the operation of the Buckingham Apartments and to grant leases and tenancies thereof and to collect rents and make disbursements, from the moneys thus received, for interest on the mortgage held by the Huron and Erie Mortgage Corporation and upon the mortgages held by the Plaintiff, The London Loan and Savings Company of Canada, and otherwise to manage and control the said apartments. At intervals, the Defendant Morine forwarded to the Defendant, The Consolidated Trusts Corporation, certain statements of collections and disbursements made by him in connection with the said property, and in so doing pretended to act as agent for the Defendant, The Consolidated Trusts Corporation, although in reality he was acting in his own interest and on his own behalf, as the real owner of the said property, or on behalf of himself and the Defendants Brickenden and McCormick.

31. During the years 1925, 1926 and 1927, the net revenue derived by the Defendant Morine from the operation of the Buckingham Apartments was insufficient to pay the operating charges and the interest owing upon the mortgage loans to which the property was subject. Upon the failure of the said Defendant Morine to make payment of principal and interest on the said mortgages as they became due, the Plaintiff, The London Loan and Savings Company, made further advances for the protection of its security by paying instalments of principal and interest owing to the Huron and Erie Mortgage Corporation and other charges for taxes and insurance in connection with the said property. In or about the month of January, 1928, the Plaintiff, The London Loan and Savings Company, paid off the whole amount of principal and interest owing on the mortgage to the Huron and Erie Mortgage Corporation (Number 8317 W. F.) and took an assignment to the said Plaintiff, The London Loan and Savings Company, of the said mortgage of The Huron and Erie Mortgage Corporation (registered as Number 13475 W. F.). The said mortgage is a valid and continuing security.

32. In the month of February, 1929, at the Annual General Meeting of the Plaintiff Company, The London Loan and Savings Company of Canada, the Defendant McCormick was removed from his office as President and Director of the Plaintiff Company, and the Defendant Brickenden was removed from office as Solicitor of the Company, and in the month of March, 1929, the Plaintiff, The London Loan and Savings Company of Canada, assumed the control and management of the mortgaged lands and premises, and has continued, since the said date, as mortgagee in possession of the said lands and premises, to manage and control the said property.

33. By agreement dated July 3rd, 1929, assented to by Order-in-Council dated August 29th, 1929, the Plaintiff, The London Loan and Savings Company of Canada, sold and transferred the assets therein mentioned to the Huron and Erie Mortgage Corporation. The Huron and Erie Mortgage Corporation sold, transferred and assigned to the Plaintiff Company, The London Loan Assets Limited, the mortgages hereinbefore mentioned, and all title and interest formerly held by the Plaintiff, The London Loan and Savings Company of Canada, in the said lands and premises and in the mortgages and matters hereinbefore mentioned.

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10 34. The Plaintiffs therefore claim

(a) \$272,000.00 damages against the Defendants, Morine, Brickenden and McCormick, or any of them, for loss suffered by the Plaintiffs, through the fraud, misrepresentation, conspiracy, breach of trust, breach of duty and negligence of the said Defendants Morine, Brickenden and McCormick, or any of them, in the amount now owing the Plaintiffs on the mortgages of the lands and premises described in Paragraph 3 hereof, and a reference to the Local Master of this Court at London to ascertain the amount due and owing in respect of such mortgages, including principal, interest, taxes, advances, charges and costs, and for judgment against the said Defendants for the amount found due by the said Local Master forthwith after confirmation of his Report:

20

(b) Judgment against the Defendant Morine for the amount owing under the said first mortgage, Number 8317 W. F., formerly held by The Huron and Erie Mortgage Corporation and for a reference to the Local Master of this Court at London to ascertain the amount due and owing in respect thereof, including principal, interest, advances, charges and costs, and for judgment against the said Defendant Morine for the amount found due by the said Local Master forthwith after confirmation of his Report:

30

(c) A declaration that the Discharge of Mortgage mentioned in Paragraph 25 hereof is invalid and that the mortgage dated 13th February, 1923, and registered as Number 8318 W. F. has not been paid or discharged, and for a reference to the Local Master of this Court at London to determine the amount due and owing in respect of the said mortgage, including principal, interest, taxes, advances, charges, and costs, and for judgment against the Defendant Morine for the amount found due by the said Local Master, forthwith after confirmation of his Report:

40

(d) For a declaration that the sale of the mortgaged premises to the Defendant Durno is fictitious and fraudulent and the conveyance of the property to the said Durno is void, and for an order setting aside the said conveyance and the subsequent mortgage made by the Defendant Durno and the subsequent conveyance of the property to the Consolidated Trusts Corporation, and for judgment against the Defendant Morine for the amount owing under the third mortgage dated 23rd May, 1923, and registered as Number

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8761 W. F., and for a reference to the Local Master of this Court at London to ascertain the amount due and owing in respect thereof, including principal, interest, advances, charges and costs, and for judgment against the Defendant Morine for the amount found due by the said Local Master, forthwith after confirmation of his Report:

(e) Or, in the alternative, a declaration that the said Durno is the agent or trustee of the Defendants Morine, Brickenden and McCormick, or some of them, in respect of the transaction described in Paragraph 20 hereof and that the said mortgage dated June 1st, 1925, made by the said Defendant Durno to the Plaintiff, The London Loan and Savings Company of Canada, is a mortgage made for and on behalf of the said Defendants, Morine, Brickenden and McCormick, or some of them, and that the Defendants Morine, Brickenden and McCormick are liable as principals or *cestuis que trust* to the Plaintiffs in the amount owing under the said mortgage and a Reference to the Local Master of this Court at London to ascertain the amount due and owing in respect thereof, including principal and interest, advances, charges and costs, and for judgment against the Defendants Morine, Brickenden and McCormick for the amount found due by the said Local Master, forthwith after confirmation of his Report:

(f) And for the costs of this action:

(g) And such further and other relief as to this Honourable Court may seem just.

The Plaintiffs propose that this action be tried at the City of London, in the County of Middlesex.

DELIVERED this 6th day of April, 1931, by Braden & McAlister, of the City of London in the County of Middlesex, Solicitors for the Plaintiffs.

No. 2

30

PARTICULARS.

TAKE NOTICE that the Plaintiffs give the following particulars in reply to Demand for Particulars bearing date the 21st day of April, 1931:—

The Plaintiffs say that they are not required to amend their statement of claim as paragraph 34 (a) of the plaintiffs' statement of claim complies with Rule 145. In the alternative the Plaintiffs say that if the said subparagraph (a) does not comply with Rule 145, the amount of damages claimed as set forth in said paragraph 34 (a) in the plaintiffs' statement of claim is the sum of \$270,000., being approximately the amount owing on the said three mortgages.

(a) Paragraph 7. The alleged representations made by the Defendants McCormick and Brickenden referred to in said paragraph 7, required under this heading, are as follows:

40

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10 That the Defendant Morine would be personally responsible for the loans referred to in paragraphs 5 and 6 of the plaintiffs' statement of claim, and that the said lands and buildings had a value of \$400,000. The said representations as aforesaid were, as far as the Defendant Brickenden is concerned, verbal representations made on or about the month of February, 1923, and the month of May, 1923. As far as the Defendant McCormick is concerned, the said representations are set forth in the minutes of Directors' meetings bearing date February 12th, 1923, and May 28th, 1923, and were signed by the Defendant McCormick as President of the Plaintiff, The London Loan and Savings Company of Canada.

10 (b) *Paragraph 13.* Particulars of the alleged Mechanics' Liens filed against the property in question, required under this heading, are as follows:

1. Mechanics' Lien dated July 31st, 1923, registered July 31st, 1923, by Michael C. Foley, trading as The Foley Lumber Co., for \$1,289.38 and \$25.00 costs.
- 20 2. Mechanics' Lien dated August 11th, 1923, registered August 11th, 1923, by Seaman-Eaton Flooring Co. Limited, for \$3,302.34 and \$25.00 costs.
- 20 3. Mechanics' Lien dated August 16th, 1923, registered August 21st, 1923, by Ebsary Gypsum Co., for \$1,593.84.
4. Mechanics Lien dated September 25th, 1923, registered September 27th, 1923, by Alexander L. McKay, for \$1,974.04 and \$25.00 costs.

(c) *Paragraph 15.* Particulars of the alleged report, required under this heading, are as follows:

30 These are contained in the Minute Book of the Plaintiff, The London Loan and Savings Company of Canada, under date of January 20th, 1925, and the said minutes are signed by the Defendant McCormick as President of the Plaintiff, The London Loan and Savings Company of Canada.

(d) *Paragraph 16.* Particulars of the alleged benefit to the Defendants Brickenden and McCormick, required under this heading, are as follows:

40 The Defendant Morine, after disposing of all claims through sale proceedings back of the third mortgage held by the Plaintiff, The London Loan and Savings Company of Canada, intended to dispose of the property, and he was to keep forty per cent (40%) of the profits, and Messrs. Brickenden and McCormick were to obtain sixty per cent (60%) of the profits made, after providing for the first, second and third mortgages.

(e) *Paragraph 18.* Particulars of moneys alleged to have been wrongfully paid out by the said Plaintiff:

1925	
May 28	Payment to The Huron and Erie Mortgage Corporation..... \$9,539.95
Apr. 7	Payment to M. W. Wilson..... 4,194.00

(f) *Paragraph 25.* The names of the parties executing the Discharge

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of Mortgage referred to in this paragraph, and required under this heading, are as follows:

H. R. Clewes and C. R. Hunt.

(g) *Paragraph 27.* Particulars of the "amount of the advances which the Defendants Morine, Brickenden and McCormick caused to be made by the Plaintiff," required under this heading, are as follows:

1925			
May 28	The Huron and Erie Mortgage Corporation	\$9,539.95	
May 28	M. W. Wilson	420.68	
Apr. 7	M. W. Wilson	4,194.00	10
Sept. 18	Accrued interest on 2nd mortgage	3,596.37*	
Sept. 18	“ “ “ 3rd mortgage	3,299.72*	

*Both of which amounts of accrued interest were included in said mortgage of \$77,000.00 made by the Defendant Durno to the Plaintiff, The London Loan and Savings Company of Canada.

(h) *Paragraph 27.* Particulars of the alleged "losses on the operation of the apartment house and additional charges and disbursements," required under this heading, are as follows:

1926—Rents Received	nil	20
12 months' interest due on \$77,000.	\$5,390.00	
Insurance paid out	637.50	
	<u>6,027.50</u>	
Loss	\$6,027.50	
1927—Rents Received	\$12,808.11	
Paid out:		
Jan. 12 Huron and Erie	\$8,567.55	
Apr. 20 Huron and Erie	5,839.29	
Aug. 8 Huron and Erie	2,731.39	30
Apr. 19 Huron and Erie	2,457.66	
Aug. 9 Huron and Erie	5,331.13	
May 3 Taxes	2,724.72	
1 year's interest due on \$77,000.	5,390.00	
	<u>33,041.74</u>	
Loss	\$20,233.63	
1928—Rents Received	\$12,951.83	
Paid out:		
May 8 Taxes	\$ 3,338.67	
1 year's interest due on \$77,000.	5,390.00	40
1 year's interest due on 1st mortgage to Huron and Erie, \$139,000., paid off by London Loan and Savings Co., Feb. 7th, 1928.	10,425.00	
	<u>19,153.67</u>	
Loss	\$ 6,201.84	

	1929—Rents Received	\$12,448.21	
	Paid out:		
	Apr. 24 Taxes	\$ 3,299.77	
	1 year's interest due on \$77,000.	5,390.00	
	1 year's interest due on		
	\$139,000.	10,425.00	
		19,114.77	
	Loss		\$ 6,666.56
	1930—Rents Received	\$13,753.85	
10	Paid out:		
	May 6 Insurance	\$ 34.36	
	May 5 Taxes	1,140.28	
	July 2 Taxes	1,116.00	
	Sept. 3 Taxes	1,096.01	
	Oct. 21 To o/s account, Fess		
	Oil Burners	157.75	
	Nov. 27 Solicitor's acct.	80.00	
	1 year's interest due on \$77,000.	5,390.00	
	1 year's interest due on		
20	\$139,000.	10,425.00	
		19,439.41	
	Loss		\$ 5,685.56

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(i) *Paragraph 28.* Particulars of the alleged advice and inducement given and offered by the Defendants McCormick and Brickenden, required under this heading, are as follows:

The advice was given in January, 1923, and up to February 12th, 1923, to advance \$31,000. on a second mortgage, and during the month of May, 1923, advice was given by the Defendants McCormick and Brickenden to loan \$20,000. on a third mortgage on the said lands. This advice was verbal, and the exact dates upon which it was given is within the knowledge of the Defendants Brickenden and McCormick, and cannot be given until after the examination for discovery. On June 23rd, 1925, the Defendants McCormick and Brickenden, knowing that the sale to Durno was not a genuine sale but only a pretended sale, induced and advised the Plaintiff, The London Loan and Savings Company of Canada, to accept a second mortgage from the Defendant Durno to take the place of the two mortgages for \$35,000. and \$20,000. plus accrued interest, costs and other charges, including the advances made to The Huron and Erie Mortgage Corporation, although the Defendants McCormick and Brickenden knew that by so doing the Defendant Morine might be relieved from his covenant and guarantee to pay the said second and third mortgages. The Defendants Brickenden and McCormick also stated at the board meeting of the Plaintiff, The London Loan and Savings Company of Canada, on June 23rd, 1925, that the sale was an advantageous sale, and did not disclose the facts within their knowledge, which it was their duty to disclose.

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Paragraph 28. Particulars of the excess of the amounts advanced over the amounts which “should prudently and safely be advanced,” required under this heading, are as follows:

Moneys advanced under mortgage bearing date February 12th, 1923, from Samuel B. Green *et al* to the Plaintiff,
The London Loan and Savings Company of Canada . . . \$35,000.00

Moneys advanced under mortgage bearing date May 23rd, 1923, from Samuel B. Green *et al* to the Plaintiff, The
London Loan and Savings Company of Canada 20,000.00

The said property, at the time the said advances of \$35,000. and \$20,000. respectively were made by the Plaintiff, The London Loan and Savings Company of Canada, was already encumbered by a first mortgage to The Huron and Erie Mortgage Corporation upon which there was owing approximately \$146,000.00. It was imprudent to advance any moneys whatever on second and third mortgages.

(j) *Paragraph 28.* Particulars of the alleged negligence referred to in this paragraph, including the following allegations, “negligently, fraudulently and dishonestly advise and induce the Plaintiff Company to advance by way of mortgage loan on the said lands monies,” and “negligently, fraudulently and dishonestly permitted the Defendant Morine to be released from his personal covenant,” required under this heading, are as follows:

In inducing the Plaintiff, The London Loan and Savings Company of Canada, to accept a mortgage from R. S. Durno for \$77,000., knowing at the time such mortgage was taken that the said Defendant Durno was the nominee of the Defendant Morine, and that the said Defendant Durno was a man of straw, and that his covenant was worthless, and that the sale to the Defendant Durno was not a genuine sale, and that the conveyance to the Defendant Durno and the mortgage back from the Defendant for \$77,000. was principally for the purpose of relieving the Defendant Morine from his liability on the covenants in the second and third mortgages. The Defendants McCormick and Brickenden, with knowledge of these facts, induced the Plaintiff, The London Loan and Savings Company of Canada, to accept the said mortgage of \$77,000., and their action in so doing, along with the advice given, was fraudulent and dishonest. The covenant of the Defendant Morine to pay under the said two mortgages was valuable, whereas the covenant to pay of the Defendant Durno was worthless, which was well known to the Defendants McCormick and Brickenden; and it was also well known to the Defendants McCormick and Brickenden that the effect of accepting the Durno mortgage might be to release and they intended to release the Defendant Morine from his covenants to pay under the second and third mortgages held by the Plaintiff, The London Loan and Savings Company of Canada, without the knowledge and against the interest of the Plaintiff, The London Loan and Savings Company of Canada.

(k) Paragraph 34 (a) The damages claimed under this paragraph will amount to approximately \$125,000.00, being the difference between the amount of the Plaintiffs' claim and the value of the mortgage security.

The Plaintiffs deny the right of the Defendants Brickenden and McCormick to be furnished with the above particulars. The said particulars are delivered without prejudice to the Plaintiffs' rights and the Plaintiffs reserve the right to deliver further or other particulars at any time before or at the trial.

DATED at London, Ontario, this 22nd day of April, A.D. 1931.

BRADEN & McALISTER,
301 Dundas Building,
London, Ontario,
Solicitors for the Plaintiffs.

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TO

MESSRS. BARTON & HENDERSON,
Federal Building, Toronto, Ontario,
Solicitors for the Defendant, George G. McCormick.

MESSRS. SLAGHT & COWAN,
Toronto, Ontario,

20 *Solicitors for the Defendant, G. A. P. Brickenden.*

No. 3
Particulars

TAKE NOTICE that the Plaintiffs give the following particulars of the sum of \$272,000.00 claimed under Paragraph 34 (a) of the Plaintiffs' Statement of Claim:

1. To amount of mortgage, bearing date February 13th, 1932, made by the Defendant H. A. Morine and S. B. Green in favour of the Plaintiff, The London Loan and Savings Company of Canada, (which mortgage is now held by the Plaintiff, London Loan Assets Limited), and which mortgage was registered against parts of Lots Numbers 2 and 3 according to Plan filed as No. 512 in the Registry Office for the Registry Division of West Toronto, and part of Lot Number 16, according to Plan filed in said Registry Office as No. 457:

Principal.....	\$ 35,000.00
Interest, costs and other charges less credits.....	33,510.27
Total.....	\$ 68,510.27
2. To amount of mortgage, bearing date May 23rd, 1932, made by the said Defendant Morine and Green in favour of said Plaintiff, The London Loan and Savings Company of Canada, (which mortgage is now held by the Plaintiff, London Loan Assets Limited), and which mortgage was registered against the lands described in Paragraph 1, hereof:

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40

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Principal.....	\$ 20,000.00	
Interest, costs and other charges less credits.....	9,426.52	
Total.....	\$ 29,425.52	
3. To amount of mortgage, bearing date February 7th, 1932, made by the said Defendant Morine and Green in favour of The Huron and Erie Mortgage Corporation, (which mortgage is now held by the Plaintiff, London Loan Assets Limited), which said mortgage was registered against the lands described in Paragraph 1 hereof:		10
Principal.....	\$139,432.52	
Interest, costs and other charges, less credits.....	31,273.19	
	\$170,705.71	
4. To amount owing for subsequent interest, costs and expenses.	3,357.50	
Total.....	\$272,000.00	

DATED at London, Ontario, this 1st day of May, A.D. 1931.

BRADEN & MCALISTER,
301 Dundas Building,
London, Ontario,

Solicitors for the Plaintiffs. 20

TO

MESSRS. SLAGHT & COWAN,
Toronto, Ontario,

Solicitors for the Defendant, G. A. P. Brickenden.

No. 4

Statement of Defence of Defendant, H. A. Morine

No. 4.
Statement of
Defence of
Defendant,
H. A.
Morine,
5th May,
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1. The above named Defendant admits that he is a Financial Agent or Broker residing in the City of Toronto, and, save as expressly otherwise hereinafter admitted, denies all the other allegations contained in the Plaintiffs' Statement of Claim, and puts the Plaintiffs to the strict proof thereof. 30
2. The said Defendant specifically denies the allegations of the Plaintiffs:
 - (a) That he, the said Defendant, was the Agent, Representative or Valuator of the Plaintiff, The London Loan and Savings Company of Canada.
 - (b) That the Defendant, Robert S. Durno, was the Agent, Nominee, Trustee or Associate in business of the said Defendant, H. A. Morine.
 - (c) That he, the said Defendant, made the representations referred to in Paragraph 9 of the Plaintiffs' Statement of Claim, or that

he at any time entered into a conspiracy to defraud the said Plaintiff, The London Loan and Savings Company of Canada.
 (d) That he was acting in his own interest and on his own behalf in connection with the management or control of The Buckingham Apartments as alleged in Paragraph 30 of the Plaintiffs' Statement of Claim.

3. The said Defendant admits that at the time Mortgages Nos. 8318 W. F. and 8761 W. F., referred to in Paragraphs 5 and 6 of the Plaintiffs' Statement of Claim, were given to the said Plaintiff, The London Loan and Savings Company of Canada, he, the said Defendant, and one Samuel B. Green were the owners of the said lands. Applications for the said loans were made in the usual course of business and the Plaintiff, The London Loan and Savings Company of Canada, before making such advances, were fully aware of all particulars connected with the said premises and the buildings erected thereon, and obtained independent valuations as to the value of the said lands and buildings before making such advances.

4. In accordance with arrangements made by the said Defendant with the said Plaintiff, The London Loan and Savings Company of Canada, the said Defendant paid to the said Plaintiff the sum of \$4,000.00 as a bonus in connection with the advance made under Mortgage No. 8318 W. F., which payment was made up of a cheque to the said Plaintiff for \$3,648.54, and certain amounts due him by the said Plaintiff. The said Defendant also paid to the said Plaintiff a bonus of \$1,000.00 in connection with the advance made by the said Plaintiff under Mortgage No. 8761 W. F.

5. The advances made by the Plaintiff, The London Loan and Savings Company of Canada, under Mortgages Nos. 8318 W. F., and 8761 W. F., were not made until the said Plaintiffs, as a result of inspections and valuations made by their own officials and independent valuations, satisfied themselves as to such values of the property in question.

6. Payment of the arrears of principal and interest due under the Mortgages held by the said Plaintiff, The London Loan and Savings Company of Canada, referred to in paragraphs 14 and 15 of the Plaintiffs' Statement of Claim, were not demanded from the said Defendant, H. A. Morine.

7. The said Plaintiffs, The London Loan and Savings Company of Canada, commenced sale proceedings under Mortgage No. 8761 W. F. held by them, being the third mortgage covering the said premises. The said sale proceedings were postponed for a period of one month by the Order of the Honourable Mr. Justice Kelly upon the application of W. Lawson Renton and George M. Kelley, Trustees and holders of a fourth mortgage against the said property, registered as No. 9085 W. F., the said applicants having satisfied the Honourable Mr. Justice Kelly that the value of the property at the time of their application was the sum of \$310,000.00, by the production of a qualified valuator's certificate and otherwise, and that the said The London Loan and Savings Company of Canada would suffer no harm if the said sale were so postponed. After the expiry of the extended time, the property was offered for sale at auction. A reserve bid of about \$227,000.00 was fixed by the said Plaintiffs to cover the amount due under the said mortgages and for taxes,

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No. 4.
Statement of
Defence of
Defendant,
H. A.
Morine,
5th May,
1931.

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Statement of
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Defendant,
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Morine,
5th May,
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—continued.

and etc. No bid equal to the reserve bid was received, and the property was withdrawn from the said sale.

8. After the said abortive proceedings, inquiries were made by different parties as to the price at which the said property could be purchased, and in connection therewith the said Defendant, H. A. Morine, attended at London and discussed with M. J. Kent, Managing-Director of The London Loan and Savings Company of Canada, and other Directors of the said Company, the price at which the Company was prepared to sell the said premises. The said H. A. Morine was advised that the Company was prepared to sell the said premises at the price or sum of \$227,000.00, but pointed out to the said M. J. Kent and other Directors with whom the sale price was discussed, that the said price did not include any amount for the Mechanics' Liens registered against the property, and further, that the said Mechanics' Liens would not be cut out by a sale under the powers of sale contained in the said Mortgage No. 8761 W. F., held by the Plaintiff, The London Loan and Savings Company of Canada.

9. Upon this being brought to the attention of the said Directors of The London Loan and Savings Company of Canada, the said Defendant, H. A. Morine, was then advised that the Company would not consider any offer to purchase the said property until the said Mechanics' Liens were disposed of. The said Directors were aware that the said Defendant, H. A. Morine, had settled with the holders of the said Mechanics' Liens, and that he had taken either to himself or to his nominees an assignment of the said Mechanics' Liens. The said H. A. Morine was then requested to take such steps as would be necessary to discharge the various Mechanics' Liens and to vacate the certificates of action filed in connection therewith in order to enable the said Plaintiffs, The London Loan and Savings Company of Canada, to make a good title to the said property free of the said Mechanics' Liens, and to avoid the additional delay and time and expense that would be incurred if proceedings had to be otherwise taken to dispose of the claims of the holders of the various Mechanics' Liens. The said H. A. Morine agreed to do this, and gave instructions to his solicitors on or about the 11th day of June, 1925, to proceed with the necessary work to obtain the Order vacating and discharging the said Mechanics' Liens, and the said Order was obtained on or about the 13th day of June, 1925, and was registered on the 16th day of June, 1925, as No. 11005 W. F.

10. The Defendant, Robert S. Durno, through his solicitor, M. W. Wilson, did on the 17th day of June, 1925, make an offer to the Plaintiff, The London Loan and Savings Company of Canada, to purchase the said premises for the said sum of \$227,500.00, on the terms and conditions set out in the said offer, which included the assumption of the first mortgage registered against the said property, and the giving back of a second mortgage for \$77,000.00 as the purchase money.

11. The said Robert S. Durno was well known to the Plaintiff, The London Loan and Savings Company of Canada, and had had frequent dealings with them in obtaining loans from the said Plaintiff, The London Loan and Savings Company of Canada, on buildings erected by the said Robert S.

Durno, and in connection with various mortgages sold by the said Defendant, R. S. Durno, to the said Plaintiff, The London Loan and Savings Company of Canada.

12. The said Defendant, H. A. Morine, was requested by the said Plaintiff, The London Loan and Savings Company of Canada, to be present at London on the 23rd day of June, 1925, when the offer made by the said Robert S. Durno was to be considered at a meeting of the Board of Directors to be held on that day. The question of the said offer was thoroughly discussed by the Directors of the said London Loan and Savings Company of Canada, who were fully conversant with the situation then existing. The Directors of the said Company agreed that the offer of the said Robert S. Durno for the purchase of the said property be accepted on the express understanding and condition, however, that the said Defendant, Robert S. Durno, give a Deed of the said premises to the Consolidated Trusts Corporation in trust for the said London Loan and Savings Company of Canada and the said Robert S. Durno, so that the said Consolidated Trusts Corporation might collect the rent of the said premises for the protection of the said London Loan and Savings Company of Canada, and also on the condition that the said Robert S. Durno at the same time give the said Consolidated Trusts Corporation a Quit Claim Deed of the said premises, which the said Consolidated Trusts Corporation would have the right to use in the event of the said Robert S. Durno failing to make good any deficiency which might arise in the event of the moneys received from the collection of the rent of the said premises not being sufficient to pay the carrying charges and other payments which might become due and payable under the mortgages covering the said premises so that an absolute title might be obtained free of any claims of the said Robert S. Durno and without any undue expense or delay.

13. The said Trustees at the said meeting discussed the possibility of the rents of the said premises being insufficient to pay the carrying charges of the said premises and of the possible failure of the Defendant, Robert S. Durno, to pay any deficiency that might arise, but agreed that The London Loan and Savings Company of Canada would be fully protected by the collection of the rents by the Consolidated Trusts Corporation, and that in case such default were made it would be to the advantage of The London Loan and Savings Company of Canada to take over the said premises under the said Quit Claim whereby a clear title to the premises would be vested in them, subject only to the first mortgage registered against the said premises. The said Directors believed that in such event a considerable profit would accrue to the said London Loan and Savings Company of Canada, as they believed that the value of the premises was over \$300,000.00.

14. The sale of the said premises to the said Robert S. Durno was not a fictitious sale, and it was not entered into by the said Robert S. Durno as agent or nominee of the said Defendant, H. A. Morine. The said Robert S. Durno was not persuaded or induced to enter into or to carry through the said transaction by the said Defendant, H. A. Morine.

15. In pursuance of the instructions given by or on behalf of the Plaintiff, The London Loan and Savings Company of Canada, the sale of the said

*In the
Supreme
Court of
Ontario.*

No. 4.
Statement of
Defence of
Defendant,
H. A.
Morine,
5th May,
1931.

—continued.

*In the
Supreme
Court of
Ontario.*

No. 4.
Statement of
Defence of
Defendant,
H. A.
Morine,
5th May,
1931.

—continued.

property to the said Robert S. Durno was completed, and a Deed to the said Durno was registered as No. 11077 W. F. A mortgage from the said Robert S. Durno to The London Loan and Savings Company of Canada was registered as No. 11078 W. F. A Deed from the said Robert S. Durno to the Consolidated Trusts Corporation, in trust, was registered as No. 11079 W. F. and a Discharge of the said Mortgage No. 8318 W. F. was registered as No. 11076 W. F., and at the same time the said Plaintiff received from the said Defendant, Robert S. Durno, a Quit Claim bearing date the 8th day of July, 1925.

16. The Deed given to the Consolidated Trusts Corporation, in trust, by the said Robert S. Durno, registered as No. 11079 W. F., was given in pursuance of an arrangement whereby the said Consolidated Trusts Corporation was to hold the said lands in trust for the said The London Loan and Savings Company of Canada and the said Robert S. Durno. The said Consolidated Trusts Corporation were to collect the rents of the said premises on behalf of the said The London Loan and Savings Company of Canada and the said Robert S. Durno, and were to use the said rents to pay carrying charges in connection with the said premises and to pay all moneys which would become due and payable under the mortgages covering the said premises. Any surplus was to be paid to the said Robert S. Durno, and if sufficient moneys were not collected to make all the necessary payments, the said Robert S. Durno was to supply the money to cover any deficiency. In the event of the said Robert S. Durno failing to supply the moneys necessary to cover any deficiency, the said Consolidated Trusts Corporation were to have the privilege to register the Quit Claim executed by the said Robert S. Durno for the purpose of vesting in the said Consolidated Trusts Corporation an absolute title to the said lands, which they were then to hold as Trustees for the said Plaintiff, The London Loan and Savings Company of Canada.

17. As a result of the said Robert S. Durno failing to pay such moneys as were required to pay carrying and other charges with respect to the said property over and above the moneys collected for rents, the said Consolidated Trusts Corporation and the said The London Loan and Savings Company of Canada took possession of and continued to manage the said premises and collected the rents thereof and treated the property as property belonging to the said The London Loan and Savings Company of Canada free of any interest of the said Robert S. Durno.

18. From the year 1926 down to the date when the said Company took an assignment of the first mortgage held by The Huron & Erie Mortgage Corporation, the 27th day of February, 1928, the said The London Loan and Savings Company of Canada dealt with the said property as a property belonging to them, subject only to the first mortgage to The Huron & Erie Mortgage Corporation, and held themselves out as the owners of the said property, and not as mortgagees thereof.

19. From the said 27th day of February, 1928, down to the date when the said The London Loan and Savings Company of Canada transferred their assets to the London Loan Assets Limited, or to the Huron & Erie Mortgage Corporation, or either of them, the said The London Loan and Savings Com-

pany of Canada held themselves out as the owners of the said premises free of all encumbrances.

20. From the date upon which the London Loan Assets Limited obtained a transfer of the said assets of The London Loan and Savings Company of Canada from the said The London Loan and Savings Company of Canada or The Huron & Erie Mortgage Corporation, or either of them, the said London Loan Assets Limited held themselves out as the owners of the said premises free from all encumbrances.

21. By Assignment of Mortgage, bearing date the 7th day of February, 1928, and registered on the 27th day of February, 1928, as No. 13475 W. F., The Huron and Erie Mortgage Corporation assigned to The London Loan and Savings Company of Canada a first mortgage held by them covering the said premises, No. 8317 W. F.

22. The said Defendant alleges that at the time of this Assignment the lands and premises in question were held by the Consolidated Trusts Corporation in trust for the said The London Loan and Savings Company of Canada, and that the Assignment of the said Mortgage No. 8317 W. F. to the said The London Loan and Savings Company of Canada effected a merger of the interests of the said The London Loan and Savings Company of Canada as owners and mortgagees of the said premises.

23. Prior and subsequent to the said 27th day of February, 1928, the said The London Loan and Savings Company of Canada and the said London Loan Assets Limited, for the periods of their respective ownership, treated and continued to treat the said lands and premises as belonging to them, and carried on various negotiations for the sale of the said premises. The said Defendant further alleges that the said Plaintiffs are now estopped from making any claim that any persons are liable to the said Plaintiffs or either of them under Mortgages Nos. 8317 W. F., 8318 W. F., and 8761 W. F. referred to in the Plaintiffs' Statement of Claim.

24. In or about the month of January, 1928, the said Plaintiffs, The London Loan and Savings Company of Canada, agreed to sell the said premises to one May Rutherford for the price or sum of \$275,000.00, and under the terms of the said Agreement the said lands and premises were to be conveyed to the said May Rutherford free of all encumbrances, and the said May Rutherford was to give back to the said Plaintiff, The London Loan and Savings Company of Canada, a new first mortgage covering the said premises for \$225,000.00. The balance of the consideration was to be paid on the terms set out in the said Agreement. The said Plaintiff, The London Loan and Savings Company of Canada, in connection with the said transaction, represented that they were the owner of the said lands in a position to convey the said lands free of encumbrances, and tendered to the solicitor for the Purchaser of the said premises a Quit Claim from the said Robert S. Durno to the said Consolidated Trusts Corporation, which they undertook to register for the purpose of vesting in the said Consolidated Trusts Corporation an absolute title to the said lands and premises. The said sale was not completed.

25. Subsequent to this transaction, the said Plaintiffs, for the period of their respective ownership, continued to act as owners of the said lands

*In the
Supreme
Court of
Ontario.*

No. 4.
Statement of
Defence of
Defendant,
H. A.
Morine,
5th May,
1931.

—continued.

*In the
Supreme
Court of
Ontario.*

No. 4.
Statement of
Defence of
Defendant,
H. A.
Moline,
5th May,
1931.

and premises, and on one or more occasions entered into Agreements to sell the said lands at prices in excess of the said sum of \$275,000.00.

26. This Defendant pleads the Statute of Limitations, and particularly Sections 48 and 31 thereof.

27. The Plaintiffs' claims, if any, are barred by delay and laches.

28. The said Defendant submits that the Plaintiffs' action should be dismissed with costs.

DELIVERED at Toronto, this 5th day of May, 1931, by SINGER & KERT, 406-8 Temple Bldg., Toronto, *Solicitors for the Defendant, H. A. Moline.*

—continued.

No. 5.
Statement of
Defence of
Defendant,
G. A. P.
Brickenden,
23rd April,
1931.

No. 5

10

Statement of Defence of the Defendant, G. A. P. Brickenden

1. This Defendant admits that the Plaintiffs are incorporated Companies, having their Head Offices at the City of London in the County of Middlesex, and admits that this Defendant is a Solicitor of the Supreme Court of Ontario, practising his profession at the City of London, in the County of Middlesex, and admits the place of residence of the Defendants, H. A. Moline and George G. McCormick, and that the Consolidated Trusts Corporation is a Trust Company with Head Office at the City of London, but except as hereinafter expressly admitted, this Defendant denies each and every allegation contained in the Plaintiffs' Statement of Claim. 20

2. At the dates and times referred to in the Plaintiffs' Statement of Claim, this Defendant was practising his profession at the City of London under the firm name of G. A. P. Brickenden & Co., and is now practising his profession under the firm name of Brickenden, McMillan & Ferguson.

3. This Defendant was not at any time in receipt of any salary, fee or retainer as a general solicitor for the Plaintiff, The London Loan and Savings Company of Canada. Any act performed by this Defendant or his partners in connection with the mortgage sale proceedings or other matters referred to in the Plaintiffs' Statement of Claim was so done or performed upon instructions received as Solicitors from time to time from the Plaintiff and in precise accordance with such instructions. 30

4. This Defendant denies that he conspired with his co-Defendants or any of them as alleged by the Plaintiffs' Statement of Claim, or entered into any secret arrangement or agreement with his co-Defendants or any of them, or received any secret profit out of the transactions set forth in the Plaintiffs' Statement of Claim, or at all, or received any benefit from the said transactions, except a proper fee to him as one of the Solicitors for the Plaintiff, The London Loan and Savings Company of Canada.

5. This Defendant denies that the Plaintiff has suffered any damage whatever by reason of any of the acts mentioned in the Plaintiffs' Statement of Claim. 40

6. The Plaintiff, The London Loan and Savings Company of Canada, was at all times fully informed of all matters and things in connection with all

of the transactions set forth in the Plaintiffs' Statement of Claim, and this Defendant neither neglected his duty as Solicitor for the said Plaintiff, having regard to his instructions, nor made any representations to the said Plaintiff on his own behalf, or on behalf of any other person.

7. This Defendant specifically denies that he represented to the Plaintiff, The London Loan and Savings Company, that the Defendant Morine would personally guarantee repayment of the loans as alleged by paragraph seven of the Plaintiffs' Statement of Claim, or at all.

8. The Plaintiff, The London Loan and Savings Company, were at all
10 times aware of all proceedings in connection with the property referred to in the Plaintiffs' Statement of Claim, and instructed all such proceedings to be taken, and ratified, approved and confirmed such proceedings, by resolution of the Directors passed at meetings called to consider the various steps to be taken and by conduct subsequent to the completion of such proceedings.

9. This Defendant denies that the conveyance to The Consolidated Trusts Corporation, referred to in paragraph twenty of the Plaintiffs' Statement of Claim, was made without the knowledge or consent of the said Trusts Corporation, and says that such conveyance was made with the full knowledge and consent and approval of the said Trusts Corporation, and the Deeds
20 were delivered to and accepted by the said Trusts Corporation on or before the 16th day of September, A.D. 1925.

10. This Defendant pleads the Statute of Limitations and particularly Sections 48 and 31 thereof.

11. The Plaintiffs' claim, if any, is barred by delay and laches.

12. This Defendant submits that this action as against him should be dismissed with costs.

DELIVERED at Toronto this 23rd day of April, A.D. 1931, by MESSRS. SLAGHT & COWAN, 1401 Sterling Tower, Toronto, Ontario, *Solicitors for the Defendant, G. A. P. Brickenden.*

*In the
Supreme
Court of
Ontario.*

No. 5.
Statement of
Defence of
Defendant,
G. A. P.
Brickenden,
23rd April,
1931.

—continued.

30

No. 6

Statement of Defence of the Defendant, George G. McCormick

1. This Defendant admits that he resides at the City of London, and was for many years prior to February, 1929, a Director and President of the Plaintiff, The London Loan and Savings Company of Canada, but, save as hereinafter expressly admitted, denies all allegations made in the Plaintiffs' Statement of Claim.

2. The lands and premises referred to in the Plaintiffs' Statement of Claim were offered for sale by the Plaintiff, The London Loan and Savings Company of Canada, and all conveyances of the said lands subsequent to the
40 said sale were made and taken upon the unanimous approval of the Board of Directors of the said Plaintiff, and all acts done by this Defendant in connection with the dealings of the said property were done as a member of the Board of Directors and as Chairman of such Board, with full knowledge and approval of the said Plaintiff, and not otherwise.

3. This Defendant denies that he conspired with his co-Defendants,

No. 6.
Statement of
Defence of
Defendant,
George G.
McCormick,
23rd April,
1931.

*In the
Supreme
Court of
Ontario.*

No. 6.
Statement of
Defence of
Defendant,
George G.
McCormick,
23rd April,
1931.

or any of them, or with any other person, to do any of the acts set forth in the Plaintiffs' Statement of Claim, or at all, and denies that he received any benefit whatever from any of the said transactions or made any representations whatever to the Board of Directors of the said Plaintiff on behalf of the Defendant Morine, or any other person, or has been guilty of any fraud whatever, or was in any way acting for or with the Defendant Morine, or any other Defendant.

4. The sale of the said lands and premises referred to in the Plaintiffs' Statement of Claim was for the sole benefit of the Plaintiff, The London Loan and Savings Company of Canada, and such sales and conveyances subsequent thereto improved the position of the said Plaintiff, and were ratified, approved and confirmed by the said Plaintiff, both by the unanimous resolutions passed by the Board of Directors of the said Plaintiff, and by subsequent conduct. 10

5. Each act or transaction which this Defendant performed or with which he had any connection concerning the said lands was done or performed on the express direction of the Board of Directors of the Plaintiff, The London Loan and Savings Company of Canada, such Board having full knowledge of the facts and the effect thereof, and this Defendant performed no act whatever in connection with said transactions, except in his ministerial capacity as Chairman and a member of the Board of Directors. 20

6. In any event this Defendant alleges that the Plaintiff has suffered no damage by reason of any act or thing alleged by the Plaintiffs' Statement of Claim, but on the contrary the position of the said Plaintiff in respect of the said lands and premises has materially benefitted by the conveyance of the said lands, as set forth in the Plaintiffs' Statement of Claim.

7. This Defendant specifically denies that he made any representations to the Plaintiff, The London Loan and Savings Company of Canada, as alleged by paragraph seven of the Plaintiffs' Statement of Claim.

8. This Defendant specifically denies that there was any collusion whatever between himself and the Defendant Brickenden, or any other person. 30

9. The conveyance referred to in paragraph twenty of the Plaintiffs' Statement of Claim was made with the express approval of the Board of Directors of the Plaintiff, The London Loan and Savings Company of Canada, which approval was given at a special meeting of the Board of Directors called for the purpose of considering same, and such conveyance was made with the full knowledge, consent and approval of the Consolidated Trusts Corporation, and the Deeds were delivered to and accepted by the Consolidated Trusts Corporation on or about the 16th day of September, A.D. 1925.

10. In any event the Plaintiffs' claim, if any, is barred by delay and laches. 40

11. This Defendant pleads the Statute of Limitations, and particularly Sections 31 and 48 thereof.

12. This Defendant submits that this action should be dismissed with costs.

DELIVERED at Toronto this 23rd day of April, A.D. 1931, by MESSRS. BARTON & HENDERSON, Federal Building, Toronto, Ontario, *Solicitors for the Defendant, George G. McCormick.*

No. 7

**Statement of Defence of Defendant,
The Consolidated Trusts Corporation**

The Defendant, The Consolidated Trusts Corporation, having no further interest in the lands described in the Pleadings, submit their rights to This Honourable Court.

DATED at London, Ontario, this 8th day of May, 1931.

CRONYN & BETTS,

442 Richmond Street, London, Ontario,

*Solicitors for the above named Defendant, The
Consolidated Trusts Corporation.*

10

*In the
Supreme
Court of
Ontario.*

No. 7.
Statement of
Defence of
Defendant,
The Consoli-
dated Trusts
Corporation.
8th May,
1931.

No. 8

Joinder of Issue

The Plaintiff joins issue upon the Statement of Defence of the Defendant, H. A. Morine.

DELIVERED this 5th day of May, 1931, by BRADEN & McALISTER, of the City of London, in the County of Middlesex, *Solicitors for the Plaintiffs.*

No. 8.
Reply,
5th May,
1931.

No. 9

Joinder of Issue

The Plaintiffs join issue upon the Statement of Defence of the Defendant, G. A. P. Brickenden.

DELIVERED this 5th day of May, 1931, by BRADEN & McALISTER, of the City of London, in the County of Middlesex, *Solicitors for the Plaintiffs.*

20

No. 9.
Reply,
5th May,
1931.

No. 10

Joinder of Issue

The Plaintiffs join issue upon the Statement of Defence of the Defendant, George G. McCormick.

DELIVERED this 5th day of May, 1931, by BRADEN & McALISTER, of the City of London, in the County of Middlesex, *Solicitors for the Plaintiffs.*

30

No. 10.
Reply,
5th May,
1931.

No. 11

Joinder of Issue

The Plaintiff joins issue upon the Statement of Defence of the Defendant, Consolidated Trusts Corporation.

DELIVERED this 11th day of May, 1931, by BRADEN & McALISTER, of the City of London, in the County of Middlesex, *Solicitors for the Plaintiffs.*

No. 11.
Reply,
11th May,
1931.

Notice of Motion to Amend Statement of Claim at Trial

*In the
Supreme
Court of
Ontario.*

No. 12.
Notice of
Motion to
Amend
Statement of
Claim at
Trial,
5th Decem-
ber, 1931.

TAKE NOTICE that at the trial of this action a Motion will be made on behalf of the Plaintiffs for an Order amending the Statement of Claim herein, by adding thereto, as Paragraph 6 (a), the following:—

“6. (a) The moneys advanced under the said mortgages, registered as Numbers 8318 W. F. and 8761 W. F., were not used for erecting or completing the buildings known as The Buckingham Apartments, as the Defendant Morine represented such moneys would be used. In lieu thereof, the moneys advanced under the said mortgages were improperly applied by the Defendant Morine in re-payment of advances of moneys made by the Defendant Morine to the said S. B. Green in respect of various transactions between the said Defendant Morine and the said S. B. Green, and in payment of secret commissions and profits agreed to be paid to the Defendant Morine by the said S. B. Green under three certain agreements between the said Defendant Morine and the said S. B. Green, which agreements were dated May 1st, 1922, February 13th, 1923, and June 18th, 1923, and which agreements provide that the said Defendant Morine and the said S. B. Green should be partners in the erection of the said Apartments and should share the profits equally and that the said Defendant Morine should be paid by the said S. B. Green out of the \$35,000. secured by the said mortgage, Number 8318 W. F., negotiated by the said Defendant Morine with The London Loan and Savings Company of Canada, a bonus for arranging and negotiating the said loan of 25%, and in addition thereto, a sum of \$2,000. The said buildings did not have the value which the Defendant Morine represented them to have, and the cost of construction of the said buildings was much less than represented by the Defendant Morine in the application for the said advances and in the valuation of the property by the Defendant Morine.”

DATED at London, Ontario, this 5th day of December, 1931.

BRADEN & McALISTER,
Dundas Building,

Solicitors for the Plaintiffs.

TO

MESSRS. SINGER AND KERT,
Temple Building, Toronto,
Solicitors for the Defendant, H. A. Morine.

MESSRS. SLAGHT AND COWAN,
Sterling Tower, Toronto,
Solicitors for the Defendant, G. A. P. Brickenden.

MESSRS. BARTON AND HENDERSON,
Federal Building, Toronto,
Solicitors for the Defendant, George G. McCormick.

No. 13
Trial Proceedings

Before the Honourable Mr. Justice Wright, without a Jury, at London,
Ontario, commencing December 8th, 1931.

*In the
Supreme
Court of
Ontario.*

No. 13.
Opening
Proceedings
at Trial,
8th Decem-
ber, 1931.

	GEORGE T. WALSH, K.C. V. EVAN GRAY	}	<i>Counsel for Plaintiffs.</i>
	A. G. SLAGHT, K.C. R. I. FERGUSON	}	<i>Counsel for Defendants Brickenden and McCormick.</i>
10	SIR ALFRED MORINE, K.C. JOSEPH SINGER	}	<i>Counsel for Defendant H. A. Morine.</i>
	N. W. ROWELL, K.C. F. G. BETTS	}	<i>Counsel for Defendant Consolidated Trusts Corporation.</i>

HIS LORDSHIP: Is there any one appearing for the Defendant Durno?

MR. WALSH: He has been served, my Lord, and no appearance has been entered.

HIS LORDSHIP: Have you entered interlocutory judgment against him or discontinued?

MR. WALSH: The pleadings are noted closed as against him, and notice of trial was served; he is unrepresented.

20 HIS LORDSHIP: Let me have a general outline of the case.

MR. WALSH: This is an action against the Defendants in connection with the Buckingham Apartments in the City of Toronto.

HIS LORDSHIP: It is confined just to the one transaction?

MR. WALSH: Yes, your Lordship. It arises, your Lordship, under two mortgages that were put on the property. There is a second mortgage for \$35,000. and a third mortgage for \$20,000. These mortgages were put on respectively in February—

HIS LORDSHIP: The first mortgage is not in question?

30 MR. WALSH: Yes, your Lordship. We have taken an assignment. The second mortgage, your Lordship, was put on in February, 1923, and the other mortgage was put on in May, 1923, that is the third mortgage, \$20,000. These mortgages were put on by the Defendant Morine to the Plaintiff, The London Loan and Savings Company. It is contended, your Lordship, that as far as these mortgages were concerned, the investment at that particular time was an absolutely unsafe and unwarranted investment, that that investment could only have been obtained by reason of the fact that Mr. Morine was the Toronto representative, agent and valuator of The London Loan and Savings Company; that he was in a position of agent for them down there, and that he got this
40 Defendant Morine was to guarantee the mortgages. That, your Lordship will see, will appear on the evidence endorsed on the applications for the

*In the
Supreme
Court of
Ontario.*

No. 13.
Opening
Proceedings
at Trial,
8th Decem-
ber, 1931.

—continued.

loans. This property at that time was registered in the name of Mr. Morine and S. B. Green, as owners in partnership of the property, they having acquired it about that time, or before that. They were erecting this apartment house—

HIS LORDSHIP : Were these building loans ?

MR. WALSH : Yes, your Lordship. This apartment was started in the year 1922, and they had raised from the Huron and Erie Mortgage Corporation a mortgage. They increased that mortgage to \$150,000. in the month of February, 1923.

HIS LORDSHIP : That is the first mortgage ?

MR. WALSH : Yes, your Lordship. That mortgage, your Lordship, was a building mortgage obtained from the Huron and Erie Mortgage Corporation for \$150,000. about the same time as our second mortgage was obtained for \$35,000. At that time Mr. Morine and Mr. Green were owners in partnership of the property. There was, I may say, a bonus in connection with this mortgage of \$4,000., that is, of the second mortgage, and there was a bonus of \$1,000. in connection with the third mortgage. The third mortgage was of very short duration, just a matter of a few months.

HIS LORDSHIP : Was the third mortgage paid off ?

MR. WALSH : No, your Lordship; there were sale proceedings taken. Mr. Morine, according to the abstract, becomes the owner of that property under a conveyance from Mr. Green. That is registered on the 18th September, 1923. After the date of the third mortgage and for a couple of weeks after Mr. Morine received the deed, there were certain liens put on this property which will be referred to in the evidence.

Then the next thing that appears on the abstract is a conveyance by Mr. Morine to Mr. Dyas, his son-in-law; and then appears a mortgage immediately contemporaneously with that deed, a mortgage from Mr. Dyas to Mr. Renton, trustee for certain Scottish investors, of about \$46,000. Then the next thing that appears on the abstract is a mortgage to Mr. Morine for \$23,000. Your Lordship, that is the way the matter stood in 1923 and 1924. Then the mortgages to The London Loan and Savings Company got into arrears. There were instructions given by the Board, according to the minutes of the Board, to take proceedings under the mortgage, or as the minutes show, to collect moneys. There was one minute in particular, in January, 1924, that is to collect that mortgage; and the next thing that follows are certain sale proceedings and conveyance under power of sale. The conveyance is registered in July, 1925, from The London Loan and Savings Company to this Defendant Durno, who has not appeared in the action. There was a preliminary agreement dated the 17th day of June, 1925, an offer to purchase, whereby Durno agreed to purchase that for the moneys owing to The London Loan and Savings Company of Canada. Now, our contention is that that very deed was a fictitious, an irregular sale, it was not intended whatever, Durno was not a real purchaser, and that Durno was no more than a nominee for the Defendants, Mr. Morine, Mr. Brickenden and Mr. McCormick, or one of them.

HIS LORDSHIP : What is your claim against the Defendant Morine, first ?

MR. WALSH : Our claim is he is still liable on the covenants contained in the second and third mortgages. These sale proceedings never released him; we say he never was released; the transaction was fictitious and fraudulent.

HIS LORDSHIP : Your claim against him is——

MR. WALSH : On the second and third mortgages, and on the first. We later took an assignment from the Huron and Erie Corporation of that first mortgage.

HIS LORDSHIP : In which he covenants ?

MR. WALSH : Which he covenants in that mortgage to pay.

10 HIS LORDSHIP : Then against Brickenden and McCormick ?

MR. WALSH : Our case is this, that Mr. G. A. P. Brickenden was the general solicitor of this company; not only general solicitor, but in this particular transaction he was their solicitor handling it; that Mr. McCormick at that time was the President of this company; that this transaction could only have been put through by reason of their acts and conduct, and that this company lost—if your Lordship should hold upon the evidence that Mr. Morine was released, then it was done by the President—there never was any formal release or anything of that kind, but the contention is that we have since sold the property under this fictitious sale, and that that released
20 Morine, and that therefore Morine is no longer liable on that covenant; we say if that is the fact that it was done through the actions and conduct of the Defendants McCormick and Brickenden, that they are liable to these Plaintiffs for the loss they have sustained by reason of the occurrences that are detailed in the pleadings. Your Lordship will notice on the pleadings the name the London Loan Assets Limited—I think your Lordship had a case before in which this question came up, and I think your Lordship had to read the amalgamation agreement that took place——

HIS LORDSHIP : Yes, but I do not retain the particulars of it in my mind.

MR. WALSH : I read it in the law reports. The London Loan Assets
30 Limited is the liquidating company of The London Loan and Savings Company.

HIS LORDSHIP : All the assets of the Loan Company were transferred to the Assets Company ?

MR. WALSH : Yes; and then the Consolidated Trust Corporation hold a deed of the property to them in trust, and that is the reason why they are defendants on this record.

I had served on my learned friend a notice of motion.

MR. SLAGHT : If I might have permission to state one or two facts not stated by my friend and which I would like to feel are present to your Lordship's mind as the evidence goes forward.

40 HIS LORDSHIP : Go on.

MR. SLAGHT : The title to the property in question is at present vested in the Consolidated Trust Company, one of the defendant parties. That company is a subsidiary owned and controlled by The London Loan and Savings Co. originally, and the London Loan Assets by contract now. The property has never been disposed of since the mortgage given back by Durno. I am not sure that my learned friend mentioned to the Court that at the time of the sale to Durno, Durno assumed the first mortgage for \$150,000.

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which was then on in favour of the Huron and Erie, and Durno gave a mortgage back for \$77,000. to The London Loan and Savings Company Limited, the original company. Now, then, the property has never been disposed of, and therefore no loss is being faced or probability of loss to one or other of the Plaintiffs, no loss has ever been as yet established in that sense, because they still hold.

HIS LORDSHIP : They have not realized on the mortgage ?

MR. SLAGHT : No, and they are bringing an action to ask the Court to say that some day one or other of them will lose money when they realize, and therefore they want damages now. Another point is this : as far as either 10
of my clients is concerned, they have never had any privity of contract nor dealings with the Plaintiff, the London Loan Assets Limited. I think that applies to Morine also. The title to these securities, to all three of them, that is, the original Huron and Erie, and the \$35,000. and the \$20,000. mortgages, the title to all of those is now vested in London Loan Assets Limited, and The London Loan Savings Company, the parent company, have divested themselves first by assignment and sale to the Huron and Erie, who are not parties to this action, and secondly by assignment from the Huron and Erie absolute to the Plaintiff, the London Loan Assets Limited; so that we have the London Loan Assets Limited as owners of these securities. If the suspected 20
loss put forward by the Plaintiffs should ever occur to anybody, we say that the position of the title and the ownership of the securities makes it abundantly clear that the only Plaintiff who could lose would be the London Loan Assets Limited, towards whom there never was any duty by any of the three De-

HIS LORDSHIP : But if they were liable at all, it would be to the London Loan Company ?

MR. SLAGHT : Yes, my Lord; and the reason I make this comment now is that I think it is proper at an early stage of the case that our position in that regard should be present to the mind of the Court, and it is conceivable 30
that in a case framed like this where there are two Plaintiffs, that there might be a cause of action, that is, a technical cause of action, established on behalf of one of such Plaintiffs—our submission is there will not be in this case—that is, on behalf of the original London Loan and Savings Co. with whom there were relationships with all three of the Defendants attacked, but we say that if the Plaintiffs can establish to the Court that there may some day be a loss, there has not been yet, that the position of the title and the ownership of the securities and the whole situation is that there could never be a loss to anyone except the London Loan Assets Limited; in other words, a corporation towards whom nobody ever owed any duty— 40

HIS LORDSHIP : If by their acts they lessened the assets in the hands of the original transferors, and that the London Assets Company is only a holding company, virtually trustees for the other company, and *cestui que trust* received damage or sustained damage, surely when they are both added somebody would have a right of action.

MR. SLAGHT : If they were, yes, my Lord; but may I say that the evidence will establish that the London Loan Assets Limited are not trustees for the

London Loan Company who are not *cestui que trust*—the evidence will establish that all the shareholders of the London Loan and Savings Company have surrendered their shares to trustees, and that in connection with the surrender and the tripartite agreement which will come before the Court dated the 3rd July, 1929, it will be disclosed that these securities were sold outright by the original London Loan and Savings Company to the Huron and Erie, and they parted with them absolutely, and received \$720,000. in money and certain 20,000 shares of stock in London Loan Assets Limited, which shares of stock the London Loan and Savings Company do not at present own,
 10 but have in turn parted with by distributing as a stock dividend along with the cash they received, distributing to each and every shareholder of London Loan and Savings Company a share of stock, in return for each share of the parent company held by him, a share of stock in London Loan Assets Limited; so that if these securities which they fear may result in loss to the London Loan Assets Limited should so result, the London Loan and Savings Company have no interest, money interest, in any shape or form in such shrinkage; but A. and B. as shareholders of London Loan original company, who now hold stock in London Assets Limited, their shares of stock might, if one could ever work it out, be of less value, if there is a loss on these securities.

20 HIS LORDSHIP: The London Loan Company, has its charter been surrendered, and is it wound up?

MR. SLAGHT: No, my Lord, not formally, but it will be disclosed to the Court that there has been in law an effectual surrender of the charter, although it has not been turned in to the Department.

HIS LORDSHIP: As long as it has a corporate existence and if it ever had a right of action, and if it has not parted with the right of action, it still has it.

30 MR. SLAGHT: Probably so, my Lord; my point at the moment being I should like the Court to be aware that we say the evidence will disclose that the stock of London Loan Assets Limited is not owned by the London Loan and Savings Company, nor a share of it, and that those shares have been passed to the individual shareholders of the London Loan and Savings Company, and if a suspected loss some day occurs, anybody who would suffer at all would be a shareholder of the parent company because some of the assets of London Loan Assets Limited, in which he is a shareholder now, having surrendered his stock in the parent company, may not turn out as fruitful—

HIS LORDSHIP: Well, I have the history of the transaction, I think, clear.

40 MR. WALSH: My learned friend made the statement that the London Loan Assets was the parent company of the Consolidated Trust; they have no connection, your Lordship, whatever, now.

HIS LORDSHIP: That will be developed in the evidence.

MR. WALSH: About suspected loss, may I say it will be found that the loss is as real as any loss ever could be.

HIS LORDSHIP: That is a matter of evidence.

MR. WALSH: I just mentioned before Mr. Slaght spoke to your Lordship about a notice of motion for further amending the statement of claim and adding paragraph 6 (a).

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HIS LORDSHIP : When was it served ?

MR. WALSH : This was served yesterday.

HIS LORDSHIP : Is not it rather late ? This action has been running over a year. I will hear if the Defendants have any objection to it, and if it is necessary to have an adjournment in order to have the matter squarely before the Court.

SIR ALFRED MORINE : We object to the proposed amendment for reasons which we will show your Lordship. As to whether there should be an adjournment depends upon the decision as to whether you permit the amendment or not. 10

HIS LORDSHIP : Let me see what the proposed amendment is.

—Mr. Walsh hands amendment to his Lordship.

HIS LORDSHIP : You can file the amendment. I will not at the moment allow it until I see whether the evidence justifies it, and if it appears that the Defendants will be taken by surprise I will consider that and give them an opportunity to meet, if necessary. File the amendment in the meantime.

—The amendment was filed.

—At the request of Sir Alfred Morine all the witnesses were excluded.

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JOHN A. E. BRADEN, Sworn. Examined by

MR. WALSH : Q. What is your business ? A. Barrister and solicitor. 20

Q. Practising in London ? A. Yes.

Q. Are you an officer of the plaintiff company, the London Loan and Savings Company ? and London Loan Assets Company ?

A. Yes, I am Vice-President of each company.

Q. Will you tell his Lordship when you became Vice-President of the plaintiff companies ?

A. I became Vice-President of the London Loan and Savings Company in February, 1929, and Vice-President of the London Loan Assets Limited in September, 1929.

Q. Will you tell his Lordship who is the President of the plaintiff com- 30
pany, the London Loan and Savings Co. ?

A. Lieutenant-Colonel Coles is the President now.

Q. Has he anything to do with the London Loan Assets ?

A. He also is President of the London Loan Assets.

Q. Was there any change in the management, the personnel or manage-
ment of the London Loan and Savings Company in 1929 ?

A. Yes; there was a contest for control, and prior to that time Mr. McCormick, one of the Defendants, was President of the London Loan and Savings Company and had been President to my knowledge for over ten years, and Mr. Thomas Baker was Vice-President. 40

Q. May we put it say in the year 1923, do you know who were on the Board of the London Loan and Savings Co. in addition to Mr. McCormick and Mr. Baker ?

A. Yes, Mr. William E. Robinson, he was 2nd Vice-President of the London Loan and Savings Co.; Mr. Charles Hunt was a director, and Mr.

M. J. Kent until 1927, he was managing director; Mr. Kent was with the company for over fifty years I am informed; then Mr. Hambly.

Q. There were five directors? A. Yes.

Q. What about Mr. Hambly?

A. Mr. Hambly took Mr. Kent's place in 1927, and Mr. Kent was dismissed by the Board of the London Loan and Savings Company; Mr. Kent was dismissed as a result of his attempt to gain control of the company in 1927.

Q. Mr. Hambly took over his duties?

A. In 1927; I think before that time he had been doing Mr. Kent's work.
10 He was not made manager until after the contest for control in 1927.

Q. Mr. Hambly was manager from 1927 to what date?

A. Until July or August, 1929.

Q. He stayed on with the new management?

A. Yes; Mr. Hambly remained as manager after the contest for control took place, and still maintained his old position.

HIS LORDSHIP: What time in 1929?

A. Until August, 1929, the end of August, that was the time the new company, my Lord, started to function, the London Loan Assets Limited.

MR. WALSH: We have told his Lordship that this concerned the Bucking-
20 ham Apartment property in Toronto; have you an abstract of the property?

A. Yes.

Q. Have you any documents?

HIS LORDSHIP: I suppose the parties are agreeable that this abstract goes in as showing the title?

MR. SLAGHT: Yes. What is the date of it?

MR. WALSH: The abstract is dated the 14th June, 1929, and I may say I have made searches this year and I know of no subsequent entries on it.

EXHIBIT NO. 1: Abstract of Title of Buckingham Apartments to June 14th, 1929—subject to verification if considered necessary.

30 MR. WALSH: Your Lordship will see on the 14th July by a deed dated the 27th April, 1922, one John E. Laxton conveyed the lands in question to Samuel B. Green. Then, your Lordship, there is a mortgage from Mr. Green and his wife to the Huron and Erie for \$105,000. That mortgage, your Lordship will see, later on was discharged, and discharge registered. The next instrument to which I wish to refer is a grant dated the 21st April, 1922, and registered the 15th September, 1922, from Samuel B. Green to Samuel B. Green and Horace A. Morine, partnership.

HIS LORDSHIP: Was it joint tenants, or tenants in common?

40 MR. WALSH: It would appear in partnership according to the mortgages. The next, your Lordship will see, is a deed back from Morine to Green; and then mortgage from Mr. Green only to the Huron and Erie.

HIS LORDSHIP: That is a new mortgage superseding the former one?

MR. WALSH: Yes, your Lordship. The next is a deed on the 16th November, 1922, the same date as the \$135,000. mortgage to the Huron and Erie, a deed back from Mr. Green.

HIS LORDSHIP: I suppose that is only a question of conveyancing.

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MR. WALSH : To Mr. Green and Mr. Morine in partnership. The next is mortgage from Samuel B. Green and Horace A. Morine individually and as co-partners, and their wives, to the Huron and Erie Mortgage Corporation for \$150,000. That mortgage is one of the mortgages in question in this action.

HIS LORDSHIP : Were the other two mortgages got out of the road ?

MR. WALSH : Yes, discharged. That is mortgage number one, that \$150,000.

HIS LORDSHIP : Now, we come to the two mortgages to the London Loan and Savings Company, which I suppose are the mortgages in question in this action. 10

MR. WALSH : Yes, your Lordship.

HIS LORDSHIP : I suppose it is common ground that the only existing mortgage to the Huron and Erie was 8317, the final one, for \$150,000; is there any doubt about that ?

MR. SLAGHT : No, my Lord.

MR. WALSH : I notice on the abstract a mortgage, No. 8318 W. F., 13th February, 1923, registered the 16th February, 1923, Samuel B. Green and Horace A. Morine individually and as co-partners to the London Loan and Savings Co. for \$35,000.; have you got that mortgage ?

A. Yes, this is the mortgage. 20

HIS LORDSHIP : I see a note on the abstract that that mortgage has been discharged.

MR. WALSH : Yes, your Lordship.

EXHIBIT No. 2 : Mortgage No. 8318 W. F.

MR. WALSH : The mortgage is dated the 13th February, 1923, for \$35,000., and the interest is at $7\frac{1}{2}\%$; payable in seven half-yearly instalments of \$700. each, commencing on the 13th day of August, 1923, and thereafter on the 13th days of February and August in each year until the 13th day of February, 1927, when the principal shall become due; interest half-yearly. Then there is the provision that the mortgagors have the privilege when not in default 30 at any time of paying off the whole or any portion of the principal without notice or bonus.

The next mortgage, I notice, is the 23rd May, 1923, and registered on the 1st June, 1923, as number 8761 W. F., from Samuel B. Green and wife, and Horace A. Morine and wife, individually and co-partners, to the London Loan and Savings Co., for \$20,000. A. I do not appear to have it here.

MR. WALSH : We have a certified copy of that mortgage. Sale proceedings were taken under that mortgage, and that was not in the custody of the Plaintiffs. We cannot just lay our hands on that for the minute.

EXHIBIT No. 3 : Certified copy of mortgage dated the 23rd May, 1923, 40 and registered as No. 8761 W. F., for \$20,000.

MR. WALSH : The next item, your Lordship will see on the abstract, is the grant the 8th June, 1923, registered on the 9th June, 1923, from Samuel B. Green and wife to Horace A. Morine. Your Lordship will notice there is registered on the 19th June, 1923, discharges of the two mortgages of \$105,000. and \$135,000.

HIS LORDSHIP: That was clearing the title and showing the first two Huron and Erie mortgages were superseded by the other.

MR. WALSH: So that on the 9th June, 1923, Mr. Morine was then the owner of the property subject to these three mortgages on the property, the first to the Huron and Erie for \$150,000—

HIS LORDSHIP: That is quite apparent.

MR. WALSH: You have produced one mortgage for \$35,000. and you are getting a copy of the \$20,000. mortgage; will you tell us how that money was advanced under that second mortgage of \$35,000. held by the London
10 Loan and Savings Company; have you got your papers there?

MR. SINGER: May I suggest that Mr. Braden was not connected with the company till 1929, and cannot give any evidence as to that.

A. I speak from the records and minutes of the London Loan directors' meetings.

HIS LORDSHIP: They are records of proceedings against all the world as far as the proceedings go, but the evidence of cheques are not. Is there any doubt about it? No use of taking any technical objections when they can readily be proved by producing the proper officer.

MR. SINGER: My only reason for taking this objection is, there is a great
20 deal of this class of evidence in the action, and I do not want to be placed in the position that I am assenting to it and then be met with it afterwards.

HIS LORDSHIP: You are perfectly right to take that objection.

MR. WALSH: I wish to produce a letter from the Defendant Morine to the London Loan and Savings Co. dated the 15th February, 1923.

HIS LORDSHIP: That will be evidence against the man who wrote it.

MR. WALSH: Will you give me that letter?

MR. SLAGHT: As I understand it, the present letter is a letter written by the Defendant Morine and addressed to the company; I, on behalf of
30 both Defendants whom I represent, take the position that it is not evidence against them.

HIS LORDSHIP: It is evidence against the man who wrote the letter.

MR. SLAGHT: It may be that some of these letters will be shown to have been brought to the attention of one or other of my clients, in which event it may be evidence against them, but at this stage it is not.

HIS LORDSHIP: No; it is being received now as evidence against Morine. If it subsequently develops that it can be made evidence against the others, it is quite open for counsel to connect it; I think I can keep in mind that the act of one Defendant, unless in association with the others, is only evidence
40 against himself. You can point that out in your argument as well as now; but you have taken the general objection.

MR. WALSH: Have you that letter of February 15th, 1923?

A. Yes. (Produces.)

EXHIBIT NO. 4: Letter February 15th, 1923, from the Defendant Morine to the London Loan and Savings Company.

Q. Now, Mr. Braden, have you the cheque from the London Loan and Savings Company for the advance of that money? A. Yes.

HIS LORDSHIP: Any question about the advance of the money?

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MR. SLAGHT : No.

EXHIBIT No. 5 : Cheque dated 12th February, 1923, for \$15,000.

MR. WALSH : Have you any further cheques in connection with that loan ? A. Yes, this one.

Q. The next one is February 23rd, 1923, from the London Loan and Savings Co. to H. A. Morine and S. B. Green for \$10,000.

EXHIBIT No. 6 : Cheque dated February 23rd, 1923, from London Loan and Savings Co. to H. A. Morine and S. B. Green for \$10,000.

Q. Then have you the next cheque ?

A. Yes, March 9th, 1923, for \$4,996; and here is the last one, March 10 23rd, 1923, \$4,996.

EXHIBIT No. 7 : Cheque March 9th, 1923, for \$4,996.

EXHIBIT No. 8 : Cheque March 23rd, 1923, for \$4,996.

HIS LORDSHIP : Those, I suppose, would be the \$35,000., the amount of the second mortgage.

MR. WALSH : Yes; there is \$4. off each cheque; I think those were the days of the tax on cheques.

Q. I notice the mortgage is dated the 13th February and the first advance is made on February 12th before the mortgage is registered; is there anything in the minutes about that ? A. Yes.

MR. SINGER : I suppose the same objection—I submit these minutes cannot be filed as evidence as against any of the Defendants.

HIS LORDSHIP : They are evidence of proceedings of the company; that is all.

A. The minutes bear date February 12th, 1923.

MR. WALSH : Q. Who were at that meeting ?

A. The minutes state the Board met, all present save Mr. Robinson.

MR. SLAGHT : May I object on behalf of the Defendants McCormick and Brickenden to this testimony being received from this witness ?

HIS LORDSHIP : The records can be put in.

MR. SLAGHT : They can be put in against a company but not for a company against an individual sued; and my reason is this : there is a way to prove these minutes.

HIS LORDSHIP : I suppose these minutes will likely be signed by one of these Defendants ?

MR. SLAGHT : I take it they probably will, by Mr. McCormick, and there is a way to prove them; and I desire to cross-examine the witness who may be called to prove such minutes. I do not want to waste any time by making trouble in the matters that are obvious, but I do not desire at this stage Mr. Braden to—

HIS LORDSHIP : He produces the records of the company and they are being read into the minutes, and if there is any objection to them they can either be corrected by independent evidence or in cross-examination of this witness. I am going to receive them subject to your objection.

MR. WALSH : Tell his Lordship now. A. The record of the minutes of the meeting of that date recite that all were present.

MR. SLAGHT : May I make this clear; it is clear that the witness in the

box knows nothing of the making of the entries and had nothing to do with the company at the time; he is not able to testify to their accuracy or inaccuracy. I therefore do suggest it is dangerous to receive them from him at all against either of these individual clients.

HIS LORDSHIP: He produces them as the records of the company; they purport to be the records of the company, and perhaps he can identify the signature of some of the parties to them.

A. I can, my Lord.

10 MR. SLAGHT: If he identifies the signature of my client it would be against that client admissible.

HIS LORDSHIP: Can you identify the signature?

A. Yes; I know both signatures, Mr. McCormick's and Mr. Kent's; I know Mr. Kent's signature very well.

MR. SLAGHT: So that I may have proper protection as against Mr. Brickenden, this is not evidence.

HIS LORDSHIP: Unless connected up. I am going to receive it subject to objection, and if there is any flaw in the chain connecting Mr. Brickenden with them or any person who is not signing or confirming the minutes it can be taken later. At present I am going to receive them.

20 MR. WALSH: The only item that relates to this particular matter of the mortgage is as follows, on page 517 of the Minute Book: "S. B. Green. Lend \$31,000. at 7½%; commission, 1% to H. A. Morine; bonus \$4,000. H. A. Morine to guarantee." That is all that relates to that matter.

MR. SINGER: Are the minutes being filed?

HIS LORDSHIP: No; that clause is being read into the record. I cannot see that there is any doubt about that item.

MR. WALSH: Have you a letter from G. A. P. Brickenden & Company to the London Loan dated May 5th, 1923? A. Yes.

30 EXHIBIT NO. 9: Letter from G. A. P. Brickenden & Co. to the London Loan, dated May 5th, 1923.

HIS LORDSHIP: Is that Mr. Brickenden the Defendant?

A. Yes, my Lord.

MR. WALSH: (Referring to letter heading of Exhibit 9). Solicitor for London Loan and Consolidated Trust; do you know of your own knowledge he was solicitor at that time for the London Loan and Savings Company?

A. Yes; Mr. G. A. P. Brickenden.

HIS LORDSHIP: I cannot see the importance of that, Mr. Walsh. This transaction is virtually admitted. However, go on. Perhaps it should be on the record.

40 Q. Have you the certificate of title? A. Yes.

EXHIBIT NO. 10: Certificate of title dated May 5th, 1923.

Q. Have you the application for that loan?

A. Yes. There is another application, copy of application, they are both copies, my Lord.

HIS LORDSHIP: Both copies; how is that? Copies cannot go in.

MR. WALSH: It is an original as far as the London Loan and Savings

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are concerned, by reason of what took place on the back. There is an endorsement on the back of the application by the President of the Company.

HIS LORDSHIP: Oh, no; that would not be evidence against anybody.

MR. WALSH: It is signed by him.

HIS LORDSHIP: It may be evidence as to proceedings of the company, but it is not evidence as against any person who is supposed to have signed the original.

MR. WALSH: I am not putting it in for that purpose; I am putting it in to show that the application which was before the company came before the President of the company on the 12th February, 1923. 10

HIS LORDSHIP: Who was the President?

MR. WALSH: Mr. George G. McCormick.

HIS LORDSHIP: It would be evidence against him.

MR. WALSH: Will you tell his Lordship what that is?

A. It is a copy of application for a loan of \$30,000., and on the back of it appears the following notation: "February 12th, 1923. S. B. Green, \$31,000. wanted at 7½%. Bonus \$4,000. H. A. Morine to guarantee. Commission 1%." And then Mr. McCormick's name appears as president—"Geo. McC."—that is the way he usually signed.

EXHIBIT NO. 11: Copy of application for loan. 20

Q. Was there any valuation at the time of this loan in the records of the company by any of the Defendants?

A. Yes; there was Mr. Morine's valuation.

Q. Is that it? A. Yes.

MR. SINGER: Might I raise the objection, when it comes to the particular portion at this stage, the question was there any valuation? Mr. Braden was not connected with the company in 1923. The examinations show that certain valuations were filed other than the one that Mr. Braden is now referring to.

HIS LORDSHIP: I don't know anything about examinations; he is producing a valuation here signed by the Defendant Morine, and that for the present purpose is evidence. I will receive it that way. 30

SIR ALFRED MORINE: My objection would be that when the counsel calls it a valuation, which is one of the points in issue, I submit the document ought to be allowed to speak for itself, and not the words of the counsel.

HIS LORDSHIP: The document may certainly speak for itself, but it has to be given some title. If the title is erroneous it won't hurt the contents. Go on, Mr. Walsh.

MR. WALSH: I see on it, "I value the property at \$325,000. H. A. Morine." That is dated Feb. 10th, 1923. 40

EXHIBIT NO. 12: Valuation of Mr. Morine dated Feb. 10th, 1923.

Q. Have you any other documents, original documents, either of the Plaintiffs or of the Defendants, about that second mortgage there?

A. No; those are the only documents or letters that I know of.

MR. WALSH: Are there any minutes concerning the mortgage of \$20,000. being a second mortgage of the London Loan and Savings Co.?

HIS LORDSHIP: Would it not be more appropriate to speak of it as the third mortgage?

MR. WALSH: Perhaps so.

HIS LORDSHIP: Or, better still, refer to it by its registration number; that would be 8761.

MR. WALSH: I think your Lordship's suggestion of calling it a third mortgage is all right.

HIS LORDSHIP: Very well.

A. Yes, there is a record of minutes of directors' meeting of May 28th, 1923, and it reads as follows: "Board met. Present, Messrs. McCormick, Baker and Hunt. Minutes of last meeting read and confirmed. H. A. Morine and S. B. Green. Lend \$20,000. on a third mortgage on their apartment house, which Mr. Morine values at \$400,000, subject to a first mortgage of \$150,000. to Huron and Erie, and second mortgage of \$35,000. to London Loan and Savings Co. Mr. Morine to personally guarantee loan. Terms, 7½%. No commission. Bonus \$1,000. to be paid company by Mr. Morine."——

HIS LORDSHIP: With regard to this Minute Book, are there going to be many references to it? Would it not be better to have it filed as an Exhibit and then the page number of any particular minute could be used. Are there many minutes to go in?

MR. WALSH: I would say perhaps ten pages. I was going to suggest that Mr. Braden should just put the particular pages in.

HIS LORDSHIP: Would that meet the wishes of the counsel for the Defendants?

MR. SINGER: We are quite satisfied so long as the Minute Book is in Court during the trial of the action, because we will require to refer to other extracts in the Minute Book.

MR. SLAGHT: It occurred to me that his Lordship's suggestion is the best, to mark the book, on the basis that only those parts which are subsequently referred to are before the Court.

HIS LORDSHIP: I think that would be the better way. Mark the Minute Book Exhibit No. 13.

EXHIBIT NO. 13: Minute Book, London Loan and Savings Co.

WITNESS: Shall I finish reading the quotation?

HIS LORDSHIP: Yes.

A. "Terms, 7½%. No commission. Bonus \$1,000. to be paid company by Mr. Morine. Loan to be repaid on December 20th, 1923." (See page 531 of Minute Book.)

HIS LORDSHIP: Who are those minutes signed by?

A. M. J. Kent as Manager, and George McC., which is short for Mr. McCormick's name. I know both signatures to be the signatures of those parties. I recognize the signatures.

MR. WALSH: Tell his Lordship if there is any application for that loan?

A. There is no application I have been able to find for that loan.

Q. Was there any valuation for that loan?

A. No valuation that I have been able to find.

HIS LORDSHIP: No document purporting to be a valuation?

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A. No, the only reference to valuation that I have been able to find is the one in the minutes I have just read.

MR. WALSH: Have you any other documents in regard to that? Have you a letter from Mr. Brickenden of July 19th, 1923?

A. There is a letter from Mr. Morine of July 16th enclosing insurance policy; and then on July 19th.

HIS LORDSHIP: Are you putting that in or is it material?

MR. WALSH: There are two letters about insurance. I was not bothering, unless my learned friends want it in.

MR. SLAGHT: I want to call my friend's attention, he has made an error; 10
he has said it is a letter of Mr. Brickenden; this letter is written by G. A. P. Brickenden & Co., per Evelyn Harrison, a member of the firm. There may be some importance to have that made clear.

MR. WALSH: This letter is dated July 19th, 1923, from G. A. P. Brickenden & Co. to the London Loan & Savings Co. enclosing the mortgage and the certificate of title.

EXHIBIT NO. 14: Letter July 19th, 1923, from G. A. P. Brickenden & Co. to the London Loan and Savings Co.

EXHIBIT NO. 15: Certificate of title.

WITNESS: Then there is the cheque, Mr. Walsh. 20

MR. WALSH: Have you the cheque in connection with the advance of that mortgage? A. Yes, that is the cheque.

MR. WALSH: The cheque is dated May 22nd, 1923, from London Loan and Savings to H. A. Morine for \$19,998.

EXHIBIT NO. 16: Cheque from London Loan and Savings to H. A. Morine, dated May 22nd, 1923, for \$19,998.

Q. Have you any further letter in connection with that mortgage?

A. No, I don't know of any.

Q. I notice a letter dated August 9th, 1923; have you it there?

A. Yes; one written by Mr. Morine. 30

EXHIBIT NO. 17: Letter from Defendant Morine to London Loan and Savings Co., dated August 9th, 1923.

Q. Have you any further correspondence after that in connection with this mortgage? A. Notification of liens.

Q. Were they from these Defendants?

HIS LORDSHIP: I notice some reference was made to liens; do they enter into this case at all? If not, keep them out.

MR. WALSH: All right, your Lordship.

Q. The next letter is September 17th, 1923?

A. I have a copy of the letter to Mr. Morine of that date. 40

Q. Have you the original there, Mr. Singer? (Original produced.)

You have Mr. Morine's letter in reply, I understand?

A. Yes, I have the reply.

EXHIBIT NO. 18: Letter September 17th, 1923, from London Loan and Savings Company signed by Mr. Kent to H. A. Morine.

EXHIBIT NO. 19: Reply to Exhibit 18 dated Sept. 18th, 1923, signed H. A. Morine, and addressed to M. J. Kent.

Q. Have you anything further from Mr. Morine there—I have a letter here about insurance October 9th, 1923, giving the particulars of the insurance; I don't think that is material.

HIS LORDSHIP: Do not encumber the record.

MR. WALSH: Now there is a letter October 12th from Mr. Kent to Mr. Morine; have you that one? A. Yes.

EXHIBIT NO. 20: Letter dated Oct. 12th, 1923, London Loan & Savings Company, Mr. Kent, to the Defendant Morine.

HIS LORDSHIP: Was there some reply?

10 A. No. The next letter is November 24th, 1923, from Mr. Kent evidently to Mr. Morine.

HIS LORDSHIP: Is that the original?

MR. WALSH: No; that is a copy. My learned friend has the original.

MR. SINGER: No, we have not it. We may have received it, but we have no knowledge of it. I have no objection to it being filed.

HIS LORDSHIP: Very well.

EXHIBIT NO. 21: Copy of letter from London Loan and Savings Company, Mr. Kent, Manager, to H. A. Morine, dated November 24th, 1923.

20 MR. WALSH: The next is a letter, December 22nd, 1923, from London Loan and Savings Co., signed by Mr. Kent, to H. A. Morine. (Produces.)

EXHIBIT NO. 22: Letter from London Loan and Savings Co., signed by Mr. Kent, to H. A. Morine, dated Dec. 22nd, 1923.

MR. WALSH: That letter of the 29th December, 1923, from the Defendant Morine to Mr. Kent. (Produces.)

EXHIBIT NO. 23: Letter dated Dec. 29th, 1923, from Defendant Morine to Mr. Kent.

MR. WALSH: I have just been reminded about the cheque for that bonus. Mr. Singer has it.

30 (Mr. Singer produces.) This is a cheque of Mr. Morine, dated December 29th, 1923, to London Loan and Savings Co. for \$1,000. *re* bonus \$20,000.—I see this cheque was cashed on December 31st, 1923, in London, Ont.?

A. Yes, and London gave a cheque to cover that on the 28th December for \$1,000.

EXHIBIT NO. 24: Cheque dated Dec. 29th, 1923, of Mr. Morine.

MR. WALSH: Cheque dated December 28th, 1923, from the company to H. A. Morine for \$1,000.

EXHIBIT NO. 25: Cheque dated December 28th, 1923, from London Loan to H. A. Morine.

40 Q. I see these words on the back, "Further advance on mortgage"—have you any vouchers or anything concerning that?

A. I think I have a voucher for that.

HIS LORDSHIP: Is Mr. Kent, the Manager, alive yet?

MR. WALSH: No, your Lordship; he is dead.

Q. Have you that voucher?

A. Yes. Here it is, signed by Mr. Morine's signature on the back.

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Q. Have you a copy of the deposit slip that goes with that cheque for \$1,000.? A. Yes. (Produces.)

MR. WALSH : It is the original slip, London Loan and Savings Company, credit London Loan and Savings Co., December 31st, 1923, bonus *re* G. 46, that is what the loan was called, H. A. M.'s cheque \$1,000.

HIS LORDSHIP : Does not the cheque show it was cashed at the bank ?

MR. WALSH : I want to identify that cheque as the bonus.

HIS LORDSHIP : It says bonus, does it not, on it ? I thought you read on the cheque it was a bonus.

MR. WALSH : And that we paid it with our own money—

10

HIS LORDSHIP : Never mind the deposit slip. Then there was a voucher.

MR. WALSH : Voucher December 28th, 1923, signed by the Defendant Morine : "Received from London Loan and Savings Co. the sum of \$1,000. being paid to me as a further advance on my loan, No. G. 46, with interest at rate of 7½% per annum, the mortgage rate. This money paid me by Bank of Montreal cheque, to which tax stamps have been attached."

EXHIBIT No. 26 : Voucher dated December 28th, 1923, from H. A. Morine for \$1,000. as further advance on loan G. 46.

MR. WALSH : Have you letter of January 10th, 1924 ? A. Yes.

EXHIBIT No. 27 : Copy of letter Jan. 10th, 1924, from London Loan and Savings Co., Mr. Kent, Manager, to H. A. Morine.

MR. WALSH : Mr. Braden, have you a letter there of March 24th, 1924 ?

A. Yes, Maclellan and Black to the London Loan and Savings Co.

MR. SINGER : I want to file objection to the production and filing of this letter.

MR. WALSH : I am not asking it yet.

MR. SINGER : It is written by a party who is not a party to this action at all, to the London Loan and Savings Co.

HIS LORDSHIP : How could it be evidence against anybody, Mr. Walsh ?

MR. WALSH : I was not putting it in yet.

30

HIS LORDSHIP : Very well.

MR. WALSH : Have you a letter there in February ?

A. No, I do not see it.

Q. I wish to put in certain productions in my learned friend's custody if I may, a letter from Mr. Morine to Mr. Kent dated May 21st, 1923, and Mr. Kent's endorsement of May, 1923—productions 73 and 74.

MR. SINGER : That is a copy.

MR. WALSH : Yes; which your client says he sent.

—Mr. Singer produces letter.

HIS LORDSHIP : What is this ?

40

MR. WALSH : This is a letter from Mr. Morine to Mr. Kent, dated May 21st, 1923.

EXHIBIT No. 28 : Letter May 21st, 1923, from H. A. Morine to M. J. Kent, London Loan and Savings Co.

MR. WALSH : Then Mr. Kent's memorandum, production number 74.

—Memorandum produced by Mr. Singer.

MR. WALSH : This is Mr. Kent's reply to that letter : "Re S. B. Green, \$35,000. on apartment house.

"My directors did not feel disposed to increase the \$35,000. already granted on this property without further security, as the amount of the first mortgage seems very large to them. This is also a matter that you might take up with them personally when you come to the city.

"Yours truly,

"M. J. Kent, Manager."

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10 There is no date on that, but it is endorsed in pencil on the side, "May, 1923."

That is in reply to that letter I just read of May 21st, 1923.

EXHIBIT No. 29 : Memorandum of Mr. Kent, dated May, 1923 (in lead pencil), as read above.

MR. WALSH : I should like to put in the letter from Mr. Morine to Mr. Brickenden, dated June 15th, 1923, appearing as production No. 72 of Mr. Morine.

—Mr. Singer produces copy.

20 MR. WALSH : This, your Lordship, is from H. A. Morine to G. A. P. Brickenden, dated June 15th, 1923 : "Re Green—King Street No. 2.

"I return herewith abstract, also mortgage, dated May 23rd, 1923, for \$20,000., covering the above mentioned property."

EXHIBIT No. 30 : Letter June 15th, 1923, from H. A. Morine to G. A. P. Brickenden.

Q. Then a letter from G. A. P. Brickenden & Company to Mr. H. A. Morine, dated June 16th, 1923, Mr. Singer's production No. 71. (Produced by Mr. Singer.)

EXHIBIT No. 31 : Letter June 16th, 1923, Brickenden & Co. to H. A. Morine.

30 MR. WALSH : Next, Mr. Singer, letters June 18th, June 19th, and another June 19th, 1923, your productions numbers 68, 69 and 70.

HIS LORDSHIP : Are they all with reference to the same matter ?

MR. WALSH : Yes.

HIS LORDSHIP : Might they well be put in together ?

MR. WALSH : Yes.

EXHIBIT No. 32 : Letter from H. A. Morine to G. A. P. Brickenden, dated June 18th, 1923.

EXHIBIT No. 33 : Letter June 19th, 1923, from H. A. Morine to G. A. P. Brickenden, together with copy of letter enclosed from Cassels, Brock & Company of June 19th, 1923.

40 MR. WALSH : Q. Have you, Mr. Braden, a letter there from Mr. Morine to Mr. Kent, London Loan and Savings Company, dated March 29th, 1924 ?

A. Yes.

MR. GRAY : And the prior one, the 24th of March ?

A. Yes, that is Mr. Maclennan.

MR. WALSH : This letter is dated March 29th, 1924, from H. A. Morine to M. J. Kent, and which reads as follows :

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“Further to my conversation with you *re* information as to standing of mortgages, I think information in regard to mortgages should only be given when requested so to do by the mortgagor or owner of the property, and a request by a solicitor should be accompanied by an order signed by the owner.

“I think, therefore, you would be within your rights to only furnish information on these orders. Frequently information along these lines is asked for mere curiosity and not for business purposes.”

EXHIBIT No. 34 : Letter dated March 29th, 1924, from H. A. Morine to M. J. Kent. 10

MR. WALSH : Your Lordship will see that is March 29th, 1924; there was preceding that letter a letter which I will prove, dated March 24th, 1924, from Mr. J. J. MacLennan, barrister, of Toronto, to the London Loan and Savings Company, and there is a certain endorsement appearing on the back of that letter by the manager of the company. Your Lordship will see in the letter I have just read, “Further to my conversation with you *re* information as to standing of mortgages”—may I, your Lordship, produce that letter of Mr. MacLennan’s to the London Loan and Savings Co. with the endorsement on the back of that? I will undertake to prove that letter by Mr. MacLennan, my next witness. 20

HIS LORDSHIP : Have you Mr. MacLennan here for any other purpose?

MR. WALSH : Yes, my Lord.

HIS LORDSHIP : How does this enter into the matter here?

MR. WALSH : This goes to the root of my case. Your Lordship will notice by looking at that abstract Exhibit No. 1 that there was a mortgage given to one Renton, agent for Scottish investors to the extent of \$46,000. That mortgage was put on in August, 1923, it being the next to our mortgage, that is a fourth mortgage on the property. Mr. MacLennan became counsel for these investors, and he wrote a letter to the London Loan and Savings Company in March of 1924. I may say that the property had been advertised for sale by the London Loan and Savings Company under their powers of sale, and then it was sold, your Lordship, by private sale to Durno in June of that year. 30

HIS LORDSHIP : I suppose you will put in the sale proceedings at a later date?

MR. SINGER : I still renew the objection. It is a letter written by a party who is not a party to this case to the company, and should not be allowed to be introduced.

HIS LORDSHIP : No, but it is communicated to the Defendant Morine in some way or other, and his reply. 40

MR. SINGER : My learned friend is not in a position to prove it to the satisfaction of this Court; I submit on the inference he proposes to draw from the letters, it should not be allowed in.

HIS LORDSHIP : The letters may be perhaps just in the nature of the history of the whole matter, and if he cannot connect them it won’t prejudice the Defendants. He is entitled to prove there was such a letter sent, whether it finally can be fixed upon the Defendants as notice of what was going on,

or that it came to their knowledge, that is a matter to be argued, the inference to be drawn; I cannot at this moment say one way or the other. Mr. Walsh will have to connect it in some way with the Defendants before it is evidence against them. I will admit it subject to the objection taken by Mr. Singer, which appears to be a substantial objection at the present time. However, you may remove the objection.

MR. SLAGHT: I take the same objection.

HIS LORDSHIP: Your client is not concerned in this, as I understand it.

MR. WALSH: Have you that letter of Mr. Maclellan's?

10 A. You have that letter there.

MR. WALSH: A letter dated March 24th, 1924, from J. J. Maclellan to the London Loan and Savings Co.:

"*Re* Buckingham Apartments Building, King St. West, Toronto.

"For Scotch investors, who have made a mortgage loan on the
 "above premises, I am requested to obtain from you a statement
 "of your two mortgage accounts, as from the records you appear
 "as holders of a second and of a third mortgage of \$35,000. and
 "\$20,000. respectively, each made by Samuel B. Green and Horace
 "A. Morine. The property now stands in the name of Arthur W.
 20 "Dyas of Toronto, and comprises parts of lots 2 and 3 on plan 512,
 "and part of lot 16 on plan 457. I will appreciate an early reply."

Then there appears on the back of that letter a statement—

HIS LORDSHIP: In whose handwriting?

MR. WALSH: I will ask this witness. Do you identify that handwriting?

A. No, I cannot say whose handwriting that is.

EXHIBIT NO. 35: Letter from J. J. Maclellan to London Loan and Savings Co., March 24th, 1924.

Q. Mr. Morine's letter to Mr. Kent is dated March the 29th, 1924. Will
 30 you let me have the letter from Mr. Kent to Mr. Maclellan that was written
 on March 31st, 1924?

MR. SINGER: I take the same objection to this letter.

MR. SLAGHT: I object as well; I assume my friend will appreciate we need not rise each time to take these objections, but our objection will protect us with regard to other documents in the same way.

HIS LORDSHIP: Certainly; it is only evidence against the immediate parties to it.

MR. SLAGHT: Of course. This is Kent, the managing director, to a legal gentleman who has nothing to do with this case.

40 HIS LORDSHIP: Well, Mr. Kent, I suppose, is the man whose duty it
 was, and he is dead, and the evidence can be given; I don't see how it connects
 up with Mr. Slaght's client at the moment. Go on.

MR. WALSH: This letter is March 31st, 1924—Mr. Kent to Mr. Maclellan:

"I have been absent from the city or would have answered
 "your letter of the 24th instant sooner. For information as to our
 "loans, it is a rule of the company to require a written request from
 "our mortgagors or owners of the property. If you will be good

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“enough to forward this request we will be pleased to let you have
“any information in our power.”

EXHIBIT No. 36: Letter March 31st, 1924, from M. J. Kent to J. J. Maclennan.

Q. The next is a letter March 1st, 1924, Mr. Maclennan to Mr. Kent?
A. (Mr. Braden produces letter.)

MR. SINGER: With all due respect to my friend, there is a series of correspondence which passed between Mr. Maclennan and the London Loan and Savings Co.—

HIS LORDSHIP: If it is not evidence against your client, it cannot hurt. 10
It is evidence of the history of the matter, and that is all.

MR. SINGER: Except the letters put on record, a number of very nasty suggestions and insinuations which have no right to be put on this record at all. The letters are not written between parties to this action. I submit it is not a question of whether the letters are going to hurt us; I say they are not evidence and should not be placed on record in this trial at all.

HIS LORDSHIP: What is the object of them, Mr. Walsh? Do they relate to or in any way make out this case?

MR. WALSH: Yes, your Lordship. Your Lordship will see Mr. Morine was entrusted with the cheques before the mortgage was registered; he regis- 20
tered the mortgages, sent them to Brickenden & Co.—your Lordship will notice that that is just before this sale that took place, and it shows that Mr. Morine was in command of the situation, Mr. Morine who was on this covenant, and from whom the company required a guarantee—

HIS LORDSHIP: What about it? How does that connect with what took place between Mr. Maclennan and Mr. Kent?

MR. WALSH: It was just a conspiracy—

HIS LORDSHIP: Between whom?

MR. WALSH: Between Mr. McCormick, Mr. Brickenden and Mr. 30
Morine.

HIS LORDSHIP: Mr. Kent is not one of those.

MR. WALSH: Mr. Kent first gets his instructions from Mr. Morine and passes them over, and before any information could be given he must get the consent of the owner of this property—

HIS LORDSHIP: So far, well and good, but what?

MR. WALSH: This letter shows Mr. Maclennan, for obvious reasons, could not get, his time being short, and the notice of power of sale—

HIS LORDSHIP: The only effect of it is, Mr. Kent says “We cannot give you the information.”

MR. WALSH: You will notice that letter of Mr. Kent's says: “If you 40
will be good enough to forward this request, namely, “A written request from our mortgagors,” and the mortgagor was Mr. Morine or his son-in-law, and therefore he could not get that request, Mr. Maclennan says.

HIS LORDSHIP: That is a question of evidence. That is communicated to Mr. Maclennan and then what?

MR. WALSH: Then Mr. Maclennan immediately writes Mr. Kent why he cannot get that written request from the mortgagor.

—continued.

HIS LORDSHIP: What Mr. Macleannan writes would not be evidence of the facts. If Mr. Macleannan is here he may be able to give the evidence, but what he writes is not evidence of the fact.

MR. WALSH: I think that is connected up.

HIS LORDSHIP: No.

MR. SLAGHT: I suggest it is a primary rule of evidence that it is a back-wind way to try to put something on the record.

MR. WALSH: I can prove the letter from Mr. Macleannan, that he wrote the letter.

10 HIS LORDSHIP: Prove the facts from Mr. Macleannan, and that he communicated it to the company. A letter of Mr. Macleannan's stating that he did thus and so, could not be evidence of the fact.

MR. WALSH: Your Lordship, may I put it this way: I say it is admissible in this sense, that they were asking what I am going to prove was an impossibility of Mr. Macleannan; they knew it was an impossibility when they asked him for it, and having asked him for this—

HIS LORDSHIP: How would they know? There is no suggestion here that they knew it was impossible.

20 1st. MR. WALSH: Your Lordship, Mr. Macleannan puts it in a letter of April

HIS LORDSHIP: That is evidence of Mr. Macleannan, but the mere fact that a witness writes a letter concerning certain facts, or somebody writes a letter, are you going to put that letter in as proof of the facts at all?

MR. WALSH: No, my Lord; I am only putting it as a notice to them; I will prove the facts stated; it is notice to the London Loan and Savings Company.

HIS LORDSHIP: I think you had better wait until Mr. Macleannan goes in the box and gives his evidence and identifies the letter; there is no evidence yet of his letter.

30 MR. WALSH: All right; I am putting it in as a plain notice to the company.

HIS LORDSHIP: As notice, it would be good evidence, not as proof of the facts stated. Now, is not the proper time.

MR. WALSH: May I put in a letter then, a reply to that letter, to Mr. Macleannan, or will I have to wait till I get Mr. Macleannan?

HIS LORDSHIP: You had better wait.

MR. WALSH: Then a letter from Mr. Morine to Mr. Kent, dated April 11th, 1924, and the draft letter attached:

"I attach hereto draft letter in answer to letter received by you
"from Macleannan and Black."

40 EXHIBIT NO. 37: Letter April 11th, 1924, from H. A. Morine to M. J. Kent.

HIS LORDSHIP: That may open the door for something more.

MR. WALSH: And show that he received that letter—

HIS LORDSHIP: Is the draft letter enclosed?

MR. WALSH: I have that draft letter right here, dated April blank, 1924, addressed to Messrs. Macleannan and Black, Toronto:

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“I acknowledge receipt of yours of the 9th instant. Have you
“applied to either Dyas or Renton for information or consent for us
“to furnish the information you ask for, and have you any authority
“for making the statement that they are antagonistic?”

EXHIBIT No. 38 : Draft letter dated April blank, 1924, to Maclennan
and Black, referred to in Exhibit 37.

MR. WALSH : There is a gentleman named Dyas referred to in that letter;
who is Mr. Dyas ?

A. Mr. Dyas, I understand, is the son-in-law of Mr. H. A. Morine.

Q. And Mr. Renton referred to; who is he ?

A. He was a trustee representing certain Scottish investors.

Q. And there is a mortgage, I notice, in trust, W. Lawson Renton in
trust.

HIS LORDSHIP : Mr. Renton was Mr. Maclennan's client then ?

A. No, Mr. Renton was the fourth mortgagee of the property, he was
evidently the trustee representing a group of Scottish investors, and Mr.
Maclennan was employed by the Scottish investors, who were dissatisfied
with Renton.

MR. WALSH : Have you the letter from Mr. Kent to Mr. Maclennan
using the words of Mr. Morine, following the instructions—?

A. Yes. (Produces.)

Q. I will wait for that till the right time. Put that along with the other
one, for when Mr. Maclennan comes. Then a letter of May 2nd, 1924 ?

A. Yes. (Produces.)

Q. Letter May 2nd, 1924, from London Loan and Savings Co., Mr.
Kent, Manager, to Mr. Morine :

“I see a memo in our diary that the extension granted has
“elapsed, and the liens were supposed to have now ceased. Kindly
“advise progress.”

EXHIBIT No. 39 : Letter May 2nd, 1924, from London Loan and Savings
Co. to H. A. Morine.

MR. WALSH : Then there is the original reply from H. A. Morine to
M. J. Kent, May 3rd, 1924.

EXHIBIT No. 40 : Letter May 3rd, 1924, from H. A. Morine to M. J.
Kent, London Loan and Savings Company.

Q. Then original letter May 20th, 1924, from Morine to M. J. Kent ?

A. (Produces.)

Q. *Re Green*—G. 41. These are dead.”

EXHIBIT No. 41 : Letter from H. A. Morine to M. J. Kent, May 20th,
1924.

Q. The next is a letter from Mr. Dyas to the London Loan and Savings
Co., dated July 7th, 1924 ? A. (Produces.)

HIS LORDSHIP : This will be notice of certain things.

MR. WALSH : Written on Mr. Morine's notepaper.

HIS LORDSHIP : That does not make any difference.

MR. WALSH : I will undertake—

HIS LORDSHIP : I may be anticipating an objection that may not be taken.

MR. SLAGHT : I certainly object to that.

HIS LORDSHIP : It is not evidence against your client yet; what about this letter?

MR. WALSH : July 7th, 1924.

MR. SLAGHT : May I make this suggestion : here is a witness in the box; of course he knows absolutely nothing about them.

HIS LORDSHIP : Somebody has to produce these documents.

MR. SLAGHT : Yes, that is true, and it is true it is a non-jury case, but in a case like this, when my friend says I am going to connect this and that, he
10 can put this letter to the Court just as well then as with a gentleman that knows absolutely nothing about it.

HIS LORDSHIP : I think the better way is to have all the productions possible put in, and then if any of them are not connected up, I think I can have them struck out or disregarded. I prefer this way of keeping track of it. It is so difficult when you intersperse evidence and exhibits. I do not suppose Mr. Braden is here for any other purpose than to produce the records of the company as he finds them.

MR. WALSH : The letter is from Dyas to the London Loan and Savings Company, dated July 7th, 1924.

20 EXHIBIT No. 42 : Letter July 7th, 1924, from Dyas to London Loan and Savings Co.

Q. The next is a letter from Mr. Morine dated July 17th, 1924, to the London Loan and Savings Co. :

“Herewith cheque for \$400, being instalment of interest which
“kindly credit to this account. We will be sending you further
“cheque in the matter of a few days. Again thanking you for your
“kind consideration, I remain.”

EXHIBIT No. 43 : Letter July 17th, 1924, from H. A. Morine to London Loan and Savings Company.

30 Q. The next is a letter of October 10th, 1924, from M. J. Kent to H. A. Morine :

“On looking over the arrears I find these loans are largely
“behind in payments, and the company would appreciate very much
“a substantial remittance on account.”

EXHIBIT No. 44 : Letter October 10th, 1924, from M. J. Kent to H. A. Morine.

Q. Next is a letter October 13th, 1924, from Mr. Dyas to the London Loan? A. Yes. (Produces.)

40 EXHIBIT No. 45 : Letter October 13th, 1924, from Dyas to London Loan and Savings Co., enclosing cheque for \$750. on account of interest.

Q. And the reply to that, Mr. Singer, of October 14th, 1924, from London Loan and Savings Co. to H. A. Morine. (Produced.)

EXHIBIT No. 46 : Letter October 14th, 1924, from London Loan and Savings Co. to H. A. Morine.

Q. Here is a copy of this collateral account number L. 301½—

HIS LORDSHIP : That is an enclosure. Attach it to the letter, Exhibit
46. (Attached to Exhibit 46.)

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MR. WALSH : Then receipt and undertaking :

LONDON LOAN AND SAVINGS COMPANY OF CANADA.

\$750.00.

London, Oct. 14th, 1924.

Received from H. A. Morine, Esq., undertaking to pay \$750. on account of arrears *re* M. G. 41 Buckingham Apartments. No. L. 301½ collateral.

(Sgd.) M. J. Kent, Manager.

EXHIBIT No. 47 : Receipt and undertaking dated Oct. 14th, 1924, signed by M. J. Kent, manager.

Q. Then letter dated 6th December, 1924, from Mr. Dyas to Mr. Kent ? 10

A. (Produced.)

Q. This letter is dated the 6th December, 1924, from A. W. Dyas to M. J. Kent, London Loan and Savings Company :

“I enclose herewith cheque for \$1,000., being payment on “account of interest owing under your mortgage on the above “property,” etc. (Reads.)

EXHIBIT No. 48 : Letter December 6th, 1924, from A. W. Dyas to M. J. Kent.

Q. There was certain correspondence that passed between the London Loan and Savings Co. and the Huron and Erie that held the first mortgage, 20 and the treasurer of the City of Toronto, with regard to the taxes on that property; they occur during the months of October and November. May I have those letters produced and identified, or may I not ?

HIS LORDSHIP : Is not the fact admitted practically that your client finally took an assignment of this mortgage ?

MR. WALSH : Yes.

HIS LORDSHIP : What more do you want ?

MR. WALSH : I want to show in 1924 how that property stood.

HIS LORDSHIP : You cannot show it by letters.

MR. WALSH : If your Lordship tells me that, I won't press it. 30

HIS LORDSHIP : Certainly; you should not need to be told that.

MR. WALSH : Then Mr. Morine's letter to the London Loan, dated December 18th, 1924 :

“Herewith Royal Insurance cheque for \$89.64 in payment “of small fire damage at the Buckingham Apartments, which I “would ask you to have endorsed and returned to me as soon as “convenient.”

EXHIBIT No. 49 : Letter December 18th, 1924, from H. A. Morine to London Loan and Savings Co.

Q. The next letter is a letter dated January 14th, 1925, from the London 40 Loan and Savings Co. to Mr. Morine—before I put that in will you give me production No. 53, December 8th, 1924, Mr. Morine undertaking to pay \$1,000. :

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA.

\$1,000.

London, Ont., Dec. 8th, 1924.

Received from H. A. Morine, Esq., undertaking to pay one thousand dollars on account of arrears *re* Buckingham Apartments.

(Sgd.) M. J. Kent, Manager.

EXHIBIT NO. 50: Undertaking received from Mr. Morine to pay \$1,000. dated the 8th December, 1924.

MR. WALSH: Then letter January 14th, 1925.

MR. SINGER: I have not got it.

A. Here is our copy.

HIS LORDSHIP: Is there any doubt about this?

MR. SINGER: I don't think anything turns on it. I have no objection.

HIS LORDSHIP: Very well.

MR. WALSH: Letter January 14th, 1925, to H. A. Morine:

10 "We have received a letter from Cassels & Co. asking for particulars of your loans. I enclose our letter to them, and if it is agreeable to you that we give them the information, please have our letter delivered to them."

EXHIBIT NO. 51: Letter January 14th, 1925, from London Loan to H. A. Morine. (Copy.)

MR. WALSH: Then there is the copy enclosed.

Make it part of the same Exhibit. (Made part of Exhibit 51.)

—Court adjourned at 12.45 p.m. to 2 p.m.

—Court resumed at 2 p.m., Dec. 8th, 1931.

20 J. A. E. BRADEN. Examination continued by Mr. Walsh.

The next is a letter January 15th, 1925, from Mr. Morine to Mr. Kent, of the London Loan and Savings Co. A. (Produces.)

EXHIBIT NO. 52: Letter January 15th, 1925, from H. A. Morine to M. J. Kent, London Loan and Savings Co.

MR. WALSH: Exhibit 51 was a copy of the letter to Messrs. Cassels & Company, and it showed the standing of those two mortgages; it showed February 13th, 1924, six months' interest in arrears; and August 13th, 1924, six months' interest in arrears; that is on the \$35,000. mortgage. And on the \$20,000. mortgage, according to that letter, it shows three instalments of interest in arrears. The next letter is January 16th, 1925, the London Loan and Savings Co., Mr. Kent, Manager, to Mr. Morine:

"In reply to your letter of the 12th instant I enclose you copy of collateral savings bank account"—

HIS LORDSHIP: Is not that a mistake? Should not the 12th be the 15th?

MR. WALSH: Evidently it was Mr. Kent's error, your Lordship, when he says in reply to your letter of January 12th; the letter is actually the 15th that this letter is in reply to.

EXHIBIT NO. 53: Letter January 16th, 1925, from M. J. Kent, Manager, to H. A. Morine.

40 Q. Then letter January 26th, 1925, from A. W. Dyas to the London Loan and Savings Co.

EXHIBIT NO. 54: Letter January 26th from A. W. Dyas to London Loan and Savings Co.

Q. I notice endorsed on the back of this Exhibit 54 this memorandum: "January 27th, 1925. Must have the money. Geo. G. McC., Presd." Whose are these initials, Geo. G. McC.? A. Mr. McCormick.

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Q. Are there any minutes in reference to that?

A. I think so; page 611, minutes of January 27th, 1925. "All present. *Re* Buckingham Apartments. Letter from A. W. Dyas asking for extension of time."

Q. Before that. I want the minutes before that, of January 20th, 1925.

A. Page 608: "Board met. All present. Buckingham Apartments, mortgages G. 41 and 46. Manager reported loans in arrears for both interest and principal. Solicitors to collect."

And then at page 611, the notation, "Board met. All present. *Re* Buckingham Apartments, letter from A. W. Dyas asking for extension of time. 10 Company must have arrears paid. Solicitors collecting." The minutes are signed by Mr. Kent and Mr. McCormick.

Q. In both cases? A. Yes.

Q. Then letter January 27th, 1925, from the London Loan and Savings Company to Mr. Dyas *re* Buckingham:

"Your letter of the 26th inst. was laid before my directors at meeting today, and I am directed to state that the arrears must be paid in the case of these two mortgages, and no further time can be granted. Company has already been very lenient and have granted several extensions, but they need the money now 20 and cannot extend any further leniency."

EXHIBIT NO. 55: Letter January 27th, 1925, from London Loan to A. W. Dyas.

MR. WALSH: I would like your production, Mr. Singer, letter from G. A. P. Brickenden & Co., per James L. McMillan, to H. A. Morine, February 27th, 1925. (Produced.)

EXHIBIT NO. 56: Letter Feb. 27th, 1925, from G. A. P. Brickenden & Co., per James L. McMillan, to H. A. Morine.

MR. WALSH: I would like, Mr. Slaght, your production number one, statement Jan. 22nd, 1925: 30

"*Re* mortgage G. 41 Buckingham Apartments.

"H. A. Morine, Esq., *et al.*

"Toronto, Ontario.

"G. A. P. Brickenden & Co. collect taxes if any, and six months' interest due, etc." (Reads statement), which was produced and filed.

EXHIBIT NO. 57: Statement January 22nd, 1925, *re* mortgage G. 41 Buckingham Apartments.

MR. WALSH: Then, your Lordship, there is a statement dated the same date, January 22nd, 1925, with reference to the \$20,000. mortgage. 40

EXHIBIT NO. 58: Statement January 22nd, 1925, *re* mortgage No. G. 46.

MR. WALSH: The next letter is February 26th, 1925, from Mr. Melville W. Wilson to G. A. P. Brickenden & Co.

EXHIBIT NO. 59: Letter Feb. 26th, 1925, from M. W. Wilson to G. A. P. Brickenden & Co.

Q. The next letter is a letter from MacLennan and Black to the London Loan and Savings Co., dated February 27th, 1925.

MR. SINGER : The same objection to that.

HIS LORDSHIP : Yes.

MR. WALSH : Just put that aside.

HIS LORDSHIP : I am going to receive that subject to objection as a letter that was received by the company, but not as to the contents.

A. There is a reply to it here.

EXHIBIT NO. 60 : Letter dated February 27th, 1925, from Maclellan and Black to the London Loan and Savings Co.

Q. The next one is the reply of the company to Maclellan and Black, dated February 28th, 1925.

HIS LORDSHIP : Have you the original ?

MR. WALSH : Mr. Maclellan has the original.

HIS LORDSHIP : You had better get it from him so that we won't have to mark it again. Let it stand in the meantime. We will leave No. 61 open for the reply.

EXHIBIT NO. 61 : Letter from London Loan to Maclellan and Black, dated Feb. 28th, 1925, to be filed later.

Q. Then letter from Maclellan and Black, March 23rd, 1925, to the London Loan and Savings Co. *re* Buckingham Apartments :

20 "As you are aware, we are acting for the fourth mortgagees, a syndicate of Scotch gentlemen who were unfortunate enough to put funds in the hands of an agent here who placed it in a fourth mortgage on the above property," etc. (Reads.)

EXHIBIT NO. 62 : Letter March 23rd, 1925, from Maclellan and Black to London Loan and Savings Co.

Q. Then the reply to that letter is March 26th, 1925.

HIS LORDSHIP : The original of that will be available; leave that.

EXHIBIT NO. 63 : Letter March 26th, 1925, from M. J. Kent, Manager, London Loan and Savings Co. to Maclellan and Black (original to be filed).

30 MR. WALSH : Then, your Lordship, the next is a letter from Maclellan and Black to G. A. P. Brickenden, April 24th, 1925, *re* Buckingham Apartments, Toronto :

"*Re* London Loan and Savings Company, mortgagees.

"As advised you when in London on Tuesday the Scotch investors, holders of the fourth mortgage on the Buckingham Apartments, are instructing us with regard to the payment of the arrears on the several mortgages," etc. (Reads letter.)

40 EXHIBIT NO. 64 : Letter March 24th, 1925, from Maclellan and Black to G. A. P. Brickenden.

MR. WALSH : I do not see any reply. Have you one, April 27th ?

MR. SLAGHT : If you have the original, I prefer to put it in. If you have not, I will let you have this one.

MR. WALSH : I have not the original.

HIS LORDSHIP : Mr. Maclellan will have the original, I suppose. You may read it now and we will leave a place for it.

——Letter read.

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EXHIBIT No. 65 : Letter April 27th, 1925, from G. A. P. Brickenden & Co. to MacLennan and Black, original to be filed.

MR. WALSH : I wish to put in a letter from Brickenden & Company to Mr. M. W. Wilson, April 25th, 1925—perhaps you had better give me the letter preceding, letter of April 24th, 1925, from G. A. P. Brickenden & Co. to M. W. Wilson.

—Letters produced. I understand from Mr. Slaght that Mr. McMillan wrote that letter.

MR. SLAGHT : A barrister in the firm of Brickenden & Co.

EXHIBIT No. 66 : Letter April 24th, 1925, from G. A. P. Brickenden & Co., per McMillan, to M. W. Wilson. 10

EXHIBIT No. 67 : Letter April 25th, 1925, from G. A. P. Brickenden & Co. to M. W. Wilson.

MR. WALSH : Will you look at the minutes; this letter (Exhibit 67) says, "We have had instructions from the London Loan to refuse this offer and are writing to that effect today." Is there anything in the minutes?

A. Nothing in the minutes. I have also examined the directors' agenda at that date, and there is no mention of it.

HIS LORDSHIP : I suppose the instructions came from the manager.

MR. SLAGHT : Managing director, Mr. Kent. 20

HIS LORDSHIP : Not from the directors.

MR. WALSH : He is dead, and we have to take what he said about it. The last letter I put in, April 25th, they say they would like to know what happened. Please give me the reply of Mr. Wilson and Mr. Brickenden.

HIS LORDSHIP : Is that evidence?

MR. WALSH : Mr. MacLennan was there, and he can say.

HIS LORDSHIP : Everything that passes in Court is not evidence; it is not material; it is sufficient there was such an order postponing the sale to some time in May.

MR. SLAGHT : Are you putting in the order? 30

HIS LORDSHIP : Are there any special terms in the order that are important? As I gather from what has been already read, the fourth mortgagees made a motion to postpone the sale.

MR. SLAGHT : Yes, my Lord, they did, and his Lordship Mr. Justice Kelly postponed it for a month to give them an opportunity to better protect their interest, and it was embodied in an order.

HIS LORDSHIP : I suppose there was nothing special in the order except the sale was postponed for a month?

MR. WALSH : Yes. I have not the order.

HIS LORDSHIP : I suppose the reason being some question whether 40 notice was ever received in time?

MR. SINGER : There is some question upon that motion. His Lordship satisfied himself on the material filed as to the value of the property.

HIS LORDSHIP : There won't be anything in the order to show that Mr. Justice Kelly was satisfied?

MR. SINGER : No; that is in the material filed.

MR. SLAGHT : Affidavits were filed on the value.

HIS LORDSHIP: Mr. Justice Kelly would not find whether the valuation was proper or anything else.

MR. WALSH: Mr. MacLennan will tell us the source and inspiration of the valuation, if my learned friend wants it.

HIS LORDSHIP: I don't know that it is important here. All I know as a matter of history the sale was postponed.

MR. WALSH: The next letter is a letter dated May 29th, 1925, from Mr. Morine to Cassels, Brock and Kelley?

10 A. I have not got that; that was produced by Mr. Singer. It was one of Mr. Morine's productions.

MR. SINGER: Here is my copy.

MR. WALSH: Letter written by Mr. Morine to Cassels, Brock and Kelley, May 29th, 1925:

"Now that this property has been sold under power of sale, "and, as all mechanics' liens, etc., have been disposed of, is there "any reason why the \$190. deposited into Court cannot be withdrawn "and returned?"

EXHIBIT No. 68: Letter (copy) from Mr. Morine to Cassels, Brock and Kelley, May 29th, 1925.

20 Q. Have you the Minute Book of the company there—was there a sale?

A. No record; I have searched.

Q. Is there any record of any minute or memorandum of the Board of Directors or agenda showing any sale of this property in the month of May, 1925?

A. No; I examined the agendas of the directors and the minute book, and there was no record in either the agendas or the minute book of any such sale in May.

Q. When was the first entry of any sale in those books?

30 A. June 23rd, 1925. There are two sets of minutes of the meeting that took place June 23rd, 1925, and they are shown at page 631; both pages bear the same number. One page has evidently been altered and removed from the book because it is soiled; I don't know why it was put back in there again. There is quite a material alteration.

Q. Let his Lordship judge the materiality. (Witness shows the minute to his Lordship.) I had better read them.

HIS LORDSHIP: The whole book is in, but put in by the pages, there are two pages 631? A. Yes; one has alterations and the other has not.

HIS LORDSHIP: It appears in the Exhibit. Those pages will go in. I don't think there is any object in reading them. They are Exhibits.

40 MR. WALSH: Very well. I would like, Mr. Singer, the original offer to purchase.

Q. I have the original offer to purchase dated Toronto, the 17th June, 1925.

HIS LORDSHIP: It comes from the custody of whom?

MR. WALSH: The Defendant Morine.

EXHIBIT No. 69: Original offer to purchase dated the 17th June, 1925, the London Loan and Savings Co. and R. S. Durno.

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Q. I notice on the back of this offer to purchase, do you know that endorsement on the back? A. Yes, I would say that is Mr. McCormick.

Q. "June 23rd, 1925, accept offer for \$227,500. George G. McC., President"—I notice that this offer to purchase provides for \$500. cash to be paid to the vendors as a deposit; have you that cheque? A. Yes.

Q. Tell his Lordship if that cheque was ever cashed?

A. The cheque was never cashed and never deposited in any bank.

EXHIBIT NO. 70: Cheque for \$500., R. S. Durno, "Pay to London Loan and Savings Co.," dated June 17th, 1925.

Q. Any record of that ever having been cashed? 10

HIS LORDSHIP: Would it not show on its face?

MR. WALSH: Very well.

Q. Will you tell his Lordship if there is any record of any \$3,500. having been received? A. No; there is no record of any moneys having been paid on that transaction by Durno.

Q. Have you any statement of adjustments in connection with that transaction?

A. There is this statement; there is no statement of adjustments I have been able to find; there are some statements from Wilson, and that is one of them, but no statement of adjustments. 20

HIS LORDSHIP: That is found in the records of the company? A. Yes.

MR. WALSH: Statement of disbursements *re* London Loan and Savings Co. and Buckingham Apartments. (Reads.)

EXHIBIT NO. 71: Statement of disbursements *re* London Loan and Savings Co. and Buckingham Apartments.

HIS LORDSHIP: That just goes in as a record found in the company's office. It is not proof of the facts in it.

MR. WALSH: Mr. Braden, the three sums shown in that statement——?

A. I produce a cheque bearing date——

HIS LORDSHIP: Is Mr. Wilson a witness? 30

MR. WALSH: I have not subpoenaed him.

HIS LORDSHIP: I should have thought he would have been an important witness on one side or the other.

MR. WALSH: I think it is up to him to have him.

A. Those are the cheques.

MR. WALSH: On that statement, Exhibit 71, Mr. Wilson has: "Received by me from London Loan, \$9,539.95"; this is a cheque May 28th, 1925, from the London Loan, and it says on the back, "Arrears of principal and interest *re* Buckingham Apartments."

HIS LORDSHIP: That is what went to the Huron and Erie? 40

MR. WALSH: Yes.

EXHIBIT NO. 72: Cheque dated May 28th, 1925, for \$9,539.95.

MR. WALSH: Then Mr. Wilson has, "Received by me from sale to Durno, \$4,193.20."

HIS LORDSHIP: Whose cheque?

MR. WALSH: Cheque from London Loan.

HIS LORDSHIP: Let me see that cheque. This is a cheque London Loan

to Wilson for \$4,193., adjustment *re* Buckingham Apartments; the cheque is to M. W. Wilson, solicitor?

A. One is a voucher and the other is the cheque.

EXHIBIT No. 73: Cheque and voucher for \$4,193. from London Loan and Savings Co. to M. W. Wilson.

MR. WALSH: The next is a cheque May 28th, 1925, from London Loan and Savings Co. to Mr. M. W. Wilson for \$420.50, and on the back it says: "Cost and expenses *re* Buckingham Apartments."

10 EXHIBIT No. 74: Cheque for \$420. dated May 28th, 1925, from London Loan and Savings Co. to M. W. Wilson.

MR. WALSH: I wish to point out, your Lordship, that the two cheques of May 28th, 1925, are signed on behalf of the company by the Defendant McCormick. (Referring to Exhibits 72 and 74.)

HIS LORDSHIP: Apparently the cheques had to be signed by some one other than the managing director.

MR. WALSH: I hope when Mr. McCormick goes in the witness box that I will have the opportunity of asking him about those cheques.

Q. Letter from Brickenden & Co. to Wilson, May 28th, 1925; Mr. Slaght will have that.

20 HIS LORDSHIP: Were those cheques sent by Brickenden & Co. to Wilson?
MR. WALSH: Yes.

EXHIBIT No. 75: Letter May 28th, 1925, from Brickenden & Co. to M. W. Wilson.

MR. SLAGHT: Written by Mr. McMillan.

MR. WALSH: Have you production 209?

A. Yes; it is another statement. Here is another document.

Q. What is this; whose initials are those?

A. Mr. McCormick's.

Q. What is that?

30 A. I found this with the company's papers; it was not attached to anything. Just this sheet as it is now.

Q. Our production 210, dated June 23rd, 1925?

A. Yes, it is in Mr. McCormick's writing.

EXHIBIT No. 76: Memorandum June 23rd, 1925, *re* Buckingham Apartments. "R. S. Durno. Accept offer to purchase for \$227,500. Geo. G. McC., President."

Q. I have a memorandum, a statement *re* London Loan and Savings Co. and Green *re* Buckingham Apartments. Disbursements, showing how those cheques were made up. It shows down below a date, "May 28th, 1925."

40 HIS LORDSHIP: Statement by whom?

MR. WALSH: It says Mr. Wilson on it.

A. I think that is Mr. Morine's writing that is on there; I think he identified that in one of his examinations. It came out of the company's file.

EXHIBIT No. 77: Statement *re* London Loan and Savings Co. and Green, disbursement.

Q. I show you statement of mortgages of London Loan as of June 1st, 1925. (Production No. 208.)

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—continued.

EXHIBIT No. 78 : Statement of mortgages of London Loan as of June 1st, 1925.

HIS LORDSHIP : Who was that statement by ?

MR. WALSH : Evidently it has been prepared by Mr. Wilson, because it says : "Received by me from London Loan" ?

A. It has writing on it by Mr. Morine, his figuring on, that is his writing, the pencil notations are in Mr. Morine's writing.

Q. It says \$227,500. and below \$224,000., and the difference \$3,500. ?

A. Yes, that is in Mr. Morine's writing.

Q. And then I see above here, \$147,000. and under that \$77,000., making 10 a total of \$224,000.—whose figures are those ?

A. That is Mr. Morine's writing.

Q. Has that money ever come in, the \$3,500. ? A. It never did.

Q. The offer to purchase that was read to your Lordship called for \$500. deposit, \$3,500 on closing, and a mortgage for the balance, did it not ?

A. Yes, I think it did.

Q. Is there anything in the records of the London Loan and Savings Company to show that that cash ever was put up ?

A. No reference of any kind or description showing any cash was paid by Durno or any one else in connection with the Buckingham sale to Durno. 20

Q. I notice your production No. 207, two statements there ?

A. Yes, I have it.

Q. They are both dated June 27th, 1925, *re* mortgage G. 41, Buckingham Apartments, H. A. Morine, Esq., *et al.*, Toronto, Ont., etc. (Reads.) \$39,995.17, April 27th, 1925; and June 1st, 1925, interest \$287.60. Paid Huron and Erie \$9,540.95 and interest and costs, Wilson (\$420.58) making \$9,961.63. Then four days' interest, \$8.20. Then as at June 1st, 1925, \$50,252.60.

EXHIBIT No. 79 : Statement June 27th, 1925, *re* mortgage G. 41.

MR. WALSH : I may say the original of that is produced in Mr. Brickenden's production. 30

HIS LORDSHIP : The original had better go in.

MR. WALSH : Now, the other original one of the other mortgage, June 27th, 1925, *re* mortgage G. 46, H. A. Morine, Esq., *et al.*, Toronto, Ont. (Reads.) As at June 1st, 1925, \$25,338.60.

EXHIBIT No. 80 : Statement June 27th, 1925, *re* mortgage G. 46.

Q. Then letter from Mr. Brickenden to Mr. Wilson June 29th, 1925. (Produced by Mr. Slaght.)

EXHIBIT No. 81 : Letter June 29th, 1925, from G. A. P. Brickenden & Co. per McMillan to M. W. Wilson.

MR. WALSH : Then correspondence in June and July between Mr. 40 Brickenden and Mr. Wilson, and I was going to put it in as one Exhibit.

HIS LORDSHIP : Is there anything important ?

MR. WALSH : It just shows how it was carried out, the deed and mortgage and what took place about the matter.

HIS LORDSHIP : Do not the abstracts show that ?

MR. SLAGHT : The last letter shows Wilson carried it out and reported back.

MR. WALSH : The main letter I wanted to put in was the letter of June 30th, 1925, from Brickenden & Company to Wilson :

“We are returning you herewith deed under power of sale in “the above matter duly executed by the London Loan and Savings “Company. This deed will, of course, only be used when all docu- “ments have been properly completed and handed to you on our “behalf and the balance of cash in this matter paid over to you.”

MR. SLAGHT : Written by Mr. McMillan.

MR. WALSH : Your Lordship, perhaps it is just as well to put the corres-
10 ponde in.

HIS LORDSHIP : Put in all the correspondence as one Exhibit.

MR. WALSH : Yes, your Lordship.

HIS LORDSHIP : Very well, I cannot see it is helpful. The nature of the transaction appears from the registered documents.

MR. WALSH : Perhaps I can tell your Lordship; your Lordship will see when I come to it there is a document, a release from Durno to the Consolidated Trust, which is dated July 8th, 1925, and in this correspondence I see no correspondence whatever about that document. So if we just put all this in as Exhibit 82 ?

20 HIS LORDSHIP : Yes, fasten them together.

MR. WALSH : We can put in there any more that relates to it.

MR. SLAGHT : Tell me any more letters you want, because that is all I have.

HIS LORDSHIP : This has reference to this closing between Brickenden and Wilson.

MR. WALSH : That is it, your Lordship, the closing.

MR. SLAGHT : Give the last date and the first date, and state the fact as it is, that there is a statement you have in there too besides correspondence.

HIS LORDSHIP : Is the statement accompanying some of the letters ?

30 MR. WALSH : Yes.

HIS LORDSHIP : The correspondence and enclosures in reference to the closing of the sale, beginning with June the 29th, 1925, and ending September 30th, 1925, will go in as one Exhibit, No. 82.

EXHIBIT NO. 82 : Correspondence and enclosures in reference to closing of the sale to Durno, June 29th, 1925, to Sept. 30th, 1925.

MR. WALSH : Now, my Lord, these are separate ones and I will put these in in their order. Letter June 24th, 1925, G. A. P. Brickenden & Co., per J. F. McMillan, to the London Loan and Savings Co.

40 EXHIBIT NO. 83 : Letter from G. A. P. Brickenden & Co. to the London Loan and Savings Co., dated June 24th, 1925.

MR. WALSH : The next one is July 10th, 1925, G. A. P. Brickenden & Co., per J. F. McMillan, to the London Loan and Savings Co. *re* Buckingham Apartments.

EXHIBIT NO. 84 : Letter G. A. P. Brickenden & Co. to London Loan and Savings Co., dated July 10th, 1925.

MR. WALSH : Then letter of June 30th, 1925, G. A. P. Brickenden & Co. to London Loan and Savings.

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EXHIBIT NO. 85 : Letter G. A. P. Brickenden & Co. to London Loan and Savings, dated June 30th, 1925.

MR. WALSH : The next is a letter September 15th, 1925, G. A. P. Brickenden & Co., per J. F. MacMillan, to the London Loan and Savings Co.

EXHIBIT NO. 86 : Letter G. A. P. Brickenden & Co. to London Loan and Savings dated Sept. 15th, 1925.

MR. WALSH : Next, letter of Brickenden & Co. to London Loan and Savings Co., dated Sept. 16th, 1925.

EXHIBIT NO. 87 : Letter G. A. P. Brickenden & Co. to London Loan and Savings Co., Sept. 16th, 1925.

HIS LORDSHIP : What is the general subject matter of the letters ?

MR. WALSH : This letter of Sept. 16th, 1925, is *re* Buckingham Apartments :

“We beg to report that we have received from Toronto and are enclosing to you herewith the following documents :

“1. Mortgage from R. S. Durno to yourself, registered as “No. 11078 W. F.

“2. Deed from London Loan to R. S. Durno, registered as “No. 11077 W. F.

“Deed from R. S. Durno to Consolidated Trusts Corporation 20
“in trust, registered as No. 11079 W. F., has been forwarded to Con-
“solidated Trusts Corporation.

“The abstract of title has been received this morning, and we
“will forward report on same in due course.”

The next one is a letter from the London Loan and Savings Company to Mr. Clewes, manager of the Consolidated Trusts Corporation, dated October 1st, 1925, or September 1st, 1925—it is not plain :

“I have got back to business and would be glad to know the
“position of this property. As manager of the Trust Corporation,
“are you collecting the rents, and if so, what balance have you in 30
“hand, and when will you make returns ? Have you a deed of the
“property for the purpose of handling the revenues ? We have an
“inquiry from Scotland for particulars.”

Mr. Gray says he investigated that date, and that was October 1st intended; there is an erasure on it.

EXHIBIT NO. 88 : Letter October 1st, 1925, from London Loan to Mr. Clewes, manager of Consolidated Trusts Corporation.

MR. WALSH : Then there is a letter from G. A. P. Brickenden & Co. to Consolidated Trusts Corporation, dated September 16th, 1925 : “We are enclosing to you herewith deed from Robert S. Durno to yourselves in 40 trust, registered as No. 11079 W. F.,” etc. (Reads.)

EXHIBIT NO. 89 : Letter Sept. 16th, 1925, from G. A. P. Brickenden & Co. to Consolidated Trusts Corporation.

MR. WALSH : Then letter September 28th, 1925, from M. J. Kent, manager of the London Loan and Savings Co. to Brickenden & Company :

“During my absence I notice that company paid out, no doubt
“at your request, a further amount on this loan of nearly \$4,200.,

“marked as paid Mr. Wilson. We do not seem to have any order
 “from Durno to pay this out as a further advance. Kindly let us
 “have an itemized statement of the abortive sale and your expenses;
 “or do the expenses form part of the above sum? I do not appear
 “to have any authority on file to make this further advance.”

EXHIBIT NO. 90: Letter from M. J. Kent to Brickenden & Co., dated
 Sept. 28th, 1925.

MR. WALSH: Could you tell his Lordship if you know, did you act
 for Mr. Kent? A. Yes.

10 Q. Were you solicitor for Mr. Kent? A. Yes.

Q. Do you know if, in 1925, he was absent from the offices of the London
 Loan and Savings Co.?

A. Yes; I know he was hurt in an accident in May, 1925, and was out
 of the office until some time in the fall of that year.

Q. He says here he was away from the office? A. Yes, with a broken hip.

Q. Have you the letter October, 1925? A. Yes.

EXHIBIT NO. 91: Letter October 2nd, 1925, from G. A. P. Brickenden
 & Co., per J. F. McMillan, to London Loan and Savings Company.

MR. WALSH: Then letter October 5th, 1925, from M. J. Kent, manager,
 20 to H. A. Morine.

EXHIBIT NO. 92: Letter October 5th, 1925, from M. J. Kent to H. A.
 Morine.

MR. WALSH: Then letter from the Consolidated Trusts to Mr. Kent,
 dated October 15th, 1925:

“You wish a reply to your letter of October 1st regarding the
 “above property. A few days ago we received a deed of the above
 “property from our solicitors, the deed being made by R. S. Durno.
 “We received no instructions as to what we were to do, and are still
 “awaiting same. We would be pleased to have you give us instructions
 30 “as to what you wish done.”

EXHIBIT NO. 93: Letter October 5th, 1925, from H. R. Clewes, manager
 Consolidated Trusts Corporation to M. J. Kent, Manager London
 Loan and Savings Co.

MR. WALSH: The next is a letter from Mr. Dyas to the Consolidated
 Trusts Corporation, October 15th, 1925. A. (Produces.)

EXHIBIT NO. 94: Letter October 15th, 1925, from Mr. Dyas to Con-
 solidated Trusts Corporation.

Q. Then letter October 16th, 1925, from H. R. Clewes to M. J. Kent.

EXHIBIT NO. 95: Letter October 16th, 1925, from H. R. Clewes, manager,
 40 Consolidated Trust Corporation, to M. J. Kent, Manager, London
 Loan and Savings Co.

Q. The next letter is from H. A. Morine to London Loan and Savings
 Co., October 16th, 1925? (Reads.)

A. This letter goes with it.

Q. Is that not in? A. I don't think so.

EXHIBIT NO. 96: Letter October 16th, 1925, from H. A. Morine to
 London Loan and Savings Co.

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Q. Then letter of H. A. Morine to London Loan and Savings Co. Then letter from Mr. Kent to Mr. Morine, to which that evidently was the reply. That letter is dated October 5th, 1925.

MR. SINGER: You have that already in as Exhibit 92.

MR. WALSH: Very well. Then the next letter is one of November 30th, 1925, Morine to London Loan and Savings Company.

EXHIBIT NO. 97: Letter November 30th, 1925, H. A. Morine to London Loan and Savings Co.

Q. The next is December 2nd, 1925, sent to Mr. Morine, *re* R. S. Durno mortgage. 10

EXHIBIT NO. 98: Letter December 2nd, 1925, to H. A. Morine from London Loan and Savings Co.

MR. WALSH: The next, December 7th, 1925, letter from A. W. Dyas to M. J. Kent, London Loan and Savings Co.

EXHIBIT NO. 99: Letter December 7th, 1925, from A. W. Dyas to M. J. Kent, London Loan and Savings Co.

MR. WALSH: Then letter from Mr. Kent to Mr. Morine dated December 8th, 1925, acknowledging receipt of that cheque.

EXHIBIT NO. 100: Letter December 8th, 1925, from London Loan and Savings Co. to H. A. Morine, acknowledging cheque for \$2,696.96. 20

HIS LORDSHIP: Mr. Hambly was manager succeeding Mr. Kent?

MR. WALSH: Yes. Mr. Kent was gone from that company at the end of 1925.

A. No; he was still connected but doing practically very little work; he was not able to. Mr. Hambly was manager to all intents and purposes from the fall of 1925 onwards.

Q. The next one is a letter from Mr. Morine to Mr. Kent, December 9th, 1925.

EXHIBIT NO. 101: Letter December 9th, 1925, from H. A. Morine to M. J. Kent. 30

The next letter is December 10th, from Mr. Hambly, the manager, to Mr. Morine.

EXHIBIT NO. 102: Letter Dec. 10th, 1925, from London Loan and Savings Co. to H. A. Morine.

The next is a letter from Mr. Morine to the Consolidated Trusts Corporation dated December 24th, 1925.

EXHIBIT NO. 103: Letter from H. A. Morine to Consolidated Trusts Corporation dated December 24th, 1925.

Then letter from Mr. Kent to Mr. Morine, February 5th, 1925:

"I have just received a bill from Mr. Baker, manager of the 40

"Huron and Erie Mortgage Corporation at Toronto, through the

"Consolidated Trusts Corporation, asking for an interest payment

"of \$5,400., and an instalment of principal, \$3,000.; in all, \$8,400.,

"as payment on their mortgage against the Buckingham Apartments.

"Have you the funds to pay this? Advise at once what we shall do."

EXHIBIT NO. 104: Letter from M. J. Kent to H. A. Morine, dated February 5th, 1926.

—continued.

Then Mr. Morine writes to Mr. Kent February 6th, 1926.

EXHIBIT No. 105 : Letter February 6th, 1926, H. A. Morine to M. J. Kent.

Letter from Mr. Kent to Mr. Morine, March 2nd, 1926.

EXHIBIT No. 106 : Letter March 2nd, 1926, from M. J. Kent, manager, to H. A. Morine.

Then Mr. Morine's reply to Mr. Kent.

EXHIBIT No. 107 : Letter March 3rd, 1926, from H. A. Morine to M. J. Kent.

10 Letter from Mr. Dyas to Consolidated Trusts Corporation, March 4th, 1926, and the letter from Mr. Clewes enclosing that.

EXHIBIT No. 108 : Letter from A. W. Dyas to Consolidated Trusts Corporation, March 4th, 1926.

EXHIBIT No. 109 : Letter March 6th, 1926, from H. R. Clewes to Manager, London Loan and Savings Co., enclosing letter March 4th, A. W. Dyas. (See Exhibit 108.)

Q. I produce an original letter from the Huron and Erie to the Consolidated Trusts dated May 12th, 1926, and on the back of it I notice an endorsement; whose signature is that? A. Mr. McCormick's signature.

20 EXHIBIT No. 110 : Letter May 12th, 1926, from manager, Huron and Erie Mortgage Corporation to Consolidated Trusts Corporation, with memorandum on back : "May 18th, 1926. Send copy to Morine and ask him to take it up with Huron and Erie. Geo. G. McC., President."

Q. Then the letter to Mr. Morine, May 18th, 1926, from Mr. Kent—
EXHIBIT No. 111 : Letter May 18th, 1926, from M. J. Kent to H. A. Morine.

Mr. Morine's reply, May 19th, 1926—

30 EXHIBIT No. 112 : Letter May 19th, 1926, from H. A. Morine to M. J. Kent, London Loan and Savings Co.

MR. SLAGHT : I think it would be convenient to indicate now, in reference to Exhibit 110, you read out a memorandum written on the back which is in pencil, and as I caught your language you said that it was in the writing of Mr. McCormick.

MR. WALSH : No, I asked Mr. Braden whose signature; I never said who wrote it on.

MR. SLAGHT : It is obviously written by Mr. Kent and initialled by the Chairman.

40 HIS LORDSHIP : I don't suppose it makes any difference; the President put his initials on it.

MR. WALSH : Then Mr. Morine's letter of June 17th, 1926, to M. J. Kent.
EXHIBIT No. 113 : Letter of H. A. Morine to M. J. Kent, dated June 17th, 1926.

Then letter June 22nd, 1926, from Mr. Hambly to Mr. Morine—

HIS LORDSHIP : Over what period of time does this correspondence extend?

MR. WALSH : It extends for some little time, yes.

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HIS LORDSHIP: I suppose all this evidence tends to show that the sale was an illusory or a fictitious one?

MR. WALSH: Yes.

HIS LORDSHIP: It only affects the Defendant Morine directly?

MR. WALSH: That may be so.

HIS LORDSHIP: As I understand it, your claim against the other Defendants is more than in the alternative.

MR. WALSH: I would not like to be so comforting to Mr. Slaughter as that, but in the meantime—

HIS LORDSHIP: That is really so—

MR. WALSH: Your Lordship has put your finger on it. Letter June 22nd, 1926, London Loan and Savings Co. to H. A. Morine.

EXHIBIT NO. 114: Letter June 22nd, 1926, London Loan and Savings Co. to H. A. Morine.

The next letter, my Lord, is to Mr. Morine, dated June 22nd, 1926; have you that letter, Mr. Singer?

MR. SINGER: I have not a letter of June 22nd.

MR. WALSH: June 22nd, 1926, from London Loan and Savings Co. to H. A. Morine.

EXHIBIT NO. 115: Letter June 22nd, 1926, from London Loan and Savings Co. to H. A. Morine.

HIS LORDSHIP: The last part has reference to other parties.

MR. WALSH: Yes; other properties which Mr. Morine was collecting for. There is a letter from Mr. Morine of June 23rd, 1926, to M. J. Kent, London Loan and Savings Co.

EXHIBIT NO. 116: Letter from H. A. Morine to M. J. Kent, June 23rd, 1926.

Then I see endorsed on the back of that these words: "Decline. Geo. G. McC., President." Whose are they? A. The Defendant McCormick's signature.

Q. The words above that are: "Letter *re* R. S. Durno from H. A. Morine," and then the word "decline". This, then, would be an opportune time to let us see the Durno mortgage to let us see what is due.

A. Here is the mortgage to the London Loan.

Q. Give me the deed first.

HIS LORDSHIP: That is the deed under the power of sale?

MR. WALSH: Yes, dated the 1st June, 1925, London Loan and Savings Co. to Robert S. Durno, drawn by M. W. Wilson, registered 8th July, 1925, as No. 11077 W. F. This deed under power of sale is under the third mortgage of \$20,000.

HIS LORDSHIP: So that the second mortgage still remains?

MR. WALSH: It was discharged. I am going to come to that.

HIS LORDSHIP: Put that mortgage in first.

EXHIBIT NO. 117: Deed June 1st, 1925, London Loan and Savings Co. to R. S. Durno.

EXHIBIT NO. 118: Mortgage June 1st, 1925, Robert S. Durno *et ux* to

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London Loan and Savings Co. of Canada, registered as No. 11078 on the 8th day of July, 1925.

MR. WALSH: The mortgage provides \$77,000. principal, interest 7%⁰/₁₀₀; \$1,000. shall become due and payable on the 1st December, 1925, and the first days of June and December in each of the years 1926, 1927, 1928 and 1929, and the balance of the said principal sum of \$77,000. shall become due and payable on the first day of June, 1930; interest half-yearly on the first days of June and December in each year, first payment to be due on the 1st December, 1925. Then there is attached to this mortgage a letter from Brickenden and
10 Company to the London Loan and Savings Co. enclosing a certificate of title in connection with the mortgage in question.

MR. SLAGHT: Who signed that?

MR. WALSH: G. A. P. Brickenden & Co., per J. F. Macmillan. The certificate is as follows: "We hereby certify that we have investigated the title to the above mentioned property including and subsequent to your two registered mortgages, Nos. 8318 W. F. and 8716 W. F., and find the same good and sufficient for the purposes of the mortgage referred to in the heading of this certificate, and that the said mortgage now forms a first charge on the said lands. Dated at London this 2nd day of February, 1926."

20 Q. Now what is the next document?

A. Conveyance Durno to the Consolidated Trusts Corporation.

Q. Conveyance Robert S. Durno and wife to Consolidated Trusts Corporation in trust, dated the 26th June, 1925, registered the 8th July, 1925, as No. 11079 W. F.

EXHIBIT No. 119: Conveyance Robert S. Durno to Consolidated Trusts Corporation, dated June 26th, 1925, and registered as No. 11079 on July 8th, 1925.

HIS LORDSHIP: Is there any trust declared in the document?

MR. WALSH: No.

30 A. There is a certified copy of that deed with the transfer tax affidavit attached.

MR. WALSH: That is under power of sale.

A. Is it? Then I was wrong.

MR. WALSH: May I put this certified copy in, because Mr. Wilson swears—

HIS LORDSHIP: How is that evidence?

MR. WALSH: The deed I put in is the original. He signed the affidavit.

HIS LORDSHIP: Can you prove the affidavit by a certified copy?

MR. WALSH: Nothing turns on the signature of it.

40 HIS LORDSHIP: I could not accept that at all; I don't know whether it was ever sworn or not. There is nothing in the Registry Act or Evidence Act which makes a certified copy of the deed evidence on production. The Registry Act provides that one of the duplicate originals with the Registrar's certificate of registration on is evidence. I feel quite sure that there is no provision that makes a certified copy of a deed evidence unless you give certain notices, and that is only in the absence of the original. Now, you seek to prove some-

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body swears something because it appears on the certified copy; I could not accept that.

MR. WALSH : I said sale proceedings took place under the third mortgage for \$20,000., and his Lordship asked what happened the second mortgage of the London Loan and Savings Co. for \$35,000. ?

A. It was discharged.

Q. Have you a certified copy of that discharge? A. Yes. (Produces.)

MR. WALSH : The original is in the Registry Office. The date is the 3rd July, 1925, signed and witnessed, the corporate seal of the company at the hands of the President and Secretary, and it is signed Charles R. Hunt, acting President, and Clewes, Secretary-Treasurer, and the corporate seal, and this was registered on the 8th July, 1925, as No. 11076 W. F. 10

EXHIBIT No. 120 : Discharge dated July 3rd, 1925, (Certified copy), registered as No. 11076 W. F.

Q. Who are the proper officers from the by-laws of the company or resolution of the Board showing the signing officers in the month of July, 1925? A. The signing officers were the President, Vice-President and Manager, either one of those, or any director, I think, and the manager.

HIS LORDSHIP : Refer to the by-law.

MR. WALSH : Give us the section. 20

A. It does not appear to be in the By-law book; the by-laws were all printed.

Q. It must have been adopted at some time or other ?

A. Yes, but I have never been able to find it.

HIS LORDSHIP : In the absence of any special by-law, it is only the head of the organization that can sign.

MR. WALSH : Yes. May I just point out the sections afterwards of the by-law.

A. Mr. Clewes was not a director of the company or manager at any time.

MR. SINGER : May I say my learned friend must first show that these printed by-laws which he produces, which are, I believe, some 18 or 20 years old, have been adopted. 30

HIS LORDSHIP : In the absence of that this discharge is no good.

MR. SINGER : We will respectfully submit otherwise, that the company has bound itself by its own action.

HIS LORDSHIP : No, they cannot bind in that way unless the head of the corporation signs; unless there is a by-law limiting or providing for other officers.

MR. WALSH : You have the printed by-laws of the London Loan and Savings Co. 40

HIS LORDSHIP : I cannot admit the printed by-laws.

MR. WALSH : We will get the originals for you.

HIS LORDSHIP : Your position is stronger without them.

A. I don't think there are any originals; I have looked for them, and Mr. McCormick may know, but I certainly do not.

HIS LORDSHIP : In connection with loan companies, is not there provision

in the Statute requiring the by-laws to be filed or a certified copy with the provincial officers?

MR. WALSH: I think there is. Perhaps we can just leave that.

MR. SLAGHT: We are handicapped; our friends have had all the documents of the company in their custody for a long time.

MR. WALSH: My learned friend may be handicapped in this case, but not in the way he says; we gave him every opportunity. That certified copy we have of that deed, that affidavit, may be material, and perhaps my learned friends would not want me to bring down the Registrar from Toronto to bring
10 the original.

HIS LORDSHIP: Supposing Mr. Wilson did swear to it, would that be evidence at the trial? You would not be any further-ahead.

MR. WALSH: Perhaps I had better just leave it then.

Then the next letter is October 15th, 1926, H. A. Morine to Consolidated Trusts Corporation.

EXHIBIT No. 121: Letter from H. A. Morine to Consolidated Trusts Corporation, October 15th, 1926.

Then I wish a letter dated Oct. 30th, 1926, the Huron and Erie to Consolidated Trusts Corporation.

20 HIS LORDSHIP: What has that to do with it?

MR. WALSH: Perhaps I will not bother with that. The next is a letter——

MR. SINGER: I think perhaps that letter of October 30th should go in, because it is a letter addressed to the registered owners of the property. I think putting in the letters generally on this loan, while I have objected to them, I think it should go in with the others in its logical order now.

HIS LORDSHIP: It only relates to Mr. Singer's client.

MR. SINGER: It is a letter addressed to Consolidated Trusts Corporation by the Huron and Erie asking for payment of the first mortgage on this property.

30 MR. WALSH: It gets back to what your Lordship says, that this is a matter of Mr. Morine, because the Huron and Erie pass it to the Consolidated Trusts. The Consolidated Trusts send it to the London Loan, and the London Loan go right to Mr. Morine; so it goes right back to Mr. Singer; it is just a chain.

HIS LORDSHIP: What the Huron and Erie did cannot affect matters here.

MR. WALSH: That is the reason I was not putting it in.

HIS LORDSHIP: That is why when you mentioned it I did not think it had anything to do with this, because the Huron and Erie are parties entirely outside this litigation.

40 MR. WALSH: If my learned friend wants it in I will put it in for him.

HIS LORDSHIP: If it does not affect the other people, if the parties agree, let it go in.

MR. SINGER: I am not going to request it; all I draw your Lordship's attention to, there are a dozen letters filed of Huron and Erie.

HIS LORDSHIP: Not yet.

MR. SINGER: Yes, right through this we have had letters from the Huron and Erie Corporation.

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HIS LORDSHIP : I fail to recall a single one.

MR. WALSH : In each case it had the endorsement of Mr. McCormick right on the back; those are the only ones.

HIS LORDSHIP : I have no recollection of any being in, but if there were—

MR. WALSH : It was by reason of Mr. McCormick's endorsement.

HIS LORDSHIP : Mr. Singer's request is a reasonable one, but I cannot see what they would have to do one way or the other; however, look it over.

MR. SINGER : Letter, Exhibit 110, is one.

HIS LORDSHIP : Yes, with memorandum on the back, but that is introduced against the Defendant McCormick. 10

MR. SINGER : Also a memorandum on the back of this one of October 30th, 1926, also signed by Mr. McCormick.

HIS LORDSHIP : If you are going to put it in—

MR. WALSH : Very well, I will put it in, because they are all passed on to Morine.

—Letter October 30th, 1926, from the Huron and Erie to the Consolidated Trusts; and then on the back, is that Mr. McCormick's signature?

A. Yes.

"*Re* Buckingham Apartments, mortgage D. 42. Letter from Huron and Erie *re* payment of first mortgage which is overdue. File. Geo. G. McC., 20 President."

EXHIBIT NO. 122 : Letter from Huron and Erie Mortgage Corporation to Consolidated Trusts Corporation, October 30th, 1926, with memorandum on back.

Then the next letter shows what was done, November 2nd, 1926, letter from manager of London Loan to Mr. Morine :

"Enclosed please find copy of letter received from the Huron "and Erie Mortgage Corporation *re* the Buckingham Apartments," and then Mr. Morine's note on the back, "Mr. Hambly : I understood from you in London you were paying the H. & E., so my "letter to the Consolidated Trusts dated October 15th which gave "you all particulars of rents and expenses enclosed a cheque and "stated when balance would be taken care of. H. A. Morine, October "10th, 1926."

EXHIBIT NO. 123 : Letter Nov. 2nd, 1926, from M. J. Kent to H. A. Morine, with memorandum of Mr. Morine on back.

Then a letter to Mr. Morine, dated November 5th, 1926 ?

A. I have just a copy here, but probably Mr. Singer has the original.

MR. SINGER : I have not the original of that.

EXHIBIT NO. 124 : Letter Nov. 5th, 1926, from Manager, London Loan and Savings Co. to H. A. Morine. 40

Then letter of Nov. 26th, 1926, from Huron and Erie to the Consolidated Trusts with Mr. McCormick's notation on the back.

HIS LORDSHIP : That memorandum is in Mr. McCormick's writing?

A. Yes.

EXHIBIT NO. 125 : Letter November 26th, 1926, from the Huron and

Erie to the Consolidated Trusts Corporation with memorandum on back.

MR. WALSH: Will you give me production No. 114—a copy of that had been sent to Mr. Morine, the Defendant.

HIS LORDSHIP: This is a letter from Morine to the Consolidated Trusts?

MR. WALSH: Yes, my Lord; Toronto, Ont., 1st Dec., 1926. It is on a copy of that last Exhibit of November 26th, 1926:

“Consolidated Trusts Corporation.

10 “I cannot see your object in delaying payment, as undoubtedly “the mortgagees will go into possession of the property”——

EXHIBIT NO. 126: Letter (copy) Dec. 1st, 1926, at the bottom of a copy of Exhibit 125, the letter being from H. A. Morine to Consolidated Trusts Corporation.

The next one is a letter Dec. 2nd, 1926, from the London Loan to Mr. Morine.

MR. SINGER: Might I draw your Lordship’s attention to Exhibit No. 126, where my learned friend refers to it as a letter from Morine to Consolidated Trusts on the bottom of a copy of the previous Exhibit, the only indication as to it being from Mr. Morine is a signature in lead pencil in
20 quotation marks, which is not Morine’s signature at all.

HIS LORDSHIP: Let me see that. This is only a copy.

MR. WALSH: I was waiting for him to point that out. If you look at Mr. Morine’s letter which I have just asked for, it cures it “Letter December 3rd, 1926.” (Reads.)

EXHIBIT NO. 127: Letter Dec. 3rd, 1926, H. A. Morine to London Loan and Savings Co.

HIS LORDSHIP: That appears to clear up the situation.

MR. SINGER: The signature was not put on by Mr. Morine; it was
30 put on by Mr. Hambly.

HIS LORDSHIP: It does not profess to be an original.

MR. WALSH: This is a letter Dec. 2nd, from Mr. Hambly to H. A. Morine.

EXHIBIT NO. 128: Letter from Mr. Hambly to H. A. Morine dated the 2nd December, 1926.

Q. The next is a letter of December 7th, 1926, from Huron and Erie to the London Loan.

HIS LORDSHIP: Is there a memorandum on it?

MR. WALSH: No.

HIS LORDSHIP: What use is it?

MR. WALSH: Very well. Then letter from Salter and Stapells to H. A.
40 Morine, January 7th, 1927.

HIS LORDSHIP: Who is Salter and Stapells?

MR. WALSH: Solicitors for Huron and Erie.

MR. SLAGHT: This does not affect us.

MR. WALSH: Salter and Stapells, January 7th, 1927, to Mr. H. A. Morine. (Reads.)

EXHIBIT NO. 129: Letter, Salter & Stapells, dated January 7th, 1927, to H. A. Morine.

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HIS LORDSHIP: Morine was one of the mortgagors or the mortgagor to the Huron and Erie?

MR. WALSH: Yes, your Lordship. A letter from Mr. Morine to Mr. Brickenden dated January 8th, 1927.

MR. SINGER: I have a copy.

MR. SLAGHT: I have not any original of the 8th, but I have one of the 10th.

MR. WALSH: We will put in the 8th. (Reads.)

EXHIBIT NO. 130: Letter January 8th, 1927, from Morine to G. A. P. Brickenden. 10

Now, the letter of January 10th, 1927.

MR. SINGER: That is to Mr. Hambly; you have that letter.

MR. WALSH: Have you the letter of January 10th, Mr. Braden?

A. I have not it here.

MR. WALSH: Mr. Singer, then yours; it is 26th in your documents. (Letter produced by Mr. Singer.) Letter from Mr. Morine to Mr. Hambly, London Loan and Savings Co., January 10th, 1927.

EXHIBIT NO. 131: Letter from H. A. Morine to Mr. Hambly, London Loan and Savings Co., dated January 10th, 1927.

Q. Have you been able to find that on the files of the London Loan? 20

A. I never have.

HIS LORDSHIP: Is it just addressed to Mr. Hambly personally?

MR. WALSH: Mr. Hambly, the London Loan and Savings Co., London. Then there is letter January 10th, 1927, from Mr. H. A. Morine to Mr. Brickenden, *re* Buckingham Apartments.

EXHIBIT NO. 132: Letter from H. A. Morine to G. A. P. Brickenden, dated Jan. 10th, 1927.

The next letter after that—have you a letter there, copy of your letter to Salter and Stapells, January 11th, 1927, following the telephone conversation? 30

MR. SINGER: Yes, Mr. Walsh.

MR. WALSH: Copy of letter from Mr. Morine to Messrs. Salter and Stapells, January 11th, 1927.

EXHIBIT NO. 133: Letter January 11th, from Mr. Morine to Salter and Stapells.

Then the next letter (produced by Mr. Slaght) from Mr. Morine to Mr. Brickenden, January 11th, 1927: "Herewith copy of my letter of even date to Salter and Stapells, and under separate cover Mr. Dyas is sending you a memo and a cheque covering the funds on hand." etc.

EXHIBIT NO. 134: Letter from H. A. Morine to G. A. P. Brickenden, 40 dated Jan. 11th, 1927, with copy of letter referred to therein attached.

Then, your Lordship, the next letter is January 29th, 1927; have you that letter, Mr. Singer, from the London Loan and Savings Co. to H. A. Morine?

MR. SINGER: No; I have not one of that date; I have never seen it; I have seen your copy.

MR. WALSH: There is a copy in our files.

HIS LORDSHIP: You cannot introduce it that way.

MR. WALSH: The next letter is a letter to Mr. Morine from the London Loan and Savings, February 22nd, 1927.

EXHIBIT No. 135: Letter February 22nd, 1927, from Mr. Hambly to H. A. Morine.

I wish to put in the letter of February 14th, 1927, of J. H. Laverty to the London Loan and Savings Co., and then this endorsement of Mr. Morine's on the back: "This man is only asking for information *re* price and this is unwise as he is not a buyer or any intention that way. He had better make
10 an offer, say, of about \$275,000. H.A.M."

EXHIBIT No. 136: Letter February 14th, 1927, from J. H. Laverty to London Loan and Savings Co. with memorandum by Mr. Morine on the back.

Mr. Morine's letter, dated February 23rd, 1927, to Mr. J. H. Hambly, London Loan and Savings Co.:

"In reply to yours of the 22nd enclosing Mr. Laverty's letter
"and your reply thereto, I wish to advise that this man is only
"asking for information *re* price, and it is unwise to give it to him
"as he is not a buyer and has no such intention, and giving a price
20 "will only do the property harm. However, the property will be sold
"and the sale will turn a profit to the company in due time."

EXHIBIT No. 137: Letter February 23rd, 1927, from H. A. Morine to J. H. Hambly.

The next is a letter in your productions Numbers 17 and 18, Hambly to Morine, March 21st, 1927; your number 18 was enclosed with No. 17 (produced by Mr. Singer).

This is a letter from the London Loan and Savings Co. to H. A. Morine, March 21st, 1927:

"Enclosed herewith you will find a copy of a letter which we
30 "received today from George R. Dane in regard to real estate for
"sale in the City of Toronto. I do not think there is anything in
"this inquiry, but we have referred him to you for any information
"he may desire." And the letter enclosed is March the 18th, 1927.

EXHIBIT No. 138: Letter March 21st, 1927, from Mr. Hambly, Manager London Loan and Savings Co., to H. A. Morine, enclosing letter from George R. Dane, copy of which is attached.

There is a letter of Consolidated Trusts that has a memorandum on the back, April 6th, 1927, from the Huron and Erie to the Consolidated Trusts, with Mr. McCormick's memorandum on the back, as follows: "April 12th,
40 1927, *re* Durno. D. 42. Letter from Huron and Erie *re* payment due February
7th, 1927, pay 20th April, 1927. George G. McC., President."

EXHIBIT No. 139: Letter April 6th, 1927, from Huron and Erie Mortgage Corporation to Consolidated Trusts Corporation, with memorandum on back, signed by Mr. McCormick.

After that date, did Mr. Morine, according to the records of the company, continue to collect the rents of the property?

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A. Yes; he continued to collect the rents until the change in control took place.

HIS LORDSHIP: When was that?

A. That was in February, 1929, when the change in control took place, and he may have collected for one or two months after that.

Q. The change in the control of the London Loan? A. Yes, my Lord.

MR. WALSH: Have you the original records of the London Loan and Savings, the ledger sheets of that company? A. Yes.

Q. Have you the Durno mortgage sheets? A. Yes.

HIS LORDSHIP: What are they important for? 10

MR. WALSH: In this sense: As shown by this correspondence, that mortgage was always shown as a mortgage, never shown as anything different right down, always shown as a mortgage with arrears.

HIS LORDSHIP: The London Loan Co. are your clients?

MR. WALSH: Yes, my Lord.

HIS LORDSHIP: How would an entry in their books support the attitude you take? Is it not self-serving evidence?

MR. WALSH: They were entries made at the time.

HIS LORDSHIP: What difference does that make? It might be perhaps evidence against the then President. 20

MR. WALSH: That is what I want to put it in against, because it was shown as a mortgage right down.

MR. SINGER: I think perhaps it would be wiser not to make that statement, because the sheets do not show anything of the sort.

HIS LORDSHIP: Have you your sheets there?

A. Yes, my Lord.

HIS LORDSHIP: Let me see them before they go in. A. (Produces.)

MR. SLAGHT: As far as my clients are concerned, they neither of them ever saw those until this action began; I submit it is not evidence against them.

MR. WALSH: How do we know? 30

MR. SLAGHT: They have sworn here in their examinations.

HIS LORDSHIP: I should think it would be in relief of your clients if they were that way.

MR. SLAGHT: It may be that at a later stage they would be referable, but I sort of hesitate to have a lot of documents go in in a case like this.

HIS LORDSHIP: They might be evidence against one Defendant and not evidence against the other; but Mr. Walsh, how are they evidence against anybody?

MR. SINGER: I am going to ask that Mr. Walsh introduce the sheets, because I will have to put them in in cross-examination anyway. 40

HIS LORDSHIP: Are these sheets available?

A. Yes, my Lord; I have given them to Mr. Walsh.

MR. WALSH: Now, Mr. Braden, evidently Mr. Singer and I both want these.

HIS LORDSHIP: Mr. Slaght does not. So how are they evidence against Mr. Slaght? They can go in at Mr. Singer's request, and I suppose if he wants them in they have to be evidence either for or against his client, and they turn

out whichever way they may be construed—put them in subject to that; more than that has to be established to make them evidence against Mr. Slaght's clients.

MR. WALSH: Mr. Braden, I now produce to you, take the \$35,000.00 mortgage first—

HIS LORDSHIP: The \$35,000. mortgage, that is the second mortgage on the property and the first mortgage held by the London Loan.

MR. WALSH: Yes. This is the mortgage, the original sheet in the mortgage ledger, the London Loan and Savings Co. in account with the second mortgage
10 of \$35,000.

MR. SINGER: That is G. 41?

A. It is the original mortgage ledger sheet of the \$35,000. mortgage; it is No. G. 41.

MR. SLAGHT: That is the number the loan was carried in?

A. Yes, under the name of S. B. Green.

EXHIBIT NO. 140: Ledger sheet of the \$35,000. mortgage, No. G. 41.

MR. WALSH: The next one is the \$20,000. mortgage, the third mortgage on the property?

A. Yes, that is carried in the company's books under the name of Samuel
20 Green and H. A. Morine as G. 46; that is the \$20,000. or \$21,000. loan.

EXHIBIT NO. 141: Ledger sheet of \$20,000. mortgage, No. G. 46.

Q. What is this?

A. This is known as D. 42, R. S. Durno. This is the original ledger sheet dealing with the Durno account.

EXHIBIT NO. 142: Ledger sheet dealing with Durno account, D. 42.

MR. WALSH: There are two sheets for this D. 42.

MR. SINGER: One is D. 42 and the other is R.E. 42—do not mix them up.

HIS LORDSHIP: The second one does not start till 1929; they had better be kept separate. D. 42 is Exhibit 142, and the other, what letter is it?

30 MR. SINGER: R. E. D.

HIS LORDSHIP: Is that on it?

MR. WALSH: No; loan No. D. 42, and in pencil mark above it it says "R.E."—real estate would be R.E. I am calling Mr. Hambly on that, anyway; he was the one that kept these books? A. Yes.

HIS LORDSHIP: One will be Exhibit 142 and the other 143.

MR. WALSH: This is just a continuation.

EXHIBIT NO. 143: Ledger sheet D. 42 continued. R.E.

MR. SINGER: Any more sheets—R.E. 57? A. Here is one, Mr. Walsh.

MR. WALSH: These are all duplicate copies.

40 A. Those are all copies; the other sheet is the original.

MR. SINGER: There are three sheets, 22, 57 and R.E. 57.

MR. WALSH: I see another sheet here. The one I have here is with regard to the first mortgage, \$150,000; is that the one you want?

MR. SINGER: Yes.

MR. WALSH: I will put it in then; original sheets for Huron and Erie.

HIS LORDSHIP: Would that be Huron and Erie sheet transferred over

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to these people or did it start from them taking it over? We have not heard of them taking it over.

MR. WALSH: The sheet has on the top No. 57 and gives particulars of this mortgage; and then there is a second sheet, and it is a continuation of this one carried forward.

HIS LORDSHIP: Put them in together.

EXHIBIT NO. 144: Two ledger sheets, account No. 57.

MR. WALSH: Is there anything else, Mr. Singer?

MR. SINGER: No. 22.

MR. WALSH: What is 22? A. Is that it? 10

MR. WALSH: Yes.

HIS LORDSHIP: What is that?

MR. WALSH: That is a ledger sheet; the front of it has nothing to do with this property; it is only the back, and it says on the top of it: "G. 41 and G. 46," that is the two mortgages.

MR. WALSH: Then the name M. W. Wilson, Toronto, *re* Buckingham Apartments, etc.

EXHIBIT NO. 145: Ledger sheet No. 22, name M. W. Wilson.

MR. WALSH: There is a letter, your Lordship, from the London Loan to the Huron and Erie on Nov. 5th, 1927, giving them the notice that they 20 are going to repay it on the 7th of February, 1928.

HIS LORDSHIP: What difference. They repaid it, or at least they took it over as they had a right to.

MR. WALSH: Very well.

HIS LORDSHIP: Put in the assignment; have you the assignment there?

A. Yes; I have the mortgage and the assignment.

EXHIBIT NO. 146: Mortgage to Huron and Erie.

EXHIBIT NO. 147: Assignment of mortgage dated February 7th, 1928, from Huron and Erie to London Loan and Savings Co., registered as No. 13475 on the 17th February, 1928. 30

MR. WALSH: The mortgage is dated the 7th February, 1923.

HIS LORDSHIP: It speaks for itself.

MR. WALSH: It is the same parties.

HIS LORDSHIP: That sheet, Exhibit 144, will explain after it was taken over; are there any arrears on that mortgage?

MR. WALSH: Yes, my Lord; we have taken an assignment of that, and we say we are entitled to recover on that covenant against the Defendant, Mr. Morine.

MR. SLAGHT: There are further conveyances.

MR. WALSH: That is the last entry on the registry, and I have given you 40 the conveyances. I don't think Mr. Slaght will argue that Mr. Morine was relieved on that covenant.

If I may put in a letter to show what we paid to the Huron and Erie before that; your Lordship asked me if we are making any claim on that mortgage and the covenant; we are. May I put in a letter of August 8th showing we had paid the Huron and Erie before we took that assignment?

HIS LORDSHIP: I suppose you have the cheques?

MR. WALSH: Have you the cheques that were paid to the Huron and Erie? A. No; I suppose I could find it.

HIS LORDSHIP: That is the best evidence.

MR. WALSH: There is no question—

MR. SINGER: There is only one question, they paid a bonus of three months' interest in order to pay it off.

A. The mortgage has an endorsement on it of the amount paid in the front of it.

Q. Yes, it has "February 6th, 1928. Assign to the London Loan and Savings Co. of Canada; consideration \$139,432.50 owing. Principal, \$132,000; interest at 7½% from February 7th, 1928."

HIS LORDSHIP: To when?

MR. WALSH: That is all it says, your Lordship.

HIS LORDSHIP: Interest to that date?

MR. WALSH: From that date. It is easy to get the cheques?

A. Yes; I think I can get the cheques.

Q. Was there any bonus paid? A. I don't think so.

MR. SINGER: Three months, I think.

HIS LORDSHIP: They were demanding the money; why should they get the bonus?

MR. SINGER: They were not demanding the money; they took advantage of the Act; it was over five years.

HIS LORDSHIP: They were demanding the money; there are letters put in here insisting on payment.

MR. SINGER: That is only as to arrears.

HIS LORDSHIP: Was it paid off under the provisions of the Mortgage Act?

MR. SINGER: Yes, my Lord.

HIS LORDSHIP: Or Interest Act really, I guess it was.

MR. WALSH: They notified they were going to pay it off, February 7th, 1933, that is the time it matured, but they are going to take advantage of the Act of Parliament that gave them the right to pay off after five years with bonus of three months' interest.

HIS LORDSHIP: If they were giving three months' interest, is it not three months' interest in lieu of three months' notice?

MR. WALSH: Yes.

HIS LORDSHIP: They do not need both. You had better look into that and see how it is, if it is at all important. I think that is the provision of the Act.

MR. WALSH: There is a letter here, if I may just put this in—these all relate to that mortgage; we might put all these in together.

EXHIBIT NO. 148: Correspondence produced relating to assignment of the mortgage, seven letters beginning Aug. 8th, 1927, and the last being Jan. 20th, 1928.

—Court adjourned at 6 p.m. to 10 a.m. tomorrow.

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—Court resumed at 10 a.m., December 9th, 1931.

MR. WALSH : I was wondering if I could ask your Lordship for a few minutes to allow Mr. MacLennan to be called. He has been here all day yesterday.

HIS LORDSHIP : There ought not to be any objection to that.

MR. SLAGHT : No, my Lord.

JAMES JOHN MACLENNAN, Sworn. Examined by

MR. WALSH : Q. What is your business? A. Barrister and solicitor.

Q. Where do you practise your profession?

A. At 15 King Street West, in Toronto. 10

Q. The lawsuit before his Lordship is in connection with certain mortgages on the Buckingham Apartments in the City of Toronto. Will you tell his Lordship if you ever acted for any clients that had any interest in that property? A. I did; with Mr. A. J. Cattanach of Toronto.

Q. Who is he?

A. He is a young solicitor in Toronto, and I had been advising him relative to this action and other matters apart from it altogether.

Q. Will you tell his Lordship in what way you were brought into the matter?

MR. SLAGHT : I submit that is not relevant. 20

HIS LORDSHIP : It may not be strictly relevant, but it is historical perhaps; it won't affect your clients. Go on.

A. Mr. Cattanach brought to me a letter from Mr. J. B. Wood of Bathgate in Scotland.

MR. SLAGHT : I object to that.

HIS LORDSHIP : That is how you came into it.

MR. WALSH : Will you tell his Lordship whom you represented, who were they?

A. A syndicate, as I recall, twenty-four or thirty Scotch people living in and about Bathgate in Scotland, some living out of Scotland, I think one was in Demerara, and one in South Africa, who had, as I was instructed, placed moneys in the hands— 30

MR. SLAGHT : I object.

HIS LORDSHIP : Go on; I overrule the objection. I want to hear whom he represented, that is all. It is not evidence of the fact; it is just to explain the introduction as to how Mr. MacLennan was interested in the matter.

MR. SLAGHT : I appreciate that, but he was, as I apprehend it, about to say that he was instructed with regard to moneys, and so on.

HIS LORDSHIP : He was instructed, that does not say the instructions are correct. 40

MR. SLAGHT : Should it go into the record that he was instructed with regard to money transactions?

HIS LORDSHIP : Yes, I think so; I am going to let it in subject to your objection.

A. I was instructed that a number of people in Scotland had formed a

syndicate and had placed moneys in the hands of Mr. Renton under an agreement.

HIS LORDSHIP: Your instructions were in connection with that? A. Yes.

MR. WALSH: As a result of your instructions, will you tell his Lordship if you had any correspondence with the London Loan and Savings Co.?

A. Yes, a letter was written to the London Loan and Savings Co.

HIS LORDSHIP: That letter is in?

MR. WALSH: I want to put that in.

MR. SINGER: I lodge an objection.

10 HIS LORDSHIP: Very well, objection overruled; file the letter; there was a space kept for that, the one of March, 1925, there was a letter from Mr. Maclellan put in as Exhibit 62, and the reply.

MR. WALSH: I don't think I asked you to leave any place for this letter; it is of April 1st, 1924.

MR. SLAGHT: I desire to object to this letter as irrelevant and inadmissible against my clients.

HIS LORDSHIP: Very well, objection noted, and I receive it subject to your objection.

20 MR. WALSH: This is April 1st, 1924: "I have your letter of the 31st March"——

HIS LORDSHIP: Show the letter to Mr. Maclellan and let him use it to refresh his memory. You can give the oral evidence of Mr. Maclellan as to whether he could get consent or not.

A. I had been seeking to get from the London Loan particulars of the mortgage accounts.

HIS LORDSHIP: We have that history; there was a letter sent to you asking you to get certain consents.

A. To get the consent of Mr. Dyas and Mr. Renton, I think it was, but I could not get that from either of them.

30 MR. WALSH: And then you wrote this letter of April the first? A. Yes.

HIS LORDSHIP: Perhaps the letter had better go in as Exhibit No. 149. It is only important to show that he wrote the letter. He has given the verbal evidence that he could not get the consents.

MR. SLAGHT: I want my objection to go to the verbal evidence as well, because, as I understand, he is testifying to conversation he had with Mr. Dyas in the absence of my clients.

EXHIBIT NO. 149: Letter April 1st, 1924, from J. J. Maclellan to M. J. Kent, manager London Loan and Savings Co.

MR. WALSH: Who was Mr. Dyas?

40 A. He was son-in-law of Mr. Morine, and was in Mr. Morine's office as I always understood.

Q. I notice this was in 1924 this correspondence took place; will you tell his Lordship at that time who was the trustee for the Scottish investors?

A. Originally Mr. Renton was under the syndicate agreement.

HIS LORDSHIP: Was not there a mortgage on the abstract produced showing that Renton was the trustee?

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A. Subsequently, your Lordship, an application was made to have Renton deposed from his post as trustee——

MR. WALSH : Were there any other trustees ?

HIS LORDSHIP : Who was the new trustee ? I suppose this order can be put in. I cannot see it is very material, but I am going to allow it.

A. Mr. G. M. Kelley, of Cassels, Brock and Kelley, barristers in Toronto, was appointed by the Court along with Renton as trustee for the syndicate.

HIS LORDSHIP : Who was Mr. Renton ?

A. I cannot say that I have any great knowledge of him at all other than as disclosed by the correspondence from Scotland, that he had come 10 out here from there, he had a motor car business, repairing motors just off Yonge Street, I think it was Yorkville Avenue.

MR. WALSH : Did you know under what name he carried on business ?

A. The Toronto Investment Syndicate.

Q. Did you know the name of the company he had ?

A. That is the name he went under, Toronto Investment Syndicate, and he was manager of it.

Q. Have you anything to show that ?

HIS LORDSHIP : Never mind that. Mr. MacLennan is giving the evidence; I cannot see that this is at all material. 20

MR. WALSH : You say the last trustee was whom ?

A. Mr. Kelley desired to be relieved and then he and Mr. Renton agreed to have the mortgage transferred as trustee to the Prudential Trust Company.

MR. SLAGHT : I object.

MR. WALSH : That was the standing of it in 1925.

A. When the sale proceedings were taken.

MR. SLAGHT : I don't know the relevancy; I do feel it is entirely inadmissible.

HIS LORDSHIP : I would allow this by allowing it to be proved by putting in the orders of the Court later. You can check it up if you question it at all. I 30 suppose the orders can be produced.

MR. WALSH : In January, 1925, did you get any statement as to what was owing the London Loan and Savings Co. on their second and third mortgages ?

A. A statement was sent by Mr. Kelley, came through the Cassels & Brock firm to us.

MR. SLAGHT : This is objected to.

HIS LORDSHIP : That would only be evidence that a statement was received.

MR. WALSH : I put in yesterday that statement, a duplicate of that statement from the London Loan records, that was sent to Cassels, Brock 40 and Kelley.

HIS LORDSHIP : That would be evidence; why repeat ?

MR. WALSH : That was sent to you by Cassels, Brock and Kelley ? A. Yes.

Q. Will you tell his Lordship, then, if you had any correspondence with the London Loan after that date ? A. Yes.

Q. I see a letter that I had to put in, of February 28th, 1925; this is

Exhibit 61, February 28th, 1925, from the London Loan and Savings Co. to Messrs. Maclennan and Black.

MR. SLAGHT: I object to this; I think my objection to this series can be made omnibus.

HIS LORDSHIP: Yes, it cannot be evidence against your client; it may be evidence against the other.

MR. SINGER: I am filing the same objection.

MR. WALSH: Then, your Lordship, the next one I was to file was the letter March 26th from the London Loan and Savings Co. to Maclennan and Black. (Filed as Exhibit 63.)

MR. WALSH: The next one is a letter of the 27th April, 1925, which was to be filed as Exhibit 65, letter from G. A. P. Brickenden & Co. per McMillan, to Maclennan and Black. (Filed as Exhibit 65.)

Q. Did you see any of the Defendants in connection with this matter, or the London Loan and Savings Co. in regard to this mortgage?

A. We found what I suppose his Lordship knows, there was a fourth mortgage for \$46,000. on the Buckingham Apartments to Renton as Trustee, and the information we had was that there were very substantial arrears on the prior mortgages.

20 HIS LORDSHIP: There is no question about the arrears on the prior mortgages.

A. I came to London here and saw the Huron and Erie, holders of the first mortgage, and I discussed the situation with I suppose it was the assistant manager—their manager was away—and they were willing—

MR. SLAGHT: I object.

HIS LORDSHIP: What was done?

A. We did not come to any final agreement with them, but I went then to the London Loan office and I met Mr. Kent there, I understood him to be the manager of the company, and I told him the situation my clients were in.

30 MR. SLAGHT: I object to any conversation with Mr. Kent so far as my clients are concerned unless they were present.

HIS LORDSHIP: Very well, objection noted. Go on.

A. Mr. Kent seemed to be very much disturbed over the state of the mortgage account because of the large arrears; there was a second and third mortgage held by his company, but he could not do anything, he said that he had to—

HIS LORDSHIP: Was anything done?

A. He referred me to Mr. Brickenden, the solicitor, and I went to Mr. Brickenden to discuss the matter with him, but I got no satisfaction at all; 40 he would not say what they would do, or whether they would make any concession at all to the Scottish investors. I asked if I might speak of the matter before their Board, and he said the Board did not want to hear anything about it. I went back and saw Mr. Kent and had a little further discussion with him, and he suggested that I speak—

MR. SLAGHT: I object to this.

HIS LORDSHIP: Go on.

A. He referred me to Mr. McCormick, whom he said was President. I

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called Mr. McCormick by telephone, but he refused over the telephone to discuss the matter in any form or shape; of course I did not know Mr. McCormick and I assumed it was he who was at the other end of the wire speaking.

HIS LORDSHIP: Whoever it was they refused? A. Yes.

MR. WALSH: Whom did you ask for?

A. For Mr. McCormick; I phoned to his house.

MR. SLAGHT: I understood he refused to discuss it by telephone?

A. He refused to discuss it at all. I desired to go to his house, but he declined to have me do so.

MR. WALSH: What did you do after that? 10

A. I think I obtained from Mr. Kent a copy of one of their annual statements, and I found the name of the Vice-President, Mr. Baker, and I went to see him at his office; as I recall now it was east of the station, some lumber office, and I discussed the situation with him there, but he said that it was—

MR. SLAGHT: I object.

HIS LORDSHIP: Nothing done, I suppose?

MR. WALSH: What did he say?

A. That he knew practically nothing about it, that it was all in the hands of Mr. Brickenden and Mr. Morine.

MR. SLAGHT: Our difficulty is we are helpless to check matters of con- 20
versation between two parties not parties to this action, and in which we were not present and have no control over, and surely—

HIS LORDSHIP: It is not evidence of anything except the efforts that Mr. MacLennan made to get some arrangement with the parties; that is all.

MR. SLAGHT: Then, my Lord, it would be sufficient for him to say: "I saw so and so without results."

HIS LORDSHIP: The actual language used by Mr. Baker would not be evidence of any particular facts, but it would be evidence of the fact that he did not make any arrangement with this witness. That is all. Go on.

A. The report of my visit here was made to the Scottish solicitor, to 30
Mr.——

HIS LORDSHIP: You reported to your clients?

A. Yes, and following that notice of sale under the third mortgage was served.

Q. On you? A. No, I think it was Mr. Kelley got that.

Q. That, I suppose, would be proved in another way, Mr. Walsh?

A. The trustees of the mortgage——

MR. WALSH: Yes.

A. That was reported to Scotland, and the sale was to be brought on very quickly; so an application was made to the Court to postpone the sale, 40
which application was granted by Mr. Justice Kelly, as I recall.

HIS LORDSHIP: We have had that. It was postponed for one month?

A. Yes.

Q. If there is any objection to that, I suppose there was an order taken out; were you acting as solicitor then for the parties?

A. I was acting in conjunction with Mr. Kelley, who was the solicitor on the record.

HIS LORDSHIP: Is there any doubt this order was made?

MR. SINGER: No question the order was made; I do not care whether it is an order or not, it is not at all relevant to this action.

HIS LORDSHIP: It is only a question of the history of the transaction. It assists the Court in getting at the history.

A. Then we got in touch with the solicitor for the Scotch trustees resident in Scotland with regard to steps to be taken to protect their interest, having regard to the proposed sale, and the ultimate result of that was that they were prepared to——

10 MR. SLAGHT: I object.

HIS LORDSHIP: What was done about it; did you do anything here in regard to it?

A. Yes, my Lord, upon the instructions and information I got from Scotland I advised the London Loan that we were prepared to pay the arrears.

Q. How did you advise them—by letter?

A. I am quite sure it was by letter. Exhibit 62.

Q. Is the letter in?

MR. WALSH: Yes, my Lord.

A. Our proposals were refused by the London Loan; they wanted us
20 to pay off——

HIS LORDSHIP: Those letters are in and speak for themselves.

MR. WALSH: You told him verbally, too? A. Yes.

HIS LORDSHIP: There is nothing like the letters, you know?

A. The ultimate result was that they asked us to pay off their two mortgages, so that would make an advance of \$55,000. more than we had already advanced apart from arrears of interest and taxes, and our clients in Scotland could not arrange that much; they were willing to pay——

HIS LORDSHIP: They could not accept that?

A. No; and so the property was put up for sale; the sale was abortive
30 and subsequently the property was transferred by——

HIS LORDSHIP: We have all that history here.

A. To Durno.

MR. WALSH: Did you see the Defendant, H. A. Morine?

A. Yes; I called at his office to discuss it with him.

Q. How did you come to see him?

A. We knew that he was on the title, he and Mr. Green had made the first, second and third mortgages, and then there was a conveyance.

MR. WALSH: Did you know what position he had in Toronto in connection with this property?

40 A. Yes; he was the agent in Toronto for the London Loan.

MR. SINGER: I object; that is one of the very vital matters at issue in this matter, and why a witness has to make a statement like that——

HIS LORDSHIP: There is a lot of correspondence to indicate that.

MR. SINGER: I think not.

HIS LORDSHIP: I think so.

MR. SINGER: It should not go in as evidence of the fact.

HIS LORDSHIP: It is hardly proof of the fact.

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A. It was Mr. Kent, the manager, told me——

HIS LORDSHIP: No.

MR. WALSH: Q. You saw him in any event?

A. I saw Mr. Morine in his office on Yonge Street, I think it was the Kent Building.

MR. SLAGHT: I suppose it is not necessary for me to suggest here that it is not evidence against my client.

HIS LORDSHIP: No; it won't be used against your clients.

MR. WALSH: Tell his Lordship what took place.

A. In short form, I indicated why I had come to see him and what the information was I wanted, and he refused to give me any information, and he was very curt and I thought discourteous; and he practically said it was none of my business or those whom I represented.

MR. WALSH: Your Lordship will notice the mortgage——

HIS LORDSHIP: Let me see that abstract.

MR. WALSH: Your Lordship will see the grant on the 9th August, 1923, registered the 18th Sept., 1923, that is the first instrument I want to refer your Lordship to, No. 9084 W. F., Morine to Dyas, one dollar valuable consideration, and then the mortgage No. 9085 W. F., mortgage 10th August, 1923, registered on the 18th September, 1923, Arthur W. Dyas to W. Lawson Renton in trust. Mr. MacLennan, do you know who drew that mortgage?

A. Yes; Mr. Kelley told me.

Q. Of your own knowledge? A. No, other than as I got it from——

Q. May I put it this way—Mr. MacLennan, do you know who the valuator was of Mr. Renton?

HIS LORDSHIP: How does he know unless he was told?

MR. WALSH: Is not the letterhead of Mr. Renton evidence of that, that he had in his possession, handed to him with Mr. Renton's signature——

HIS LORDSHIP: Handed to whom?

MR. WALSH: To Mr. MacLennan.

HIS LORDSHIP: What difference would that make? Would that be any more than Mr. Renton told him something; would not that be hearsay evidence of the purest kind?

MR. WALSH: May I put it this way; could I have that letter marked for identification and not read, and then when Mr. Morine takes the witness box I will be in a position to confront him with it, because Mr. MacLennan will be gone and it will be too late.

HIS LORDSHIP: It is a letter from Mr. Renton—No, you will have to prove it some other way.

MR. WALSH: I was asking if I could put it in for identification.

HIS LORDSHIP: Supposing a witness is in the box and you produce the letter, that is not his letter, and he would not be bound by it. No, I cannot allow it.

MR. WALSH: Now, as solicitor for the Scottish investors, in 1924 did you know at that time that Mr. Renton was the unregistered owner of one half interest of that property, Dyas holding it in trust——?

MR. SINGER: I object.

MR. WALSH: I am going to prove it by the examination for discovery.
 HIS LORDSHIP: You had better put in the examination before you ask him the question, because there are so many things here, they must be proved in the regular order.

MR. WALSH: Question 952 of the examination for discovery of Mr. Morine—

HIS LORDSHIP: You can put in the other part again. The examination will be marked now, Exhibit 150.

10 EXHIBIT NO. 150: Examination for discovery of H. A. Morine, so far as read.

MR. WALSH: (Reads from examination for discovery):

“Q. 952. Now, Mr. Morine, on September 28th, the date of that letter that I read to you, the property appears to be registered in the name of Mr. Dyas—and you say Arthur W. Dyas is trustee for you and for Mr. Renton? A. Yes.

“Q. 953. For the two of you? A. Yes.

“Q. 954. In what proportions did you two hold it?

“A. Fifty-fifty.

“Q. 955. Now he held it for you two as trustee? A. Yes.”

20 MR. SLAGHT: That is evidence against Mr. Morine alone.

HIS LORDSHIP: Yes.

MR. WALSH: (Reads from the examination of Mr. Morine):

“Q. 966. And Mr. Dyas was like a nominee, in other words, for you and Mr. Renton? A. He was collecting the rent.

“Q. 967. As trustee for you two? A. Trustee for both.

“Q. 968. So I can take it, then, that the consideration that Mr. Renton got for making the fourth mortgage of \$46,000. was a half interest in the property?

30 “A. He had half of the interest in the property—in the equity of redemption, as you call it, with priority to the extent of his mortgage.

“Q. 969. Well, you gave him a half interest in the equity of redemption. Was that given to him in consideration of his loaning \$46,000.

“on the fourth mortgage? A. Yes.

“Q. 970. Beg pardon? A. I would say yes.”

MR. WALSH: Acting for these Scotch bondholders, when did you first hear that?

SIR ALFRED MORINE: I object; he was not acting for the bondholders; it cannot be relevant, my Lord, what this witness knew or when he first heard.

40 HIS LORDSHIP: I cannot tell just now. It would not be evidence against you anyway when he first heard, but it might be proper in order to give the connection.

SIR ALFRED MORINE: Your Lordship will see the tendency arises from evidence of that kind—

HIS LORDSHIP: I am going to allow the question, when did he first learn that? A. Within the last week, my Lord.

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MR. WALSH : Did you know that the Defendant, H. A. Morine, had a power of attorney from—

HIS LORDSHIP : We do not know that he had.

MR. WALSH : May I prove it ?

HIS LORDSHIP : Mr. Walsh, what difference does it make ? Mr. MacLennan has apparently told us what information he did get; they did not give him any information, so how would he know this ? It is unnecessary.

MR. WALSH : Perhaps I will get that from Mr. Braden.

HIS LORDSHIP : Very well.

MR. WALSH : Mr. MacLennan, I see here one more letter; there is a 10 letter from MacLennan and Black to Mr. Kent, dated April 9th, 1924; did you write that letter to Mr. Kent ? A. Yes.

MR. SLAGHT : Covered by previous objection.

HIS LORDSHIP : Very well.

EXHIBIT NO. 151 : Letter MacLennan & Black to Mr. Kent, dated April 9th, 1924.

HIS LORDSHIP : Mr. MacLennan has testified to that, and that shows he communicated that.

MR. WALSH : The only other two letters I want to put in are letters from Mr. Kent, London Loan, to MacLennan and Black, April 8th, 1924. 20

A. Yes; that was a letter received by me.

Q. You got that letter ? A. Yes.

Q. Have you got the original ? A. No.

Q. Did you get that ?

A. Yes, I remember distinctly getting that.

HIS LORDSHIP : You cannot put that in, a copy; have you got the original ?

A. Well, the whole original file was left with Mr. Cattanach, so has been there since 1925.

HIS LORDSHIP : That cannot be put in.

MR. WALSH : I may say, your Lordship, in the letter of April 9th of Mr. 30 MacLennan's to Mr. Kent, it refers to this letter I have a copy of.

HIS LORDSHIP : But you cannot prove a letter by production of a copy.

MR. WALSH : I have not the original. The other one is a letter, April 12th, 1924, and that is a copy, too, and the objection applies to that as well. I think that is all.

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CROSS-EXAMINED by Mr. Slaght :

MR. SLAGHT : May I make a very brief cross-examination of the witness without prejudice to my objection ?

HIS LORDSHIP : It does not prejudice your objection at all. The evidence 40 is admitted under your objection and you have a perfect right to cross-examine.

MR. SLAGHT : Let me ascertain just whether you were solicitor or counsel for the Scottish investors that have been referred to, or whether you were not ?

A. Well, I will put it this way; Mr. Cattanach brought the matter to me.

Q. Is that Mr. Ernest Cattanach ? A. No, Mr. J. C. Cattanach.

Q. He is a solicitor ? A. Yes, in Toronto.

Q. And he brought— ?

A. He brought the first letter from the Scottish, Mr. J. B. Wood, he was one of the syndicate.

HIS LORDSHIP: I suppose you were a sort of consultant in the matter?

A. Yes; and I wrote personally to Mr. Wood as well as Cattanach.

MR. SLAGHT: I think you said that the London Loan invited you to pay off their two mortgages? A. No, they did not invite me.

Q. You said asked you?

A. That was by way of reply to what I was prepared to do.

Q. You were negotiating naturally to put your clients in the best position you could for them? A. Yes.

Q. And you offered to go part way along the road, and they said you must go a little further?

A. And pay off in toto.

Q. Pay the two mortgages that they held? A. Yes.

Q. That would be a proposition of \$35,000. and \$20,000.?

A. Yes. We were prepared to pay the \$20,000. and all the arrears on all the mortgages and all the taxes.

Q. That has been demonstrated yesterday by a document. They made it perfectly clear that if you would pay their two mortgages they would be glad to have their money? A. Oh, surely.

Q. Did you appear before the Court in connection with the application to Mr. Justice Kelly? A. Yes.

Q. I am instructed, I have not the material here, that your position before the Court was that there was ample security at that time in the property to pay everybody if you were afforded an opportunity and time on which to realize? A. Well, I don't think I would go quite that far.

Q. Did not you file material to that effect?

A. There was material filed; I do not for the moment recall what it was.

Q. There was material filed? A. Yes.

Q. Before the Court to the effect I have indicated, and you appeared in your capacity as counsel to press upon the Court the position that that material disclosed, I am told? A. The motion at that time was to postpone the sale.

Q. And this factor was put forward by you to the Court as part of the position you occupied which would justify the Court in postponing the sale, that is fair, is it not?

A. Well, I was not in a position at that time to say to the Court that my people would have funds to take it all up.

HIS LORDSHIP: Was there evidence produced to show that there was ample security to pay the claims of the London Loan and leave something for your clients that the sale was prejudiced?

A. If my recollection serves me, there was a valuation, or at least in some of the material a statement of valuation.

MR. SLAGHT: A sworn valuation in your material, I am told, of \$310,000.?

A. Yes.

Q. That was a sworn valuation in your material put before the Court?

A. Yes.

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Q. And put forward in good faith, I am sure, if you had anything to do with it? A. Thank you.

Q. Is not that right? A. I can go back now and say that that was the valuation that we got, that I got, immediately after the matter came to my hands.

Q. At that time? A. At that time.

HIS LORDSHIP: That is no proof of the value, but you had material?

A. Yes. We had to get some information; I did not profess to be able to value it.

MR. SLAGHT: Whoever you got your valuations from, I suppose you 10 selected reputable men, and you put that forward to the Court in an honest way as the position at that time? A. As we understood it.

Q. And as you believed it? A. Yes.

Q. So that the matter became perhaps a matter of tactics between you and the London Loan; it might be expected, perhaps, if they did not take up your offer that you people might feel it would be to your interest to raise the money and pay them off?

A. We could not take up their two mortgages; we would be in the position of third mortgagees, and if they saw fit to move under their second mortgage we would be in the same position. 20

Q. They suggested you take their two mortgages and then you would only have had in front of you the Huron and Erie mortgage?

A. Yes; at least they said they would not do anything unless we at once were prepared to take up the whole indebtedness.

Q. Their indebtedness on the two mortgages? A. Yes.

Q. Your people had received these valuations which indicated \$310,000.; and I understand from you the reason you did not take up their two mortgages was your people either did not have these or did not want to put additional money into the property at that time?

A. They had \$46,000. and they did not want to put another \$55,000. 30 in with the addition of interest and taxes; they were prepared to put an extra \$20,000. in.

CROSS-EXAMINED by Mr. Singer:

Q. Did you say that after the matter came to your hands you obtained a valuation of the property?

A. I asked the estate manager of one of the large companies for his valuation of it.

Q. And he went to the property and inspected it and gave you a valuation?

A. He gave me a valuation of \$310,000. 40

Q. That would be as of April, 1925? A. I cannot give the exact date.

Q. It was on that basis your clients were prepared and did make the offer through you that you stated, that you would pay off the third mortgage and all arrears on all prior mortgages if you could get an extension of time for the principal?

A. Yes, that was the negotiation that we were having with the London Loan.

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Q. Did you ever speak to Mr. Dyas about this matter?

A. I do not recall that I did. I went to the office where he was; I ascertained that he was in Mr. Morine's office, and asked for him, and I was referred to Mr. Morine.

Q. You remember Mr. Dyas calling on you at your office?

A. No, I do not; he may have done so, but I do not for the moment recall.

Q. You never made application to Mr. Dyas for the authority that was requested of you by the London Loan and Savings Co.?

10 A. The application was made to him by Mr. Cattanach.

Q. By whom? A. To Mr. Dyas.

Q. You were not there? A. No.

Q. Do not give us hearsay evidence; you do not know of your own knowledge that any application was ever made to Mr. Dyas for his authority to give you the information you wanted? A. I was so told.

HIS LORDSHIP: He has a perfect right to answer it that way, but it is not evidence.

MR. SINGER: I would imagine a solicitor would not answer that way.

HIS LORDSHIP: Solicitors are usually the poorest witnesses.

20 MR. SINGER: Did you ever make application to Mr. Renton for the authority that was required by the London Loan and Savings Co.?

A. It was made in the same way.

Q. Did you ever make application? A. No, I did not personally.

HIS LORDSHIP: I suppose if a solicitor sent a clerk, and so on, he would write and say that an application had been made, although when he comes in the witness box he personally had not made it.

A. I can say I instructed the application to be made.

MR. SINGER: You don't know whether it was made?

HIS LORDSHIP: He did not make it himself.

30 MR. SINGER: Q. You saw Mr. Morine on how many occasions?

A. I think twice; I remember quite well the first occasion.

Q. Will you tell me what took place on the occasion of the first interview?

A. He received me very coldly, as I thought.

Q. Something must have happened before that?

A. I told him why I came to him, and asked him for information relative to the Scotch mortgage and Buckingham Apartments generally.

Q. Can you recall what you asked him?

10 A. Well, I can recall this; I asked him how he happened to get Renton to make an advance of \$46,000. on a fourth mortgage where Renton was trustee and expressed in the mortgage to be a trustee.

Q. What else did you ask him?

A. I spoke with regard to allowing the rentals to be applied upon arrears upon the \$46,000. mortgage so that they might be able to remit something to Scotland.

Q. Would you expect that to be done? There were prior encumbrances to be met? A. It was Mr. Morine's property, as I thought.

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Q. There were further encumbrances which would have first call on those rentals? A. Yes.

Q. You still wanted the rentals to go?

A. I wanted——

Q. You were not surprised that the request was refused?

A. I suppose not.

Q. Tell me what else you asked Mr. Morine?

A. I inquired of him as to the situation of the property, whether it would be productive enough to carry all the charges against it, why the taxes were allowed to accumulate and be in arrears, so that I could give a report to the 10 people in Scotland.

Q. Was there any information you wanted from Mr. Morine you did not get? A. Yes; he refused to give it to me.

Q. What information did he refuse to give to you?

A. He refused to tell me anything about the state the mortgages were in.

Q. Did you ask him for the state of the second and third mortgages?

A. Yes, and he refused to give it to me.

Q. Was there anything else took place at that first interview? A. He said he did not think it was worth while talking any more about it, that he had no further information and would not give any further. 20

Q. Did you have occasion to see him again?

A. I don't think so; I may have seen him a second time, but I have no recollection.

Q. Do you remember ever discussing with Mr. Morine the question of the payment off of the arrears of the second and third mortgages? A. No.

Q. Do you ever recall Mr. Morine telling you that if your clients were prepared to pay off one half of the arrears that he would pay off the other half?

A. He never told me any such thing.

Q. Do you remember telling him that you would not do that, and if he did not pay the whole arrears you would cut him out under your mortgage? 30

A. No.

HIS LORDSHIP: If you are going to contradict the witness you will have to lay a more definite foundation than that.

MR. SINGER: It will be laid when my client goes in the box.

HIS LORDSHIP: No; it has to be laid now, because Mr. MacLennan is only a witness.

MR. SINGER: Did you have any further conversation with Mr. Morine?

A. No.

Q. You made an application to the company? A. Yes.

Q. And I believe to Brickenden & Company in which your offer to pay 40 off the third mortgage and arrears of prior mortgages was contained, you made that offer to Brickenden and Co.? A. Yes.

MR. SLAGHT: You advised Mr. Kent of that while you were at London of your readiness to do that? A. No. I was at London before that.

Q. You did not see Mr. Kent at the time or after that offer was made?

A. No; it was correspondence and refused by the solicitor for the company.

Q. Did you discuss that with Mr. Baker when you were in London at all?
 A. No; those matters, the question of paying off the mortgages, were all subsequent to my visit to London.

Q. So that you had no personal discussion at all with any of the directors in London with reference to that particular point? A. I saw Mr. Baker.

Q. You made your offer after your visit to London?

A. I wrote to the company asking them if they would do so and so.

Q. Was it after that you came to London or before?

A. It was before that I was in London.

10 Q. You had no personal interview with any of the directors with reference to that offer?

A. No; it was all by correspondence with the company.

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RE-EXAMINED by Mr. Walsh :

MR. WALSH : My learned friend having cross-examined on the material of that motion, would I be in order in now tendering certified copies of that material, my Lord?

HIS LORDSHIP : You had better have the original material. Certified copies, are those evidence of Court proceedings?

20 MR. WALSH : I will have them praeciped from Toronto.

HIS LORDSHIP : Yes, that will be the better way.

MR. WALSH : Q. Mr. Slaght asked you whether the London Loan would be gracious enough to accept payment of their second and third mortgages and they would be clear of the property—

HIS LORDSHIP : They were bound to.

MR. WALSH : I asked him if he knew of any law whereby they could not.

HIS LORDSHIP : Never mind that.

MR. WALSH : Q. The next thing was a reference to valuation; tell his Lordship about this valuation.

30 A. In order to satisfy ourselves in a fair way as to what the property was reasonably worth, we had Mr. Lonsdale, the Toronto General Trusts Company, I think if my memory serves me it was over the telephone I called him and asked him to give me a report upon the Buckingham Apartments, and its reasonable value, and I think I told him why I wanted it, because of the fact of there being four mortgages upon it, and I wanted to know what our position was as a matter of dollars and cents, and I do not recall that we got a written appraisal from him; my recollection is that he phoned and said that it was worth, he would put a valuation of \$310,000. upon it.

40 HIS LORDSHIP : That is not evidence as to its worth; just evidence you had a valuation.

MR. WALSH : Did you know at that particular time that Mr. Lonsdale had valued it for Mr. Morine? A. No.

SIR ALFRED MORINE : It is not proved that he was the valuator for Mr. Morine.

MR. WALSH : We are going to prove that to the hilt by the next witness.

HIS LORDSHIP : Was that disclosed to you at all?

A. It was not, my Lord.

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Q. Was it stated to you? A. No.

MR. WALSH: I will prove that, your Lordship.

HIS LORDSHIP: The other side say it never was.

MR. WALSH: I fortunately have it.

MR. SLAGHT: I don't know anything about it.

J. A. E. BRADEN, Examination continued.

MR. WALSH: Q. May I add two or three letters to that lot Exhibit 148, correspondence with Huron & Erie?

HIS LORDSHIP: Very well; add them to Exhibit 148.

MR. WALSH: Will you now produce letter from Mr. Morine to the 10 London Loan and Savings Co. dated the 7th December, 1927, *re* Buckingham Apartments? A. (Produces.)

EXHIBIT No. 152: Letter from Mr. Morine to London Loan and Savings Co. dated the 7th December, 1927.

Q. Will you please give me letter dated December 9th, 1927, from the London Loan and Savings Co. signed by Mr. Hambly to H. A. Morine? (Produced.)

EXHIBIT No. 153: Letter December 9th, 1927, from London Loan and Savings Co. signed by Mr. Hambly to H. A. Morine.

The next letter is December 10th, 1927, from London Loan and Savings 20 Co. to H. A. Morine.

EXHIBIT No. 154: Letter December 10th, 1927, from London Loan and Savings Co. to H. A. Morine.

Q. It mentioned a possible sale in that letter; will you tell his Lordship if there is any record of any kind in the minutes of the London Loan and Savings Company of any sale of that property at that time or thereafter?

A. No, there is no record either in the directors' agendas or the minute book of the company or anything of the correspondence indicating there was any sale so far as the London Loan and Savings Co. was concerned in Decem- 30 ber, 1927 or 1928, until October, I think, of 1928; then there was a sale men- tioned, Lymberger or some name like that.

Q. Is there anything in those minutes or agenda, is there anything of that character relating to the Rutherford deal? A. No.

Q. That is referred to in the defence filed by Mr. Singer, and the only thing I have is in his production, and I asked for the offer to purchase; I have an offer to purchase, my Lord. M. Rutherford of the City of Toronto, purchaser, hereby agrees to, and with the London Loan and Savings Co. as vendors through J. C. Crawford and Ed. T. Hickey, agent, naming this property, for \$275,000., and I want to read how it is to be paid: (Reads).

Can you find in the files of the London Loan and Savings Co. any record 40 of that offer at all? A. No.

Q. Now I want from your productions, Mr. Brickenden, your other copy of that? A. I never heard of that transaction until this action began.

Q. The first copy I read came from the possession of the Defendant Morine.

EXHIBIT No. 155: Offer to purchase of M. Rutherford first referred to.

MR. WALSH: This copy comes from the possession of the Defendant Brickenden (unsigned).

EXHIBIT No. 156: Offer to purchase by M. Rutherford, from the possession of Defendant Brickenden (unsigned).

MR. WALSH: Then I want to ask from the custody of Mr. Morine letter dated April 4th, 1928, from Mr. Morine to Brickenden & Company.

HIS LORDSHIP: That would come from Mr. Brickenden, would it not? (Mr. Slaght produces.)

MR. WALSH: This is a letter from Mr. Morine to G. A. P. Brickenden & Co. dated April 14th, 1928. (Reads).

EXHIBIT No. 157: Letter from Mr. Morine to G. A. P. Brickenden & Co. April 14th, 1928.

The next correspondence in connection with that matter is letter March 15th, 1928, Brickenden & Co. to H. A. Morine. (Copy produced from possession of Defendant Brickenden.)

EXHIBIT No. 158: Copy of letter March 15th, 1928, Brickenden & Co. to H. A. Morine.

The next letter is a letter from G. A. P. Brickenden & Company to H. A. Morine dated April 17th, 1928.

EXHIBIT No. 159: Letter from G. A. P. Brickenden & Co. to H. A. Morine dated April 17th, 1928.

The next I wish to put in from Mr. Slaght's possession, statement of these mortgages, Durno's, dated April 18th, 1928.

EXHIBIT No. 160: Statement of mortgages, from possession of Mr. Brickenden.

Then there is a telegram from Mr. T. H. Wilson to Brickenden & Co. 19th April, 1928: "All matters adjusted with McPherson ready close. Send statement adjustments. T. H. Wilson."

EXHIBIT No. 161: Telegram from T. H. Wilson to Brickenden & Co.

The statement of adjustments is in Mr. Morine's possession. Adjustments as of April 20th, 1928. (Produced.)

EXHIBIT No. 162: Statement of adjustments as of April 20th, 1928.

Then letter of H. A. Morine to Brickenden dated May 16th, 1928. (From custody of Mr. Brickenden.)

EXHIBIT No. 163: Letter H. A. Morine to Brickenden dated May 16th, 1928.

Then letter of June 25th, 1928, Morine to Brickenden.

EXHIBIT No. 164: Letter of June 25th, 1928, Morine to Brickenden.

I am going to put in two other letters that correct a statement made in this letter; they might go in as one exhibit. The second letter is from Morine to Brickenden, dated June 26th, 1928, and the third letter is June 27th, 1928, Brickenden & Co. to Morine.

HIS LORDSHIP: There are three separate letters; but you say they relate to the same subject matter?

MR. WALSH: Yes. It put in \$750., and the next letter said it should have been \$5,750., and the next letter agrees with that, and I thought I would have them in the one.

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HIS LORDSHIP: Very well. Put the last letter in separately.
Letter of June 26th, 1928, Morine to Brickenden, made part of Exhibit 164.
EXHIBIT NO. 165: Letter June 27th, 1928, Brickenden & Co. to H. A. Morine.

MR. WALSH: The next letter I wish is letter of July 10th, 1928, Brickenden & Co. to H. A. Morine; it was written by G. A. P. B., on the bottom of it.

HIS LORDSHIP: Is not the original available?

MR. SINGER: No, my Lord.

HIS LORDSHIP: This copy is from Mr. Brickenden's possession.

EXHIBIT NO. 166: Letter July 10th, 1928, Brickenden & Co. to H. A. Morine.

Then Mr. Morine's telegram of July 10th, 1928, to Mr. Brickenden.

EXHIBIT NO. 167: Telegram Morine to Brickenden July 10th, 1928.

The next is a letter from G. A. P. Brickenden & Co. to H. A. Morine, July 16th, 1928.

EXHIBIT NO. 168: Letter from G. A. P. Brickenden & Co. to H. A. Morine, July 16th, 1928.

MR. WALSH: Then, your Lordship, the correspondence that appears in the possession of Mr. Brickenden relating to one E. R. Barber, I wish to put that in, to the General Manager, Consolidated Trusts, dated August 2nd, 1928.

HIS LORDSHIP: Are there several?

MR. WALSH: Four; I think they could be put together.

Letter August 2nd, 1928, Barber to General Manager, Consolidated Trusts;

August 7th, 1928, Brickenden & Co. to Barber;

August 8th, 1928, Barber to Brickenden & Co.;

August 9th, 1928, Brickenden & Co. to Barber.

EXHIBIT NO. 169: Correspondence with Barber, Consolidated Trusts and Brickenden & Co. as enumerated above.

HIS LORDSHIP: What is the subject matter of these letters—sale?

MR. WALSH: Yes. These are all from the custody of Mr. Brickenden.

MR. WALSH: Mr. Braden, may I ask what kind of search you made to see about that Rutherford deal in the London Loan and Savings Co. papers and records?

A. I searched everywhere where the records were kept, and amongst the records, and I made inquiries of employees and directors outside of Mr. McCormick and Mr. Baker, and none of them had ever heard of the Rutherford deal in any shape or form.

—Mr. Slaght objects to evidence as to statement made.

HIS LORDSHIP: Nothing in the record.

MR. SLAGHT: This witness knows better than to run in statements like that.

MR. WALSH: Was there any other sale or any proposed sale referred to in the minutes, I want to come to that?

A. Yes. Proposed sale to one Lymberry, it is set out in the Minute Book of the company: on page 774 of Exhibit 13, the Lymberry offer is referred to; that is a record of meeting of directors of London Loan and Savings Co.

held Oct. 9th, 1928, and the notation here is: "All present except Mr. Hunt. Offer to purchase received from Mr. Lymberry for \$276,000., 20,000 shares of stock in Canusa Mining and Exploration Company, valued at \$12,000., to be put up as deposit on same, balance to be secured by a mortgage for \$264,000., repayable \$1,500. quarterly, account of principal, balance at end of five-year term; interest in the meantime at 6% payable quarterly; also privilege in case no default on expiration of mortgage to reduce same on same terms and conditions. Laid over for further consideration."

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HIS LORDSHIP: Any further reference to that?

10 A. No, my Lord; that is the only reference.

MR. WALSH: The first offer we had was Durno? A. Yes.

Q. Were you able to serve Durno? A. No.

Q. How did you have to serve him? A. By publication.

Q. The next one is May Rutherford, called spinster; have you ever been able to get her?

A. Never been able to find out anything about her, although I have talked to her solicitor and agent.

Q. Have you been able to lay your finger on May? A. No.

Q. Now, Lymberry, who is he, and whence did he come?

20 A. I don't know; I understand he was brought forward by Mr. Morine.

Q. Tell me about that deal?

A. When I first heard of this deal it was in October of 1928. At that time I was acting for Mr. Kent in connection with obtaining control of the London Loan and Savings Co., and he had at that time sufficient shares to elect a Board acceptable to Mr. Kent, and the directors who were on the Board of the London Loan and Savings Co. other than Mr. McCormick—

MR. SLAGHT: This may be very interesting; I suggest it is not evidence.

HIS LORDSHIP: It is more a family history.

A. I am leading up.

30 Q. The war was on then for control? A. Yes.

MR. SLAGHT: If my learned friends are going to open this up, we will have to explore it on cross-examination.

MR. WALSH: At that time there was an assignment of that mortgage, and the Rutherford offer would have the same effect, it will be contended, as the Durno, because the first mortgage would then be gone and a new mortgage made to May Rutherford and—

HIS LORDSHIP: That may all be, but this history of internal strife in the company does not help at all; there was strife?

A. Yes. I knew specifically about this offer.

40 MR. WALSH: I want to know that.

A. This Lymberry offer, because the matter was mentioned to me by Mr. Baker, Mr. Hunt, Mr. Hambly and Mr. Robinson.

MR. SLAGHT: All of which does not make it evidence at all against Mr. McCormick or Mr. Brickenden.

HIS LORDSHIP: No, but it gives this witness his instructions or his knowledge, that is all; it is not hurting anybody.

A. And when the matter was mentioned to me I told those directors—

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HIS LORDSHIP: No; you gave them certain advice?

A. Yes, and the offer was refused as a result of my advice.

MR. WALSH: Have you the letter, Mr. Singer, from London Loan and Savings Co., Mr. Hambly, to Mr. H. A. Morine, January 15th, 1929?

(Produced.)

EXHIBIT NO. 170: Letter from London Loan and Savings Co. to H. A. Morine, January 15th, 1929.

MR. WALSH: Will you tell his Lordship here about the Consolidated Trusts Company? Mr. Slaght, I think, told his Lordship at the opening of the case that he—

HIS LORDSHIP: Mr. Slaght has not given evidence; he was just giving as counsel an explanation of their contention; it will be time enough when they go into it.

MR. WALSH: When was there a change in the management or change in the directorate of the London Loan and Savings Co.? A. February, 1929.

Q. What happened, there was a change?

A. Yes, there was contest for control.

HIS LORDSHIP: That is all we are interested in.

MR. WALSH: As to the change of control, was anything done with the Buckingham Apartments?

A. Very shortly after control changed, I was asked by the Board of the London Loan and Savings Co., the new Board, to investigate this Buckingham Apartment matter, and I had a search made in Toronto.

HIS LORDSHIP: You investigated?

A. Yes; I investigated the title, and I found the entries shown in the abstract.

MR. WALSH: Did you write any letter to Mr. Morine?

A. Not at that time; a little later I did.

Q. Will you look at your letter, production No. 196?

A. June 27th, 1929, I wrote to Mr. Morine.

EXHIBIT NO. 171: Letter June 27th, 1929, Braden and McAlister to H. A. Morine.

Q. Then Mr. Morine's reply to that; letter dated June 28th, 1929?

A. (Produces.)

EXHIBIT NO. 172: Letter June 28th, 1929, from H. A. Morine to Braden and McAlister.

Q. In this letter of June 27th, 1929, (Exhibit 171) where you say, "It appears that a sale was arranged in June, 1925, to one Durno. . . . The transaction was put through in the following way."—from what did you get that? A. Mr. Kent told me about \$3,500. not being paid, and also Mr. Hambly.

HIS LORDSHIP: You got it from the officials of the company?

A. Yes; but I think most of the information about different transfers was obtained from the search, the abstract.

MR. WALSH: Q. You say the other information where you say a cheque was not paid was from the officials of the company? A. Yes.

Q. Did you have any conversation with Mr. Brickenden, the Defendant?

A. Yes.

Q. When?

A. I think it was in May; my recollection is of 1929; I saw Mr. Brickenden; I went to his office and told him that I had been asked by the Board of the London Loan and Savings Co. to look into this Buckingham matter; I had the abstract of title with me, and I referred to these different conveyances, showing registration all of them on the same date, and particularly the conveyance to the Consolidated Trusts Corporation. I asked Mr. Brickenden if this was a genuine sale, what it appeared to be, and he said no, it was not. He said it was a sale put through for the purpose of cleaning up the title.
 10 He said there were mechanics' liens that had to be dealt with, and he said there were also subsequent mortgages, and the idea of the sale was to eliminate the mechanics' lien holders and the subsequent mortgagees, and beyond that it was not a sale; and he also told me that Mr. Morine had someone in view, Mr. Morine had a large investment in the property, and had lost quite a large sum, and that Mr. Morine had someone in view that he intended to sell the property to, and that he would recoup himself for his loss, and the company would be paid its claim; that is the first interview I had.

Q. Mr. Morine would recoup his loss and the company be paid its claim?

A. Yes; but he did not endeavour in any way to pretend that was a
 20 real sale.

Q. At that conversation with Mr. Brickenden did he disclose to you the fact of the matter that the liens were at the time of the sale held by Mr. Morine?

SIR ALFRED MORINE: I object to that; an important matter of that kind counsel should not make statements of his own.

HIS LORDSHIP: Just a moment, Mr. Walsh; there is no suggestion as yet unless it is in the pleadings to that effect; why contradict something that is not here?

MR. WALSH: All right, my Lord.

HIS LORDSHIP: Are you not a little premature?

30 MR. WALSH: I thought it was an appropriate moment to show who held those liens.

HIS LORDSHIP: Well, that does not alter the way of giving evidence. There is a proper time to give it.

MR. SLAGHT: I did not catch the latter part of what Mr. Braden said.

MR. WALSH: He says Mr. Brickenden said that Mr. Morine had large investments in the property and that Mr. Morine would recoup his loss and the company be paid its claim?

A. What I said was that Mr. Brickenden told me that Mr. Morine by selling this property would obtain enough money to pay the claim of the
 40 London Loan and Savings Co. and would recoup himself for his own loss.

SIR ALFRED MORINE: Should not that be stricken out of the record at the present moment? Your Lordship said it was an improper question.

HIS LORDSHIP: Which is that?

SIR ALFRED MORINE: The question what he said about Mr. Morine.

HIS LORDSHIP: It is not evidence. You cannot rule out the question. The Court above would have a right to see, and probably Mr. Walsh would complain of my ruling; the question is there, and I rule it is not proper; it

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cannot be struck out of the record, otherwise there would be nothing before the Court above to see that such a question was asked.

MR. WALSH: After that conversation what next took place?

A. I think I saw Mr. Morine, called to see him when I was in Toronto, and I told him about my conversation with Mr. Brickenden, that Mr. Brickenden claimed this was not a genuine sale, and Mr. Morine made the statement that that was not exactly right, that the purpose of the sale was not to eliminate mechanics' lien holders and subsequent mortgagees; he said there was a question as to whether the mechanics' liens came in ahead of the last mortgage, I think it was, of the London Loan and Savings Co., and that he had paid out a large sum of money to discharge these liens, and that was one of the reasons why he was allowed off the covenant in his mortgages. 10

MR. SINGER: What is that last again?

A. That is one of the reasons why he was—the discussion took place about him being off the covenant, and he said that is one of the reasons why he was allowed off the covenant.

MR. WALSH: Anything else?

A. I had another conversation with him later on.

Q. At that time? A. Yes, that is all I can think of.

Q. Did you see Mr. Brickenden after that? 20

A. I saw Mr. Brickenden about July 17th, that was after I had, some time after I had written to Mr. Morine, Mr. Brickenden came over to my office and at that time the amalgamation agreement between the London Loan and Savings Co. and the Huron and Erie Mortgage Co. was coming up for ratification, and Mr. Brickenden asked me to call the Board of the London Loan and Savings Co. together, and have this Buckingham Apartment matter adjusted with Mr. Morine. He said if we did not do that, if there was not some adjustment made of it, that Mr. Morine intended to bring an action to stop the amalgamation agreement from going through, and I said to him, "You have already admitted this was not a genuine sale, this sale to Durno," and I said, "I do not see any reason why we should allow Mr. Morine to escape if he is responsible." And he said, "If you don't settle that up with him, and I advise you to," he said, "Mr. Morine intends to bring an action." He said something about Mr. Morine being a better friend than an enemy during the same conversation. 30

Q. Did you have any further conversation with Mr. Brickenden about the matter? A. No; I think that was the last conversation I had with him.

Q. Did you have any other conversations with Mr. Morine?

A. Yes; I had a conversation with Mr. Morine sometime after that letter of June 27th was written; I was in Toronto, and I was in your office if I remember correctly, and Mr. Morine telephoned you about this particular matter you were handling, and he suggested we go over to his office. So I went over to his office, Mr. Walsh only stayed a few minutes, and Mr. Morine asked me to wait, he had some things to talk about, and he brought up this Durno matter again, and he said, as far as he was concerned everything was quite in order, that this Durno sale was a genuine sale, and that he had documents in his possession which he would produce at the proper time which would show 40

that it was, and as far as he was concerned there was no liability on his part. I asked him to let me see those documents, but he said he would produce them at the proper time; and he also said if we would let him continue to handle the rental of the apartment and other properties we had, that he would dispose of the apartment house for a sum sufficient to cover our claim, and would also dispose of other properties which we had on hand and which came to the company as a result of applications made by him. He talked for a long time, and he was very hostile to me at first, and he finally got up against the door; I had an appointment somewhere else, and did not want to listen to him, and he told me I would have to listen to what he had to say, and he talked away for a long time about different things, principally how honest he was, and that I was entirely mistaken in my conclusions about him.

Q. I believe you had correspondence; he said he could sell the property?

A. Yes; he said he could.

Q. I will put in letter September 25th, 1929, some correspondence between Mr. Braden and Mr. Morine; the first is a letter September 25th, 1929, Braden and McAlister to H. A. Morine.

MR. SINGER: I have not the original.

MR. WALSH: I have the copy.

20 EXHIBIT NO. 173: Letter September 25th, 1929, from Braden and McAlister to H. A. Morine.

Then a letter from Mr. Braden, March 19th, 1930, to H. A. Morine.

EXHIBIT NO. 174: Letter from Braden and McAlister to H. A. Morine, March 19th, 1930.

Letter from H. A. Morine to Braden and McAlister, March 21st, 1930.

EXHIBIT NO. 175: Letter from H. A. Morine to Braden and McAlister, March 21st, 1930.

Q. Did you have any conversation about a sale to Stratford people?

30 A. I discussed it with him and asked him what he thought about it, but it never got beyond the point, the sale to the Stratford people never got to a point where any offer was made.

Q. Did you tell him any particulars about it?

A. Yes; I told him all about it; I said to him, we expect you to look after the property; if there is any loss we expect you to bear it. He used to call me by long distance telephone for a while, and he always reversed the charges to me.

Q. The next letter is Braden and McAlister to H. A. Morine, October 20th, 1930.

40 EXHIBIT NO. 176: Letter Braden and McAlister to H. A. Morine, October 20th, 1930.

Q. Did you have any further conversations after that with Mr. Morine that are material to this action?

A. Yes; I had several conversations.

HIS LORDSHIP: After this letter? A. After the last one 1930?

MR. WALSH: There was some correspondence between himself and the London Loan Assets; I notice it begins June 18th, 1930, and ends October 6th, 1930.

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HIS LORDSHIP : Your letter is after the correspondence ?

A. Yes; I don't think I had any more correspondence with him.

Q. Or conversation ? A. Not that I can speak of.

MR. WALSH : Nothing you can think of ? A. No.

Q. I notice that in your letter you mention these words, that is the letter of June 27th, 1929 : "It was a well-known fact that Durno could not carry out the sale." What was that, why is that statement made——

MR. SLAGHT : Here is another line of stuff told the witness.

HIS LORDSHIP : He made the statement I suppose advisedly; I don't think he is called upon or permitted to say at this time why he made use of that expression. 10

MR. SLAGHT : We could not check it by cross-examination.

HIS LORDSHIP : I suppose he could be cross-examined later on and that will open that up.

MR. WALSH : When this sale or what is called a fictitious sale went through in June, 1925, between the London Loan and Durno, at that time was there any other mortgage or loan to Durno in the London Loan and Savings Company ?

A. Yes, sir; there was a mortgage on his residence on St. Ives Crescent which was in arrear at that time in August. 20

Q. What kind of property was that ?

A. Residential property; the mortgage was about \$5,700.

Q. And he could not pay it ?

A. He could not pay. He did not pay it.

Q. Just a few interesting letters on that to show what they knew about him; just show his Lordship that mortgage sheet, St. Ives.

HIS LORDSHIP : How is that evidence here ?

MR. WALSH : He can tell from it.

HIS LORDSHIP : That is not in evidence; it is evidence that the officials of the company had the knowledge. 30

MR. WALSH : Yes.

HIS LORDSHIP : It is not evidence of the fact.

MR. WALSH : That is just it. Mr. Morine had certain knowledge which I will show by letters who this fellow was. (Mr. Braden produces ledger sheet.)

Q. This is the mortgage sheet of the St. Ives Crescent property ? A. Yes.

Q. This mortgage was put on in August, cheque given August 23rd, 1923, covering 79 St. Ives Crescent, a mortgage for \$3,000——

MR. SLAGHT : I don't know that it does any particular harm; I submit this is not evidence against my clients, Brickenden or McCormick.

HIS LORDSHIP : No. 40

SIR ALFRED MORINE : I object.

HIS LORDSHIP : It is evidence that the officials had knowledge about this man being in default.

MR. WALSH : Will you tell his Lordship how that stood from that record.

HIS LORDSHIP : Does it show generally that he was in arrears ?

MR. WALSH : The first thing is 1924, the first interest March 25th, 1924, by interest \$75., and then instalment of principal, it is not paid till April 4th,

and then it says, "To cheque returned protested \$234.38"—that is his first payment; and then it goes down, your Lordship—

MR. SINGER: Is that the only time it showed any arrears?

MR. WALSH: No, there are a number of them.

EXHIBIT NO. 177: Ledger sheet showing mortgage account *re* St. Ives Crescent.

MR. WALSH: Will you give me a letter of Mr. Morine to the London Loan dated August 27th, 1923; I want to show its genesis? A. (Produces.)

MR. SLAGHT: What about the exodus?

10 MR. WALSH: Letter H. A. Morine to London Loan and Savings Co., August 27th, 1923.

EXHIBIT NO. 178: Letter August 27th, 1923, from H. A. Morine to London Loan and Savings Co.

Q. Just to show, have you the application with Mr. Morine's valuation on it? A. Yes; here is one with the valuation.

Q. This is the valuation—there are two of them, one dated August 20th, 1923, an application for a loan of \$5,750. for a period of five years bearing interest at 7½% on property St. Ives Crescent, Lawrence Park:

20 "I certify the value of this property when completed at \$10,500., and would recommend a loan of \$5,750., \$75 half yearly," and signed H. A. Morine.

The other duplicate has on it a memorandum by Mr. Morine in his handwriting, "I value this property as good value for loan of \$5,750, repayable \$75 half-yearly, account a/c principal," and signed H. A. Morine, August 22nd, 1923.

EXHIBIT NO. 179: First application referred to for loan on St. Ives Crescent.

EXHIBIT NO. 180: Application secondly referred to above for loan on St. Ives Crescent property.

30 Q. Mr. Slaght was anxious to know about the exodus of that loan?

A. The property was sold to someone else.

Q. Who took it over? A. The Monarch Realty.

Q. And who were they—second mortgagees?

A. Yes, they were second mortgagees.

Q. That is the exodus?

HIS LORDSHIP: The London Loan got their money?

MR. WALSH: Letter April 9th, 1924, H. A. Morine to M. J. Kent.

"*Re* R. S. Durno—St. Ives Crescent.

40 "In reply to your letter of the 8th I have your instructions. "I took up the matter and I am assured that a new cheque has been "sent to cover this. I have not much faith that the new cheque "will even be taken up on presentation. If you have received this "cheque and have put it through your bank and you fail to have it "honoured, return it to me, together with the one which has been "protested, and the mortgage which you hold, and I will take pro- "ceedings to collect."

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EXHIBIT No. 181 : Letter from H. A. Morine to M. J. Kent, London Loan and Savings Co., April 9th, 1924.

Q. Was the protested cheque paid ?

A. I think it was paid by Mr. Morine's cheque.

Q. I have just been reminded, tell us who the cheque for the advances on that mortgage were made to ?

A. Made to Mr. Morine; I have the cheque here, it is in that envelope on the table.

HIS LORDSHIP : I suppose all this is showing that he was acting as your agent.

MR. WALSH : The cheque was made to R. S. Durno and H. A. Morine for \$2,999. It is endorsed by R. S. Durno, and then it has the printed stamp, "For deposit only Canadian Bank of Commerce, H. A. Morine," August 22nd, 1923. Was not that before the registration of the mortgage ?

A. It was before we got any report on the title; we did not get a report on the title till September 12th.

EXHIBIT No. 182 : Cheque dated August 22nd, 1923, for \$2,999. from London Loan and Savings Co. to R. S. Durno and H. A. Morine.

MR. SINGER : Mr. Braden knows nothing about it.

HIS LORDSHIP : I understand he is producing a letter, from whom ?

A. From the files of the London Loan and Savings Co.

Q. Whose is the letter ? A. Durno and Morine letters.

Q. Who is it from ? A. G. A. P. Brickenden & Co.

MR. SINGER : My learned friend was not connected with the company in 1923. He may say a search does not reveal one; he should not put on the record that they did not get a report.

HIS LORDSHIP : He is putting in now not his evidence, but a letter from the company's solicitor.

MR. SINGER : I don't think the letter says that.

A. It is a letter enclosing the document, but there is a report attached to the application.

MR. WALSH : The letter I put in August, 27th, 1923, from Mr. Morine to the London Loan, clearly shows that this cheque was made before the mortgage was registered. "This mortgage has been duly registered and all the documents"—and that letter is August 27th; the cheque is dated August 22nd, and a recommendation of that loan, your Lordship, is dated by Mr. Morine on August 22nd, so it shows—

HIS LORDSHIP : That is a question of evidence. Mr. Singer is objecting quite properly that Mr. Braden can do nothing with reference to this transaction except produce documents.

—Court adjourned at 12.45 p.m. to 2 p.m.

—Court resumed at 2 p.m.

J. A. E. BRADEN, Examination continued.

MR. WALSH : Q. The sale to Durno was in June and papers registered in July of 1925 ? A. Yes.

Q. Will you tell his Lordship just what was owing on that mortgage?

A. On the St. Ives Crescent property?

HIS LORDSHIP: Is not that shown by that ledger sheet? A. Nearly \$300.

Q. Tell his Lordship from that statement?

A. Six months' interest due February 24th, 1925, \$210.; extra interest, \$7.88; then six months' interest due August 24th, 1925, \$210;—

HIS LORDSHIP: What is this date?

A. June 23rd there was \$210. arrears of interest due February 24th, 1925.

HIS LORDSHIP: Give us the total amount due? A. \$293.80.

10 MR. WALSH: Will you tell his Lordship if you had any conversation with Mr. McCormick in regard to this matter?

A. Yes; I had a conversation with Mr. McCormick in February, 1929; I was at Mr. McCormick's office during that month in connection with settling certain points that arose as a result of the contest for control and the buying out of his interest in the company, and I told Mr. McCormick that Mr. Kent had stated that the Buckingham deal with Durno had been put through behind his back, and without his knowledge and consent, and against his protests after he had learned of it, and I also told him—

MR. SLAGHT: You told Mr. McCormick what?

20 A. That Mr. Kent had stated the Buckingham Apartment deal with Durno had been put through behind his back and without his consent, and that Mr. Kent had told me that there would be a large loss in connection with this property, and that the whole deal was irregular. Mr. McCormick stated that he knew the property personally and had seen it, and that it was quite good for the company's claim, and that he personally knew all the details in connection with the Durno transaction, and that the information Mr. Kent had given me was not correct. Then I asked Mr. McCormick if he would take over the Buckingham Apartment in lieu of cash for certain stock he was selling. I said, "If the Buckingham Apartment is good enough
30 to loan the company's money on, it ought to be good enough for you." He said he would gladly take it over, but he did not want to have any real estate on his hands in Toronto; he was in London and the apartment house was in Toronto.

HIS LORDSHIP: Was there any specific statement by Mr. McCormick at that interview as to whether or not Mr. Kent had been a party to or had known?

A. No; he did not deny that part of the statement. He said Mr. Kent had been a detriment to the company. I also had a conversation with Mr. McCormick, or I won't say I had a conversation, I was at a meeting in 1927
40 when the Durno matter was mentioned, and we had at that meeting a report made by Riddell, Stead, Graham and Hutchison, in which was incorporated conversations which this firm had with Mr. McCormick and Mr. Morine, and I remember Mr. McCormick getting up at the meeting and vigorously defending this Durno transaction.

MR. WALSH: Who are Riddell, Stead, Graham and Hutchison?

A. This report was made at the instigation of Martin, Curry & Co., the Scottish debenture agents of the London Loan and Savings Co.

Q. Anything else you want to mention?

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A. I think that is all.

Q. Had you been solicitor for Mr. Kent for any length of time?

A. I was solicitor for Mr. Kent for practically since 1925. I had known him for some years before that time.

Q. What were the relations between him and the London Loan?

A. From 1925 onwards the relationship between Mr. Kent and the London Loan was very strained.

MR. SLAGHT: That is not proper.

A. When I say the London Loan I mean Mr. McCormick and Mr. Brickenden.

MR. WALSH: The other directors?

A. Mr. Baker and Mr. McCormick and Mr. Brickenden; there was a good deal of feeling evidently between.

MR. SLAGHT: I do object to that sort of thing; this gentleman is weighing something I suppose to reach conclusions—

HIS LORDSHIP: He makes the statement, and I suppose if on cross-examination it appears it was only from hearsay then it would disappear.

MR. SLAGHT: I think the safer way would be—

HIS LORDSHIP: He is making the statement now there was; I don't know how he gets it; and if it appears on cross-examination it was only from hearsay it disappears.

MR. SLAGHT: I would have thought the safer way would be if he heard any conversation.

HIS LORDSHIP: Perhaps it would clear it up now; why did you make that statement? A. I make this statement from what Mr. Kent told me.

HIS LORDSHIP: That won't do.

A. And what followed in 1927, Mr. McCormick—I was at a meeting of the Board of Directors after the contest for the control in 1927, and Mr. Kent was unsuccessful in obtaining control, I was asked to attend a meeting of the directors, Mr. McCormick was there, in which it was quite clear from what Mr. McCormick said that he had no further use for Mr. Kent and had not for some time; Mr. Kent was dismissed following his unsuccessful attempt to obtain control in 1927.

MR. WALSH: Have you the cheque of Mr. Renton in February, 1923?

A. Yes.

Q. I produce a cheque from the London Loan and Savings Co. dated February, 1923, pay to the order of W. Lawson Renton and H. A. Morine for \$4,998., and it is endorsed on the back, your Lordship, "W. Lawson Renton, per H. A. Morine, attorney. No. 34139-GR."

MR. SINGER: Might I ask the purpose of a cheque which has nothing to do with Buckingham Apartments at all?

MR. WALSH: Absolutely.

HIS LORDSHIP: If it is not connected up with it, it will disappear, but I cannot say to counsel, you must prove so and so before you introduce it. If it does appear that it has nothing to do with it, it will disappear from the record. How much is it for?

MR. WALSH: \$4,998. It is endorsed on the back, "W. Lawson Renton

per H. A. Morine, attorney, No. 34139-GR." And, "For deposit only Canadian Bank of Commerce, Queen and Yonge Streets, H. A. Morine."

MR. SLAGHT: My friend is aware that is not referable in any way to the Buckingham Apartments, nor to this action, and is another transaction which has been explained as entirely nothing to do with the Buckingham Apartments.

HIS LORDSHIP: What do you say as to that?

MR. WALSH: As a matter of fact that is the same date, we have no evidence that it is not, and it is the same W. Lawson Renton as the mortgagee in trust on that apartment house, and was half owner under the questions I have read.

EXHIBIT NO. 183: Cheque dated Feb. 19th, 1923, from London Loan and Savings Co. to the order of W. Lawson Renton and H. A. Morine for \$4,998.

MR. SINGER: No claim made on the cheque in the pleadings at all.

HIS LORDSHIP: There would not be; it is only a matter of evidence to show the relationship between the parties. I shall receive it subject to objection, but unless it has something to do with these matters—

MR. SINGER: If it stops at one or two cheques, all right, but if we are to be presented with fifteen or twenty different cheques on which the same line is followed, there is going to be no end of it.

HIS LORDSHIP: The only thing I think is important is the endorsement, showing Mr. Morine purported to act as attorney for this other man.

MR. WALSH: Q. Did you ever have any correspondence with Mr. Morine with reference to his agency for the London Loan and Savings Co.?

A. Yes. I had a conversation with him about it, and then he wrote letters to the London Loan Assets Co.; he claimed to me that he was the agent and had been the agent for a great many years, and then—

HIS LORDSHIP: When was that he claimed to be agent?

A. That was in the spring and summer of 1929, and he wrote a number of letters to the London Loan Assets, Limited, about some matter which I have here—

MR. WALSH: How was this brought about, and your conversations first?

A. He was in charge of most of the properties which the company had on hand, that is properties that came into the hands of the company as a result of the mortgages not being paid, he was collecting the rents and looking after repairs, and he had practically all the insurance, I might say 98% of the insurance on all the properties which were under the control of the company as well as the insurance on the mortgage properties, and after control being changed we decided to take all these things out of his hands, and that is how the question of agency came up; he claimed that he was agent and we could not take these things out of his hands; he stated there was a resolution on the books of the company appointing him agent about eighteen years ago—set forth in one of these letters—

HIS LORDSHIP: Put the letter in.

MR. WALSH: Letter of June 18th, 1930, H. A. Morine to London Assets Limited.

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MR. SINGER: Were they produced?

A. They were not mentioned in the productions, in fact I forgot we had them till the other day I was being examined for discovery and Mr. Slaght asked me to produce it.

Q. They were produced to Mr. Slaght? A. Yes.

Q. And he saw them?

A. Yes; and they were marked as an Exhibit in my examination.

HIS LORDSHIP: Mr. Singer should have ample opportunity to cross-examine this witness with respect to anything in that matter, and if necessary he has the right to call him again; it cannot be excluded because it was not produced. 10

MR. WALSH: I see a letter from Mr. Morine to the London Loan Assets Limited dated June 18th, 1930:

"I am returning herewith General Accident renewal certificates numbers 6918, 6919, 6920, 6921 and 6922 covering plate glass in stores at Buckingham Apartments, which insurance has always been carried through my agency, in accordance with agreement, and in accordance with the particulars as set out before your Board, and I would ask you to kindly instruct your secretary, Miss Fletcher, to carry out the arrangement in regard to these 20 policies, the same as in the past.

"If these policies have been renewed through another agent, as you know, the same can be cancelled without cost to your company.

"I trust that this will be done for reasons already fully explained to you, and I am quite confident that you will agree with the attitude and the request which I make herewith."

MR. SINGER: Is that the letter referred to as claiming agency by a resolution eighteen years ago?

A. No, I can find that.

MR. SINGER: I am going to ask that the letters be put in as separate 30 Exhibits.

HIS LORDSHIP: Yes, that will be Exhibit 184.

EXHIBIT NO. 184: Letter June 18th, 1930, from H. A. Morine to London Loan Assets Limited.

MR. WALSH: The next is letter June 18th, 1930, from H. A. Morine to London Assets Limited.

EXHIBIT NO. 185: Letter June 18th, 1930, from H. A. Morine to London Loan Assets Limited.

Then there is the reply of Mr. Braden to Mr. Morine, June 19th, 1930.

EXHIBIT NO. 186: Letter June 19th, 1930, from Mr. Braden to H. A. 40 Morine.

Then there is Mr. Morine's reply dated June 20th, 1930.

EXHIBIT NO. 187: Letter June 20th, 1930, from H. A. Morine to Lieut.-Col. W. G. Coles, President, London Loan Assets Limited.

Q. The next letter is June 25th, 1930, from the London Loan Assets Limited to H. A. Morine.

EXHIBIT NO. 188 : Letter June 25th, 1930, from London Loan Assets Limited to H. A. Morine.

MR. SLAGHT : That is signed by whom ? A. W. G. Coles, President.

MR. WALSH : The next letter is one June 26th, 1930, H. A. Morine to Lieut.-Col. W. G. Coles, President, London Loan Assets Limited.

EXHIBIT NO. 189 : Letter from H. A. Morine to W. G. Coles, President, London Loan Assets Limited, dated June 26th, 1930.

The next is a letter June 30th, 1930, H. A. Morine to Lieut.-Col. W. G. Coles.

10 EXHIBIT NO. 190 : Letter June 30th, 1930, from H. A. Morine to Lieut.-Col. W. G. Coles.

EXHIBIT NO. 191 : Letter July 2nd, 1930, from London Loan Assets to H. A. Morine.

MR. WALSH : The next two are without prejudice and I do not put them in.

A. I may say I asked Mr. McCormick and Mr. Brickenden about what agreement there was with Mr. Morine at the time the control changed, and they both assured me that there was nothing in writing, that Mr. Morine had been employed as agent, and it was an agreement to be terminated at any
20 time. I was particularly anxious to find out if there was any document in writing at that time.

Q. Those are the letters that claimed he was agent for the company ?

A. Yes. Those followed up interviews he had with me on long distance telephone and otherwise; he was in London a couple of times.

Q. What position did he take in these interviews with you ?

A. He claimed he was agent and had been for a long time, and that we had no right to take away the insurance or the collection of the rents or management of the properties from him.

Q. That he was their agent ? A. Yes.

30 Q. I see a number of your productions letters 213-14-15-16——

HIS LORDSHIP : What is the subject matter of these letters ?

MR. WALSH : Letters addressed by the auditors to the President and Directors, London Loan and Savings Co., concerning mortgages on the 6th October, 1924.

MR. SINGER : I am filing an objection to that.

HIS LORDSHIP : How is that evidence ?

MR. WALSH : Durno sale and mortgage was put on in July of 1925; these were warnings by the auditors to the President and Directors of the London Loan and Savings Co. before that was done.

40 HIS LORDSHIP : It might be evidence against the president and directors, but it would not be any evidence against Mr. Morine.

MR. WALSH : No, my Lord.

MR. SLAGHT : Just a moment; my friend says they are warnings of the Durno transaction.

MR. WALSH : Warnings that should have prevented the Durno transaction.

HIS LORDSHIP : No, that is too far afield altogether; no. It is their duty

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quite apart from warnings of auditors. The directors are there to direct, not to shut their eyes.

MR. WALSH: Now, Mr. Braden, you have mentioned the words Martin, Currie & Company; who are they?

A. They were the Scottish debenture agents of the London Loan and Savings Co. in Edinburgh, Scotland.

Q. Were there any moneys owed Scottish people invested in London Loan and Savings Co.?

A. Yes; there was a very large amount, in the neighborhood of half a million dollars.

Q. Who was the one that looked after that in Scotland?

A. Martin, Currie & Co.

Q. Your Lordship will remember that one letter of Mr. Kent as soon as he got back after being sick, a letter that he sent to the solicitor, "Scotland has been after us"—you remember I read that yesterday, "I had inquiries from Scotland"——

HIS LORDSHIP: This is just to explain what is meant.

MR. WALSH: Yes; and this now starts an important lot of evidence I wish to put in, your Lordship.

MR. SINGER: I want to file an objection to the reception of this against Mr. Morine, as a series of letters extending over a long period of months, some of the letters fifteen or twenty pages in length, in which a number of insinuations are made of people in Scotland against my client; I submit these letters should not be placed on record in this action.

HIS LORDSHIP: What ground do you seek to have them admitted?

MR. WALSH: Martin, Currie & Co. had a very substantial interest, having half a million dollars invested in London Loan and Savings Co.; the question of this very sale and this very appointment and the liability of Mr. Morine on his covenant came directly to their notice. They wrote, re-wrote and they bombarded the London Loan and Savings Co. officials as to their explanation of that transaction. There were letters that were written, some of them drafted by Mr. Brickenden, others written by him, some written by Mr. McCormick, giving their explanations of this transaction, these two Defendants.

HIS LORDSHIP: They will be evidence against them; they could not be evidence against Mr. Morine.

MR. WALSH: No, my Lord.

HIS LORDSHIP: Of course in this case, Mr. Singer, if they are evidence against the other Defendants you would have no ground to object to their admission against them.

MR. SINGER: I cannot object very seriously to the admission of letters written by Mr. McCormick and any other officials; but as to the admission of letters written by Martin, Currie & Co. to——

HIS LORDSHIP: They will not be evidence of facts; they will simply be evidence that these letters were written, not of the facts contained in them, any more than a solicitor writes letters and says certain things; that is no evidence of the fact, just evidence that a claim was made.

MR. SINGER : Nevertheless, I submit the contents of these letters should not be placed on the record by filing, because they are not evidence against us.

HIS LORDSHIP : Not against your client, but it is evidence of a claim made by these people, and if they are answered by the other Defendants their letters can be used against them.

MR. SLAGHT : For the Defendants for whom I appear any letters they wrote to these people concerning the transactions here attacked I have no objection to the admissibility.

HIS LORDSHIP : I will try and see they are limited.

10 MR. SLAGHT : But there are letters written of which they had no knowledge; so I do object to anything except letters written by them.

HIS LORDSHIP : I think that is a proper objection; confine yourself to that, Mr. Walsh, letters written by Mr. Brickenden or Mr. McCormick.

MR. WALSH : May I say a little on that; letters that were written and sent by others at first shown to them?

HIS LORDSHIP : If you can connect that.

MR. WALSH : First shown to them.

HIS LORDSHIP : How are you going to prove that?

20 MR. WALSH : I have a man tomorrow. Then you have the drafts there?
A. Yes.

HIS LORDSHIP : Draft of what?

MR. WALSH : Before they were typewritten, whose handwriting is on that?

A. Mr. Brickenden and Mr. McCormick.

MR. SLAGHT : I am not objecting to anything written by Brickenden or McCormick.

HIS LORDSHIP : Or letters that they drafted?

MR. SLAGHT : No.

MR. WALSH : The first one I can see is a letter of April 29th, 1925, from Martin, Currie & Co. to the London Loan and Savings Co.

30 MR. SLAGHT : Was that replied to by either of my clients? If it was, I see no reason why it should not go in; if not, it cannot be evidence against them.

MR. WALSH : This is addressed to the London Loan and Savings Co., and it is the very inception, bringing it to the attention of the company, the position of Martin, Currie on this very mortgage, and they are wanting an explanation of it right off the bat.

HIS LORDSHIP : It is only evidence that this matter was brought by Martin, Currie & Co. to the attention, no evidence of the fact; I am going to admit it in that view only.

40 MR. WALSH : I am only going to read the reference to this in it: this is April 29th, 1925, Martin, Currie & Co. to M. J. Kent, Manager London Loan and Savings Co. of Canada :

“The loan under the name of S. B. Green is, we take it, the loan referred to in the enclosed copy of a letter we have just received from a valued correspondent, and there appears to be something requiring investigation on your part in this matter. In your statement the book value of the loan is entered at \$39,882.68, and the

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“letter states that you have two loans, a second mortgage for \$35,000.
“and a third mortgage for \$20,000., both loans made in 1923. You
“will observe that it is suggested in our correspondent’s letter that
“the actual owner of this property is your own valuer, and the fact
“that you lent these sums in 1923 and had to take foreclosure pro-
“ceedings in 1924 lends colour to the suggestion that there is some-
“thing far from right in the transaction.

“You will observe that our friend is interested on behalf of the
“fourth mortgage, and is anxious that you should not pursue the
“proceedings to sell the property on terms that will cause total loss 10
“of the fourth bond, his plea being”——

HIS LORDSHIP : Never mind that part, just that the question was raised.
EXHIBIT NO. 192 : Letter from Martin, Currie & Co. to M. J. Kent,
Manager, London Loan and Savings Co., April 29th, 1925.

MR. WALSH : The next letter is one of the 15th June, 1925, from Martin,
Currie & Co. to the Manager, London Loan and Savings Co. of Canada. It
bears the endorsement on the back—whose signature is that ?

A. That is Mr. McCormick’s signature on the back, and some writing
on the front which is Mr. Brickenden’s.

EXHIBIT NO. 193 : Letter June 15th, 1925, from Martin, Currie & Co. 20
to Manager, London Loan and Savings Co., with endorsement on
back and some pencil writing on the top of the front page.

MR. WALSH : Then Mr. Brickenden’s letter of June 27th, 1925, to
Martin, Currie & Co.

EXHIBIT NO. 194 : Letter from G. A. P. Brickenden to Martin, Currie
& Co. dated June 27th, 1925.

Q. Have you the letter of July 9th, 1925 ? A. Yes.

MR. WALSH : This is from the London Loan and Savings Co. of Canada,
Thomas Baker, Vice-President, to Martin, Currie & Co., Scotland.

HIS LORDSHIP : How is that evidence here ?

30

MR. WALSH : It came before the Board and they instructed a reply to
be sent.

HIS LORDSHIP : The letter may say that, but there is no evidence here
that it did come before the Board.

MR. WALSH : It is a direct reply to that letter of Martin, Currie & Co.

HIS LORDSHIP : Sent by the company ?

MR. WALSH : Per Thomas Baker.

HIS LORDSHIP : Mr. Baker is not a party to these proceedings.

MR. WALSH : Is there any draft of this letter there ? A. No.

MR. WALSH : I will have to get that in some way, so I will have to 40
think it over. Then letter Martin, Currie & Co. to the Manager, London Loan
and Savings Co., dated the 17th September, 1925 :

“We wrote a letter on the 4th August in relation to the questions
“raised in our letters of the 29th April and 15th June, addressing our
“letter to your Vice-President, who had written us on the 9th July.
“We had hoped to have a further letter from you in reply before this
“and are disappointed that no letter has reached us.” (Reads letter.)

EXHIBIT NO. 195 : Letter 17th Sept., 1925, from Martin, Currie & Co. to the Manager, London Loan and Savings Co.

Q. This letter of October 13th, 1925, who is that from ?

A. That is from the London Loan and Savings Co. to Messrs. Martin, Currie & Co., Edinburgh; it is evidently sent by Mr. Kent.

Q. Is there any evidence to show that Mr. Brickenden and Mr. McCormick went over that ?

A. No; this is an original letter which I got from Martin, Currie & Co.

MR. WALSH : Shall I give an explanation of the letter of October 13th ?

10 HIS LORDSHIP : No.

MR. WALSH : Then the reply to that of Martin, Currie & Co., 17th December, 1925.

HIS LORDSHIP : How is that a reply to a letter which is not in ? Is it not sufficient that the letter shows at this time the question was brought to the attention of the directors in connection with this sale ? That is all the assistance that can be to the Court, that this matter was brought to their attention by these people; if there are any statements made by any of the Defendants or with their consent, and only may be evidence against them—

MR. SLAGHT : I think the letter of October 13th my friend offers; I will 20 not make any objection to that one going in.

MR. WALSH : I won't let it go in without the other two. If they are both going in—

HIS LORDSHIP : No bargaining with the Court as to the evidence.

MR. WALSH : I will not put it in without the other; I will save them for cross-examination.

Q. Have you Martin, Currie's letter of December 17th, 1925—where is the one of the reply of Mr. Brickenden ?

A. That gets on into the next year; they are in 1926; I have a copy of one of December 17th, 1925, which I got from Martin, Currie's files, the 30 original is not here. It is acknowledged in the next letter signed by Mr. Kent.

Q. I have one of January 13th, 1926 ?

HIS LORDSHIP : Does that come within the ruling I gave ?

MR. WALSH : Only give me the ones you know by Brickenden or Mr. McCormick ?

A. I have the letter of July 5th, 1926, which is signed by Mr. McCormick.

Q. May 17th, 1926, Martin, Currie letter to McCormick ?

A. This is only a copy that is here.

MR. SLAGHT : I understand we left all letters with the company.

MR. WALSH : Were any of these in the custody of the London Loan at all ?

40 A. Some of them were and some were not.

Q. Were the ones put in as Exhibits there ?

A. Yes, I think they were.

Q. Was this one you are coming at ?

A. No; I got that from Martin, Currie & Co.

Q. Did you have one like that in the London Loan ?

A. No.

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MR. SLAGHT : I understand now you are proposing to put in a letter from Martin, Currie & Co. to McCormick, President.

MR. WALSH : Yes, as President of the company.

MR. SLAGHT : Is that the one that was replied to by Mr. McCormick? If so, as far as I am concerned you can put in the copy you got from Martin, Currie.

MR. WALSH : Very well, I will put that in, dated May 17th, 1926, Martin, Currie & Co. to Mr. McCormick, President, London Loan and Savings Co.

EXHIBIT NO. 196 : Letter from Martin, Currie & Co. to Geo. G. 10
McCormick, President, London Loan and Savings Co. of Canada.

WITNESS : I had better give you the draft letter, too.

MR. WALSH : I just want to read what is stated here (on page 2 of the memorandum attached to Exhibit 196) :

"No. 3 (D.42—R. S. Durno \$77,000.). This loan was also
"advanced on property in course of construction and was subject to
"a first mortgage of \$150,000. from the Huron & Erie Company. It
"is understood that the original valuation by Morine amounted to
"about \$400,000., subsequent valuations by Dyas (son-in-law of
"Morine) being \$350,000., and by Lonsdale \$310,400., while the 20
"property when exposed to sale by auction did not realize sufficient
"to pay off in cash the first three bonds amounting to \$206,000. It
"appears to me that the company might be left with this property
"on their hands at any time as the purchaser only put up a nominal
"amount of cash. We refer further to this loan later on."

Then on page 6 of the memorandum :

"H. A. Morine. It appears that a number of the large speculative
"loans granted by your company were made on valuations by Mr.
"Morine, and the accountants remarked that large commissions were
"paid to him by the borrowers. We shall be glad to receive replies 30
"to the following points in this connection, viz :—

"1. To what extent were Morine's valuations accepted in the
"case of the large loans granted by the company ?

"2. Did Morine act as valuator for your company in any case
"in which he received a commission from the borrower ?

"3. Is it the practice in Canada for a valuator to take com-
"missions on arranging loans ?

"4. Has any valuator or other party employed by the company
"drawn such commissions ?

"5. Has the company now dispensed with Morine's services as 40
"was done by another similar company ?

"6. Were the Danforth Avenue properties valued by Morine,
"or, if not, who are the valutors responsible ?

"7. Why did your Board sacrifice the personal covenant of
"Morine, who is reputed to be a wealthy man, in the case of the
"large mortgage to him over the Buckingham Mansions property ?
"In his letter of 13th January last, Mr. Kent stated that the value

—continued.

“quoted put ‘the value quoted at the time the loan was passed was fairly safe, considering the excellent nature of the personal security behind the loan,’ but he omitted to refer to our inquiry on this point when replying to our letter of the 26th January. It appears that the rents are being collected by Morine’s son-in-law, although the property was sold by private sale to R. S. Durno. Is Morine or Durno the real owner of the property? It is understood that the Huron & Erie Co., who hold the first mortgage for \$150,000., insisted on Morine’s name being on the covenant?”

10 “8. Was it not in the interest of Morine to take over the property subject to these mortgages thereon in view of the large sum of \$85,000. applied by him and by Renton in completing construction of the property? His failure to assume the ownership for the sum of \$227,500., being the figure arranged with Durno, does not reflect credit on his original valuation of about \$400,000.”

And now in reply to these Scotch questions, I want to read the letter, July 5th, 1926, from London Loan and Savings Co., signed by Mr. Geo. G. McCormick, President, to Martin, Currie & Co. (Mr. Walsh reads the letter to the top of page 7 to the words “having a moral obligation to us to adjust certain matters”)—

The Scotchmen over there crossed out “moral” and put “legal.”

(Mr. Walsh continues reading letter to the end of the first paragraph on page 8, ending with the words “according to conditions in 1923 in Toronto.”)

MR. SLAGHT: Was that the original you got from Martin, Currie?

MR. WALSH: Yes.

MR. SLAGHT: Have you attached to it the schedules that were enclosed and referred to in the portion you read? I ask you to attach those.

MR. WALSH: Have you those? A. I do not know of any schedules.

MR. SLAGHT: Please put the letter in as a whole, not parts of it.

30 MR. WALSH: I will put everything in. Perhaps I should put this in, “Referring again to your memorandum *re* amount of large loan on page one”—

HIS LORDSHIP: Is this part of the letter?

MR. WALSH: Yes. —“it is not the policy of this company to make large loans in the future, and during the past year we have attempted to reduce the number. When we have made one it has been under exceptional circumstances, and we will not make a definite statement that there will be no more large loans, but it is our intention to continually cut down on our large investments where possible.”

HIS LORDSHIP: Have you the enclosures annexed to it?

40 A. I think everything is attached.

MR. SINGER: What about the last paragraph, bottom of page 6?

MR. WALSH: I read all of six to his Lordship.

HIS LORDSHIP: These letters can all be referred to in argument. I don’t think it is necessary to read them in full now.

MR. SLAGHT: Will you answer his Lordship’s question and my request as to whether the enclosures are attached to this exhibit; have you the schedules?

A. I have not, unless they are attached to that.

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—continued.

MR. SLAGHT : They have been taken off; I want them put on.

A. There is this draft letter that was with it.

MR. WALSH : Mr. Gray says he never saw any.

A. Here is something; memorandum by Martin, Currie & Co., transac-
tions with Morine.

MR. SLAGHT : I am referring to the valuations that were enclosed with
this letter?

A. I do not know of any myself; if they are not attached I don't know
anything about them.

MR. WALSH : Mr. Slaght wants to know if there were any enclosures with 10
this that were referred to in this letter, Mr. McCormick's original letter; did
they come from Scotland? If so, I want them.

A. I do not know anything about it; the bundle of correspondence was
given to the girl in the office, and she assembled these letters; if it is not
attached to the letter which you have just read, I don't know where it is.

Q. Did it come from Scotland? A. I don't know.

HIS LORDSHIP : Make a search.

MR. WALSH : If it came from Scotland you have no objection?

A. No, none whatever; I will be very glad to produce it.

EXHIBIT NO. 197 : Letter July 5th, 1926, from London Loan and Savings 20
Co. to Martin, Currie & Co.

Q. Have you a draft of the letter? A. Yes, there is the draft.

EXHIBIT NO. 198 : Draft of Exhibit 197.

MR. WALSH : There are certain questions in the examination for dis-
covery; as I understand this was gone over by Brickenden and McCormick—
the draft of that letter, the last Exhibit, was made by Mr. Brickenden, typed
in his office and revised by Mr. Brickenden and Mr. McCormick.

HIS LORDSHIP : Are you making that statement now from the examina-
tion? Is that admitted?

MR. SLAGHT : If he adds the rest of it, and by Mr. Hambly, the manager. 30

MR. WALSH : Because it is referred to in the letter what a wonderful man
he is. Mr. Hambly is referred to in this letter as the present manager of the
company, a man of efficiency and integrity, and with no personal knowledge
of the Durno matter, because he was not there then.

MR. SLAGHT : Supposing you state to the Court the truth about what
the examination disclosed. I suggest to you it discloses that this letter was
gone over by Mr. Hambly before it was sent, which statement you did not
make to the Court.

MR. GRAY : I don't know of any such statement.

HIS LORDSHIP : Is it admitted the letter was revised by Mr. Brickenden 40
and Mr. McCormick, and that Mr. Hambly also saw it before it was sent out?

MR. SLAGHT : Yes.

HIS LORDSHIP : That is a draft letter of Exhibit 197.

MR. SLAGHT : And was read to the Board.

HIS LORDSHIP : Is that stated in the examination?

MR. GRAY : Yes.

A. Stated in Mr. Brickenden's examination.

- HIS LORDSHIP : But they are not bound to put that part in.
 MR. WALSH : Show his Lordship that Scotch reply.
 A. (Produces.)
 MR. WALSH : Letter from Martin, Currie & Co. to George G. McCormick,
 dated October 12th, 1926.
 HIS LORDSHIP : Was it replied to?
 MR. WALSH : Yes, my Lord.
 HIS LORDSHIP : Don't read it all; read the important parts.
 MR. WALSH : Letter Martin, Currie & Co. to George G. McCormick,
 10 dated 12th October, 1926. (Reads the first and the last paragraphs).
 EXHIBIT NO. 199 : Letter from Martin, Currie & Co. to George G.
 McCormick, President, London Loan and Savings Co., dated Oct.
 12th, 1926.
 MR. WALSH : Then memorandum by Martin, Currie & Co., Edinburgh :
 "1. Transactions with Morine"——
 HIS LORDSHIP : I am not going to allow that to be read.
 MR. WALSH : There is the reply to this.
 HIS LORDSHIP : It does not matter; memorandums they make on a
 letter——
 20 MR. WALSH : It is a memorandum they sent with that letter to the
 London Loan demanding explanation.
 HIS LORDSHIP : That is a different thing.
 MR. WALSH : (Reads from the memorandum) :
 "Statement by Mr. McCormick regarding the release of Morine's covenant
 in connection with the loans over the Buckingham Mansions property is not
 convincing, etc." (Reads further.)
 ——Memorandum just referred to by Martin, Currie & Co. attached to
 and made part of Exhibit 199.
 MR. WALSH : Then the reply.
 30 HIS LORDSHIP : Whom is it by?
 A. By Mr. McCormick.
 MR. WALSH : It is letter of April 14th, 1927, to Martin, Currie & Co.,
 signed by George G. McCormick, President. (Reads.)
 EXHIBIT NO. 200 : Letter April 14th, 1927, from George G. McCormick,
 President, London Loan and Savings Co., to Martin, Currie & Co.
 Then letter 2nd September, 1927, Martin, Currie & Co. to J. H. Hambly,
 the Managing Director, whom Mr. McCormick in the last letter asked them
 to address their future letters to.
 40 EXHIBIT NO. 201 : Letter September 2nd, 1927, from Martin, Currie
 & Co. to J. H. Hambly, Managing Director, London Loan and
 Savings Co.
 MR. WALSH : Letter September 28th, 1927, from London Loan and
 Savings Co., J. H. Hambly, Manager, to Martin, Currie & Co.——
 HIS LORDSHIP : I have ruled that unless it was shown to McCormick
 and approved by him or Brickenden, it cannot go in.
 MR. WALSH : All right, your Lordship; there are three letters to wind
 up that Martin, Currie correspondence that I will call Mr. Hambly on. Mr.

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Braden has referred to the Lonsdale valuation of that property at the time that these mortgages were put on in 1923; was there any other valuation than Mr. Morine's own valuation of this property?

A. None that I have been able to find.

HIS LORDSHIP: None in the records of the company?

A. None in the records of the company.

MR. WALSH: There is also referred a valuation of Mr. Lonsdale for \$310,000.; whom was it addressed to?

A. Addressed to Mr. Morine.

HIS LORDSHIP: Has that been put in?

MR. WALSH: No, my Lord.

HIS LORDSHIP: If it is in writing that is the only way to give the evidence.

MR. SLAGHT: It is your own production No. 202? A. It is here.

MR. WALSH: The valuation, your Lordship, is December 1st, 1924.

HIS LORDSHIP: Are you putting that in?

MR. WALSH: I don't think it is perhaps material; I will put in in when I cross-examine him.

HIS LORDSHIP: It is not a valuation that was made at the time the money was advanced.

MR. WALSH: You say that was addressed to Mr. Morine? A. Yes. 20

Q. Have you any others on other properties from Mr. Lonsdale?

A. Yes; I have six or eight all the same way.

Q. Who are they addressed to? A. To Mr. Morine.

Q. Were these loans all paid? A. They are all bad loans.

MR. SLAGHT: That is not proper evidence.

HIS LORDSHIP: What have the other loans got to do with this? No, that is not proper.

MR. SLAGHT: There are eight more cases to be tried if this is going in.

HIS LORDSHIP: It is not going to be tried; that is not evidence here.

MR. WALSH: I was not trying to try eight cases; I was only trying to 30 try this one.

HIS LORDSHIP: Why refer to the other loans? I am not going into those.

MR. WALSH: The reason why was this: Mr. Slaght asked Mr. MacLennan if there was a valuation by Mr. Lonsdale for \$310,000.; I thought I owed a duty to the Court to tell just about that.

HIS LORDSHIP: So far Mr. Lonsdale's valuations are not in evidence here, whether they were good, bad or indifferent; it may be that somebody got a valuation from him; it might be some evidence of good faith if they relied on it.

MR. WALSH: But the ones were all to Mr. Morine? A. Yes. 40

HIS LORDSHIP: No; I must ask you to observe my ruling.

MR. WALSH: I am sorry; I withdraw that.

MR. SINGER: This might be a proper time to put in three valuations that are in their possession.

HIS LORDSHIP: Mr. Walsh is conducting his case; you can put it in in cross-examination.

MR. SLAGHT: You abandoned and passed the Lonsdale valuation and did not put it in.

HIS LORDSHIP: It is quite proper, because the valuation was not till December, 1924, and for this purpose it is not evidence, at least for the purpose of showing a valuation at the time the loan was put on.

MR. SLAGHT: My friend is not putting it in.

MR. WALSH: I want to respect your ruling; I am through on that.

Q. Mr. Braden, will you tell his Lordship if there was any record or anything in the books of the London Loan and Savings Co. or any documents to show, any legal documents or anything else, to show from whom the Consolidated Trusts Co. held that property?

A. Nothing that I have been able to find.

Q. You told his Lordship yesterday there was an assignment taken of the Huron and Erie first mortgage on the property? A. Yes.

Q. And then you also referred to a discharge—

HIS LORDSHIP: Do I correctly remember that that assignment was put in?

MR. WALSH: Yes, your Lordship.

Q. Then you told his Lordship about a discharge of the second mortgage?

A. Yes.

Q. Was there any change in the London Loan and Savings Co., and if so, what? A. In what?

Q. In the corporation of London Loan and Savings Company, what happened?

HIS LORDSHIP: Is it necessary for you to show that as part of your case?

MR. WALSH: All right; I will leave that to other hands.

HIS LORDSHIP: As far as appears yet, they are still in existence.

MR. WALSH: Mr. Slaght stated that there was no possible loss.

HIS LORDSHIP: Mr. Slaght was not giving evidence.

MR. WALSH: He just reminded me of it. Will you tell his Lordship, as the Vice-President of the Plaintiff company, is there any reality in their loss?

A. Oh, yes, quite apparent, according to the opinions we have had, that there will be a very heavy loss.

Q. Can you give his Lordship any indication?

HIS LORDSHIP: I suppose in the first instance you have lost the benefit of Morine's covenant? A. Yes, my Lord.

Q. What other loss—owing to the present condition of the real estate market?

A. We would not get as much for the property now as we would in 1925.

MR. WALSH: When the mortgage became due, if the covenant had been insisted upon then, can you give his Lordship any indication in figures what the loss is?

A. We consider the loss will be in the neighbourhood of \$150,000.

HIS LORDSHIP: That is owing to the insufficient security?

A. Insufficient security.

Q. Estimated loss, \$150,000.? A. Yes, my Lord.

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MR. WALSH : I do not want to be asking questions that may be for my opponents, but may I just ask about Consolidated Trusts ?

HIS LORDSHIP : Very well; go on.

MR. WALSH : At the time that there was a change in the London Loan and Savings Co., was the Consolidated Trusts then in existence ? A. Yes.

Q. Will you tell his Lordship at the time you took over the control of the London Loan and Savings Co., who was the President of Consolidated Trusts ? A. Mr. McCormick; they are two separate corporations.

Q. Two separate distinct legal entities ?

A. Yes. The same President in each case, and same solicitor. 10

Q. Had they the same manager ?

A. Different managers and different Board of Directors to some extent.

Q. In the same office ?

A. No; they each had their own quarters; they were in the same building, but otherwise they were not connected.

Q. Had they separate and distinct office premises ? A. Yes.

Q. Were all the directors of Consolidated Trusts all the directors of the London Loan, and vice versa ? A. No.

Q. Are they separate boards ?

A. Yes; there were five of the directors of the London Loan on the Con- 20
solidated Trusts Board.

Q. How many directors were there on Consolidated Trusts ?

A. I think either eleven or twelve.

Q. Do you know who the general solicitors of each company were ?

A. G. A. P. Brickenden & Company.

Q. When you took over the control of the London Loan and Savings Co., did you have any access to the records of Consolidated Trusts ?

A. No, not at that time.

Q. Did you at a later date ? A. We did subsequently, yes.

Q. Were you able to find any records of any kind with reference to whom 30
the Consolidated Trusts Company held these loans ?

A. No; I examined the Minute Book and records of Consolidated Trusts Company and could find no record; in fact, there is not any notation in any of the minutes of the company of the matter ever having been before the directors—of Buckingham Apartments in any manner or form—that I could find.

Q. Nothing in there ? A. No.

Q. When I read over that correspondence of Martin, Currie & Co. it referred to liens on the property ? A. Yes.

HIS LORDSHIP : Why trouble with that now ? 40

MR. WALSH : All right, your Lordship.

Q. Mr. Braden, do you know anything about the government returns, the annual returns to the government ?

A. Yes, I have them here and the correspondence we found in the records of the London Loan and Savings Co.

HIS LORDSHIP : You have the duplicate returns ? A. Yes.

MR. WALSH : Will you tell his Lordship how this property was shown

by this mortgage on the Buckingham Apartments, or whatever it was shown in the returns?

MR. SINGER: The returns speak for themselves.

A: It was shown under the heading "property."

HIS LORDSHIP: He has to indicate it in the returns.

MR. WALSH: Look at your returns.

A: I don't know where 1924 is; I don't think we have got it. The year 1925, the returns for 1925, Buckingham Apartments, is shown under—

HIS LORDSHIP: Do you have to give each individual mortgage held
10 by the company? A: Yes, my Lord; overdue mortgages shown that way.

HIS LORDSHIP: Mortgage of a certain amount, I suppose.

MR. WALSH: The large ones, I understand it.

A: Loans secured by mortgage, R. S. Durno; it is shown under the schedule "Loans secured by mortgages on land."

HIS LORDSHIP: What does it show?

A: D. 42; 392 Bay Street, Toronto, Ontario, parts of lots 2 and 3, plan 512; parts of lot 16, plan 547; No. 1622 to 1631 Queen Street West, \$77,000.

EXHIBIT NO. 202: Annual returns to Government for 1925.

WITNESS: Do you just want the statement for the one year?

20 MR. WALSH: No; what is the next year?

A: 1926; it is shown under the heading of "Real Estate owned by the Corporation."

HIS LORDSHIP: And is this property under that? A: Yes.

Q: As owned by the corporation?

A: Yes; 1622-31 Queen Street West, Toronto. Date acquired, June, 1925; amount encumbrance, \$135,000.; actual cost, \$77,000.—there are a great many other properties the same way.

Q: There is page after page there, is there not?

A: Yes; there are two pages of properties all described the same way.

30 Q: Looking over those—?

A: Evidently any property that was put up for sale is listed the same way.

MR. SLAGHT: You gave the date acquired?

A: Real estate which was put up under power of sale in mortgage and not sold appears in this schedule.

MR. WALSH: How many places are there to put it?

A: That is the only place it could be put.

Q: Where is the other? A: It could be put under mortgages.

Q: Current mortgages? A: Yes.

HIS LORDSHIP: Is it under current mortgages?

40 A: No, my Lord; it is under real estate owned by the corporation.

Q: Tell his Lordship why it cannot be put under current mortgages.

MR. SINGER: Surely, my learned friend can only draw his conclusions; he was not with the company in 1925 and 1926.

HIS LORDSHIP: That is a matter of conclusion to be drawn on argument.

MR. WALSH: Are there any of the other of the properties named in the list for 1926 as property owned by the corporation, do you know them?

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A. Yes; I know them all, and there are none of them actually owned by the company.

MR. SINGER: That is another conclusion.

MR. WALSH: No.

A. They are properties that are held for sale.

HIS LORDSHIP: This is not a real estate company; that is the only way it would have properties.

MR. WALSH: What return is that?

A. This is the return for the year 1926.

Q. Prepared when? A. In 1927, sworn to in 1927. 10

HIS LORDSHIP: I suppose up to the 31st December, 1926?

A. Yes. 25th February, 1927, is when the affidavits were sworn to; Mr. Hambly swore to them before Mr. Brickenden, and Mr. McCormick swore to them also.

Q. Was Mr. Hambly with the company then?

A. He was acting manager; he is described as manager. I believe he was manager then.

Q. Sworn to by him and the President?

A. Yes, and the President also swears on the same date, and both of those parties swore the affidavits before Mr. Brickenden. 20

EXHIBIT No. 203: Annual returns to government for 1926.

MR. WALSH: And 1927 and from then on—?

A. They are all about the same as far as this property is concerned.

Q. And as the other real estate of the company?

A. It is all under the same heading.

Q. When the interest was in arrear?

A. Yes; in cases where the property was put up for sale and not sold and the company went into possession of it and collected the rents; we have a lot of it on hand yet.

Q. Is there any minute of any kind in the books of the London Loan and Savings Co. authorizing any discharge—

HIS LORDSHIP: That question was asked before.

A. Yes; I can say no, there was not.

MR. WALSH: Any discharge of any covenant or any authorization by the Board of Directors of releasing a covenant on the part of Mr. Morine?

HIS LORDSHIP: I think I have a clear recollection that he said yes there was none? A. Yes, that is correct.

MR. WALSH: Have you any assignments from the Huron and Erie Mortgage Corporation? A. Yes.

HIS LORDSHIP: There was a general assignment to the Huron and Erie, and then re-assignment, is that right?

MR. WALSH: Yes; there was a general amalgamation agreement, and I will either take it up or leave it to my opponents, whatever they wish to do.

HIS LORDSHIP: You had better clear it up. Put in the re-assignments.

A. Here they are.

MR. WALSH: I want to put in first the assignment of each mortgage by the Huron and Erie Mortgage Corporation, that is the first mortgage,

the second mortgage and the third mortgage, three specific assignments from the Huron and Erie.

EXHIBIT No. 204: Assignment of mortgage from the Huron and Erie Mortgage Corporation to London Loan Assets Limited, dated June 12, 1930, of the \$150,000. mortgage.

EXHIBIT No. 205: Assignment of mortgage, Huron and Erie Mortgage Corporation to London Loan Assets Limited, of the \$20,000. mortgage.

10 EXHIBIT No. 206: Assignment dated June 12th, 1930, from the Huron and Erie Mortgage Corporation to the London Loan Assets of the Durno mortgage, \$77,000.

MR. WALSH: Then general assignment, dated 12th June, 1930, from Huron and Erie Mortgage Corporation to London Loan Assets with respect to the mortgages, all rights of action, etc.

EXHIBIT No. 207: General assignment, dated June 12th, 1930, from Huron and Erie Mortgage Corporation to London Loan Assets, of rights of action.

Q. Have you the so-called amalgamation agreement?

A. I have a printed copy of it that was used; I don't know that I have 20 the original here, but that is an exact printed copy.

HIS LORDSHIP: Was not that approved by the Legislature?

A. Yes, my Lord; the agreement was approved by the Legislature.

Q. It appears in the Statutes, I understand?

A. Yes; it was approved by the Lieutenant-Governor in Council.

MR. WALSH: Mr. Betts has the original agreement; could we put in a printed copy?

HIS LORDSHIP: Yes, it would be better.

MR. SINGER: I think it is just an order of the Lieutenant-Governor.

HIS LORDSHIP: Was not there a private Act? A. I don't think so.

30 HIS LORDSHIP: Is there any question about the authenticity of the printed copy?

MR. SLAGHT: No. I want the schedules produced in cross-examination. My friend has the schedules.

EXHIBIT No. 208: Amalgamation agreement, printed copy.

MR. WALSH: Will you read out the material parts of that agreement?

HIS LORDSHIP: No, you read them out yourself.

MR. WALSH: The agreement is dated the 3rd July, 1929; the London Loan and Savings Co. of Canada of the first part and the Huron and Erie Mortgage Corporation of the second part, and the London Loan Assets 40 Limited of the third part. (Reads first and second paragraphs of Part One of the agreement)——

HIS LORDSHIP: Why emphasize this? Is not the London Loan and Savings Co. a party to these proceedings?

MR. WALSH: Yes.

HIS LORDSHIP: If they have not assigned away, the right of action is still with them, and if it was assigned away it can re-assign back.

MR. WALSH: Your Lordship has it.

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MR. SLAGHT : Not re-assign back to the London Loan.

HIS LORDSHIP : But to the other—they are party plaintiffs also.

MR. WALSH : This has all been up in the Biggs vs. London Loan. Para-
graph 8, they are pressing me to read it : "All corporate powers of the Loan
Company necessary or useful for the exercise of rights of action mentioned in
paragraph number 4 hereof, and for the administration and distribution of
the money and other consideration to be received for the sale of its assets
under the terms of this agreement and for the effective carrying out of the
intention of this agreement shall persist unimpaired insofar as is necessary
to give full effect to this agreement."

HIS LORDSHIP : You have the document in now and you can refer to
it on the argument. 10

A. The charter of the Assets Company, has it gone in ?

MR. WALSH : Have you got it ? A. I don't know; is it there ?

MR. SLAGHT : The schedules should be attached to Exhibit 208.

HIS LORDSHIP : It will be part of the same Exhibit.

A. That is the schedule.

EXHIBIT NO. 208-A : Schedules.

MR. WALSH : There was the original report made by Riddell, Stead,
Graham and Hutchison referred to in the Martin, Currie correspondence; 20
your Lordship will remember they insisted upon that being made by their
auditors.

HIS LORDSHIP : How is that evidence ?

MR. WALSH : Mr. McCormick's letter refers to that, and he said it was
an honest report, your Lordship.

HIS LORDSHIP : If he said that, why of course that sort of adopts it as
his own child; it should be put in in connection with the letter. What letter
is that ?

MR. SLAGHT : He did not agree with the report that he thought it had
been honestly made. 30

HIS LORDSHIP : We will see the letter and there will be no controversy.
What is the date of the letter ?

MR. WALSH : The Exhibit is 197; it consists of a letter of July 5th, 1926,
and it is referred to there. I will read the reference : "I was very glad to
receive your letter of May 17th, and it indeed pleased me to have the audit
taken by Messrs. Riddell & Company, and although they did not convey
to you the exact situation as I had hoped they would, nevertheless they acted
fairly and honestly, and I am satisfied."

MR. SLAGHT : He says they did not convey the exact situation.

HIS LORDSHIP : I suppose they did not say enough, but he was satisfied 40
with what they did say. I cannot see how it is evidence at all except to the
extent that he either approved or disapproved of it. It will be marked as
Exhibit 197-a. The mere fact they make a report does not vouch for its
accuracy at all.

EXHIBIT NO. 197-a : Report of Riddell, Stead, Graham and Hutchison,
dated 18th March, 1926, on investigation of accounts of London
Loan and Savings Co. of Canada.

MR. SLAGHT: My view is, it ought not to be marked, as it is not evidence.

HIS LORDSHIP: Well, it is some evidence, but I think of very, very little value.

MR. WALSH: There are some minutes I want to refer to, a minute of Tuesday, October 6th, 1925?

A. Page 638 (of Exhibit 13). "The Board met. All present. Buckingham Apartments. Letter read from Mr. Clewes asking for instructions *re* deed and rents. Laid over."

HIS LORDSHIP: Any later reference to that?

10 MR. WALSH: I do not see any. Then October 28th, 1928?

A. Page 587 of Exhibit 13: "Board met. All present. *Re* large loans in Toronto. President having inspected them reports they are quite satisfactory and good for the company's claim."

Q. Whom is that signed by? A. By Mr. McCormick and Mr. Kent.

Q. The question came up yesterday in connection with the by-laws; do you remember the signing of the by-laws?

HIS LORDSHIP: Yes; do you want to put in any by-laws? I stated then my view was in the absence of any by-law authorizing any other officer, the President would be the only one who could sign, but if there is another
20 authorizing by-law it should be put in.

MR. WALSH: I am absolutely agreeing with your ruling, and pardon me if I put them in.

HIS LORDSHIP: Certainly; put them in.

MR. WALSH: I thoroughly agree with what your Lordship says. There is the old Minute Book of the London Loan and Savings, and there is a minute, minutes of first general meeting of the London Loan and Savings Co., held on May 5th. "Moved by Mr. Elliott, seconded——"

HIS LORDSHIP: Before you go into reading it, is that the By-law book?

MR. WALSH: This is the minutes of the first meeting and confirm the
30 rules as prepared by the committee be adopted——

HIS LORDSHIP: Are the rules there?

MR. WALSH: They were not copied in full.

HIS LORDSHIP: Of what value is it?

MR. WALSH: The printed copy of the rules refer it to this minute.

HIS LORDSHIP: You could have proved all this by putting in this copy certified by the proper officers, if anybody will undertake to certify to it.

MR. WALSH: I will undertake to file that certified copy.

HIS LORDSHIP: I think, if I mistake not, in cases of Loan companies, they are required to file their by-laws with the Department, are they not?

40 MR. SINGER: They are required, and they are not effective until they are filed with the Department.

MR. WALSH: That being the case, we will have them from Toronto.

HIS LORDSHIP: Was that always the law?

MR. SINGER: That was the present law.

HIS LORDSHIP: When was this company incorporated? A. 1877.

MR. SINGER: I don't know what the position was at that time.

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HIS LORDSHIP: In those days the department did not exercise much supervision over joint stock companies; they had no inspector, had no registration of them; I doubt if they even required them to make returns. How was this company incorporated? Just by Letters Patent or by special Act?

A. I think it was by special Act; I think we looked into it.

HIS LORDSHIP: During the adjournment till tomorrow, some person might look into it and see.

MR. WALSH: Mr. Braden, have you any correspondence by the company with the Registrar?

A. I now produce a number of letters and copy of letters that were in 10 the file of the company.

HIS LORDSHIP: How are those evidence?

MR. WALSH: Written, your Lordship, by the department to the company, and by the company back to the department.

HIS LORDSHIP: What difference does that make; what value have they as evidence? Every letter a company writes to the department and the department's reply, is that evidence?

MR. WALSH: The only one, I suppose, having regard to your ruling, will be the ones of Mr. McCormick?

HIS LORDSHIP: Yes; but does it bear on this matter at all? 20

MR. WALSH: As a matter of fact, the only thing I was putting them in, that these letters were bearing out a remark made by your Lordship that it should have been made, the duty of a director——

HIS LORDSHIP: That is a matter of law, not a matter of expression of opinion by somebody in the department.

MR. WALSH: All right, your Lordship.

Q. Mr. Braden, is there anything in the correspondence to show why?

MR. SLAGHT: The correspondence not to go in, and we are having the question as to what it says——

MR. WALSH: All right; I will get it in another way. 30

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CROSS-EXAMINED by Mr. Slaght:

Q. I want to deal with a few matters of titles first, the agreement between the London Loan and Savings Company, the Huron and Erie, and London Loan Assets Limited, 3rd July, is Exhibit 208; you recall that agreement?

A. Yes.

Q. It discloses that there was to be paid by Huron and Erie to London Loan \$720,000. in money? A. Yes.

Q. May I perhaps shorten it by asking you whether the books disclose, perhaps we had better have you turn to it, do the books of the London Loan and Savings Company disclose that that amount was paid to them by the Huron and Erie? A. Yes. 40

Q. You have investigated that for me before? A. Yes.

Q. If my friend wants me to go to the books for this, I will; I suggest to you that the London Loan and Savings Company, of which you are an officer, disbursed the \$722,000. in money as it was contemplated by the agreement, Exhibit 208, that they disbursed it? A. Yes.

Q. Namely, they distributed it to the shareholders, the individual shareholders, by paying them \$35. each per share? A. Yes.

Q. That is correct? A. Yes.

Q. And that is all history and has been carried out? A. Yes.

Q. Under Exhibit 208 the London Loan and Savings Co. also received from the Huron and Erie Co. 20,000 shares of stock of London Loan Assets Limited, did they not? A. Yes.

Q. I suggest to you that the London Loan and Savings Company distributed the entire 20,000 shares of stock amongst their individual shareholders also? A. That is correct.

Q. So that the London Loan and Savings Co. now are not themselves holders of any stock of London Loan Assets Limited? A. No.

Q. Having distributed it all amongst their shareholders? A. Yes.

HIS LORDSHIP: Has there been any surrender of shares in the London Loan shares? A. Yes.

Q. They have all been surrendered? A. Yes; there were three trustees appointed under an agreement—myself, Lieut.-Col. Coles and Mr. C. R. Hunt.

HIS LORDSHIP: You mean they were transferred to the trustees?

A. They were surrendered to the three trustees.

Q. Surrendered or transferred? A. Transferred.

Q. I suppose the agreement sets that out? A. Yes.

MR. SLAGHT: Sets out what was to be done? A. Yes.

Q. All the shareholders of the London Loan and Savings Co. have turned in to yourself and two other trustees, who are they?

A. William G. Coles, and C. R. Hunt.

Q. To yourself, Mr. Coles and Mr. Hunt, their shares of London Loan and Savings Co.? A. Yes.

HIS LORDSHIP: That is all provided for in that agreement? A. Yes.

MR. SLAGHT: In turning in those shares to you, you have the custody of the certificates? A. I believe so.

Q. Each shareholder endorsed a certificate on the back, signed it before turning it in? A. Yes.

Q. What entry, if any, has been made in the books of the London Loan and Savings Company stock register with reference to these shares so turned in? A. I cannot say; I think there is a record of it.

Q. Where is the stock register? A. I have not got it here.

Q. Are you willing and able to produce it tomorrow? A. I think so.

Q. To whom were these certificates transferred that were turned in by all the shareholders of London Loan?

A. My recollection is that those certificates were brought in and handed to the secretary of London Loan Assets Limited.

Q. What has he done with them—you did use the phrase cancelled two or three times, or some phrase other than transferred—what was your phrase—surrendered, I think?

A. I may have used the word surrendered; what I meant was handed over.

Q. Will you produce for us in the morning those stock certificates—

HIS LORDSHIP: Are you the secretary?

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A. No, my Lord, I am the Vice-President of the Company.

Q. Who is the secretary? A. Mrs. Young.

MR. SLAGHT: Will you produce for us then the stock certificates, or certain of them that are typical? A. Yes.

Q. So that we may have certain of them before the Court? A. Yes.

Q. I ask you to select one or two that are typical of what has been done in the main?

A. Yes; no one got paid \$35. a share until they transferred their certificates.

HIS LORDSHIP: Did they all?

A. They all have—there were one or two outstanding for quite a long while; recently we got them all in. 10

MR. SLAGHT: They received, upon transferring their certificates in the way you have indicated, their \$35. in money and one equivalent share for each share they turned over to you in the London Loan Assets Limited?

A. That is correct.

Q. That has been all consummated? A. Yes.

Q. Just for a moment, with regard to the four assignments which are in this trial, Exhibits 204, 205, 206 and 207, those are assignments previously described by you from the Huron and Erie Co. to the London Loan Assets Limited; you recall those? A. Yes. 20

Q. What was the consideration from the London Loan Assets Limited to the Huron and Erie for those four assignments? A. \$50,000.

Q. Has that \$50,000. been paid? A. Yes.

Q. That consideration has been entirely paid to the Huron and Erie Co. by the London Loan Assets Limited? A. Yes.

Q. Amongst those assignments, we find one from Huron and Erie of choses in action? A. Yes.

Q. You have there perhaps the vouchers which cover the payment to Huron and Erie for that? 30

A. Yes, I have the vouchers for it, cancelled cheques.

Q. I will put those two vouchers in, if I may? A. Yes.

EXHIBIT No. 209: Two cheques of London Loan Assets Limited to Huron and Erie Mortgage Corporation, one for \$30,616.48, dated July 2nd, 1930, and the other for \$15,000., dated June 30th, 1930, together with receipt of June 30th, 1930, from Huron and Erie Mortgage Corporation for \$15,000.

MR. SLAGHT: They don't quite make the amount of \$50,000.?

A. There were some Huron and Erie debentures.

Q. Which make up the difference between these two vouchers and the \$50,000.? A. Yes. 40

Q. May I ask you this, as an officer in London Loan Assets Limited, whether London Loan Assets Limited still are the owners of whatever rights or properties or mortgages they receive by the four documents, Exhibits 204, 205, 206, 207, at that time?

A. I would say they are the beneficial owners or trustees of these documents, of these securities.

HIS LORDSHIP: The documents speak for themselves. A. Yes.

MR. SLAGHT: Have they re-transferred or purported to re-assign, re-transfer, sell or dispose of any of the rights taken under those four exhibits?

Q. No.

Q. You have told me they paid \$50,000. for them? A. Yes.

Q. And for all existing rights that they took under the assignment in those four exhibits, \$50,000. is the complete outlay that London Loan Assets Limited have ever made for them? A. That is correct.

10 Q. So that as far as London Loan Assets Limited are concerned, if they are able to realize \$50,000. for the securities they purchased in that way, you would not be the losers of any money—

MR. WALSH: That is a legal question, because they are the same shareholders as London Loan.

HIS LORDSHIP: That is a conclusion; that is argument. You have the facts brought out.

MR. SLAGHT: If there is any other outlay or disbursement which London Loan Assets Limited have made with reference to their becoming the owners of the assets covered by the four Exhibits, give it to me now. I suggest to you there is none but the \$50,000.? A. I think you are correct.

20 Q. And interest, of course, from the time they paid the \$50,000. which is covered by Exhibit 209? A. Yes.

Q. Let me ask you with regard to the Consolidated Trusts Corporation who, by the abstract filed, appear to have acquired a deed of the Buckingham Apartments from Durno; you recall that we saw that? A. Yes.

Q. And the deed is before the Court? A. Yes.

Q. The Consolidated Trusts Company made a contract with the Canada Trust Company on the 6th November, 1929? A. I understand so.

HIS LORDSHIP: Was that before you were in the company?

A. No, that was after.

30 MR. SLAGHT: You perhaps have a copy of it, but the counsel for the Consolidated Trusts Co. has been good enough at my request to bring here the original which bears execution, and also has furnished me with a certified copy which I suggest to my friend that I put in instead of taking away from them the original.

HIS LORDSHIP: There should not be any objection to that.

MR. WALSH: I have no objection, my Lord.

EXHIBIT NO. 210: Certified copy of agreement between Consolidated Trusts Corporation and Canada Trust Co.

40 MR. SLAGHT: It bears date the 6th November, 1929, and you will observe on the back of it is the certificate of R. Leighton Foster, Registrar of Loan Corporations, dated 31st January, 1930, whereby he approved of it.

A. Yes.

Q. The document showing his approval was essential before it became effective in certain respects. Then Exhibit 210, the original of that, is registered in the Registry offices both in Toronto and London on the 14th February, 1930, as you are aware? A. I am not aware; I presume it is.

HIS LORDSHIP: Do not presume anything.

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MR. SLAGHT: Let me ask you whether, so far as you are aware, the Consolidated Trusts Corporation have ever acquired back in any way from the Canada Trust the assets they sold and transferred to them under Exhibit 210? A. I know nothing about it at all.

MR. SLAGHT: I would like to give your Lordship, if I may, not the whole agreement, but part of the clause—

HIS LORDSHIP: Why ask this witness anything about it unless it is a question of fact.

MR. SLAGHT: I think your Lordship is in the dark as to what this document is.

HIS LORDSHIP: It is not necessary now; you will have the privilege in argument in raising any point that occurs to you under it. The main thing is asking witnesses as to opinion on certain parts of a document.

MR. SLAGHT: I do not propose to err in that way.

HIS LORDSHIP: I am not preventing you from reading, but I suggest it is not necessary. You will argue that certain results flow or follow from it.

MR. SLAGHT: It is so important, and my friend has given you the meat of nearly all his documents; if you will bear with me—

HIS LORDSHIP: Very well.

MR. SLAGHT: The Consolidated Trusts.

HIS LORDSHIP: I suppose an objection you are going to take, that the action is not properly constituted?

MR. SLAGHT: There is no cause of action in either of these Plaintiffs; but on the 6th November when they appear as the registered owner of these Buckingham Apartments in trust, the effect of this document is,

“That the vendor agrees to sell and sells to the purchaser, and the
“purchaser agrees to purchase and purchases from the vendor, the
“whole of the assets, business, rights, powers and property of the
“vendor (including the goodwill of the vendor and the exclusive
“right to use the name of the vendor in connection with the business
“so purchased so that the purchaser may represent himself as carrying
“on such business in succession to the vendor) to the end that all
“trusts of every kind and description including incomplete or inchoate
“trusts, and every duty assumed by or binding upon the vendor
“shall be vested in, and bind and be enforceable against the purchaser
“as fully and effectively as if it had been originally named as the
“fiduciary, and that whenever in any instrument any estate, money
“or other property or any interest possibility or right is intended
“at the time or times of the publishing, making or signing of the
“instrument to be thereafter vested in, or administered or managed
“by, or put in the charge of the vendor as the fiduciary, the name
“of the purchaser shall be deemed to be substituted for the name of
“the vendor, and such instrument shall vest the subject matter
“therein described in the purchaser according to the tenor of, and
“at the time indicated or intended by the instrument, and the
“purchaser shall be deemed to stand in the place and stead of the
“vendor, and that where the name of the vendor appears as executor,

“trustee, guardian, curator”—and so on. There are other matters, but that is all I wish to call to the attention of the Court now.

Q. Will you turn to the Plaintiff's productions numbers 202, 203 and 204—you produce a document purporting to be signed by Mr. Lonsdale; where does this come from as far as you are concerned, the files of the London Loan? A. Yes.

Q. It is a report dated December 1st, 1924?

A. I believe so. Let me see the document.

Q. Being a valuation of Buckingham Apartments.

10 HIS LORDSHIP: That is the one that was referred to before and I would not let in then? A. Yes, December 1st, 1924.

MR. SLAGHT: I put this in.

EXHIBIT No. 211: Valuation of Mr. Lonsdale, dated Dec. 1st, 1924.

Q. You produce at my request a document dated Oct. 29th, 1923, signed by S. B. Gorewell; this you produce from the files of the Plaintiff, the London Loan and Savings Co., connected with Buckingham Apartments security?

A. Yes.

Q. Who was S. B. Gorewell? A. He was a valuator the London Loan and Savings Co. employed from time to time.

20 Q. I understand he is still alive but extremely ill?

A. I don't know as he is ill; I see him around occasionally; he was employed up to the time the change took place.

Q. A man residing here in London? A. Yes.

EXHIBIT No. 212: Valuation of Gorewell.

HIS LORDSHIP: That is not proof of the valuation, just that the document was in the possession of the company.

MR. SLAGHT: Does your investigation show whether Gorewell was a salaried valuator in the employ of the London Loan at that time in 1923?

30 A. I did not look back to see whether he was paid salary in 1923 or not; he had been paid a small salary, I think, up to 1929.

HIS LORDSHIP: Would he be paid by fees?

A. Not that I know of; I am not sure; he may have been paid.

MR. WALSH: My learned friend is not putting in those valuations to prove that, because I would ask that Mr. Lonsdale be called as a witness.

HIS LORDSHIP: Certainly; they won't be used as evidence of their truth at all; you need not be afraid of that.

MR. SLAGHT: You produce another document signed Wright's Limited, C. F. Wright, with a valuation on November 5th, 1924, of \$270,600.; does that come from the same files of the company? A. Yes.

40 MR. WALSH: The same objection.

HIS LORDSHIP: It is no proof at all of the value.

MR. SLAGHT: Because I do not argue that now, I do not want to be taken as assenting it is no evidence at all.

HIS LORDSHIP: It is only evidence that they had at that time in their possession such a report.

MR. SLAGHT: And in an action of this kind it goes to that aspect of it.

EXHIBIT No. 213: Valuation of Wright's Ltd., signed C. F. Wright.

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Q. While we are on the matter of valuations, do I recall that you made a statement some time this afternoon that somebody would lose \$125,000. by insufficient security? A. I think I said \$150,000.

Q. Whom did you say would lose that?

A. I said the London Loan and Savings Co. and London Loan Assets Limited.

HIS LORDSHIP: Whoever is entitled to it?

A. Yes, whoever is entitled to it will lose it.

MR. SLAGHT: Is that what you said before? A. Yes.

Q. Are you suggesting who would lose it? 10

A. I am suggesting that the shareholders of the London Loan and Savings Company would lose it.

Q. That is these shareholders whose shares are in the plight you have already described?

A. Yes, they are now shareholders in London Assets Limited.

Q. Having made the statement that some one will lose it, how will they lose it? A. By the security not being sufficient.

Q. That is these shareholders will lose it?

A. Yes, the London Loan and Savings Co. is owed a much larger amount than the property is worth. 20

Q. Owed by whom?

A. I would say by Mr. Morine partly, and to speak accurately I suppose I should say the property owes London Loan so much.

Q. Is that the best you can tell as to who will lose it?

HIS LORDSHIP: That is for me to determine finally, but the question is not objectionable, although it does not matter what the witness says; it is what the result is.

MR. SLAGHT: I am taking a risk perhaps in asking him about it.

HIS LORDSHIP: I have to decide.

MR. SLAGHT: You said the shareholders of London Loan will lose it because Mr. Morine owes it to them; on what document or security do you suggest Mr. Morine owes the shareholders of the London Loan and Savings Company anything? 30

A. He was loaned so much money in 1923 and he has never paid it, and the claim has grown on the mortgage since 1923.

Q. I thought on the assignment the London Loan Assets Limited owned this claim?

A. They did buy them—they did not buy them, they simply paid off the claim that the Huron and Erie Mortgage Corporation had against those assets; they did not buy them. I said they paid out \$50,000. to Huron and Erie Mortgage Corporation. 40

Q. The agreement says they purchased these assets for that sum; do you want to alter that in any way? A. That who purchased?

Q. The London Loan Assets Limited.

A. There is no agreement relating to these assets between London Loan Assets Limited that I know of.

Q. I thought you handed me some cheques, \$50,000., that London Loan Assets Limited you said paid to Huron and Erie?

HIS LORDSHIP: For these assignments.

A. Yes, that is correct; Huron and Erie only had a partial interest in those mortgages.

MR. SLAGHT: They assigned the mortgages to the London Loan Assets Limited? A. That is correct.

Q. Where do you live? A. Do you want the street number?

Q. No; just the city. A. I live in London.

10 Q. You ventured an assertion that there would be a loss of \$150,000.; are you a real estate expert?

A. I almost have become one since I became connected with the London Loan and Savings Co.

Q. These properties are in the City of Toronto? A. Yes.

Q. Are you a real estate expert with reference to Toronto properties?

A. I think I could almost qualify for that position since the last two or three years, since I became connected with the London Loan and Savings Company; we have nearly \$800,000. of property all owned in Toronto.

HIS LORDSHIP: You qualify as an owner rather than as a valuator.

20 A. I have had occasion to value these properties with competent valuers who know real estate.

Q. You are relying on the judgment of others?

A. Yes, and on my own judgment to some extent.

MR. SLAGHT: Just to see what your own judgment amounts to for a moment, you are a practising lawyer? A. Yes.

Q. Have you ever signed a valuation of Toronto real estate property?

A. I have made reports for my clients not as a valuator, but as a solicitor; I think you would be more liable to get an accurate valuation from a solicitor than you would a great many real estate men.

30 Q. Are you swearing to any report of value, that is, as a valuator, that you have ever signed of any Toronto property?

A. No; I have passed opinions on a number.

Q. That is a lawyer's business, to pass opinions?

A. Yes; I might in some cases get a valuator's opinion, and then go out and look at the property if there was any doubt in my mind about it.

Q. Whereabouts in Toronto is this property?

A. Out on Queen Street, out near Sunnyside.

Q. Do you know anything about any other properties in the vicinity?

40 A. Yes; we have some more properties in that vicinity; we have a duplex house not far from there.

Q. Has it changed hands since you have had to do with it? A. No.

Q. Do you know of any other properties in that portion of Toronto than of this one and the other one your company has an interest in?

A. Yes, we have properties out in High Park Avenue and other places not so far away from the Buckingham.

HIS LORDSHIP: It is entirely residential, High Park Avenue? A. Yes.

MR. SLAGHT: Entirely different area? A. Yes.

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Q. The fact you ventured a dollar opinion about this—let me see if you know of your own knowledge of any property in this vicinity, where any property in this vicinity has changed in the last three years? A. No, I do not.

Q. Or in the last six years?

A. I did not in the first instance give the Court my opinion, I said I had information.

Q. You caused all this cross-examination of mine by tacking on to his Lordship's question to you that you based it on information from others.

A. As well as my own opinion, I did.

Q. You do tell me you have no opinion or rather knowledge of any exchange or transactions in any Toronto property in the vicinity of this ever in your life, have you? A. No. 10

Q. Turn up for me in the Minute Book Exhibit 13, the page where the Durno sale was dealt with by the Board—that would be on or about the 25th June? A. The 23rd June, 1925.

Q. Page 631, I think it is? A. Yes, page 631.

Q. Who were present at the meeting, what directors were present when the Durno sale was approved?

A. Evidently Mr. McCormick, Mr. Baker, Mr. Robinson and Mr. Hunt.

HIS LORDSHIP: How many directors were there? 20

A. Five; Mr. Crowley was evidently acting as manager.

MR. SLAGHT: At that time Mr. Kent was not at that meeting; he was the fifth absent director? A. Yes.

Q. The other four were all there, and Crowley acting manager of the company. What is the next meeting after that?

A. June 30th, 1925; there are two sets of minutes for the 23rd of June, 1925.

Q. What is the next meeting? A. June 30th, 1925.

Q. Who were present at that meeting?

A. Messrs. McCormick, Baker and Hunt. 30

Q. I see the minutes of the last meeting were read and confirmed? A. Yes.

Q. The next meeting after June 30th is— A. July 7th.

Q. Will you look at the meeting of September 22nd, 1925, at page 636, *re* mortgages G. 41 and G. 46, Buckingham Apartments, sale confirmed?

A. Yes.

Q. What directors were present there?

A. All present except Mr. Baker and Mr. Kent; there must have been three directors present.

Q. Then at the meeting of September 29th, 1925, found at page 637, I see the Board met, all present? A. Yes. 40

Q. And I see that the minutes of this meeting are signed by Mr. M. J. Kent as manager, and Mr. McCormick as president? A. Yes.

Q. So that he apparently was back at this meeting? A. Yes.

Q. And the reference to minutes of the previous meeting, minutes of last meeting read and confirmed? A. Yes.

Q. So that on that occasion Mr. Kent signed the minutes of the meeting

which confirmed the previous meeting where the Buckingham Apartment sale was confirmed?

A. Yes. That does not look like Mr. Kent's signature; compare that signature with the next one.

Q. That is a novel suggestion; you are suggesting that that is not Mr. Kent's signature? A. No, I say it does not look like it.

Q. Have you any suggestion he was not at that meeting?

A. No; I am not suggesting anything in that respect except the signatures are different.

10 Q. This minute book has been in the custody of your company for years, has it not? A. Yes.

Q. A director's meeting on Monday, February 12th, 1923, recorded at page 517, who were present at that meeting?

A. All present save Mr. Robinson.

Q. I see Mr. Kent was present there and purports to have signed the record of minutes of that meeting along with Mr. McCormick as president?

A. Yes.

Q. With reference to Buckingham Apartments, what do you find there?

20 A. S. B. Green, lend \$31,000. at 7½%, commission 1%, to H. A. Morine; bonus, \$4,000. H. A. Morine to guarantee.

HIS LORDSHIP: That was in before? A. Yes.

MR. SLAGHT: I come back to it because it was not shown who the directors were who were present at that meeting.

HIS LORDSHIP: In the absence of anything, it would be assumed they were all there.

MR. SLAGHT: Mr. Kent was at that meeting and signed the minutes?

A. I don't know whether he was there or not; he evidently signed the minutes.

30 Q. Would you turn to page 518, the meeting of 19th of February, 1923; they were all present there again except Mr. Robinson? A. Correct.

Q. Mr. Kent and Mr. Baker being both there; and do you find the minutes of the previous meeting were or were not confirmed—read what it says with regard to that.

A. Minutes of last meeting read and confirmed; Mr. Baker signs as Vice-President.

Q. Page 531, meeting of Monday, May 28th, 1923; there were present on that occasion Messrs. McCormick, Baker and Hunt? A. Yes.

40 Q. And with regard to Buckingham Apartments, that is, when the motion was passed to lend \$20,000. on a third mortgage on their apartment house; do you find that? A. Yes.

Q. And that it is subject to a first mortgage of \$150,000. to Huron and Erie, and a second mortgage of \$35,000. to the London Loan and Savings Co., Mr. Morine personally guarantee the loan—do you find that in there?

A. Yes.

Q. Do you find Mr. Kent as manager appears to have signed those minutes? A. Evidently.

Q. His signature appears to be there? A. Yes.

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Q. Along with that of the president, Mr. McCormick. Just before we leave that, there was an Exhibit put in, a report on title—would you let us have two certificates of title, one with regard to \$35,000. and one with regard to \$20,000.? A. They went in yesterday.

MR. WALSH : I put both those in.

HIS LORDSHIP : Exhibits 10 and 15.

MR. SLAGHT : I see Exhibit 90, a letter May 5th, 1923, from Brickenden & Co. to the London Loan, signed Brickenden & Co. by Evelyn Harrison, and it encloses a certificate of title, Exhibit 10; can you tell me whether Evelyn Harrison is a lady who is a member of the Bar and a member at that time of 10
Brickenden & Co., practising—her name appears upon the letter paper at the top?

A. I think she was employed, she was connected in some way with Mr. Brickenden's office.

Q. She is a practising solicitor?

A. Yes, she is a practising solicitor in London; I don't know whether she was a member of the firm in 1923 or not.

Q. There is a similar letter from Miss Harrison, Exhibit 14, of July 19th, 1923, where she signs for the Brickenden firm; do you know whether at that time she was practising with Mr. Brickenden? A. I think she was. 20

HIS LORDSHIP : There is no reason to question it.

A. I don't know whether she was or not.

MR. SLAGHT : You spoke of acting as solicitor to Mr. Kent; when did you begin to act for him? A. I think about the latter part of 1925.

Q. You also testified as to Mr. Kent having been hurt in May of 1925 and indicated that you thought he was at home as a result of a fall with a broken hip until the fall of that year? A. I may have said that, yes.

Q. Were you up to see him at his house from time to time during that interval?

A. I don't think I was at his house, but I knew he was home most of 30
that time.

Q. Did you talk to him on business then?

A. I cannot recall whether I did or not.

Q. I am instructed that during that interval that, though he had a bad fall, a traumatic injury, that he was not ill otherwise than the injury, and that he transacted a great deal of business from his house throughout that entire period; what can you say about that?

A. I don't know whether he did or did not—you mean company or his own private business?

Q. I mean business of the London Loan and Savings Company? 40

A. He might have.

Q. Do you know Mr. Melville W. Wilson of Toronto who has had correspondence with the Brickenden firm regarding the Durno matter? A. Yes.

Q. Have you known him for a number of years as a practising lawyer?

A. No, I have not known him as a practising lawyer; I think he was in the same year as I was at Osgoode Hall.

Q. Do you know Mr. Thomas H. Wilson? A. Yes.

Q. Did you have him in London yesterday or today as a witness in this case on a subpoena? A. He was here under subpoena, yes.

Q. Is he still here?

A. I don't know whether he is still in London or not; I had nothing to do directly with bringing him here.

Q. You are solicitor on the record?

A. It was left to Mr. Walsh and Mr. Gray.

Q. Mr. Walsh suggested something about a transaction that we heard of in connection with Mr. Thomas H. Wilson and the Rutherford transaction, 10 being the same transaction as Mr. Melville W. Wilson had in the Durno one?

A. No, I think he meant the same type of transaction.

Q. If that is all he meant, I was a little mystified; my suggestion to you is, there is no connection that we know of between Melville W. Wilson and Thomas H. Wilson, although they bear the name of Wilson, and both lawyers, that they are not partners or related, and so far as you know they have nothing to do with one another or their businesses?

A. I know nothing whatever about them; I don't think they are partners.

MR. WALSH: My suggestion was they were both Wilsons and both were the same type of transaction but at different times; this is what they were; 20 two Wilsons and two Durnos.

MR. SLAGHT: I thought you went farther than that.

MR. WALSH: No.

MR. SLAGHT: I am curious to know if you have released Mr. Wilson from his subpoena? A. I don't know; you will have to ask Mr. Walsh.

MR. WALSH: I will tell you if you want to know.

MR. SLAGHT: You are swearing you don't know?

A. No, I don't know. Mr. Walsh is at liberty to release any witnesses he sees fit to release.

—Court adjourned at 6 p.m. to 10 a.m. tomorrow.

30

—Court resumed at 10 a.m. December 10th, 1931.

J. A. E. BRADEN, Cross-Examination continued.

MR. SLAGHT: I understand from you you were kind enough to indicate that you have got out certain matters you were asked to bring and turned them over to a young lady who is on her way here with them? A. Yes.

Q. Then I will take up other matters in the meantime. Would you let us have a letter from Brickenden & Co. to the London Loan and Savings Co. of October 2nd, 1925, the original? A. I have not that here.

MR. WALSH: I think I put that in along with the statements; I put the 40 adjustments,—that is Exhibit 91.

MR. SLAGHT: There is one more letter of December 22nd, 1925.

MR. WALSH: From whose custody?

MR. SLAGHT: Mr. Singer's.

MR. SLAGHT: It is a letter from Brickenden & Co., per McMillan, to the London Loan and Savings Co. which was apparently produced on the examination for discovery as Exhibit 26; it is dated December 22nd, 1925.

MR. WALSH: It is from Mr. Morine's own custody, my Lord.

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MR. SLAGHT: I will put it in.

EXHIBIT NO. 214: Letter, December 22nd, 1925, from Brickenden & Co., per McMillan, to London Loan and Savings Co.

MR. SLAGHT: I just want you to verify the original notice of sale, Mr. Kent's signature, I believe you are familiar with that?

A. I could not say if that is Mr. Kent's signature or not; it was not amongst the files; it is signed M. J. Kent, manager, and evidently the corporate seal attached to it; that is the corporate seal.

Q. You have been identifying Mr. Kent's signature, as I understood it. Is there any trouble about this one? 10

A. That did not come from the records of the company; the others did.

Q. Does that make any difference in looking at the signature—look at the signature and tell me whether or not that is Kent's signature?

A. Yes, I would say that is Kent's signature.

Q. And that is the seal of the company? A. Yes.

MR. SLAGHT: That is the notice of sale under power of sale in the mortgage, dated the 13th February, 1925, and it bears a rubber stamp of the London Loan and Savings Co. of Canada, mortgagees; the signature of M. J. Kent and the corporate seal; I am putting it in to show Mr. Kent's approval of the notice of sale proceedings. 20

MR. WALSH: Who drew it?

MR. SLAGHT: Brickenden & Co.

MR. WALSH: Whose custody does it come from?

MR. SLAGHT: It comes from the custody of Brickenden & Co.

EXHIBIT NO. 215: Notice of sale under power of sale, dated 13th Feb., 1925.

HIS LORDSHIP: All it establishes is there was notice of sale.

MR. SLAGHT: Signed by Kent. This, my Lord, I am told is a notice of sale, signed also by Mr. Kent, with reference to the proposed proceedings under the \$35,000. mortgage, but the other one is in regard to the \$20,000. one; we will just have this verified as well. 30

HIS LORDSHIP: The one already in is the notice you referred to.

MR. SLAGHT: Yes.

HIS LORDSHIP: Is there another one?

MR. SLAGHT: Yes, my Lord.

HIS LORDSHIP: How is it that that notice of sale is not registered?

MR. SLAGHT: I expect they were signed in duplicate.

HIS LORDSHIP: Under the law, power of sale notice I think has to be registered.

MR. SINGER: No, my Lord. 40

MR. SLAGHT: I cannot answer that.

MR. SINGER: The papers in the sale proceedings are sometimes put on deposit.

HIS LORDSHIP: I know all about that, but I think there is a requirement where a deed is executed pursuant to power of sale that the notice must be registered; that is my recollection of it; always was the law that they could be deposited for safe keeping in the Registry Office; I may be wrong, but my

recollection is that—I know it was always customary to register a notice.

MR. SLAGHT: I have not practised enough in the real estate to assist your Lordship on that, but we can look at the Statute later on.

Q. I am showing you notice of sale, dated the 13th February, 1925, with the rubber stamp—

HIS LORDSHIP: That is the same date.

MR. SLAGHT: Yes, but a different notice on the \$20,000. mortgage; would you see if that is the corporate seal of the London Loan and appears to be the signature of Mr. Kent?

10 A. Yes, that is the corporate seal and it appears to be the signature of Mr. Kent.

MR. WALSH: There were no proceedings under that mortgage, and there is no evidence that that was ever served.

HIS LORDSHIP: The notice can go in as papers found. That is all.

EXHIBIT NO. 216: Notice of sale under the \$30,000. mortgage.

HIS LORDSHIP: I may say to the gentlemen engaged in this case that unless they finish it by Friday night, I do not hold out any hope of completing it for months.

MR. SLAGHT: I will proceed as rapidly as possible; I had the witness for 20 an hour last night, and I think three-quarters of an hour will finish that. I think all counsel apprehend the danger of not finishing this week.

HIS LORDSHIP: I am not complaining of any delay on the part of counsel; I am making the announcement so that they can govern themselves accordingly.

MR. SLAGHT: Will you indicate when your young lady comes with those other documents? A. Yes.

Q. Will you refer to some Exhibits you dealt with yesterday; let me have Exhibits 184, 188 and 191—I want to deal for a moment with your evidence as to Mr. Morine not being an agent, you recall yesterday discussing 30 with Mr. Walsh, and I think you said you had made a search of the records and Minute Book with the result you could find nothing whereby Mr. Morine had ever been appointed as an agent of the London Loan and Savings Co.?

A. I could find nothing in the minutes of any of the directors' meetings.

Q. I thought your answer covered nor any documents in the files such as contracts or correspondence which covered his appointment? A. Yes.

Q. Then Exhibit 188, copy of a letter to Mr. Morine; do I understand this is your letter, or whose letter is that—the typewritten word "President" is there?

A. It seems to me that I dictated that letter; I know about the letter, 40 anyway.

Q. The letter of June 25th, 1930, which is Exhibit 188, you indicate you know about or perhaps dictated? A. Yes.

Q. It states to Mr. Morine, answering his letter of the 20th instant: "I have interviewed Mr. Hambly, Mr. Robinson and Mr. Hunt, and they advise me they have no recollection of any agreement made with you by the London Loan and Savings Co."—did you have the interview that is referred to there?

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A. No, I believe Col. Coles had the interview; I think I did too—yes, I spoke to Mr. Hunt.

Q. The statement in that letter is correct? A. Yes.

Q. Are you verifying that? A. Yes.

Q. The writ in this action appears to have been issued on the 6th November, 1930? A. Yes.

Q. Were there or not any letters written by the solicitors for the Plaintiff to Mr. Brickenden or Mr. McCormick with reference to proposed action prior to the issue of the writ? A. I don't think so.

Q. I note there are none in your productions? A. No.

10

Q. There was no solicitor's letter either to Mr. Brickenden or Mr. McCormick suggesting that a writ would be issued, that is correct?

A. Yes; there was a reason for that.

Q. And we have yesterday put in Exhibits 204, 205, 206 and 207, which are four assignments to the London Loan Assets Limited; do you recall those?

A. Yes.

Q. I suggest to you that no notice in writing of those four assignments was ever given either to Mr. Brickenden or Mr. McCormick before action brought on the 6th November, 1930; what do you say?

A. I don't think there was any formal notice sent to them.

20

Q. Notice in writing formal or informal, I suggest there was none?

A. No, I don't think there was.

Q. When were those productions first produced in the action, were they produced in the original affidavit on production?

A. I don't remember whether they were or not; there were so many productions in this action.

Q. There was a supplementary affidavit on production recently filed?

A. Yes, we were continually finding other things, and as we found them we reported them.

Q. With regard to the agreement of the 3rd July, 1929, which is already in as Exhibit 208, you recall that one, that is the tripartite agreement between the London Loan and Savings Co. and the Huron and Erie and London Assets Limited; I suggest that no notice in writing of that agreement was given either to Mr. Brickenden or Mr. McCormick before action brought on November 6th, 1930; what do you say?

A. If the agreement was sent to them at the time the agreement came up for ratification, every shareholder got a copy of that agreement.

Q. Produce any you have that a copy of that agreement ever reached either Mr. McCormick or Mr. Brickenden?

A. I have not got anything in the witness box here.

40

HIS LORDSHIP: A copy was sent to every shareholder.

MR. SLAGHT: I am asking for any evidence that notice in writing of that agreement was—

HIS LORDSHIP: If there is no evidence in writing you cannot speak of the other evidence? A. No.

MR. SLAGHT: You will have an opportunity if you wish, of producing any.

A. If you wish the matter to be proved, I think I can prove it to your satisfaction.

Q. I am suggesting to you that if you are able to prove that notice in writing of that agreement or the agreement itself was given to Mr. Brickenden or to Mr. McCormick, I invite you to do so? A. All right.

Q. You need not do it for the moment; you can do it for reply as far as I am concerned. A. All right.

Q. Amongst your productions are a number of agenda with which you are familiar? A. Yes.

10 Q. Will you produce now for me the agenda of Mr. Robinson, one of the directors, which I understand comes from the files of the company?

A. I think this is Mr. Robinson's agenda.

Q. What are these agenda, they are bulky; give his Lordship a notion of what they are—Mr. Robinson was a director over the period of time that is being investigated here? A. Yes.

Q. You find agenda which indicate what?

A. Indicates the business to be transacted at directors' meetings, and the written memoranda made by the different directors concerning that business.

20 HIS LORDSHIP: Did each director have an agenda? A. Yes.

Q. For his own individual use?

A. Each one would be given a copy of the business to be discussed at the meeting.

MR. SLAGHT: It appears the practice was that they made their notations on their own copy of the agenda, and then they were filed with the company?

A. No, I don't know that it was the practice to file them; they happened to be on hand, they were preserved, not really filed as records of the company at all.

30 Q. They were among the records of the company at the head office of the company?

A. Yes; the directors could have taken their agenda away if they had cared to do so.

Q. Let us have Mr. Robinson's, please?

HIS LORDSHIP: Is Mr. Robinson still alive? A. Yes, my Lord.

HIS LORDSHIP: Then they cannot go in.

MR. SLAGHT: With great respect, my Lord, I am submitting they are admissible for this reason: they are amongst the records of the company.

HIS LORDSHIP: That does not make them admissible as proof of the fact.

40 MR. SLAGHT: No; your Lordship has admitted many documents not as proof of the facts contained in them, but as evidence that the person who wrote on them memoranda and that sort of thing was aware of certain things at certain times; it is for that purpose I want them here, because one of my positions in this action is that these other directors were all familiar with what was done.

HIS LORDSHIP: Notice for that purpose is admissible, but not as proof of the fact, the same as notice sent by a solicitor to any person?

A. I think this one is Mr. Robinson's; the only way I can identify them

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is by the names on them; I am not clear whether that is Mr. Robinson's or not.

MR. WALSH: My objection is, my Lord, it is only secondary evidence. Mr. Robinson is alive; I understand he was subpoenaed here as a witness, and he is available.

HIS LORDSHIP: I am going to admit it as to notice, that is all.

MR. WALSH: Not as against the Plaintiffs.

HIS LORDSHIP: That these people had notice.

EXHIBIT NO. 217: Agenda of Mr. Robinson.

MR. SLAGHT: Let me have Mr. Hunt's agenda. We have heard he was a director over the period in review here. 10

MR. WALSH: Your Lordship does not mean that whole bunch of papers should go in?

HIS LORDSHIP: No, they are just there as the agenda of these men; unless there are certain parts of them that show that these matters were in the agenda or before them, they will be of no avail whatever.

MR. SLAGHT: There are various entries; I will go through them.

MR. WALSH: I would like to have the references now.

HIS LORDSHIP: I don't want to take up all that time.

MR. SLAGHT: I may state to the Court that there are entries with regard to Buckingham Apartments and the attitude and notations of the directors 20 with reference to those matters.

Q. This is Mr. Hunt's agenda? A. Yes.

EXHIBIT NO. 218: Mr. Hunt's agenda.

Q. Let me have Mr. Baker's agenda, please?

A. I have not it here with me; it must be on the table somewhere.

HIS LORDSHIP: Did you find out whether this company was incorporated by private Act or otherwise?

MR. WALSH: I have not yet.

MR. SINGER: There is nothing in the Statute indicating it was incorporated by private Act. 30

MR. GRAY: This was originally incorporated as a building society under the provisions of the general Act respecting Building Societies in the Province of Ontario, but in order that you may have the exact information——

HIS LORDSHIP: They filed a memorandum under the Friendly Societies Act.

MR. GRAY: With the Clerk of the Peace; your Lordship will remember that was the manner in which it used to be done. I will get the information for your Lordship.

HIS LORDSHIP: It may be of no importance because they are created a corporation by virtue—— 40

MR. GRAY: Of the general Act, my Lord.

HIS LORDSHIP: But I thought Loan Companies were mostly incorporated by special Act.

MR. GRAY: Dominion companies are.

HIS LORDSHIP: In the old days I think most of the Ontario companies were.

MR. GRAY: A good many of our present companies are successors of old building societies.

MR. SLAGHT: Will you give me Mr. Baker's? A. (Produces.)

Q. Mr. Baker seems to have been more assiduous?

A. No, it just happens Mr. Baker's seemed to have been kept together. These agendas are destroyed, I understand, every so many years.

EXHIBIT NO. 219: Mr. Baker's agenda.

Q. Let us understand with regard to Exhibit 208, the agreement of July 3rd, 1929, was this agreement confirmed by Order-in-Council? A. Yes.

10 Q. Does this printed copy purport to have a copy of the confirmation?

A. No, I do not believe it has.

Q. Will you produce for me either the original with that confirmation—the printed copy which has been heretofore furnished to me has that printed on the back; perhaps there were two series gotten out, one before and one after the confirmation; let me have whatever you can give us to show the Court that the agreement was confirmed by Order-in-Council.

MR. GRAY: I give you a printed copy produced by my friend Mr. Betts of the Consolidated Trusts Co. showing the orders to which you refer, and you might attach that to this other Exhibit if you care to, and make it one.

20 HIS LORDSHIP: That would be the better way.

MR. SLAGHT: Will you verify for me the certificate of Mr. Leighton Foster, Registrar, on the back of the second printed copy I now show you, so that we may attach that 208, and that it may become part of it?

A. Yes, I believe that is Mr. Foster's certificate.

HIS LORDSHIP: It is admitted that is a copy of the Order-in-Council. Is Mr. Foster's signature on there, whether that is printed or purports to be written there.

MR. GRAY: A. It is written; it is admitted to be a true copy.

30 —Copy of agreement now produced as Exhibit of July 3rd, 1929, with confirmation attached to and made part of Exhibit 208.

Q. I think you told me you are also officer of the London Loan Assets Limited? A. Yes.

Q. Who have been receiving the rentals from the Buckingham Apartments down to the present time?

A. Since London Loan Assets Limited was organized it has been receiving the rents.

Q. Will you produce the account showing the rentals received?

A. I have all the statements from October, 1925, to November 10th, 1931, but I have a summary of that somewhere.

40 Q. These are the statements in detail? A. Yes.

Q. If we can attach the summary to that we can make one Exhibit.

A. There are a tremendous number of statements.

HIS LORDSHIP: Have the summary checked by somebody and put in.

MR. WALSH: Is that the summary?

A. Yes; this summary was made up by the secretary of the London Loan Assets Limited, and I think can be taken as being correct.

Q. It purports to go back to 1926? A. Yes.

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EXHIBIT NO. 220: Summary of statements of rents, etc. received by London Loan Assets Limited from Buckingham Apartments.

MR. SLAGHT: As I understand you, no other one than the London Loan Assets Limited has been in receipt of rentals from Buckingham Apartments since the London Loan Assets Limited took them over? A. That is correct.

HIS LORDSHIP: When was London Loan Assets Limited formed—at the time of the amalgamation?

A. Yes, the London Loan Assets Limited began to function in September, 1929.

MR. SLAGHT: And was formed shortly prior to the 3rd July, 1929? 10

A. Yes.

HIS LORDSHIP: September, 1929? A. Yes.

Q. It was part of the machinery?

A. Yes, it was part of the agreement that London Loan Assets should be formed.

MR. SLAGHT: Who have been in the possession of the premises during the period over which London Loan Assets Limited have been receiving the rentals?

A. London Loan Assets Limited through their agents, Rice and Son.

Q. They have acted as landlords to the several tenants that occupy 20 the suites?

A. They have acted as agents of London Loan Assets Limited in collecting the rents.

Q. In referring to London Loan Assets Limited they have been in possession and they have acted as landlords, do they make leases to the tenants?

A. The leases are always sent to London for approval.

Q. Who are the lessors under the leases? A. London Loan Assets Limited.

Q. They have taken possession in the way you indicate, and have London Loan Assets Limited furnished any statements of the rentals to Consolidated Trusts Company at any time that you know of? A. No. 30

Q. Or to anybody else? A. Only to the shareholders of the company if they required it.

Q. Shareholders of London Loan Assets Limited? A. Yes.

HIS LORDSHIP: Themselves practically.

MR. SLAGHT: I assume being in possession and in receipt of rentals and so on, they have also made disbursements out of those moneys, any disbursements necessary in connection with the Buckingham Apartments? A. Yes.

HIS LORDSHIP: Paid taxes and repairs?

MR. SLAGHT: Paid the overhead and upkeep and repairs? A. Yes.

MR. SLAGHT: Are the stock certificates here? A. Yes. 40

HIS LORDSHIP: Of what?

MR. SLAGHT: Shares turned in to the witness, Mr. Braden, as trustee by the shareholders of London Loan and Savings Co. You produce a stock certificate of the London Loan and Savings Co. of Canada, No. 719, which is dated September 11th, 1912, and issued in favour of Mrs. Mabel Andrews for six shares of the capital stock? A. Yes.

Q. And attached thereto is a document dated the 14th September, 1929, which is apparently Mrs. Mabel Andrews, bearing her signature, attached to the certificate? A. Yes.

Q. This is her document of surrender of the certificate?

A. Yes, surrender and transfer.

Q. And you have had attached thereto a third document which looks like a sheet from the——

A. From the stock register of the London Loan Assets Limited.

Q. And where did this third document come from, when was it attached to this?

A. It was attached to this, it was taken out of the regular stock register.

Q. If it was attached to it perhaps we will put in first the Exhibit as it came from Mrs. Andrews; that consists of the certificate itself and her surrender of it——

MR. WALSH: There is not a word of surrender; that is my learned friend's term.

HIS LORDSHIP: It will be a transfer.

MR. WALSH: Yes.

MR. SLAGHT: My friend is so seldom mistaken that I am surprised at him saying that.

MR. WALSH: Read it.

MR. SLAGHT: "I hereby surrender to William G. Coles, J. A. E. Braden and Charles R. Hunt, as trustees, the shares of London Loan and Savings Co. of Canada stock now held by me as evidenced by this certificate. Witness my hand at West Lorne this 14th day of September, 1929"—and then her signature.

MR. WALSH: And the letter too you have in your hands; that is part of it.

HIS LORDSHIP: "Surrender" there is not in the sense that it was surrendered back to the company; it was surrendered to the trustee for certain purposes.

MR. SLAGHT: We may argue that later on, but I must correct my friend when he makes a statement of that kind without having read it.

Q. Where did the sheet you have here come from?

A. I only took that sheet as a sample of how all the others were done; that was set up by the auditors in that way.

EXHIBIT No. 221: Stock certificate of London Loan and Savings Co., No. 719, dated Sept. 11th, 1912, of Mrs. Mabel Andrews.

HIS LORDSHIP: Would it be correct to say she is the registered shareholder in the London Loan Assets Limited?

A. Yes, my Lord, the same number of shares.

Q. That was under the arrangement? A. Yes.

MR. SLAGHT: This sheet set up by the auditors we will put in as Exhibit 222.

EXHIBIT No. 222: Sheet set up by auditors *re* transfer of six shares to Mrs. Mabel Andrews in London Loan Assets Limited.

MR. SLAGHT: Q. That is London Loan Assets Limited? A. Yes.

Q. From their stock register and their records? A. Yes.

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Q. And the Exhibit 222 indicates that under the column "to or from whom" the six shares were transferred to Mrs. Mabel Andrews, indicates there that on September 25th, 1929, the London Loan and Savings Co. transferred six shares of stock in London Loan Assets Limited to Mrs. Mabel Andrews? A. The document speaks for itself, whatever is there.

Q. It is a record produced—if there is any doubt about it—?

A. There is no doubt about it; I am merely saying the document speaks for itself; I do not set it up; the auditors set it up.

Q. Will you let me have the transfer book or record book of the London Loan and Savings Co. which deals with Mrs. Andrews' former shares of stock in that company—

MR. GRAY: We had to send for a locksmith to open the book for us, and they are still working at it.

MR. SLAGHT: That will be available for us later? A. Yes.

Q. You have brought what purports apparently to be a letter dated September 18th, 1929, from London Loan and Savings Co. to this Mrs. Mabel Andrews inviting her to enter into this transaction; do you identify that?

A. Yes, I recognize that letter.

Q. On the back of it is Mrs. Andrews' reply to your company? A. Yes.

EXHIBIT NO. 223: Letter dated Sept. 18th, 1929, from London Loan and Savings Co. to Mrs. Mabel Andrews, with reply on back.

Q. May I take it that Mrs. Andrews' transactions and the records just put in, the last four Exhibits, together with the record you are getting us of her position in the books of the London Loan and Savings Co. are typical of all the shareholders of the former London Loan and Savings Co.?

A. Yes, that transaction is typical of all the others; everything was carried out in accordance with the agreement.

Q. You have the stock register of London Loan Assets here, have you not?

MR. GRAY: Wait till I see this—

MR. SLAGHT: Perhaps we can cover it by a question.

A. That sheet of Mrs. Andrews is a sheet taken from the stock register book.

MR. GRAY: Here is the rest of the book.

MR. SLAGHT: You have produced here a stock register book of the London Loan Assets Limited? A. Yes.

Q. Can you tell me from your knowledge of it as Vice-President of the company whether it is correct to say that shareholders who received shares originally, as we find Mrs. Andrews received, it, in London Loan Assets Limited have some of them since transferred and sold shares to other holders of London Loan Assets Limited? A. Yes, there have been some changes.

Q. In other words, the shareholders of London Loan Assets Limited who took stock as Mrs. Andrews did; have some of them sold and transferred their shares to other people? A. That is true.

Q. So that the present shareholders of London Loan Assets Limited are not the shareholders exactly of the former shareholders of London Loan and Savings Co. who turned in their shares to you as trustee?

A. They are not all the same people.

HIS LORDSHIP: It would not matter whether they had or not; the stock is transferable?

A. Yes, the stock is transferable; the parties who purchased the stock would stand in their shoes I think.

MR. SLAGHT: You told us yesterday in your evidence that Mr. Brickenden was or became at a certain date, which is not important now, the solicitor to the London Loan and Savings Co.? A. Yes.

Q. Prior to Mr. Brickenden becoming the solicitor, were you acting for them? A. The firm I belonged to were Gibbons, Harper and Gibbons firm.

10 Q. Of which you were a member? A. Yes.

Q. Were you doing work for London Loan and Savings Co. in that firm?

A. Not I personally; Mr. Harper looked after that, mostly.

Q. At the same time, had your firm, prior to that, been solicitors for the McCormick Estate? A. Yes.

Q. And did Mr. Brickenden become solicitor for the McCormick estate practically when he became solicitor of the old London Loan and Savings Co.?

A. I think so.

Q. So that that solicitorship passed from your own firm to him. You are a member of the firm of Braden and McAlister, the solicitors on the record,
20 in bringing this action? A. Yes.

Q. And prior to bringing the action you had certain interviews which you detailed yesterday with Mr. Brickenden? A. Yes.

Q. And with Mr. McCormick? A. Yes, and Mr. Morine.

Q. And in bringing about the interviews with Mr. Brickenden and Mr. McCormick, did you do so in contemplation of proceedings as in this action?

A. No, not the initial interviews I spoke of in 1929; the interview I had with Mr. Brickenden in the spring of 1929 was an interview, I might say the purpose of the interview was to investigate and find out the particulars of this transaction.

30 Q. That is the first interview; the later interviews, did you have those having in mind the bringing of the action? A. The second interview in July?

Q. Yes.

A. I may have had that in mind; I reported the matter back to the Board of Directors, the purport of these interviews.

Q. I just wanted to get what you have done. Then being solicitor investigating the matter you had the interview having in mind the probability of bringing the action?

40 A. I don't know as I had it right in mind at that time, that may have been in my mind; what I wanted to do was to look into the matter and advise the Board of Directors as to what I thought they should do.

Q. Any indication to Mr. Brickenden or Mr. McCormick that that was or might have been in your mind?

A. In July when I had the interview with Mr. Brickenden, there certainly was an indication then, because I told Mr. Brickenden that I did not see any reason why Mr. Morine should escape liability.

Q. I am speaking of contemplated action against Mr. Brickenden himself.

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A. No, I don't know as I said anything to indicate to him that I intended to make him a party to the case at that time; there was so much we found out later.

Q. In this interview, where you may have had in mind you were gathering evidence, did you make any notes of the interview for subsequent use as evidence? A. No, I did not make any notes, no.

Q. So that in the account you gave yesterday of that interview, you are speaking from your recollection?

A. Not entirely; I wrote a letter about the matter to my Toronto correspondent; I don't think I should be asked to divulge that letter. 10

Q. No; you did not make any notes for your own purpose?

A. No, not beyond what was in the letter.

HIS LORDSHIP: If he wrote the letter immediately afterwards he could use it to refresh his memory.

MR. WALSH: I will let Mr. Slaght see it.

HIS LORDSHIP: It is not evidence, but the witness can only use it in case his memory fails; apparently his memory has not failed?

A. I have looked at the letter.

MR. SLAGHT: Would it be fair to say there has been a good deal of friction between yourself and Mr. Brickenden in the past two or three years here? 20

A. Not any more than made necessary following my investigation and disposal of many matters of London Loan and Savings Co. with which he was connected, nothing more than that.

Q. That led to hot words between you—I am afraid I was present once when we interfered in connection with a Dempsey-Tunney exhibition?

A. I think you are speaking of the time of the examination for discovery.

Q. Not in this matter? A. In other matters.

Q. Have there been red hot words indicating feelings and almost anger, may I put it, as between yourself and Mr. Brickenden, not concealing the fact it may have been mutual? 30

A. I would not put it as strong as that; Mr. Brickenden very much resented my connecting him with these matters.

Q. Have you not had a dozen red hot rows?

A. No, I would not say that at all.

Q. Did you not have one in the Master's Office here in another matter, very heated controversy?

A. Do you mean in connection with the Biggs case; that is a case where we got judgment against him?

Q. In connection with anything whatever? A. I will say this— 40

Q. Will you answer my question?

A. I would like to answer it in this way, that our interviews were not pleasant by any means because the topic of conversation was not a pleasant topic.

Q. Controversial? A. Yes, they were controversial.

Q. And heated; were you present at Osgoode in connection with some injunction proceedings some time ago, at the time Mr. Morine was there?

A. Do you mean the time we obtained an injunction to prevent Mr. McCormick from continuing as president of the company?

Q. Yes. A. Yes.

Q. Do you recall Mr. Morine being there?

A. Yes, I think he was there.

Q. Did you have a conversation with him? A. Very likely I did.

Q. Did you state to Mr. Morine you would get Mr. Brickenden and Mr. McCormick if it took you years to get them?

A. I did not; that is the sort of language Mr. Morine would use.

10 HIS LORDSHIP: You deny using it? A. Yes.

MR. SLAGHT: Or any language to that effect?

A. I used no language to that effect.

Q. Did you on that occasion discuss them or either of them with Mr. Morine?

A. Yes; Mr. Morine was endeavouring then to side in with us on this contest for control; he pretended to be.

Q. Did you discuss Mr. Brickenden and Mr. McCormick on that occasion at all with Mr. Morine?

20 A. I may have, but I would not discuss anything that I considered very important with him.

Q. Are you able to tell me whether or not you did discuss these gentlemen at all?

A. I am not able to say, but if there was a discussion about it it was about nothing important. Mr. Morine is the last person I would discuss anything important with relating to anybody else.

Q. You are Vice-President of the London Loan and Savings Co.; as you have told us, your firm are solicitors on the record; have the London Loan and Savings Co. given you any authority or authorized the bringing of this action? A. Yes; I had full authority.

30 Q. From the London Loan and Savings Co. Limited, the corporation?

A. Yes.

Q. Is that evidenced in writing? A. The three trustees.

Q. Is it in writing? A. No.

MR. WALSH: Pardon me, I have no objection to the witness giving it, but I submit the retainer we may have is no importance to my learned friend.

MR. SLAGHT: I am not questioning your retainer.

MR. WALSH: The Plaintiff brings this action, and it does not lie in the mouth—

MR. SLAGHT: I am asking you, as Vice-President of the company.

40 MR. WALSH: If his Lordship wants it, I will be glad to give it.

HIS LORDSHIP: They are not disowning it.

MR. SLAGHT: Will you tell me, then, as Vice-President of the London Loan and Savings Co., have your company in writing authorized the bringing of this present action?

A. Not in writing, no; but they have authorized it.

MR. WALSH: There are minutes of it.

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A. The company was formed for this express purpose; that is one of the purposes for which it was formed.

HIS LORDSHIP: It is as to the other company, the London Loan and Savings Co.

MR. SLAGHT: Apparently you and your counsel are not at one. Direct your mind only to the one company, the London Loan and Savings Co. of Canada Limited.

A. I think there is authority, probably in the directors' minutes, relating to that; I have not looked for that; I did not think of that question arising or I would have looked for it. 10

Q. Do you recall being examined for discovery, and my recollection is you told us then there was nothing whatever in writing from that company authorizing the bringing of this action? A. Yes, I may have told you that.

Q. Was that correct, and is that correct, and is that the truth?

A. It is correct subject to anything that may be in the books; I don't know that I had the books in front of me at that time; I had no recollection.

Q. Do you say that is not a correct statement, and I invite you to look at any books if there are any written records which give any authority to the solicitors in this action from that company to bring this action? 20

A. Just a minute.

Q. Mr. Walsh having said there is, perhaps he can help you with it.

MR. WALSH: I see a minute here: "Rights of action remaining vested in the Loan company:" "The President called the attention of the shareholders to the provisions of paragraph 4 of the agreement relating to right of action and proceedings not transferred or assigned to the Huron and Erie Mortgage Corporation, and upon motion duly seconded it was resolved that the directors be authorized and instructed to take or maintain any proceedings which they may in their discretion deem wise and useful to enforce, exercise or realize upon any rights of action not transferred or assigned to the Huron and Erie Mortgage Corporation referred to in paragraph 4 of the agreement dated the 4th July, 1929, either in the name of the company or other persons for the benefit of the shareholders. (P. 827 of Minute Book.) 30

HIS LORDSHIP: The shareholders authorizing the directors to take such action as they saw fit, leaving it in the hands of the directors. What about the directors; is there any written authorization from them?

A. I do not know of any.

MR. SLAGHT: Who were the directors on the 6th of November, 1930, when this writ was issued?

A. The directors of the London Loan and Savings Co.?

Q. Yes. 40

A. Lieut.-Col. Coles, President; myself, Vice-President; W. E. Robinson, second Vice-President; Mr. Charles R. Hunt and Mr. William E. Gorman.

Q. Is it your oath those directors met and authorized this action?

A. I won't say they met and expressly authorized this action, but they instructed me to bring it. It is the same directors we have in London Loan Assets Limited.

Q. So that the Board of London Loan Assets Limited and the Board of the old company, if it is alive in law, are identical? A. They are.

Q. Being the gentlemen you have just named? A. Yes.

Q. One more question: we have heard read by Mr. Walsh an extract and, as I understand you, and as Mr. Walsh has not helped us with anything further so far as any meeting of directors of the London Loan and Savings Co. Limited in which this action or the bringing of it may have been officially dealt with, there is none such? A. No.

CROSS-EXAMINED by Mr. Singer:

10 Q. There are a number of other documents that I would like you to produce, so that they may be put on record, and the first is No. 68 in your productions; that is a letter written by H. A. Morine to M. J. Kent, London Loan and Savings Co. I will not read these letters unless your Lordship wishes.

HIS LORDSHIP: If there is any particular part of them that you wish—

MR. GRAY: May I call your Lordship's attention to the fact that this refers to the motion respecting postponement of the sale of Buckingham Apartments, and tell your Lordship that the Registrar has received from Toronto this morning the papers in connection with that motion which it was agreed yesterday to have produced in the action, and with your Lord-
20 ship's permission I will put them in at the same time as this letter.

HIS LORDSHIP: What is the date of that letter?

MR. SINGER: April 25th, 1925.

HIS LORDSHIP: You can put those in again, Mr. Gray. I think those ought to be replaced by copies, because I doubt if they should be out of the custody of the Court at all.

MR. GRAY: I have a certified copy here already of one of them, but I presume my friends would like them all in.

HIS LORDSHIP: I will look at them.

MR. GRAY: We have copies—

30 MR. SINGER: I am drawing your attention to one portion of that letter; the letter is addressed to M. J. Kent, London Loan and Savings Co. of Canada: "Mr. Maclennan put in a declaration that he had been notified by "you while in London that I was the Toronto agent of the London "Loan and Savings Company. I can hardly believe that such a "statement was made in the sense in which he made his declaration, "because it is a well known fact that I am not an agent of the London "Loan and Savings Company. I am merely a broker and sell my "wares to the London Loan and Savings Co. in the same manner
40 "as any other broker would do."—

HIS LORDSHIP: What is that evidence of?

MR. SINGER: It is evidence of what this witness discovered in a search of the records.

HIS LORDSHIP: It is not evidence of the truth of anything.

MR. SINGER: It is going to be evidence that is useful in connection with the cross-examination on statements made by this witness.

HIS LORDSHIP: He is no party to the letter.

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MR. GRAY: The Defendant Morine is here, and there is a proper way to prove the letter.

HIS LORDSHIP: I am going to allow the letter to go in as being in the possession of the company.

MR. GRAY: But not as evidence of any statements contained in it?

HIS LORDSHIP: No.

EXHIBIT NO. 224: Letter April 25th, 1925, from H. A. Morine to M. J. Kent, London Loan and Savings Co.

MR. SINGER: The next document I want is, have you copy of your production No. 78—(we have not got the original) letter from the London Loan and Savings Co. to H. A. Morine? A. Yes.

EXHIBIT NO. 225: Letter October 5th, 1925, from London Loan and Savings Co. to H. A. Morine. (Copy.)

MR. GRAY: This is a copy only, my Lord. I suggest my friend, who ought to have the original, should produce it.

MR. SINGER: I have not got the original, and my friend has put in twenty or thirty copies where the originals have not been produced.

HIS LORDSHIP: That is all right.

MR. SINGER: The next one I would like is your production 117, letter from Huron and Erie Mortgage Corporation to T. H. Baker, Vice-President London Loan and Savings Co., December 7th, 1926.

HIS LORDSHIP: No, that won't do.

MR. SINGER: It is London Loan and Savings Co.

HIS LORDSHIP: But it is a letter from some outside person to them; unless it is to fix them with notice.

MR. SINGER: It is only notice as to the maturity of that first mortgage, and the correspondence they had as to the first mortgage.

HIS LORDSHIP: Very well.

EXHIBIT NO. 226: Letter from the Huron and Erie Mortgage Corporation to T. H. Baker, Vice-President of London Loan and Savings Co.

MR. SINGER: I ask you for your copy of your production No. 119; I do not appear to have the original—a letter from the London Loan and Savings Co. to H. A. Morine, dated January 29th, 1927. (Produces.)

EXHIBIT NO. 227: Letter dated January 29th, 1927, from acting-manager, London Loan and Savings Co. to H. A. Morine.

MR. SINGER: And a similar copy of your No. 125. A. (Produces.)

HIS LORDSHIP: These are all admitted to have been received by your client?

MR. SINGER: Yes, my Lord.

Q. This is a letter from the London Loan and Savings Co. to H. A. Morine, bearing date March 9th, 1927.

EXHIBIT NO. 228: Copy of letter, March 9th, 1927, from London Loan and Savings Co. to H. A. Morine.

MR. SINGER: A similar letter, April 8th, 1927, your production No. 128? A. (Produces.)

EXHIBIT NO. 229: Copy of letter dated April 8th, 1927, from London Loan and Savings Co. to H. A. Morine.

MR. SINGER: Then copy of your production No. 129, from A. W. Dyas to Consolidated Trusts Corporation, dated April 9th, 1927.

A. (Produces original letter.)

EXHIBIT NO. 230: Original letter April 9th, 1927, from A. W. Dyas to Consolidated Trusts Corporation.

Then your production No. 130, letter from A. W. Dyas to J. H. Hambly, London Loan and Savings Co., April 9th, 1927. (Produces.)

EXHIBIT NO. 231: Letter April 9th, 1927, from A. W. Dyas to J. H. Hambly, London Loan and Savings Co.

10 Then copy of your production 132, being a letter from the London Loan and Savings Co. to the Huron & Erie Mortgage Corporation, bearing date April 19th, 1927—this is enclosing a cheque on account of their first mortgage?

A. (Produces.)

EXHIBIT NO. 232: Copy of letter April 19th, 1927, from London Loan and Savings Co. to Huron and Erie Mortgage Corporation, enclosing cheque for \$8,295, interest and instalment of principal.

Q. Then original letter, No. 134, H. A. Morine to London Loan and Savings Co., April 29th, 1927. A. (Produces.)

20 EXHIBIT NO. 233: Letter from H. A. Morine to London Loan and Savings Co., dated April 29th, 1927.

MR. WALSH: That is connected with production 133.

MR. SINGER: I have no objection to the other going in if you wish it. Mr. Walsh asked for the filing of your production 133—London Loan and Savings Co. to H. A. Morine, April 27th, 1927? A. (Produces.)

EXHIBIT NO. 234: Letter from London Loan and Savings Co. to H. A. Morine, of April 27th, 1927.

MR. SINGER: Then letter from London Loan and Savings Co. to H. A. Morine, dated May 3rd, 1927, being your production No. 135. (Produces.)

30 EXHIBIT NO. 235: Letter May 3rd, 1927, from London Loan and Savings Co. to H. A. Morine.

Q. Your production No. 137, a letter from London Loan and Savings Co. to H. A. Morine, dated July 18th, 1927. A. (Produces.)

EXHIBIT NO. 236: Letter July 18th, 1927, from London Loan and Savings Co. to H. A. Morine.

MR. SINGER: I might point out so far as the filing of copies are concerned, we served notice required under the Ontario Evidence Act which makes copies evidence in this case. The next is No. 139—

MR. WALSH: That notice does not make letters evidence in that sense.

MR. SINGER: It makes them produceable in the place of the original.

40 A. I do not appear to have that No. 139 here.

HIS LORDSHIP: Is there any dispute about this?

MR. SINGER: No, my Lord; the objection was raised before and it just struck me that notice had been served in which we intended to produce copies in the place of the originals, and if they had any objection, to file it within four days after that.

HIS LORDSHIP: That is a notice to admit.

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MR. SINGER: Have you 139, letter from London Loan and Savings Co. to Huron and Erie Mortgage Corporation?

A. I think that must have been filed yesterday.

Q. What about production No. 140; is it in the same position? A. Yes.

HIS LORDSHIP: It occurred to me that this trial could have been very much facilitated if the solicitors had got together and agreed on what productions were to go in.

MR. SINGER: I don't think it struck either counsel; it would have curtailed the proceedings.

Q. Then have you got production No. 143? 10

A. No; that appears to have gone in too.

Q. And does the same apply to 146 and 147? A. No, I have those.

Q. The next is 146, that is a letter from the London Loan and Savings Co. to H. A. Morine, dated December 5th, 1927.

EXHIBIT No. 237: Letter Dec. 5th, 1927, from London Loan and Savings Co. to H. A. Morine.

Then production No. 147, letter H. A. Morine to the London Loan and Savings Co., dated Dec. 6th, 1927.

EXHIBIT No. 238: Letter Dec. 6th, 1927, from H. A. Morine to London Loan and Savings Co. 20

Q. Next will be your production No. 154, letter from A. W. Dyas to Consolidated Trusts Corporation, dated March 14th, 1928.

EXHIBIT No. 239: Letter March 14th, 1928, from A. W. Dyas to Consolidated Trusts Corporation.

Q. Then your production No. 155, letter from London Loan and Savings Co. to H. A. Morine, dated March 15th, 1928? A. (Produces copy.)

EXHIBIT No. 240: Letter March 15th, 1928, from London Loan and Savings Co. to H. A. Morine.

Q. Then your production No. 159, letter from H. A. Morine to Consolidated Trusts Corporation, dated May 5th, 1928? A. (Produces.) 30

EXHIBIT No. 241: Letter H. A. Morine to Consolidated Trusts Corporation, dated May 5th, 1928.

Then your No. 160; letter from London Loan and Savings Co. to H. A. Morine, dated May 7th, 1928. (Produces.)

EXHIBIT No. 242: Letter London Loan and Savings Co. to H. A. Morine, dated May 7th, 1928. (Copy.)

Then production No. 161, letter from H. A. Morine to Consolidated Trusts Corporation, August 21st, 1928. A. (Produces.)

EXHIBIT No. 243: Letter August 21st, 1928, from H. A. Morine to Consolidated Trusts Corporation. 40

Q. Then your production No. 162, letter H. A. Morine to Consolidated Trusts Corporation, dated Sept. 18th, 1928. (Produces.)

EXHIBIT No. 244: Letter Sept. 18th, 1928, from H. A. Morine to Consolidated Trusts Corporation.

Q. Then your production No. 163, letter—

MR. WALSH: That is not admissible.

MR. SINGER: We can eliminate that. Then your production No. 166, letter from J. C. Crawford to the London Loan and Savings Co. *re* Buckingham Apartments.

MR. WALSH: Mr. Crawford is not a party to this action.

MR. SINGER: I ask it to be filed for the purpose of notice that might be contained in it, not as to statement of fact.

HIS LORDSHIP: Very well.

MR. SINGER: It is dated Dec. 12th, 1928.

10 EXHIBIT NO. 245: Letter from J. T. Crawford to London Loan and Savings Co., Dec. 12th, 1928.

MR. WALSH: Your Lordship, this letter from Mr. Crawford, the reason I am objecting to that, your Lordship should read that; if they want to prove that letter I would like Mr. Crawford called.

MR. SINGER: He was subpoenaed yesterday.

Q. Then you remember 168, H. A. Morine to J. H. Hambly, London Loan and Savings Co., January 14th, 1929.

EXHIBIT NO. 246: Letter H. A. Morine to J. H. Hambly, London Loan and Savings Co., January 14th, 1929.

20 Q. Then your production No. 171, letter H. A. Morine to J. H. Hambly, London Loan and Savings Co., March 9th, 1929? A. (Produces.)

EXHIBIT NO. 247: Letter H. A. Morine to J. H. Hambly, London Loan and Savings Co., dated March 9th, 1929.

Q. Then your production No. 172, letter H. A. Morine to J. H. Hambly, London Loan and Savings Co., bearing date 14th March, 1929? A. (Produces.)

EXHIBIT NO. 248: Letter H. A. Morine to J. H. Hambly, London Loan and Savings Co., March 14th, 1929.

Q. The next production No. 173, letter from G. A. P. Brickenden & Co. to London Loan and Savings Co., March 8th, 1929. (Produces.)

30 EXHIBIT NO. 249: Letter from G. A. P. Brickenden & Co. to London Loan and Savings Co., March 8th, 1929.

MR. WALSH: I want to have a receipt go in that is referred to in the letter: "Herewith documents in our possession with regard to the Buckingham Apartments property. Will you kindly execute the enclosed receipt for same?" —I want that receipt.

HIS LORDSHIP: Very well; the notice of sale apparently was not among them.

MR. WALSH: I would like the receipt to go in.

MR. FERGUSON: I am instructed the firm never got that receipt; if we can find it we will produce it.

40 MR. SINGER: Your next, No. 177, is letter from London Loan and Savings Co. to H. A. Morine, April 12th, 1929. (Produces.)

EXHIBIT NO. 250: Letter from London Loan and Savings Co. to H. A. Morine, dated April 12th, 1929.

Q. Letter H. A. Morine to J. H. Hambly, London Loan and Savings Co., April 24th, 1929—your production No. 178? A. (Produces.)

EXHIBIT NO. 251: Letter dated April 24th, 1929, from H. A. Morine to J. H. Hambly, London Loan and Savings Co.

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Q. Next, your No. 179, letter from London Loan and Savings Co. to H. A. Morine, bearing date April 24th, 1929.

EXHIBIT No. 252 : Letter April 24th, 1929, from London Loan and Savings Co. to H. A. Morine.

Q. Next your No. 180, letter from H. A. Morine to J. H. Hambly, bearing date May 7th, 1929.

EXHIBIT No. 253 : Letter May 7th, 1929, from H. A. Morine to J. H. Hambly.

Q. Next, copy of your production No. 183-H, letter London Loan and Savings Co. to Martin, Currie & Co., dated October 13th, 1925. 10

EXHIBIT No. 254 : Letter from London Loan and Savings Co. to Martin, Currie & Co., dated Oct. 13th, 1925.

MR. WALSH : I object; my learned friend cannot do that without your Lordship's permission—you remember those two letters of Martin, Currie's where there were two letters and I could not get them in under your Lordship's ruling; now my learned friend wants to put in a letter from Mr. Kent—

MR. SINGER : A letter from the London Loan and Savings Company.

MR. WALSH : I want his Lordship's ruling; yesterday there were two letters, one from Thomas Baker to Martin, Currie & Company, from the London Loan Savings Company, that you strenuously opposed and his Lord- 20
ship said I could not put it in without linking it up with you people, and then when it came to the letter of the 13th October your Lordship gave the same ruling.

HIS LORDSHIP : Letters under discussion yesterday were letters from Baker to Martin, Currie, and they were ruled out.

MR. WALSH : Yes, your Lordship.

HIS LORDSHIP : This is a letter in the same category ?

MR. WALSH : Yes, my Lord.

HIS LORDSHIP : Why should not the same ruling apply ?

MR. SINGER : For this reason, my Lord; the letters were probably ruled 30
out when submitted by my learned friend as evidence against the Defendants or any of them unless my learned friend connected the Defendants up with these letters; here we have letters written by the Plaintiff company and I submit their own letters are evidence against the Plaintiff companies which can be used by the Defendants against them even though they are not in a position to use those letters against the Defendants.

HIS LORDSHIP : They may be used against them, but not in their favor.

MR. SINGER : Yes.

HIS LORDSHIP : That is, I think, good reason; their own letters indicated that they had knowledge of what they were writing about. 40

MR. SINGER : Yes, my Lord.

HIS LORDSHIP : Yes.

MR. WALSH : My objection was there was one written, these both were discussed at some length before your Lordship yesterday. My learned friend would not let me put in one of July 9th, written by the London Loan per Thomas Baker—

HIS LORDSHIP: If you are acting for an ordinary Plaintiff you cannot put in a letter he writes in support of his case, but if there is a letter that the Defendant wrote you could, representing the Plaintiff; there is all the difference in the world, one is self-serving and the other is admission against interest; that is the difference.

MR. WALSH: As this letter that Mr. Singer now puts in links up the letter I want in—

HIS LORDSHIP: You may be permitted to put it in on re-examination; that is the way things are very often got in.

10 MR. WALSH: Yes, your Lordship.

MR. SINGER: The next is letter, your production 183-J, London Loan and Savings Co. to Martin, Currie & Co., bearing date January 13th, 1926?

A. I do not appear to have it here. How does it read?

Q. "I am in receipt of your letter the 17th December"—a letter of three or four pages?

A. I do not appear to have it.

MR. SINGER: Will your Lordship leave 255 for that?

MR. WALSH: I tried to get that in yesterday.

A. I think Mr. Walsh may have it.

20 MR. WALSH: Here it is.

HIS LORDSHIP: They are accommodating you apparently.

EXHIBIT NO. 255: Letter Jan. 13th, 1926, from London Loan and Savings Co. to Martin, Currie & Co.

Q. The next is your production No. 183-B, a further letter from J. H. Hambly to Martin, Currie & Co., November 9th, 1927.

EXHIBIT NO. 256: Letter November 9th, 1927, from London Loan and Savings Co. to Martin, Currie & Co.

Q. Next, your No. 183-Y, further letter from London Loan and Savings Co. to Martin, Currie & Co., dated April 6th, 1929.

30 EXHIBIT NO. 257: Letter April 6th, 1929, from London Loan and Savings Co. to Martin, Currie & Co.

MR. SINGER: My Lord, the Minute Book of the company has been filed as Exhibit 13, and I would ask here permission to make application for a ruling that that stands as an Exhibit for all entries concerning the matters at issue in this action, because otherwise I will have to go through the various minutes, and I will have probably forty or fifty items to give you, various items.

40 HIS LORDSHIP: No; I think it was arranged, as I understood it, that the whole Minute Book should be filed as Exhibit 13, but that only the pages which would be referred to would be put in as an Exhibit. That ruling ought to be satisfactory. If you indicate the pages, that is all.

MR. SINGER: I will be able to indicate to your Lordship the dates of the minutes, but not necessarily the pages.

HIS LORDSHIP: You can do that any time during the trial. Go through the book and get the pages, that is more convenient, because if I have to refer to them I do not want to have the same trouble hunting dates and all the rest of it.

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MR. SINGER: I will check that up and submit that later on.

Q. Then I want production 217-C, a letter from the Department of Insurance to M. J. Kent, Manager, London Loan and Savings Co., dated October 2nd, 1923. A. (Produces.)

EXHIBIT No. 258: Letter October 2nd, 1923, from Department of Insurance to M. J. Kent, Manager, London Loan and Savings Co.

Q. Then 217-D, letter London Loan and Savings Co., to R. Evan Gray, Registrar Loan Corporations, bearing date October 5th, 1923.

A. (Produces copy.)

EXHIBIT No. 259: Letter from London Loan and Savings Company to 10
R. Evan Gray, Registrar Loan Corporations, dated October 5th, 1923.

MR. SLAGHT: I want it understood, perhaps it is an unnecessary precaution, that these documents now being put in by another Defendant are not evidence against me in the trial unless they are connected.

HIS LORDSHIP: Certainly, they are not evidence against any person as to their contents.

MR. SLAGHT: I have not examined these things.

MR. WALSH: Did you put in a letter of April 28th, 1923, from Mr. Gray?

MR. SINGER: No. My learned friend can have the privilege of filing it.

HIS LORDSHIP: Yes, Mr. Singer is not bound to put it in unless he wishes. 20

MR. SINGER: The next thing I want you to produce are the annual reports of the Registrar of Loan Corporations; you put in two yesterday, and I want the remaining years put in. A. (Produces.)

EXHIBIT No. 260: Annual report to Registrar of Loan Corporations for 1927.

EXHIBIT No. 261: Annual Report to Registrar of Loan Corporations for 1928.

EXHIBIT No. 262: Annual Report to Registrar of Loan Corporations for 1929.

MR. SINGER: Q. I believe you told us before that the directors of the 30
London Loan Assets Limited are the same directors as now exist for the London Loan and Savings Co. Limited? A. Yes.

Q. And you, I believe, are Vice-President of both companies? A. Yes.

Q. And the Consolidated Trust Corporation had how many directors before it transferred its assets to the Canada Trust Co.?

A. I would say about eleven.

Q. Were the five directors of the London Loan and Savings Co. directors in the Consolidated Trusts Co.? A. The present five?

Q. No, the five that were in office before the sale of the assets took place. A. Yes. 40

Q. They were all directors of the Consolidated Trust Co.? A. Yes.

Q. Can you tell me from memory or from your records, if necessary, who owned the majority of shares in Consolidated Trusts Corporation?

A. I think the London Loan and Savings Co. did.

Q. As a matter of fact, the London Loan and Savings Co. owned practically all of the shares of Consolidated Trusts Corporation?

A. They owned a large number of shares.

Q. Is it not a fact the Consolidated Trusts Corporation is really a subsidiary company of the London Loan and Savings Co.? A. Yes, I would—

MR. WALSH: That is not the fact.

MR. SINGER: Perhaps the witness can give his opinion.

HIS LORDSHIP: No, it is not a case of opinion at all.

MR. SINGER: He can give me his information.

HIS LORDSHIP: Yes, of the facts, but not as to the conclusion, if there is any dispute about it.

MR. SINGER: I did not know there was any dispute.

10 Q. Do you know how many issued shares there were of the Consolidated Trusts Corporation? A. No.

Q. Do you know what percentage or approximately the percentage of shares that were owned by the London Loan and Savings Co.? A. No.

Q. Will you please produce for me the books of the Consolidated Trusts Corporation?

A. I have not any of the books of the Consolidated Trusts Company.

Q. Do you know in whose possession they are at the present time?

A. The Canada Trust Company the Board of the London Loan that was on the Consolidated Trusts Company in September, 1929, resigned some
20 months later, and then the Huron and Erie put in a new Board and carried on for some time after that.

HIS LORDSHIP: The Consolidated Trusts Co. are party Defendants here.

MR. SINGER: Yes.

Q. Can you tell me about the shares of the London Loan and Savings Co., who they were owned by just before the sale of the assets?

A. How do you mean?

Q. Can you tell me what proportion of shares in the London Loan and Savings Co. Limited were owned by the Defendant McCormick or the McCormick family? A. Before the contest for control?

30 Q. Yes.

A. I would say enough shares to represent the control of the company.

HIS LORDSHIP: Over fifty per cent? A. Yes.

MR. SINGER: Would I be fair in saying approximately fifty per cent?

A. Somewhere around that.

Q. It might be a little over or a little under?

A. Yes; Mr. McCormick had control until a meeting in February, 1929.

Q. Before there was any contest for control, let us take up to the year 1927; there was no contest up to that time, was there? A. No.

40 Q. Up to the year 1927 am I fair in saying McCormick apparently owned approximately fifty per cent of the shares of the London Loan and Savings Co.?

A. No, I don't think they owned that quite; the McCormick family along with friends of theirs and supporters had enough for control.

Q. Can you give me any approximate idea of the amount the McCormick family owned?

A. No; I never figured that out, but they had a large block of stock, there is no question about that.

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Q. Please arrange to get me that information. I want to get the relation of the ownership of the McCormick interests as against the whole of the issued stock.

MR. WALSH : I will admit they had the control and elected the Board.

HIS LORDSHIP : They and their supporters, those in accord with them had control; as I understand Mr. Singer's question is directed to the McCormick family.

MR. SINGER : Yes, my Lord. I am not interested in the question of control; the reason I want that information, certain allegations of fraud and conspiracy are made; if they are true they must result in certain damage to the shareholders of the London Loan and Savings Co. 10

A. No doubt about that.

Q. I want to see what proportion of damage the people whom you accuse of that fraud and conspiracy are going to bear?

A. They do not own the shares now.

Q. I want that information; if you have not got it I would like you to get it, and have it here this afternoon. You have the books and the records of the London Loan and Savings Co.; is that right?

A. I have, yes; the London Loan Assets have them.

HIS LORDSHIP : If your object is that, I think perhaps it is unnecessary to get the exact amount; your argument would be generally that it would be unlikely they would conspire to injure themselves. 20

MR. SINGER : Yes, my Lord.

HIS LORDSHIP : That is only argumentative; it does not matter whether they hold one share or one hundred.

MR. SINGER : I think it would matter having in view the amount of damage which is now alleged took place.

HIS LORDSHIP : I suppose the conspiracy damage is an alternative claim.

MR. WALSH : It is against them personally.

HIS LORDSHIP : I know; it will be sufficient for Mr. Singer's purpose that a very large block of stock was held by the McCormicks, and that they and their supporters held over fifty per cent. 30

MR. WALSH : And that they have now got out with notice and with bonus.

MR. SINGER : That is an explanation I do not understand.

Q. My learned friend asked me to ask, do you know what number of shares, if any, were held by Mr. Brickenden and his wife in the London Loan and Savings Company?

A. I would say around seven or eight hundred shares, speaking from memory.

Q. You filed, I believe, two affidavits on production, the first at an earlier stage of the proceedings, and the second after a number of other documents had been discovered? A. Yes. 40

Q. In the Court yesterday you produced certain further correspondence that had been discovered, evidently since the filing of the last affidavit on production? A. Yes.

Q. Are there any other documents or letters or correspondence that you have discovered that have not yet been produced or filed?

- A. Not that I know of.
- Q. You discussed yesterday the question of May Rutherford? A. Yes.
- Q. I believe it was said that you had been unable to locate May Rutherford? A. Yes.
- Q. But you had located her solicitor? A. Yes.
- Q. Did you have an interview with her solicitor?
- A. I had an interview with him some time ago.
- Q. Is there such a person as May Rutherford?
- A. I am very doubtful whether there is or not; he did not seem to know whether there was or not; he had acted for her, and he had never seen her.
- Q. Who was the solicitor? A. Mr. T. H. Wilson.
- Q. And he was subpoenaed here by you? A. Yes.
- Q. And was in London yesterday? A. I believe so; yes.
- Q. Has he been released from his subpoena?
- A. You had better ask Mr. Walsh.
- Q. I am asking the same question that was asked you yesterday.
- MR. WALSH: He was talking with Mr. Morine; no doubt Mr. Morine could tell you.
- MR. SINGER: The nasty insinuations my friend likes to make have been going on from the commencement of this case, and may I suggest Mr. Walsh has no business to make them.
- MR. WALSH: I am not making any insinuations; just a statement.
- A. I did not see Mr. Wilson from the time he came to London; if Mr. Walsh chose to release him, that was for Mr. Walsh to decide; I don't know whether he has been released or not; so I imagine he is still in London.
- Q. I believe you said you had somewhat the same difficulty with the Defendant Durno? A. Yes.
- Q. He could not be located then? A. No.
- Q. He was served by publication? A. Yes.
- Q. Have you located him since? A. I know where he is now.
- Q. Where is the Defendant Durno now?
- A. Down in the United States somewhere; I think it is Houston, Texas.
- Q. There is such a person as Durno?
- A. Evidently; I was doubtful that there was for a long time; I think there is such a person now.
- Q. Have you now satisfied yourself there is such a person? A. Yes.
- Q. Will you tell me what means you have taken to satisfy yourself?
- A. I had no direct correspondence with him or concerning him; Mr. Gray—
- Q. Might I ask you this, have you within the last three weeks received any letters or correspondence from the Defendant Durno? A. I have not.
- Q. Have you received from any solicitor in Houston, Texas, any documents signed by the Defendant Durno? A. I have not.
- Q. Do you know if your companies or solicitors in connection with this action had?
- A. Mr. Gray had some correspondence with certain agents in this city

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where Durno is located, but I have not seen the correspondence nor any of the productions.

Q. Your firm, Braden and McAlister, are the solicitors on the record for the Plaintiff? A. Yes.

Q. Any correspondence Mr. Gray had was on behalf of the Plaintiff and under your instructions or with your consent?

A. Mr. Gray made these investigations.

Q. At your request or for the Plaintiff? A. Yes, I presume so.

Q. Will you please produce the correspondence that has passed between you and your agents in Houston, Texas—I don't care so much about the 10 letters to your agents or from your agents, but I want documents signed by Durno? A. I have not any documents; I have never seen any of the letters.

Q. Will you please ask Mr. Gray for them?

MR. WALSH: I object to that; they have nothing to do with it, no relevancy to this matter.

MR. SINGER: Durno is a co-defendant in this action, and if there is any document—

MR. WALSH: You can call Mr. Durno as a witness if he is a reality; I don't know anything about him.

MR. SINGER: My learned friend knows who Mr. Durno is, and I suggest 20 he has in his possession an affidavit signed within the last two weeks.

MR. WALSH: I have not.

MR. SINGER: Has Mr. Gray?

MR. WALSH: I don't know; I object to the production if he has it. Mr. Morine and Mr. Durno were in together with these cheques; if you want Mr. Durno here, produce him.

HIS LORDSHIP: I am not going to order the production of the documents.

MR. SINGER: I am submitting it is a matter of some real importance. Durno is a co-defendant in this action. The Plaintiff should have procured all documents in their possession relating to the matters in question in this 30 action; I am submitting they have in their possession certain documents sent—

HIS LORDSHIP: I have no proof they have.

MR. SINGER: Surely, my Lord, when the witness in the box admits that the solicitor in this action has been in communication with him—

HIS LORDSHIP: With agents down there; I don't think he is obliged to produce that.

MR. SINGER: I don't want the documents or correspondence with agents, but I am submitting to you this witness does know or should know and can find out, and can be directed by your Lordship to find out if they have any documents signed by the co-defendant or not. 40

HIS LORDSHIP: He says he does not know of any; I am not going to make any further orders; that settles it.

MR. SINGER: I am going to ask your Lordship—

HIS LORDSHIP: I have made my ruling and I am not going to change it.

MR. SINGER: With all due respect—

HIS LORDSHIP: I am not going to listen to any argument against my ruling after it is given.

MR. SINGER: Will I have your Lordship's permission to call one of the counsel in this case? I propose to call Mr. Evan Gray.

HIS LORDSHIP: You don't need my permission.

MR. SINGER: Very well, my Lord.

Q. Might I ask you, outside of the evidence you have given as to the personal interviews you have had with the three Defendants, you have no personal knowledge of any of the events that transpired by or through or with this company prior to the sale of the assets to the London Loan Assets Corporation?

10 A. No, no personal knowledge, only what Mr. Kent told me; he told me a lot.

Q. That you know is not evidence? A. Yes.

Q. You have no personal knowledge except what you obtained by hearsay or as a result of your investigation of the books and records of the company?

A. That is correct. If you call Mr. Kent's information hearsay, it is hearsay evidence—I suppose according to the rules of evidence.

Q. You have been asked on two or three occasions by your counsel as to whether or not you had been able to discover certain documents or information as a result of your search of the records of the company? A. Yes.

20 Q. And you have given your answers; can you tell me whether or not your searches have given you enough information to say that such documents had never been in the possession of the company? A. Yes.

Q. Had never been?

A. Yes; I am quite satisfied those documents, you are speaking of the Rutherford transaction?

Q. I am not dealing with any documents in particular.

A. Mention the particular matter you are speaking of.

Q. I am dealing with alleged missing documents generally.

HIS LORDSHIP: You can put the question perhaps in a more direct way; was there anything in your search that would indicate that the company
30 ever had any further documents than those that you found?

A. There were Martin, Currie's letters that obviously came to the company, because I got copies from Martin, Currie & Co., and some of those letters would appear to have been letters that were answered by Mr. Brickenden and Mr. McCormick.

MR. SINGER: I am referring to questions of valuation, solicitors' reports on applications for loans.

A. I can say positively that none of those were taken out of the files of the company after the control changed; I produced absolutely everything I could find whether it was for or against the company.

40 Q. I am suggesting that they might have been in the possession of the company and might have been lost or mislaid before you ever took control of the company, and that is one of the reasons you could not find them in your search?

A. That is your suggestion, and do you wish me to pass an opinion upon that suggestion?

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Q. I want to know if it was possible a number of these documents which you could not find, might have been in the possession of the company and since lost or mislaid?

A. I would say anything was possible the way that company was operated.

Q. And did your search of the records as a matter of fact disclose to you that that was perhaps the situation of affairs in the year 1923?

A. That documents in the company's files were taken out?

Q. I am not suggesting anything was deliberately taken out?

A. I am quite convinced from looking at the records that are available, records of the 1923 transactions, that there was no valuation beyond Mr. 10 Morine's valuation of the Buckingham Apartments.

Q. That is not the suggestion I made.

HIS LORDSHIP: Of course there is always the possibility in any concern that some documents might be lost.

MR. SINGER: You must have come across one of the Exhibits, Exhibit 258, which is a letter from the Department of Insurance to Mr. Kent?

A. I guess I have it here.

Q. I want to draw your attention to one paragraph of this letter: "My examiners also found that in the case of many of your loans, the borrowers' application, the valuator's report, the solicitor's report on title, and your 20 memorandum of approval by directors were missing." A. Yes.

Q. That was evidently the situation in 1923; now, did your searches confirm the statement that was made in that letter? A. Yes.

HIS LORDSHIP: There were none found? A. There were none.

HIS LORDSHIP: Missing is an equivocal word; it was not present.

MR. SINGER: It does not suggest for a minute that it never was there.

HIS LORDSHIP: It is quite open to that meaning. They were not found; they may never have been in existence, or may have been in existence and lost.

MR. SINGER: Briefly, can you tell me without going through the details at the time of the sale of the assets by the London Loan and Savings Co. to 30 the Huron and Erie Mortgage Corporation were all the proper steps provided by the Act complied with? A. I think so.

Q. So that we may take it for granted so far as this action is concerned—

A. All the steps set forth in the agreement were fully taken.

Q. All steps rendered necessary by the directions in the Act?

HIS LORDSHIP: No, no, don't answer that question.

MR. SINGER: Q. Will you tell me what steps were taken to carry out the agreement in detail?

A. Speaking from memory, Mr. Singer, I would say everything set forth in the agreement was carried out; there are resolutions in the Minute 40 Books, if you want to look at them.

Q. The Act provides that certain procedure shall be followed in connection with the sale of assets?

A. What sort of procedure?

Q. Have you examined the Act with reference to it?

A. I may have at the time, yes; Mr. Gray was really in charge of the matter.

Q. Put it this way : as far as you know, all proper steps were taken to comply? A. All proper steps were taken, yes.

Q. And it was finally completed by obtaining consent of the Lieutenant-Governor-in-Council to the agreement? A. Yes.

HIS LORDSHIP : I suppose he had to be satisfied that all the steps were taken.

MR. SINGER : Yes. Did you at any time make any investigation to ascertain the various officers or directors of the London Loan and Savings Co. who have from time to time been executing documents of the London
10 Loan and Savings Company that required execution under seal?

A. I don't know as I made any extensive investigations beyond the investigations which were necessary for the purpose of this action.

Q. Did you find that documents had been executed by Mr. Hunt?

A. I found that the discharge of mortgage referred to in the abstract—

Q. Apart from this action?

A. I don't know of any other important documents that were signed by Mr. Hunt outside of that document; there may have been others.

Q. You were present at Mr. Hunt's examination, were you not? A. Yes.

Q. And you don't know of any? A. No.

20 Q. What about Mr. Robinson, did you have any occasion to investigate whether or not he signed documents which required execution under the seal of the company?

A. I have had no occasion to look into other matters of that kind.

Q. You have not looked into it?

A. No; but I know that Mr. Hunt has no authority to sign a document of that kind.

Q. That is your opinion?

A. Yes, and it is strengthened somewhat from seeing the by-laws of 1928. Mr. Gray has the by-laws filed with the Registrar.

30 MR. WALSH : Your Lordship suggested we should perhaps find them at the Department; they were there.

MR. GRAY : They are in the custody of an officer of the Department, and he will be called as a witness and produce them.

HIS LORDSHIP : Perhaps you can say for Mr. Singer's benefit now whether the printed copy is the same.

MR. GRAY : It is, my Lord; I have compared the two. And the pamphlet I had here yesterday is the same.

MR. SINGER : If you will let me have them then over lunch hour, I will look them over.

40 Q. So far as your searches show, Mr. Braden, have you found anything in the minutes of the company to show that any objection was taken by any director to the completion of the Durno transaction?

A. The minutes, I would say, would speak for themselves; that is all I can go by, what is in the Minute Book; I see no objection in the Minute Book.

HIS LORDSHIP : As far as you have searched?

A. I know there was objection on the part of Mr. Kent sent to the Department, a written objection.

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MR. SINGER : Confine yourself to the answers to my question; you found no record in the Minute Books as a result of your search that any objection was taken to the completion of the Durno transaction? A. No.

MR. WALSH : According to the minutes? A. From the minutes.

HIS LORDSHIP : That is all he is asked?

A. That is all; there is nothing in the minutes.

MR. SINGER : Do you find any record in the Minute Books of the company to show that Mr. Kent at any time took any objection to the Durno transaction? A. I do not.

Q. Have you been able to find out what was the usual procedure adopted by the London Loan and Savings Co. when mortgages came into default? 10

A. The usual procedure was to get Mr. Morine to look after them.

HIS LORDSHIP : That is the Toronto mortgages?

A. Yes; most of the mortgages are in Toronto, 99% of them are in Toronto; 95% anyway.

MR. SINGER : 95% in value may be?

A. Yes; nearly all the business was done with Mr. Morine in Toronto.

Q. I am dealing now with the method of procedure.

MR. WALSH : May I say Mr. Braden was asked whether there was anything in the records of the minutes of the company; there is a letter, my Lord, a copy of a letter of Mr. Kent's. 20

HIS LORDSHIP : It is minutes; Mr. Singer's question was confined to the minutes.

MR. WALSH : I don't want any misunderstanding.

MR. SLAGHT : May I interrupt at this stage, because while my friend is cross-examining, and it is not my examination in any way, the witness who was active as an investigator and who is solicitor on the record, and who is apparently the chief witness in the trial that we have seen so far, is repeatedly inserting matters of evidence that appear to his mind apparently to be helpful to the cause in which he is a solicitor, and absolutely irrelevant to the question he is asked; and I am a bit tired of it, and I want to protest against it, and suggest that the witness desist from that. 30

HIS LORDSHIP : I don't know that he is doing very badly in that respect.

MR. SLAGHT : It may be over-zeal and not intentional unfairness.

HIS LORDSHIP : I have that occurrence before me very often.

MR. SINGER : Let us see if we can confine ourselves to the questions and answers to the questions : I want to know if generally you can tell me what was the nature of the proceedings taken when mortgages were in default as to whether those proceedings would be taken by way of the exercise of the power of sale or by way of foreclosure? 40

A. I think it was in all cases exercise of power of sale was used, and not foreclosure; I know of no cases.

HIS LORDSHIP : As far as the records go? A. Yes.

MR. SINGER : So far as your search of the records show, have you come across even one case where procedure was taken by way of foreclosure?

A. I have not.

Q. So that the procedure taken by way of power of sale in the Durno

case, apart from the question of it being a fictitious sale, was the same procedure that would be taken in other cases where there was default by exercise of the power of sale? A. I have not looked into the other cases.

Q. You have made a very exhaustive search of a lot of things, and tell me what you found?

A. I can only say as far as this case is concerned notice of sale was served; I have not looked into all the other cases; I know in many cases notice of sale was used.

10 Q. You know of no case in which proceedings were taken by way of foreclosure? A. I know of none; I am not saying there were none.

HIS LORDSHIP: I should think Mr. Brickenden would be the witness to tell that.

MR. SINGER: I am producing to you, Mr. Braden, Exhibit 70, which is the Durno cheque of June 17th, 1925, for \$500.; can you tell me whether or not this cheque was ever presented for payment?

A. It does not appear to have been presented; I think it was presented since this action began, but prior to that it was not.

Q. Do you mean it was presented some seven or eight years after its date? A. Yes.

20 Q. You did not expect to have it paid then?

A. No, I did not expect; I would have been surprised if it had been.

Q. So far as you knew, Durno was not in Toronto at the time the cheque was presented? A. No.

Q. You served him by publication? A. Yes.

Q. And did not present a cheque till eight years later without any expectation of having it paid?

A. From the records I knew Durno was not of any consequence financially.

Q. You are again interjecting evidence; do you know you have no right to answer that way?

30 HIS LORDSHIP: Now, I am not going to have counsel lecture a witness; you may apply to the Court.

MR. SINGER: Have you made any investigation to find out if at or about the date of this cheque, June 17th, 1925, there were sufficient funds in the bank to cover this cheque?

A. The only thing I can speak of that I can look into the St. Ives Crescent.

Q. I am dealing with the bank situation.

A. How could you expect me to answer that question?

Q. You can answer it.

40 I am of opinion there would not be any money to meet that.

Q. I did not ask that. A. I made no investigations.

Q. With reference to St. Ives Crescent, you say you formed your opinion on the financial stability of Mr. Durno?

A. Yes, and the Buckingham transaction.

Q. And I believe you have reference in connection with that transaction to a certain cheque of Durno's that was returned unpaid?

A. Yes, and arrears that were outstanding at that time.

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Q. And can you tell me how many days after the cheque was returned unpaid was it that the cheque was paid to the company?

A. I would have to look at my file.

Q. Please look at your file and give that information to the Court—perhaps I can give you this information; the first letter shown in your production No. 233, that is the letter from the company bearing date April 4th—

HIS LORDSHIP: I don't know whether you consider it important or not, but Mr. Braden's opinion as to Durno's worth or otherwise is of no consequence.

MR. SINGER: I am not interested in his opinion, but having put on the record the question of the returned cheque—

HIS LORDSHIP: As far as the fact is concerned.

MR. SINGER: Have you got your production 233?

A. Yes, the statement is here.

Q. There is the letter dated April 4th, 1924, from the company to Durno, advising this cheque had been returned; is that correct? A. Yes.

Q. We find that on April—?

A. April the 8th, a letter to Mr. Morine—

Q. Please—April 10th, the company had received another cheque from Durno to replace the cheque which had been returned n.s.f., that will appear by your production No. 239?

A. That is the letter to Mr. Morine, received a new cheque this morning.

Q. By your production No. 241, which is the letter of the company to Durno bearing date April 17th, 1924, it would appear that payment had been made and the company returned to Durno his unpaid cheque?

A. "Your cheque for \$234.30 has now been paid by other means"—that was through Mr. Morine, I understand.

Q. Please give your basis for that understanding?

A. I think the correspondence shows that. It says here, "Has been paid by other means."

Q. You made a statement in the box yesterday the amount of that 30 cheque had been paid by Mr. Morine?

A. I think I can find that in here.

Q. I would like to know what you base that statement on?

A. The letter says it was paid by other means.

MR. GRAY: Is there any doubt about it?

MR. SINGER: Yes, because it is not true.

HIS LORDSHIP: That is a rather startling statement for counsel to make; I don't think counsel should make statements like that; he does not know the facts.

MR. SINGER: May I say my client states he did not pay this cheque. 40 I simply asked you, you made the statement in the box yesterday that the amount of this cheque, \$234.20, had been paid to the company by Mr. Morine; I want to know why you made that statement?

A. Because the letter says it was paid by other means.

Q. You take for granted that the other means was Mr. Morine?

A. And Mr. Morine was collecting these rents; the matter was placed in his hands to collect the rents.

Q. Have you any knowledge at all, not assumption, on which you can base your statement, the definite statement made by you, that the cheque was paid by Mr. Morine? A. The only knowledge I have is by the records.

Q. Is there anything in your records to show that Mr. Morine paid that cheque? A. I am looking for a certain letter here.

HIS LORDSHIP: Find it during the intermission.

MR. SINGER: If you can find it and let me have it at noon? A. Yes.

Q. Have you any personal knowledge of the various entries on the ledger sheets which have been filed as Exhibits?

10 A. No, I have no personal knowledge of any of these ledger sheets.

Q. You did make a statement yesterday that properties included in the Government return as returned to the Registrar of Loan Companies under the heading of Real Estate Holdings included the property which had been offered up for sale under the power of sale where the sales proved abortive?

A. Yes, I made that statement.

Q. Did it include any other property?

A. I think all property, property actually owned by the company, might be included under that; but I made inquiries through the Chief Inspector of the Department; that is where I got my information.

20 Q. That again was hearsay evidence?

A. It would have to be; I could not say personally.

Q. You did say it? A. Yes.

MR. WALSH: He knows of instances, too.

HIS LORDSHIP: Don't interrupt, Mr. Walsh.

MR. SINGER: Head Office property of the company, the office building and site which they own in London was included under that real estate holdings? A. I think it was.

Q. In addition to that, there would be the properties which had been offered for sale under powers of sale contained in mortgages, and where the sales proved abortive? A. Yes.

30 Q. Outside of those two classifications, do you know of any other properties which would be carried under that heading?

A. I don't know of any others because any other securities owned by the Loan Company would be in the nature of mortgages and be reported as mortgages.

HIS LORDSHIP: Your investigations would show that once a property was offered for sale and it was not sold, it would be treated as real estate in the hands of the company? A. Yes, my Lord.

Q. That was the distinguishing line between mortgage and real estate?

40 A. Yes.

MR. SINGER: Is that correct? A. Yes.

Q. Can you tell me as a result of your investigations why they included in the real estate owned by the corporation, the Buckingham Apartments, because in the returns made for the year 1926 the Buckingham Apartments did not come under either of those classifications, if your contention is correct?

A. I can only give you what has been said to me, if you wish me to give that.

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HIS LORDSHIP: No.

A. I cannot tell you; I have no personal knowledge of these matters.

MR. SINGER: The Buckingham Apartments did not at that time come under the classification of property that had been offered for sale, where the sale was abortive in 1926, did it—the sale to Durno had been completed in 1925? A. Yes.

Q. New records had been commenced in 1926 under the Durno mortgage for \$77,000? A. The records speak for themselves.

Q. So far as you know, no sale proceedings had been taken in connection with the Durno \$77,000. mortgage? A. None that I know of. 10

Q. The reason you suggested before would not be applicable then to the inclusion of this property in the list of real estate holdings in 1926?

A. Well, I understand there had been default in the payment of that \$77,000. mortgage, and that is why it was included.

Q. We are not dealing with mortgages in default, because there must have been a great many of them in default? A. Yes.

Q. And all that were in default were not included in the list of real estate holdings? A. That is true; but they should have been though.

Q. So far as you can find out, the only properties that should have been included in the list of real estate holdings was property like the Head Office 20 of the company and property where sales had taken place under power of sale, and sales had proved abortive?

A. You are asking really an opinion on that; and I am not in a position to give one; I would like the man from the department to speak of that.

Q. One of the things that perhaps you could get at luncheon hour is with reference to that cheque, if you will take notice of it, that is referred to before of \$4,998., because I want the records of the company dealing with that; that was Exhibit 183 made to Renton and Morine; I want to trace that cheque.

A. I have the records here that we have.

Q. Please produce them. A. Yes; there is a cheque for \$10,000. 30

Q. I am dealing with that one cheque, \$4,998.

A. And one for \$5,000., February 19th.

Q. \$4,998? A. Please let me see the cheque.

Q. Unless the stamp added to it may increase it to \$5,000?

A. Yes, that appears in ledger sheet 107 under the name of George G. McCormick and Joseph A. Stone, trustees of Charles A. McCormick Estate, all cheques to be signed by G. G. McCormick, and that cheque for \$4,998. you have produced, Exhibit No. 183, appears to have been charged up on February 20th, but because it has marked on it Bank of Montreal to C. Renton and H. A. Morine, marked on the ledger sheet what it is. 40

Q. Your ledger sheet shows the issue of the cheque; the cheque is dated February 19th, and under the entry of February 20th it shows the issue of the cheque to Renton and Morine for \$4,998.?

A. It is marked on the ledger sheet I have just produced.

Q. Who was this cheque charged against, in other words the company paid out the money, did they ever receive it back by payment in cash or charged against somebody else?

A. That is very difficult for me to say how it was dealt with.

Q. I am going to ask you to examine your records and find out if this cheque was charged against the McCormick Estate direct by the London Loan and Savings Co. or against the Consolidated Trusts Co. for the McCormick Estate?

A. I will have to make inquiries, and I will be glad to answer that; it was charged all right.

Q. My suggestion is that cheque was paid out by the London Loan and Savings Co. on behalf of the McCormick Estate in connection with a mortgage given to a man by the name of Clark, Lake Shore Road, Toronto, and that the London Loan received payment back again from the McCormick Estate either by a cheque received direct or by a charge made by the company against the McCormick Estate?

A. Things were done in a very peculiar way in that company at that time.

Q. If that statement is correct I would like to know it.

A. My investigation will be of such a nature that I cannot speak of the matter personally but what was told to me.

Q. Bring the records.

HIS LORDSHIP: Have the records been available to the Defendants?

20 A. Yes, my Lord.

MR. SINGER: This cheque does not come into the Buckingham matter but the suggestion has been not only that this cheque—

HIS LORDSHIP: What was the object of introducing it?

MR. SINGER: I objected to it when filed but your Lordship allowed it to be filed.

HIS LORDSHIP: On account of the undertaking that it would be connected with the matter.

MR. GRAY: It has already been connected in this way; it was introduced for one purpose, mainly to show the endorsement on this cheque of the name of W. Lawson Renton per H. A. Morine.

MR. SINGER: Is that the only reason? If so, I will drop the subject.

HIS LORDSHIP: I think I called attention to that fact yesterday, that at that time that was the only reason I could see for introducing; what do you say as to that?

MR. WALSH: The only reason I brought it was to show at that very time he had the power of attorney, and Mr. Maclennan—

HIS LORDSHIP: Only for that purpose?

MR. WALSH: For that purpose only.

MR. SINGER: That is quite satisfactory, because that has not been the suggestion heretofore.

HIS LORDSHIP: I think, Mr. Singer, I distinctly stated that that was the only thing that to my mind made it relevant to the issue at all.

MR. SINGER: Very well, my Lord.

Q. You will recall that some time in 1928 the London Loan and Savings Co. purchased the first mortgage held by the Huron and Erie Mortgage Corporation? A. Yes.

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Q. Have you been able to find out whether or not they were obliged to pay a bonus in connection with that purchase?

A. I don't think I looked into that.

Q. Will you please check that up at noon as well? A. I can check it up.

HIS LORDSHIP: There will be a statement in some letter accompanying it.

MR. SINGER: Because it appears to me there would have to be a bonus paid under the section. A. There may have been a bonus paid.

Q. I believe it is payment of interest to date, and in addition bonus equal to three months' interest in lieu of notice; you will produce that for me as well. A. I will endeavour to get that. 10

Q. After the \$150,000. was assigned to the London Loan and Savings Co., can you tell me if at any time thereafter any charges were made on the books of the company for interest payable by anybody under that mortgage?

A. I have not looked at that particular account.

Q. Please check that up for me.

HIS LORDSHIP: I don't know; this thing of asking a witness in the box to check up a whole lot of things, you cannot turn a witness into an accountant. It is a different thing from a witness on discovery or party to an action.

MR. SINGER: Please produce your records showing all records of the company as and from the time they took the assignment of this \$150,000. mortgage, so that I may find out if any further charges of interest have been made as accruing due under that mortgage from time to time? 20

A. I will be very glad to do it; I have no objection.

Q. You will get this?

A. I was not asked to produce it, and that is why I have not got it here.

HIS LORDSHIP: You are asked now.

MR. SINGER: I want to go over these annual returns.

HIS LORDSHIP: This witness has no knowledge of the annual returns; they speak for themselves. You can point them out to me without referring to the witness at all. 30

MR. SINGER: I will be very glad to do it, because there are quite a few entries that may require some explanation.

HIS LORDSHIP: How can this witness explain them?

MR. SINGER: His investigations may have caused him to get some explanation; I don't know.

A. I will say now I did not investigate this at all; we have a man from the department in Toronto ready to give evidence on this, and he knows one hundred times more about it than I do; I know nothing about it.

HIS LORDSHIP: I think it would be lost time asking Mr. Braden any- 40 thing about it.

MR. SINGER: You recall Exhibit No. 122, which was a letter from the Huron and Erie to the Consolidated Trusts Corporation in which the Huron and Erie asked the Consolidated Trusts Co. to refer the matters in connection with their mortgage to their trustor, do you remember that?

A. Yes, I remember that letter. I remember seeing that letter.

Q. The memorandum on the back of Exhibit 122 reads: "Re Buckingham

Apartments. Letter from Huron and Erie *re* payment of first mortgage, which is overdue. File. Geo. G. McC., President."

Let me refer you to a memorandum on the face of the letter; do you know whose initials they are? A. It looks like H. R. C.

Q. That would be Mr. Clewes, manager Consolidated Trusts Corporation? A. Yes.

Q. The memorandum reads: "Refer to L.L." A. Yes.

Q. That would be to London Loan? A. Yes.

Q. Have you been able to find anything on the records of the company which would indicate that the London Loan was not trustor referred to in that letter? A. Nothing that I know of.

Q. Has the London Loan Assets in its possession any of the old documents or books belonging to the Consolidated Trusts Co., or have they all been turned over to the Canada Trust?

A. I think the Canada Trust have them all; we have no interest in the Consolidated Trusts or Canada Trust in any way.

Q. You have no records? A. No.

Q. You recall a conversation that you said you had with Mr. Morine in the spring or fall of 1929? A. Yes.

Q. When he insisted that he was an agent of the company and had been their agent for years, and you produced a bundle of correspondence to substantiate your statement; all of that correspondence referred only to the question of insurance, do you recall that? A. He took the general position.

Q. All that correspondence referred only to insurance?

A. Originated over insurance.

Q. And referred to nothing else but insurance?

A. The correspondence speaks for itself.

Q. Is there anything else?

A. Mr. Morine told me that he was the agent in every sense of the word; he called me so often on the telephone about the matter.

Q. I am not asking that. I am dealing now with the bundle of correspondence you filed at that time, does it refer to anything else than the question of insurance?

A. Yes, hand me that correspondence and I will show it to you. It speaks for itself. I don't know why I should try to place my construction on it.

Q. Let me deal with the question of insurance.

A. Insurance was certainly referred to. Mr. Morine referred to his agreement with the London Loan.

Q. What did Mr. Morine tell you was his agreement with the London Loan about insurance?

A. He told me this over the telephone, ever so many conversations.

Q. What did he tell you about insurance?

A. He said he was entitled to the insurance, that he had an arrangement with the London Loan Co. that he was to have charge of all the insurance renewals on mortgages.

Q. Confine yourself to insurance. A. He mentioned insurance.

Q. That he had charge of all insurance on what?

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A. On all Toronto properties in the hands of the company.

Q. Or only on loans that have been received by the company through him?

A. He referred to all Toronto properties, and he may have referred to loans in particular which were introduced to the company by him, and that means nearly 99% of the loans in Toronto.

Q. You still go on; I am not asking that; do you know of any insurance on properties in Toronto where the loans had not come through Mr. Morine of any one case where he handled the insurance?

A. I know of so few loans that came from any other source than Mr. 10 Morine that I could not answer that question.

Q. Do you know of any one case of any one loan which had not come through Mr. Morine where he had handled the insurance?

A. A loan that had not come from Mr. Morine where he handled the insurance?

Q. Yes.

A. The only way I can answer that, nearly all the loans that the company had in Toronto came through Mr. Morine, and therefore he controlled nearly all the insurance.

Q. There were some that did not come through him? 20

A. I do not know of any that did not come through Mr. Morine.

Q. You do not know of any?

A. No, or that he was not connected in some way in introducing them.

Q. Do you know of no loans at all that came to the company through men other than Mr. Morine? A. I do not know of any.

Q. Of none? A. There might be, but I don't know of them.

Q. Did the company pay any commission, that is, the London Loan and Savings Co., with references to that insurance?

A. Mr. Morine charged up his premiums and I suppose he got his commissions out of that. 30

Q. Out of the London Loan and Savings Company?

A. Commissions out of the premiums that the London Loan and Savings Co. paid.

HIS LORDSHIP: The ordinary agent's way of commission? A. Yes.

—Court adjourned at 12.45 p.m. to 2 p.m.

—Court resumed at 2 p.m., December 10th, 1931.

HIS LORDSHIP: Are we about through with the Exhibits that are to be used here, or are there many more?

MR. SINGER: Very few more, except some few that may be put in later.

HIS LORDSHIP: The main body of them are in? 40

MR. SINGER: Yes, my Lord.

J. A. E. BRADEN, Cross-Examination continued.

MR. SINGER: Mr. Braden advises me that certain information which he was to get at the lunch hour may be delayed, and if it is not on hand by the time I am through—

HIS LORDSHIP : It can go in any time. I am not going to hold you down to the exact minute.

MR. SINGER : Q. Do your records show the amount of the arrears of taxes and the amount of the arrears on the first Huron and Erie mortgage at the time of the sale under power of sale ?

A. I have no records covering that point here; that information can be obtained.

HIS LORDSHIP : Where, at the Huron and Erie ? A. Yes.

MR. SINGER : The London Loan Assets Limited have not any records
10 showing them ? A. I really don't know.

Q. If they should have ?

A. If they have I would be very glad to produce them, or I would be glad to get them from the Huron and Erie for you if you want to see them.

Q. In connection with the various assignments which were registered showing transfers from the Huron and Erie to the London Loan Assets Limited, including the three assignments of mortgage and the general assignment of claims, can you advise me if any notice was given to the Defendant, H. A. Morine, in connection with those assignments ?

A. No, I don't know as I can, unless it is set out in a letter which I heard
20 Mr. Walsh read yesterday, one of the letters filed, that my advising Mr. Morine that the mortgages had been taken over by the London Loan Assets Limited.

Q. That is the only notice that was given to Mr. Morine of any of the assignments made by the Huron and Erie Mortgage Corporation to the London Loan Assets so far as you know ?

A. Yes, those are the only assignments I know of.

Q. Do you know particularly of any notice of the general assignment of causes of action, that would be the fourth of the documents you registered, any notice of that being given to the Defendant, H. A. Morine, in any way
at all ? A. No.

30 Q. Did you give him any notice of that assignment ?

A. No, I don't think I did.

Q. Or did any one on your behalf or under your instructions give such notice ? A. Not that I know of.

Q. Do you know whether or not any notice was given to Mr. Morine of any assignment that would result from a transfer of assets from the Consolidated Trusts Co. to the Canada Trust Co. ?

A. No, I don't know of any notice.

HIS LORDSHIP : Would you be the person who would know ?

A. No, my Lord, I would not.

40 MR. SINGER : The only remaining things I have are the ones I spoke before to you about, and when they arrive, if you will advise me, we will have them filed.

MR. SLAGHT : If your Lordship pleases, there was an unfinished matter the sheet of the stock ledger—it has now arrived; and before my friend resumes I think I should put it in.

HIS LORDSHIP : Very well.

MR. SLAGHT : You are producing the permanent stock ledger of the

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London Loan and Savings Company which contains the stock account of Mrs. Mabel Andrews, and in this ledger, I see it is numbered 8—— A. Yes.

Q. If you would like to take this page out and put it in we won't need to impound the whole book——

MR. GRAY: That is the book they had locked; and it defied the locksmith so that we could cut it out.

HIS LORDSHIP: If it is agreeable to all.

MR. SLAGHT: If you prefer not to alter the book, we will have the whole book put in.

MR. GRAY: We need the book. 10

A. A copy could be put in.

HIS LORDSHIP: Put in a copy.

MR. SLAGHT: With deference, I should very much like to have this placed before the Court as an Exhibit, the original page; it has some peculiarities, the question of interpretation, what it means.

Q. Why not tear out the page?

A. That is the only thing we can do; the locksmith cannot open the book.

Q. It should be noted it is account No. 7 of Mrs. Clara Aikenhead on the other side of the page.

HIS LORDSHIP: You had better substitute a copy for it in your book. 20

MR. GRAY: We will have that done. This account of Mrs. Mabel Andrews No. 8 will be Exhibit 263.

EXHIBIT No. 263: Account No. 8, being the account of Mrs. Mabel Andrews in the stock ledger of London Loan and Savings Co.

MR. SLAGHT: Looking at the account, Exhibit 263, will you tell me what her balance of treasury stock was in October, 1925, or her balance of stock rather? A. She seemed to have about six shares of stock.

Q. Then what does the account show as to the disposition of her matters in the books of the company? A. The account is evidently balanced.

HIS LORDSHIP: I suppose that means that the six shares of hers were transferred to the trustees and substituted shares in the London Loan Assets obtained? A. Yes, my Lord. 30

MR. SLAGHT: So that she is not now a shareholder in the London Loan and Savings Co.?

A. No more than any other shareholder who transferred their stock to the trustees is.

HIS LORDSHIP: All in the same position? A. Yes.

MR. SLAGHT: I suggest to you that in the ledger from which this sheet has just been taken, or I ask you, is there any account of the trustees as shareholders of London Loan and Savings Co.? 40

A. That matter was attended to by the auditors; I cannot say.

Q. The book is here?

A. I cannot say whether there is an account or not.

Q. Will you satisfy yourself; you are the Vice-President of the company and also a trustee?

A. Whether there is an account or not the situation is the same, the trustees hold——

Q. Perhaps you will leave that for the Court and give us the fact?

A. I don't know as I ever saw this book until last night.

Q. I cannot find that any account has been opened; I may be quite wrong; correct me if I am; that any account has been opened in the stock ledger of London Loan and Savings Company of Canada, Limited, for yourself and your co-trustees, making you shareholders either personally or in trust for any of these shares that have been, as the document says, surrendered; can you find any such?

10 A. There is nothing in the books produced indicating what you have just mentioned.

Q. I suggest to you that the book produced is the entire stock ledger containing the entire records of the shareholders of London Loan and Savings Co. of Canada Limited; is that correct?

A. I don't know; this matter was attended to by auditors, and I could not tell you, as I have no personal knowledge of the matter at all.

Q. Is there any book other than this, which, as far as I can see from examining it, contains a complete record of the shareholders of the company; if there is any other book, please produce it?

20 A. I don't know; I was not asked to produce that until today. I have done my best to produce all the records there were, and I am willing to produce anything we have, but the point never arose before, and I have no personal knowledge of any books.

Q. You are a trustee for certain purposes of certain shares? A. Yes.

Q. As trustee, let me get your answer this way; do you suggest that as trustee you are now recorded in the stock register of London Loan and Savings Co. of Canada Limited as holder of any shares formerly belonging to Mrs. Andrews or any other shareholder?

A. I cannot answer that question as I don't know.

30 Q. Did you ever take any steps to become recorded in the books of that company as a shareholder of the six shares formerly belonging to Mrs. Andrews?

A. That is a matter of detail that was left to the auditors, and I cannot say whether it was done or not. I do not know.

Q. I assume you want to help me? A. Yes.

Q. It strikes me it may be helpful to the Court in determining certain problems, you know. May I take it this way; having been asked to produce the stock register of that company complete, you now produce this one book?

A. Yes, I produce what Mrs. Young, former assistant to the manager, gave me; there may not be any other record; I don't know.

Q. I suggest to you there is no other record? A. You may be correct.

40 Q. If, before this trial closes, there is, I challenge you in a friendly way to produce any further or other records than this. A. I will be very pleased to.

Q. You don't know of any? A. No.

MR. SLAGHT: I must ask that this book be marked, my Lord, because that is a matter of importance.

EXHIBIT No. 264: Stock register of London Loan and Savings Co.

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RE-EXAMINED by Mr. Walsh :

MR. WALSH : There was read that clause in that agreement about the \$750,000. from the Huron and Erie? A. Yes.

Q. What was that shortly?

A. That was a loan to London Assets, a loan on the assets that were not required for the purpose of meeting liabilities of the London Loan and Savings Company.

HIS LORDSHIP : The agreement so states? A. Yes.

HIS LORDSHIP : The agreement will have to speak for itself, and when it comes to argument you can refer to it. Why bother with it? 10

MR. SLAGHT : I do suggest that question cannot be answered except by the books.

HIS LORDSHIP : By the document.

MR. SLAGHT : The document and the books. He says it is a loan.

A. That is the view I take of it.

MR. WALSH : The \$50,000. that you paid to the Huron and Erie in connection with the Buckingham mortgages for an assignment; what was that applied on?

A. That was applied on the total indebtedness of the London Loan Assets. 20

MR. SLAGHT : I object.

A. I know that.

HIS LORDSHIP : He can give it; it is a question of weight. Go on. All this evidence surely was in before, was it not?

MR. WALSH : No, your Lordship.

A. That \$50,000. was applied on the indebtedness of London Loan Assets to Huron and Erie Corporation.

MR. SLAGHT : I don't think we ought to have that answered—

HIS LORDSHIP : I don't think it is the slightest material; no matter if they paid one dollar or a thousand, they are entitled to the securities as far as they are enforceable. 30

MR. WALSH : Mr. Slaght asked you this morning if you notified Mr. Brickenden and Mr. McCormick before you brought action.

HIS LORDSHIP : Written notice; I don't know that it makes a particle of difference. Here both the assignees and assignors are parties. The only difference under the law is if the assignee sues in his own name he has to give a written notice; otherwise the assignor has to be added—that is my view of it. I think that is stated in that *Macmillan v. Orillia Export*.

MR. WALSH : You are asked by Mr. Slaght—

MR. SLAGHT : There is a position here arising out of that, that is in my view of great importance. 40

MR. WALSH : You were asked whether Mr. Brickenden and Mr. McCormick ever received a copy of the amalgamation agreement; did they or not? A. Yes, they did.

HIS LORDSHIP : How can you say that?

A. I know that registered letters were sent out to all the shareholders, and that is duly sworn to; there is a declaration.

HIS LORDSHIP: Is there any doubt about it? Did they produce it in their Exhibits?

MR. WALSH: No.

HIS LORDSHIP: I suppose it was not questioned.

MR. WALSH: Never questioned; they were printed for that purpose.

HIS LORDSHIP: Well, go on.

MR. WALSH: You gave a summary of the rents, and they were put in here, I think Exhibit 220; I see they show losses on the collection of the rents; will you tell his Lordship whether when the London Loan and Savings Co. and the London Loan Assets Limited were collecting, in what capacity they were collecting—

MR. SLAGHT: I object.

HIS LORDSHIP: I suppose as mortgagees in possession? A. Yes.

MR. SLAGHT: I object to that, because the London Loan Assets Limited—my learned friend puts to his own witness—

HIS LORDSHIP: He could frame the question in another way perhaps to get the answer.

MR. WALSH: Who were these rents collected by—they were collected by the firm of R. B. Rice & Sons, but they were collected for whom?

A. For London Loan Assets Limited, that is after 1929, after the London Loan Assets were formed; before that, the London Loan and Savings Co.

HIS LORDSHIP: That is as clear as day; the only people they could be collected for.

MR. WALSH: As your Lordship says, mortgagees in possession.

Q. My learned friend was asking about the Directors; you said the Directors of the London Loan and Savings Co., after the change in the Board of Directors, were the same as the Directors of the London Loan Assets Limited; can you tell his Lordship whether you received any authority, or was any authority from the Directors given authorizing this action to be brought?

A. Yes; there was authority; I said that this morning.

HIS LORDSHIP: They are not like a municipal corporation; they do not need a by-law to authorize an action; they are not repudiating it, and outsiders cannot question it.

MR. WALSH: There was a letter put in; we spoke about the receipt of papers in March of 1929 where G. A. P. Brickenden & Co. handed over papers to the London Loan and Savings Co., did you give them a receipt for those papers?

A. I did not personally; all that I know about it is what is in the files; I know a great many papers in connection with mortgage cases were in Mr. Brickenden's hands; and we had to get them.

Q. Have you produced all you got?

A. Yes; I have produced everything that was handed over.

Q. Mr. Singer put in a letter to Martin, Currie & Co., and I think I might connect that up.

HIS LORDSHIP: That is the one that the letter that has been put in is said to have been a reply to?

MR. WALSH: Yes.

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HIS LORDSHIP: Both the letter and reply, otherwise they are un-intelligible?

A. Here is another letter and here is another one.

MR. WALSH: This is a letter of July 9th, 1925—

MR. SINGER: If my learned friend will examine Exhibit 195, he will find the letter 254 is evidently written in reply to 195.

HIS LORDSHIP: 195 is a letter from Martin, Currie & Co., Sept. 17th.

MR. WALSH: Mr. Singer put in the letter of October 13th, 1925.

HIS LORDSHIP: That is in reply to the letter of the 17th September, which is Exhibit 195. 10

MR. WALSH: And which directly brings up the letter of July 9th, 1925, demanding a reply to that letter.

HIS LORDSHIP: Let me see that letter.

MR. WALSH: The letter of September 17th says this: "We wrote you on the 4th August in relation to questions raised in our letters of the 29th April and 15th June. . . . 9th July—disappointed that no letter has reached us"—and they go on to take certain extracts from the letter, and the letter my learned friend puts in refers right to that letter which your Lordship has in your hand.

HIS LORDSHIP: Well, have it marked. 20

EXHIBIT NO. 265: Letter July 9th, 1925, from Martin, Currie & Co. to London Loan and Savings Co.

MR. SLAGHT: I object to that on behalf of my client.

HIS LORDSHIP: Objection noted.

MR. WALSH: I was wondering if it would save time if Mr. Singer put in certain ones that I may have to put a reply to; if I can reserve that right, it will shorten it up.

HIS LORDSHIP: Yes, very well.

MR. WALSH: Mr. Singer asked you if the Consolidated Trusts Corporation owned any shares in the London Loan and Savings Co.? 30

A. Yes. They own a considerable block.

Q. Will you tell his Lordship if there were any shares or block of shares of the London Loan owned by the Consolidated Trusts Corporation?

A. Yes, there was a very substantial block.

HIS LORDSHIP: Both ways?

MR. WALSH: Yes.

Q. Mr. Singer asked you in connection with the McCormick shares; did Mr. McCormick and his friends or associates control, or what portion of the shares of the London Loan did they control? A. Over one half.

HIS LORDSHIP: He has already stated that. 40

MR. WALSH: Were they in a position to elect the Board of Directors?

A. Yes.

HIS LORDSHIP: What difference does it make?

MR. WALSH: My learned friend, Mr. Singer, asked you if the amalgamation was put through properly?

A. I would say yes, of course.

HIS LORDSHIP: Put through in accordance with the Act? A. Yes.

MR. WALSH : And at a meeting? A. Yes.

Q. Did you have any assistance from anybody? A. Yes.

Q. Who? A. Mr. Gray.

HIS LORDSHIP : I am going to assume in the absence of definite proof to the contrary that it was regularly done; and I doubt if it can be questioned in these proceedings anyway.

MR. WALSH : Mr. Singer asked you, have you been able to find anything in the London Loan books to show that the London Loan was not the trustor?

MR. SINGER : I did not ask that.

10 HIS LORDSHIP : No, it was not put that way; was there anything to show in the record that the London Loan Co. was the trustor referred to in a certain document that was produced?

MR. WALSH : That question evidently made the same impression on your mind as mine. Mr. Singer said, was there anything on the London Loan books to show that the London Loan was not the trustor; I want to know if there was anything on the books to show they were?

A. No, there was not.

HIS LORDSHIP : No entry either way?

A. There was nothing in the Consolidated Trusts books to show the
20 nature of the trust.

MR. WALSH : Was there anything the other way? A. No.

HIS LORDSHIP : That is the way I understood the answer to Mr. Singer's question. A. I thought I answered it that way.

MR. WALSH : About the by-laws—

HIS LORDSHIP : What is the provision in the Joint Stock Companies Act as to the proof of by-laws—the same as a municipal corporation, a certified copy under the hand and seal of the Secretary or President? What is the provision, or is there any?

MR. WALSH : I will undertake to prove this later, but I just wish to read
30 this section (referring to pamphlet of by-laws).

HIS LORDSHIP : Why do you want to read it?

MR. WALSH : I will put it this way—

HIS LORDSHIP : If they are proved I will allow you to call Mr. Braden
back.

MR. WALSH : Very well.

Q. My learned friend put in two Exhibits, correspondence between the Department of Insurance, and your Lordship said I could complete that correspondence; I have four letters I want to put in; I want to put in a letter, your production 217-E.

40 HIS LORDSHIP : All these will show there was a matter in discussion between the department; how many are there?

MR. SINGER : Are these replies to the letters I put in? Because as to the general matters of discussion I am not at all interested.

HIS LORDSHIP : Unless they relate to the subject matter of the letters put in they will not be evidence.

MR. WALSH : The first one I am putting in is a direct reply, October
31st, 217-E—

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MR. SLAGHT: I object to this on behalf of my clients as not being evidence at all.

HIS LORDSHIP: Not evidence against your client.

EXHIBIT No. 266: Letter October 31st, 1923, from London Loan and Savings Co. to the Department of Insurance.

HIS LORDSHIP: Do you find anything as to proof of by-laws?

MR. FERGUSON: Section 143 of the Ontario Companies Act (reads).

MR. WALSH: The next letter, your Lordship, Mr. Singer did not put it in; it is not a reply to it, but it is a direct communication in connection with these mortgages in question. 10

HIS LORDSHIP: No, it is not admissible. Do you want to ask anything, Mr. Slaght?

MR. SLAGHT: About the \$50,000.

HIS LORDSHIP: I thought we arrived at the conclusion that the terms of the agreement were to be referred to for that.

MR. SLAGHT: Yes, as long as that is the understanding, that the witness's interpretation of how bookkeeping was done without producing the only evidence of it, that is the books—

HIS LORDSHIP: As I understood it was common ground that the agreement made provision as to how it was to be applied. If I am wrong, now is the time to correct it. 20

MR. SLAGHT: The agreement does not go as far as my friend suggests it goes, in my opinion.

HIS LORDSHIP: At present it does not occur to me to have the slightest bearing.

MR. WALSH: There can be no doubt of the fact I wish to prove, and that is this: there was \$750,000. or \$720,000. referred to in that agreement printed in there, and the Huron and Erie Mortgage Corporation, \$50,000.; I wish to ask Mr. Braden if that \$50,000. was or was not to be applied on account of that \$720,000. or \$750,000., whatever the case may be, to release 30 that security from—

MR. SLAGHT: I object to him giving evidence of that at all.

HIS LORDSHIP: If he has personal knowledge of the matter he can give it. If there is any record that is another story; did you have charge of that?

A. Yes, my Lord; I knew all about it; I arranged it.

HIS LORDSHIP: You can give the evidence.

MR. WALSH: That \$50,000., what was that paid on account of?

A. It was paid on account of the indebtedness, \$720,000., and on account of the annual payment of \$100,000. per year called for under the terms of the agreement. 40

MR. SLAGHT: Produce your company's book. Will it contain the entries pertaining to the payment?

A. I arranged that with the Huron and Erie, a payment of that amount—they could release securities from time to time, accepting any amount that was satisfactory.

HIS LORDSHIP: Are there or not, entries showing how they were paid?

A. Yes; I can bring that book up and I can show it is all charged up to the general account; I can produce that book.

MR. SLAGHT : I want to see it.

A. I know there is that book, because I have seen it.

FRANK MILLIGAN, Sworn. Examined by

MR. WALSH : Q. What is your business ?

A. I am a contractor and engineer.

Q. What is the difference ? How do you distinguish ?

A. An engineer would be for the technical knowledge of the business, and
10 the contractor would be the actual knowledge of how to go about the work.

Q. And they go hand in hand ? A. In my business they do.

Q. Where do you come from ? A. From Toronto.

Q. Under whose name are you operating ? A. Under my own name.

Q. How long have you been operating under your own name ?

A. Just since the first November of this year.

Q. Where were you before that ?

A. I was with the John D. Gray Construction Company.

Q. Had they any experience in building ?

A. You mean the Gray Company ?

20 Q. Yes. A. Yes, large experience in building.

Q. How do you mean ?

A. They have put up a lot of buildings; the company has been in business since 1916; I joined them in 1920. I was manager of the Windsor branch of the company from about the middle of 1920 until about 1929, and then I was General Manager of the company in Toronto from then on till the first November of this year.

Q. Have you any experience at all in connection with the costs of construction of buildings ?

A. That was my position, to know what the cost of construction should be.

30 Q. Have you any knowledge of what buildings cost in 1922 and 1923 ?

A. Yes, we were carrying out the construction of buildings at that time.

Q. Will you tell his Lordship if you have ever seen the apartments known as Buckingham Apartments, King Street West, in the City of Toronto ?

A. Yes, I have seen them.

Q. When ?

A. Last week on Saturday, that is to examine them at all; of course I have seen them often before that, but not to make any detailed examination of them.

Q. Do you know the locality ? A. Yes, I do.

40 Q. Tell us shortly the locality ?

A. The locality is almost at the westerly junction of King and Queen Streets in Toronto.

HIS LORDSHIP : Not at the exact corner ?

A. No, your Lordship; it is about two hundred or three hundred feet easterly from the corner.

MR. WALSH : How big apartments are they ?

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A. There are 33 suites and 5 stores.

Q. What streets are the stores on? A. They are all on Queen Street.

Q. Tell his Lordship if you went through these?

A. Yes, I did; I went through; I did not go into every room of every apartment, but I examined typical apartments; I went in quite a few of them and examined them pretty carefully, and through the basement, examined the exterior of the roof, and I was all over the building pretty well.

Q. What type of apartment is it?

A. From a construction standpoint the apartment is a brick exterior with tar and gravel roof, concrete foundation, and the floors construction, the construction of the floors is reinforced concrete, using gypsum tile as filler 10
between the concrete joists, and over that there are sleepers and wood floors.

Q. Tell his Lordship what the cost would be, quite apart from the land, of this apartment building? A. The cost today?

Q. The cost when it was built in 1922 or 1923?

MR. SLAGHT : I object; I don't think he is qualified to do that.

HIS LORDSHIP : I think so.

A. I think that my opinion of the cost to a general contractor doing the class of work such as our company were doing, which included work like the Windsor Court Apartments, and the Claridge Apartment in Toronto— 20

MR. WALSH : Q. Did you build the Claridge in Toronto?

A. Yes, the company did; I was in Windsor at the time.

Q. You built similar apartments?

A. The Windsor Court Apartment was about 120 suites.

HIS LORDSHIP : Get down to this.

A. In my opinion the cost to the contractor at that time would have been between \$157,200. and \$165,000., if it had been built by a general contractor who is used to working under the supervision of an architect; and if it had been built by a speculative builder I think the cost to him would have been in the neighborhood of \$153,000., that is the cost to the builders, not 30
their price to the owner. The price to the owner, I think, in the case of the general contractor, would have been between \$10,800. and \$12,000. more than the figures I gave you, and the profit and cost of preparing sketches and plans that the speculative builder would have would be about \$16,000. more than his cost; that is, he would add approximately that much to his cost in order to arrive at his price to the owner, in case there was an owner.

Q. If there was a speculative builder for an owner, how much do you say it would be for him?

A. His price to the owner, \$169,000.

Q. How do you make that up? 40

A. Of his cost of \$153,000. and \$16,000. to take care of the drawings and his profit.

Q. If it was built by a contractor would there be any difference?

A. Yes, I think there would be; I think the cost to the contractor would be, shall I just give the maximum of what I think it might be?

Q. Yes.

A. That is \$165,000., with \$12,000. for his profit, would be \$177,000.

Then to that, in order to get the cost to the owner, you would have to add the architect's fees, and they would be in the neighborhood of \$13,000; so that the cost to the owner, including architect's fees, would be \$190,000., where he employed an architect and general contractor, and about \$169,000. with the speculative builder doing a different type of work.

Q. Would you tell his Lordship about those amounts, what basis have you made them on?

A. I have made them on a cubical cost basis, that is the cost per cubic foot of the construction, and, in order to arrive at that, I split the job up into the many trades that there are, and worked it out on that basis, and I also took the cubical cost—

HIS LORDSHIP: Those are the recognized methods of costs among architects and engineers, are they not?

A. They are not entirely accurate, no, I would not say that; it is only to get at it very roughly. We would not, for instance, tender on a job on a cubic cost basis; we would take off all the quantities of brick and concrete form work and all the materials through the job, and then take tenders on the various mechanical and decorating trades and put in our price that way, and just before the price was put in we would check it with a comparative cube cost to see we had not made any serious error. It generally comes within a very narrow percentage; that is the reason I did not try to give a definite sum of what the general contractor's cost would be, I could not give it accurately enough for that; I have given a spread there in my first figures of somewhere around seven or eight thousand dollars.

MR. WALSH: What would you say as to the sufficiency of the spread you have allowed? A. I think it is ample spread I have allowed.

Q. And the amounts you have allowed, what do you say as to the sufficiency of those?

A. I consider they were ample; my opinion as to what it would cost the speculative builder is purely based on the knowledge that most of these jobs are done considerably cheaper by the builder—when I say a speculative builder, he has the opportunity to change the construction as he proceeds, whereas if you are building to plans and specifications by an architect and according to a rigid contract, you cannot vary without the approval of everybody concerned; but the speculative builder is at liberty to change them as much as he likes, except for the inspection by the City Architect's department.

Q. How about the cost of construction in 1922 and 1923?

A. In 1922 the cost was about five or six per cent below the cost of 1923, and then it ran pretty steadily about the same as the 1923 cost for several years, and with a gradual rising tendency after 1925, it raised up until in 1927 it was a little higher than 1923, and 1928 and 1929 it rose up to between five and ten per cent higher; whereas the spring of this year it was just about the same as 1923, and since that it has taken a very decided drop. Now, I would say it is between ten and twenty per cent below the 1923 cost; may be slightly more than that.

Q. It is in evidence a mortgage of \$150,000., a second mortgage of \$35,000. from which \$4,000. of a bonus was made which would make \$31,000.,

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a third mortgage of \$20,000., a fourth mortgage of \$46,000., and a fifth mortgage of \$23,000., a total of \$270,000.—

HIS LORDSHIP: I understand that this witness is called as a building expert, not a valuator.

MR. WALSH: I want to ask your Lordship if I may ask him this: what would he say, having regard to what he did and everything else, whether that \$270,000. found its way into that building?

HIS LORDSHIP: No, he is not a valuator; he gives what the cost would be, and to that is to be added the cost of the land and so on, and I suppose he does not profess to know anything about the cost of the land. 10

MR. WALSH: I want to know how much of that does he think got into there?

HIS LORDSHIP: No, he has said what the cost would be.

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CROSS-EXAMINED by Mr. Slaght:

Q. Subject to my objection that the evidence was not admissible, in 1922 and 1923 where were you engaged?

A. In Windsor, that is the majority of the time; I would go up to Toronto maybe for—

Q. Week-ends?

A. No; occasionally every three or four months I would be in Toronto 20 working on estimates with the head office.

Q. As to doing any active work or having anything to do with building construction in Toronto at that time you were not so engaged?

A. But I had a knowledge of the costs at that time in Toronto, you know.

Q. As to having actual construction experience in Toronto at that time I understood you were not so engaged?

A. You mean to be directly in charge of the work with superintendents under my direction?

Q. Yes. A. No, I would not.

Q. After Windsor, where did you work? A. In Toronto. 30

Q. You have gone on your own this year?

A. Commencing first of November of this year, yes.

Q. Prior to that you were with the firm you have mentioned? A. Yes.

Q. You made an examination such as you have described; out of the suites which you said there were thirty-three—I understand there were thirty-four; there is the janitor's suite, did you count that?

A. No, that is in the basement.

Q. There is another janitor's suite?

A. Yes, I suppose you would call it that; I think it is hardly in the nature of a suite; for instance, when you go into it you have to duck under 40 the pipes, and the ceiling head room is low and everything, and it is sort of in the nature of—

Q. We won't differ much about one suite; how many of the thirty-three suites other than the janitor's apartment are you swearing you were inside?

A. I was inside four of them anyway; I think there are about four typical suites in the building, and I was in four different suites.

- Q. Can you give me the number of the four suites you were in? A. No.
 Q. Made no note of it? A. No.
 Q. Can you give me the location of any one of the four suites?
 A. One suite was in the back with a steep stairway—
 HIS LORDSHIP: What floor was it on? A. On the ground floor.
 MR. SLAGHT: Front, back, side or where?
 A. Just beside the steep stair that leads up to the back apartment.
 Q. In the front of the building? A. About the middle.
 HIS LORDSHIP: Are there two fronts? A. Yes, there are two fronts.
 10 MR. SLAGHT: This suite you say you were in on the ground floor, it
 did not front on either street?
 A. No, it was about the middle of the building.
 Q. And an interior suite; what lights did it have?
 A. It got light from the front court and from the back court; there is
 a space between the part of the building fronting on Queen Street and the
 part of it that fronts on King Street; it gets light from that space in there.
 Q. Were you in any other suite on that floor?
 A. I don't know that I was, on that floor.
 Q. What is the second suite you were in?
 20 A. I was in one of the suites on the second floor overlooking the Queen
 Street frontage, and one on the second floor facing King Street that overlooks
 the lake; I am not sure whether that was the second or third floor, but it
 was one of the suites that overlooked the lake on the east half of the building.
 Q. The fourth suite you looked at was where?
 A. Up on the top floor of the Queen Street frontage.
 Q. Whereabouts?
 A. It was in the northwest corner of the whole apartment.
 Q. You were on the roof and into the basement? A. Yes.
 Q. And that is the extent of your investigation, is that correct?
 30 A. Yes; I investigated the exterior, too, the construction of the exterior.
 Q. How many days were you out there investigating? A. Half a day.
 Q. Anybody with you? A. No, I was by myself.
 Q. What time did you get there and what time did you go away?
 A. I could not say exactly; I did not make a note of the time.
 Q. Were you an hour and a half in the building?
 A. I was more than that; I think I was there about two hours in the
 building. I would be more than that, about three hours in the building, around
 the outside, that would be approximately it.
 Q. Have you a note of the time you spent there? A. No, I have not.
 40 Q. You have told us you went at it on a cubical basis of estimation,
 and that that basis you would not yourself, and I understood your firm would
 not tender on a job on that basis?
 A. No, that is right, I did say that; that was used generally as a check
 to see there is no glaring error in the tender.
 Q. I suppose the reason you would not tender on an estimate basis only
 in that way is that you would not feel it safe to adopt that as a sole basis
 for tender?

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A. No, you would have to set your cubic price high enough so that you would be sure to be safe, such as I have tried to do in this case.

Q. You would not bet your money on that as a safe estimate?

A. You would probably be too high in your bid and you would not get the contract.

Q. You may be too low?

A. You might be too low, too, but as a general rule it is not safe except as to a guide to approximately what the price should be.

Q. Would you mind telling me what items, if any, you took into account in offering the money figure that you offer? 10

A. You mean of the items in the building?

Q. Yes; give me everything?

A. Excavation, preliminary work and foundations, concrete floors and earth, concrete structure itself, the brick work and tile partitions, plumbing, heating, electric wiring, electric fixtures, electric stoves, electric house telephones, roof and sheet metal work, tile piazza work, mill work on the floors, ornamental iron work, structural trades, lathing, plastering, painting, glazing, steel sash, fly screens, refrigeration, landscaping.

Q. Any steel fire escapes enumerated in any of your items?

A. They would be in the ornamental iron work. 20

Q. What did you allow for steel fire escapes?

A. I did not work it out on a basis of so much allowance for the item, but I have here about two or three thousand dollars.

Q. There is quite a difference?

A. These items that I have gone into are simply items noted to get at an approximate cubic cost I was telling you about.

Q. I cannot understand your last answer about two or three thousand dollars; have you anything there or are you giving me a guess, something you have not down in your figures at all?

A. I have it covered in ornamental iron work in the neighborhood of two or three thousand dollars; that is about as closely as I can give you on the one item. 30

Q. Are all the rest of your separate items to a scale of 33% like that?

A. No.

Q. The closest on that you can come is two or three thousand dollars?

A. Yes, on that one item I would say.

Q. Does that apply to the rest of your method of doing your figuring?

A. Oh no, I would not think so, because my total cost per cubic foot is pretty closely worked out with what it cost in apartments of a somewhat similar nature. 40

Q. The automatic telephone system in each apartment?

A. I said electric house telephones; I don't think these are automatics, though.

Q. I am instructed they are?

A. I thought they were just the ordinary house telephones that they have in apartments where you push a button; there is no dialing system under an automatic exchange.

- Q. You did not figure an automatic telephone system? A. No.
- Q. What have you for the telephone system, how did you figure on?
- A. I would have about \$800, somewhere in that neighborhood.
- Q. Why cannot you tell me what it is?
- A. Because these are only, I have not got them worked out in any——
- Q. You don't mind my looking at them?
- A. No, I have only them worked out on this basis; the total cubic price is multiplied by the total cubical contents of the building.
- Q. Let us see the telephone; electric house phones 0.20? A. Yes.
- 10 Q. What does "0.20" mean?
- A. Two-tenths of a cent per cubic foot of building.
- Q. Have you got the plumbing and have you silent closets and built-in tubs?
- A. Are they silent closets? I thought they were ordinary type of closets.
- Q. Perhaps you will tell me whether you have silent closets, built-in tubs and pedestal basins in your figure?
- A. Yes, I would not say for silent closets; my estimate includes what I considered to be the value of those closets and basins and tubs.
- Q. I suggest to you they were silent closets, what do you say?
- 20 A. I don't think they were the type of what I considered to be modern type of silent closets.
- Q. Will you swear they were not silent closets?
- A. I would swear they are not silent; I would swear you could hear them.
- Q. Silent is a sort of Pickwickian word about closets?
- A. That is what I mean.
- HIS LORDSHIP: Surely it is a type—what is it, one with direct pressure?
- A. The silent closet, the type I understand of silent closet is the kind with the low back and there is no high tank at the back, the thing is all down low, and it is very compact, with the whole thing only sitting about that high
- 30 from the floor; I am not a plumber, though.
- MR. SLAGHT: Do you know whether or not these were silent closets?
- A. I told you I think you could hear them, and that is all I can tell you.
- Q. In money value you could tell me for the plumbing in dollars?
- A. Around \$9,000.
- Q. How much around?
- A. It works out here at eight thousand, eight hundred and some odd
- dollars.
- Q. Oak floors throughout? A. Yes.
- Q. What have you down for oak floors?
- 40 A. I have not them separated; I have them in with the mill work.
- Q. Cannot you give me any idea what the oak floors are? A. No.
- Q. Can you give me any idea what the mill work is?
- A. The mill work and the floors——
- Q. Never mind the mill work and the floors. A. I cannot tell you.
- Q. That strikes me as strange that you can make a guess at a figure for the combined, but you cannot tell me what either one is?

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A. Except that these are very often let together as one contract; the way we generally get a bid from a mill man, it very often includes hardwood floors along with the mill work.

Q. Did you figure on built-in kitchen cabinets, equipped linen drawer, flour bins and broom cupboards?

A. You mean built-in, by that you mean fastened to the wall, not built into the wall? Do you mean they are built into the wall itself?

Q. Built-in kitchen cabinets, equipped linen drawers?

A. There are sort of cupboards with doors on, wooden cupboards in the kitchen fastened to the wall. 10

Q. Do you know whether in the four you did get into, were they the same or different, the kitchen cupboards?

A. They were pretty much the same; some of the larger suites had more facilities than the smaller ones, but they were very much the same type of construction running through.

Q. Have you an allowance for best quality of electric ranges in each suite?

A. I have an allowance for electric stoves.

Q. Were they not ranges? A. I suppose they are.

Q. What is your allowance for electric stoves or ranges?

A. It is about \$3,200. 20

Q. Have you an allowance for complete laundry and drying facilities?

A. I have included that in the plumbing and heating, the laundry facilities.

Q. What have you allowed?

A. Did not I tell you what I had allowed on the plumbing?

Q. Can you tell me whether or not you can give us any estimate on the complete laundry and drying facilities as such? A. No.

Q. You stick that in with a general heading of plumbing and heating, but you cannot tell me what that would be allowed at?

A. No, I could not separate it for you. 30

Q. The stores, were you in one or more of the stores?

A. No, I was only in the basement of one of the stores; I just looked in the front of the stores proper.

Q. Just a peek; why did not you go inside one of the five stores?

A. There was not anything to see inside but plastered walls.

Q. You did not risk going through one of the stores—there were five stores? A. Yes.

Q. An important factor in valuing the building?

A. Yes; they would be much cheaper than the rest of the building, because we find when stores and apartments are combined we find the cubical 40 is less than if it is all apartments.

Q. Is this close to the Sunnyside Boulevard? A. It is on King Street.

HIS LORDSHIP: You would have to cross over the bridge?

A. Yes, or down the bank and over the railway track.

MR. SLAGHT: A couple of hundred feet easterly of where King and Queen combine? A. The location of the apartment is, yes.

Q. I suppose you might be mistaken about this \$190,000.?

A. I felt that I was setting it as high as it should be, considering the type of construction, working it on the cube basis on apartments that we built, and allowing for the differences in the type of construction and the finish; for instance, some were worked out at 43 cents and 42 cents and 45 cents and 46 cents.

Q. Assuming a real good practical builder had been building it in 1923, are you prepared to go so far as this rather hazardous method of estimating is concerned to swear that it would not have taken him honestly more than \$190,000. ?

10 A. I don't think it would cost the contractor more than \$165,000.

Q. Are you swearing that it would not ?

A. I cannot swear what it is going to cost somebody else; it might cost us a different amount even with the more accurate way of taking off the quantities, we will find the actual cost varies; we might repeat the same job two blocks away and have the cost vary considerably.

Q. How much vary, fifteen or twenty per cent difference ?

A. No, with the ordinary method of taking off the quantities and getting prices and sub-letting to various trades.

Q. You did not do any of that here ? A. No.

20 Q. A job you might have tendered on, taking it on a cubical basis of estimate, would you swear you might not be out twenty-five per cent on a job of that kind when you finished it ?

A. Yes, absolutely; I would say my high figure is, I think, an outside price, that is the way I felt about it, and the low figure is what I thought a person might be able to have done it for at that time.

CROSS-EXAMINED by Mr. Singer :

Q. In 1923, can you tell me how many fireproof apartment houses there were in the City of Toronto, if any ?

A. No, I cannot tell you; there were very few fireproof apartments.

30 Q. This was a new method of construction in 1923 so far as apartment houses was concerned ? A. What is the difference, though ?

Q. I am saying, so far as apartment houses are concerned, this was a new method of construction in 1923 ?

A. I cannot tell you, because I don't know how many were built in Toronto at that time.

Q. I personally do not know of any; I am trying to get the information from you, because you are giving me the costs in Toronto ?

A. The only way I could tell that is by going to the City Hall and finding out how many permits were taken out in Toronto.

40 Q. If this was one of the first or possibly the first fireproof apartment house in Toronto, the cost of construction at that time would probably be a great deal higher than it would be four or five years later, with the knowledge the contractors had obtained as to how it should be built ?

A. No, because that type of construction was not any different from what we were using in schools and other buildings; the only reason they were not used in apartments was because the by-law did not insist on it; the people

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were putting up a cheaper type of construction; contractors at that time knew very well as to the cost of that type of construction, what it would be; I don't know that the speculative builders knew what that type of construction was.

Q. If they did not the chances are it would cost them a great deal more to erect the first or second of such buildings than it would others?

A. It might, all right.

Q. It might have been an experiment with them, whereas it would not be with the J. B. Gray Construction Company?

A. Yes, it might very easily have been this builder's first job, and it might have cost him more than he estimated, or he might have figured a lot higher for that type of job. 10

Q. You are not prepared to say it might not have cost this builder a great deal more than the maximum price you have given us to complete this construction?

A. I should not think it ran more than that, but I cannot tell you.

HIS LORDSHIP: It might cost—a man could spend a great deal more than was necessary, and he might not spend enough, but what is a fair average cost for it?

A. I think the fair average cost to the contractor is about \$157,000.

MR. SINGER: The ratio you have, the different percentages for different classes of work, where did you obtain those from? 20

A. From the different jobs that we have tendered and that we have completed.

Q. This is a record of your experience in building? A. Yes.

Q. And arrived at when? A. From 1920 to the present time.

Q. What was the ratio that you used in 1923; was it the one you have now submitted to the Court, or the one you have been using in 1928 and 1930?

A. This year for 1922 and 1923 is based on about six per cent less than for 1925, 1926 and 1927, which years there was a very slight spread during those years. 30

Q. I suppose the question of basing costs on the cubical contents might vary a great deal, depending on the nature of the interior finish?

A. Yes; and that is why one has to be careful in estimating it on that basis.

Q. A man might spend \$100,000. more only on interior finish than another man might spend on the same size of apartment house? A. Not on that job.

Q. I say in apartment houses of the same size?

A. \$100,000. on this size of a building?

Q. Yes.

A. I don't know how you could; for instance, the Claridge Apartments only cost around 65 cents a cubic foot, and that would be 15 cents a cubic foot more than this one. 40

Q. Do you know the St. George Apartments?

A. Yes, I have been in them.

Q. They were erected by your company? A. No.

Q. What about the Deer Park Mansions?

A. The Deer Park, I have not the actual cost on that; I am not with the Gray Co. now.

Q. You were with the Gray Co. when they erected the Deer Park Mansions? A. Yes, in Windsor.

Q. That is not as large as this apartment house?

A. I don't know; I cannot tell you about the cubical contents of it.

Q. I understand it is at least one third smaller?

HIS LORDSHIP: We take no understandings here.

MR. SINGER: Is it larger? A. I cannot tell you.

Q. You don't know anything about the size? A. No.

Q. Do you know the amount of the mortgage placed against that 10 property? A. No.

Q. You were discussing before the cost of electric ranges; how many were there in this building?

A. There are somewhere around 33 or 34, one to each apartment; all the apartments I was in had one; I simply assumed there was one in each apartment.

Q. Where did you get that figure of \$100. a range?

A. I did not take it on the price per range; I took it on the cubic foot basis of the whole building.

Q. Have you any idea whether that is correct or not?

20 A. It runs pretty much that same cost per cubic foot on other buildings of a similar nature.

Q. Let me tell you that my client advises me that the ranges in this apartment house cost in the neighborhood of \$300. apiece—

HIS LORDSHIP: No, strike that out.

MR. SINGER: Q. Will you say that the ranges in the apartment did not cost \$300. apiece?

A. I cannot understand how they would ever pay that much for them; they are simply an ordinary range about that size with four plates and oven underneath.

30 HIS LORDSHIP: That size? A. About 3 by 3.

MR. SINGER: Q. 1923 would be the early days of electric ranges?

A. I would not think so; we were using them much earlier than that.

Q. Are you prepared to say they could not at that time cost about \$300. apiece?

A. I don't think they would cost \$300. apiece, nor anywhere near it.

Q. How much did you estimate the Fess system for the boilers at?

A. I have it all in with the heating, the whole thing.

Q. What is your total cost for heating and plumbing?

A. They are two separate items.

40 Q. Please give me them?

A. The heating I figured was somewhere around \$12,000. You see, these are all worked out on decimals of a cent per cubic foot; the cubic footages is not an even figure; I have to give them to you pretty quickly; around \$12,000.

Q. Complete heating? A. Yes.

Q. And the complete plumbing? A. Plumbing was around \$8,800.

Q. That would give you about \$20,800 altogether?

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HIS LORDSHIP: This is repetition; I don't know that it strengthens it any. If you think there is anything special.

MR. SINGER: There are three or four items; what about the electrical system? A. Electric wiring and fixtures in the neighborhood of \$6,000.

Q. Do you think it is possible that the electric wiring and fixtures in this building cost in the neighborhood of \$15,000?

A. I would be amazed to hear that they did.

Q. What do you provide for the refrigeration system?

A. Between two and three thousand dollars.

Q. I think you would be equally surprised to find out that the refrigera- 10
tion system cost in the neighborhood of \$10,000. in this building?

A. I would be amazed to hear it, too.

Q. Would you give me your opinion of the general nature of the construction of the building and the manner in which it has been finished?

A. You mean as to the quality?

Q. As to the quality of work? A. I don't think it is bad.

Q. Remembering it was built in 1923?

A. I think the workmanship was of a fair character.

Q. Is it a well finished building? A. No, I don't think it is.

Q. As of 1923? 20

A. For instance, the woodwork is of a very common character, the floors are not anything too good, but the brickwork seemed to be well done and the mortar was in good condition, the mortar after all these years was in very good condition, and the concrete structure, what I could see of it, seemed to be well done.

Q. What examination did you make of the basement? A. The basement?

Q. As to its general layout and construction, did you notice anything different in the layout and construction of this basement than in the ordinary basement in apartments?

A. Are you asking me as to whether it is a good layout? 30

Q. Was there anything to which your attention was particularly drawn in the method of layout and the nature of the construction of the basement of this building?

A. Nothing unusual for that type of work, except I don't think the layout was good.

Q. In the mill work you include the floors? A. Yes.

Q. And trimming? A. Yes.

Q. What else?

A. The floors and trimming and woodwork, all the woodwork in the building. 40

Q. What about doors? A. They are included.

Q. All of the doors? A. Yes.

Q. You are quite sure of that? A. All of the wooden doors.

Q. Are there any other doors?

A. Yes, there are the kalomin doors, they are at the entrance to the apartment.

Q. The entrance to each apartment?

- A. They are the ordinary kalomin-covered wood doors.
- Q. Wooden doors covered with steel?
- A. Yes, it is covered with a drawn metal.
- Q. Do you include that in your mill work?
- A. No; I have a separate item for them.
- Q. How about the finish of the bathrooms in the building?
- A. They are of an ordinary small mosaic tile cube floor and plastered dado, marked off in tile; some of the apartments have a tile dado on, but a lot of them have just marked off, the plaster is marked off in tile.
- 10 Q. You were only in four of them? A. Yes.
- Q. Suppose the majority of the walls in the bathrooms were tiled, would that make a difference in your calculations?
- A. Not very much, because I have allowed for tile and turazzo. I have taken about the average cost for the apartments we have been building, in which a lot of them have for a height of three or four feet—similar to the London Hotel, similar to the rooms there in which there are no shower baths—
- Q. Give me your figures as to the cubical contents of this building?
- A. The total?
- Q. Yes; there is no division in cost as to different sections?
- 20 A. I have set it up another way to check it, because I find the type of construction with stores is quite a bit cheaper than the type of construction without stores, you see.
- Q. Let me have your division then, please?
- A. The total cubic feet I have as 403,400 cubic feet.
- Q. You calculate the value of how much a cubic foot?
- A. I calculated that at 44 cents average.
- Q. You mean that is the average you arrive at after dealing with the division you have made?
- A. No, this was the average over the whole thing; that is based on my
- 30 cost that I thought—
- Q. 44 cents average? A. Yes.
- Q. What divisions did you make, if any?
- A. Then I checked it on a basis of a separate price on the stores and on the apartment and on the stores.
- Q. In connection with the stores, there are three floors of apartments over the stores?
- A. Yes; the cubical contents of the stores with their basement is about 65,400 cubic feet.
- Q. That is of the stores alone; you are not taking into account the
- 40 apartments over the stores?
- A. No, just the stores alone with their basements, and the balance would be the rest of the building.
- Q. That is in the apartment section?
- A. Yes, and over the stores, too.
- Q. What was your allowance per foot on the basis of division?
- A. Well, on the division the cost we have been getting on apartment buildings, our costs have been in the neighborhood, a balanced figure would

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be in the neighborhood of 44 cents on the apartment, and around 32 cents on the stores.

Q. You say you spent three hours in and outside of the building during the course of your investigations? A. Yes.

Q. Will you tell me how long you spent before you had your figures completed? A. In hours?

Q. Yes.

A. I have been working on them practically ever since; that was Saturday, except I did not work on Sunday.

Q. Since the beginning of this week? A. Yes.

10

Q. That would be Monday, Tuesday and Wednesday, to prepare your figures? A. Yes, that is right.

Q. Did you take the trouble to examine the plans and specifications for this building?

A. I went around to the City Hall to find out about them, to see if I could see them, but I could just see a plot plan, the building permit, what they put in with the building permit.

Q. A block plan? A. Yes.

Q. That does not say or show you anything about the nature of the construction? A. No.

20

Q. You have not then had any opportunity of preparing a calculation on the basis of the actual plans and specifications? A. No.

Q. You have received no tenders from sub-trades? A. No.

Q. And this work would have to be let out by your firm to sub-trades?

A. Yes.

Q. They would not tender until they first received their tenders from the sub-trades? A. No.

Q. They would not tender until they first prepared their own calculations as to quantities?

A. Do you mean the general contractors' own trades—that is right, yes. 30

Q. They first prepare that, and then receive their tenders for the sub-trades, and then follow it up with their final calculation? A. Yes.

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RE-EXAMINED by Mr. Walsh :

Q. Will you tell his Lordship about this permit; what was it for, how much? A. The amount of the permit?

HIS LORDSHIP : No.

MR. WALSH : You mentioned to my learned friend the Claridge Apartments, and his Lordship knows them; they are on Avenue Road? A. Yes.

Q. You tendered on that?

A. Well, yes; there was no competition in it; we submitted an upset price and a fee—we did the work on the basis of cost plus a fee. 40

Q. When that was checked with the cubic which you have told his Lordship here, how did that compare?

MR. SINGER : May I submit that is not re-examination on the question of the Claridge Apartments.

HIS LORDSHIP: I don't hardly think it is, but all he can do is to speak generally. You say this cubic footage is a sort of check on the other?

A. Yes, your Lordship.

MR. WALSH: Before you go back to Toronto there is one item that distressed my learned friend a good lot; will you tell his Lordship if the difference between \$169,000. and the amount of these mortgages of \$270,000. would give enough leeway for those silent closets?

HIS LORDSHIP: You don't expect an answer? What is the object of this evidence anyway? Are you making some charges about the cost?

10 MR. WALSH: Yes, my Lord.

MR. SLAGHT: Not in the pleadings.

HIS LORDSHIP: I did not understand you in your opening to lay any stress upon it at all.

MR. WALSH: Your Lordship will see the notice of motion I have in.

MR. SLAGHT: It is a great surprise to us. The notice of motion has not been allowed yet.

MR. WALSH: It has a direct bearing on the valuation of the premises; and the next witness I call—

20 HIS LORDSHIP: There are so many branches to your claim—I suppose if you succeed in one the others go; it is a sort of drag net to catch someone.

MR. SINGER: Fishing expedition.

MR. WALSH: When Mr. Morine and the others take the witness box I will be able to be very concrete then.

HIS LORDSHIP: I am afraid you will have them frightened to go in.

MR. SINGER: Might I point out that even in my learned friend's notice of motion there is no suggestion as to the cost of the building at all.

MERVIN LANCASTER, Sworn. Examined by

MR. WALSH: Q. Where do you come from? A. Toronto.

Q. What is your business? A. Real estate and building.

30 Q. Will you tell his Lordship if you have had any practical experience in building?

A. I have been building for about twenty-five years, and in nearly every section of the City of Toronto, and repairing buildings, building apartments, stores, small theatres, nearly all types of construction.

Q. Will you tell his Lordship if you have had any experience in real estate, selling it?

A. During that time I have been buying and selling real estate quite extensively on my own account, and for others.

40 MR. SLAGHT: I want to object to this evidence, if it is along the lines of the evidence offered by the last witness, on the ground that it has not been made an issue in the action. We have had no notice of this sort of thing, and it is inadmissible on that ground, I submit.

HIS LORDSHIP: Well, I have not, of course, read the pleadings, but I took the general outline of the case as my guide, and I could not see where the evidence of the last witness was admissible, but I assumed counsel did not object to it.

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MR. SLAGHT: I did object to it at the very outset.

HIS LORDSHIP: You objected on the ground he had not qualified.

MR. SLAGHT: Yes, I expressed that ground, but I object to the evidence.

HIS LORDSHIP: I will receive it, subject to the objection. The Defendants will have lots of opportunity to meet it if it is considered material.

MR. WALSH: It would take an hour to read these pleadings, and in the few minutes I outlined this case to you I put it as fair as I could.

HIS LORDSHIP: Is there some express reference in the pleadings to this matter?

MR. WALSH: Yes, insufficient valuation; and they loaned that money 10 without ample security and without ample protection; it is there in large type.

Q. Now, Mr. Lancaster, how many years experience have you had in real estate?

A. Twenty-five years, buying and selling, and I have been acting for the city.

Q. Will you tell his Lordship if you saw these Buckingham Apartments?

A. Yes.

Q. On King Street West? A. Yes, I inspected them twice.

Q. Do you know the locality? A. Yes.

Q. Are you in any position to give his Lordship any guidance as to the 20 value of those premises in 1922 and 1923 and also at this date?

A. Yes, I think I am.

Q. Will you tell his Lordship what you consider those apartments?

HIS LORDSHIP: Should you not refer to the date if you are going to speak to the values?

MR. WALSH: The buildings, I think, were started in 1922, and then, your Lordship, our loans were put on in February, 1923.

HIS LORDSHIP: That ought to be the testing time.

MR. WALSH: Will you tell his Lordship as of February, 1923, or about that time? 30

A. I will give you a description of the apartments at the present time; I did not inspect them in 1923, I only know—

HIS LORDSHIP: There is no suggestion there has been change?

A. It has a frontage on King Street of approximately 76 feet, and a frontage on Queen Street of 76 feet, with a depth of approximately 199 feet; the building approximately 72 by 130. It has a brine system of refrigeration, that is a system that creates refrigeration, I do not just know the details, because it is obsolete at the present time, and apartments are not being equipped that way; boilers equipped with oil burners; keewanee domestic hot water apparatus; steel beam construction throughout; automatic telephone 40 system in each compartment; concrete and brick walls; tile floors and sides in 22 apartments, tile floors only in 11 apartments; plumbing fixtures consist of closet with flushometers, ordinary low down white enamel tubs, pedestal basins; oak floors throughout, over concrete floor, except kitchen; built-in cupboards in kitchens; electric ranges in each kitchen; electric fixtures and laundry tubs in basement, with separate rooms for clothes-drying facilities; and locker rooms for all tenants; a separate cellar under each store, except

the most westerly one. The apartment consists of eight suites fronting on King Street, 16 suites on side court, 6 suites in rear court, 3 facing Queen St., and one janitor's suite in basement, five stores facing Queen Street, making a total of 33 apartments in all, exclusive of janitor's two-roomed apartment; condensing rooms, there are 30 apartments of four rooms, and 3 of three rooms, making a total of 129 rooms; 5 stores, exclusive of janitor's suite.

Q. How many stories to this building? A. Four stories.

Q. Any elevator in it? A. No.

Q. Will you tell his Lordship as of the date I mention, 1923, what you
10 would say as to that property at that time; what kind of apartment was it as of that time?

A. Some of the features I have taken into consideration in making my valuation of the apartment is the convenience to the railway station and street railway, the outlook over the lake, the harbour improvements and Sunnyside with its many attractions, the proximity of High Park and the Humber, the building being practically soundproof and fireproof, and in a fair state of repair at this time, and there are indications that the building, to my judgment, has been well managed. The unfavourable features to take into consideration: one very serious objection is a four-storey building without an
20 elevator, making it very difficult to rent the fourth-storey apartments. The only apartment in Toronto that I know of where there are four storeys without an elevator. The plan is very objectionable; in most of the cases you enter directly into the living-room, which has no guest closets, and in all cases, when going from one bedroom to the bathroom, you have to pass through the living-room. If one member of the family wants to retire early, and you are entertaining, they have to pass through the living-room to go from the bedroom to the bathroom in nearly all cases; the layout of the kitchen is arranged so that it is impossible to find space for kitchen table, and, as there is no dining-room, the family in most cases use that as a dining-room and
30 a kitchen, except when entertaining.

Q. There is no dining-room?

A. No. The refrigeration is obsolete, as most tenants demand ice-making refrigerators; even at the time this building was built, I understand ice-making refrigerators have been installed for some twelve years; ice-making refrigerators were installed at that time as modern equipment in 1923. Of course, there are no radio plugs. Apartments over stores and facing north are not as desirable as where stores do not exist. There might be objectionable merchants that would establish themselves in the stores—fish and chip stores, restaurants, fruit store; at the present time there is a cleaning and pressing establishment
40 there that is actually doing some cleaning and pressing on the premises, and it might even go as far as a laundry being established there, which is objectionable. The stairs in the north end of the building, every stair is very steep, as the rise is 8-inch and the tread is 8-inch; an easy stairs is a 6½-inch rise and a 10-inch tread. It is not possible to get any coal to boilers, except at great expense and inconvenience. Also it is very difficult to get the ashes out, as the boiler is located in the centre of the building. Heating is very expensive, over three times what it should be, due to present method of heating, which

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is difficult and expensive to remedy; there is no incinerator or garbage-burner. There is a tremendous waste of space in basement. There is a large clothes-drier which is inefficiently heated, by the look of it, it is almost impossible to heat it. There would be some objection in regard to the noise of the railway and smoke and street cars; while they are a convenience, there is some objection from the noise and the necessity of putting on the brakes on the grade on Queen Street.

Q. Will you tell his Lordship if you went through any of these apartments ?

A. Yes, I went through, I would say, twenty of the thirty-three.

Q. Would you tell his Lordship what is your opinion that this property 10 was worth in 1923 ? A. \$211,250.

Q. How did you ever get the fifty dollars ?

A. I have taken it from the total value of 1931; for one way of checking up my figures I have my building costs of 1923 and 1931; I was building in 1923, and I just finished up thirteen houses in North Toronto. There was a difference of twenty-five per cent. I have put the value of the land at \$30,000.

Q. How do you make your \$30,000. ?

A. That is what I consider is a fair valuation of the land.

HIS LORDSHIP : The building you would value at the date——?

A. \$181,000. the value of the building. There is some justification I 20 might give for that valuation in 1923 other than that. There are some carrying charges which have to be eliminated, such as general repairs on account of new building, and decorating, \$1,105., and the net operating expense of 1923 would be approximately \$6,600.; take three per cent depreciation on the value of the building at that time, plus the insurance, plus ten per cent for vacancies, and a reasonable interest on the money invested of \$212,000., would bring in a revenue of \$30,074.; that is \$3,000. higher than it is at the present time; that is taking into consideration a new building and conditions being, of course, better than they are at the present time.

Q. Taking all those into consideration ? A. Yes. 30

Q. Are the rentals any indication of the value of a building ?

A. Yes, that is one of the checks we make in making a valuation. Most purchasers will pay today; apartments are available from five times the gross rental to seven, according to the location and type of building and age of the building, and all factors that enter into the value.

Q. There is something mentioned about the value of this building; will you tell his Lordship, you have had experience in the cost of building ?

A. Yes, I completed a 48-suite apartment.

Q. Where ? A. 81 and 83 Isabella Street.

Q. When ? A. In 1927. 40

Q. Would you tell his Lordship what the cost was——

HIS LORDSHIP : No, no.

MR. SLAGHT : I did not catch that answer.

HIS LORDSHIP : He said he had completed a 48-suite apartment in 1927; now what is your question ?

MR. WALSH : The cost of that. A. The cost of that was——

HIS LORDSHIP : No, no.

MR. WALSH: Could you tell his Lordship how that apartment compared with the Buckingham Apartment in construction and everything else?

A. The layout is much superior, and it is modern in every respect; it is the difference between a modern apartment and an obsolete apartment that was obsolete when it was built; when it was built there should never have been a fourth storey on it; there are several factors which should never have been put into the building in the first place.

Q. Was yours a brick building? A. Yes.

MR. SLAGHT: Is there any object in this?

10 HIS LORDSHIP: I cannot see it.

MR. WALSH: I was going to ask, having regard to the comparison of them, what his complete cost was?

HIS LORDSHIP: No; that is in 1927.

MR. WALSH: We say that the cost then was not any higher than it was in 1923.

HIS LORDSHIP: This witness is competent, I should think, to give what the cost would be in 1923.

MR. WALSH: What do you say the cost of the Buckingham Apartment in 1923 would be?

20 A. In the neighborhood of 45 cents a cubic foot, around \$180,000.— I will have to figure that out.

Q. Why do you say 45 cents per cubic foot?

A. At that time that was about the dearest time to build; we were building houses at that time, and they ran from 35 cents, small houses; in 1923 we were building, and I can give you the exact cost then, the cost of ordinary construction was around 23 cents at that time; it is 17 cents for the same type of construction at the present time, about twenty-five per cent more, according to the actual figures in my work of building.

30 Q. I am going to give you another date; in 1925 or 1926, take either one or both years, will you tell his Lordship?

A. There was not any very material change in the building costs; there was some change from 1921 was the peak.

Q. What do you say, was there any difference in the value of that building in 1923 and what there was two years later?

A. Yes, there would be depreciation of two years of approximately six per cent, and, of course, obsolescence in those two years; there would not be any change in the cost of replacement to any great extent, a change of five per cent.

Q. What do you call six per cent? A. Depreciation.

40 Q. Is that annual?

A. That is annual depreciation, obsolescence of three per cent. I consider, according to the plan of several factors entering into this particular apartment, it should be more than that, but we are giving the benefit and saying three per cent, which is the recognized percentage.

Q. Was there any difference in the value of that property in say 1927?

A. Yes, there would be still depreciation, further depreciation, and some slight decline in the replacement cost.

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Q. What do you tell his Lordship as to the value of that property today?

A. Market value of the property today according to my experience is \$175,000.; that is under ordinary conditions, with twenty-five per cent cash payment and reasonable terms for the balance.

Q. That is for everything, the whole apartment, land and everything else? A. Yes, total valuation.

CROSS-EXAMINED by Mr. Slaght :

Q. You are on your own, you are a contractor and carry on for yourself?

A. Yes.

Q. You do some actual building? A. Yes.

10

Q. Have you a trade?

A. Yes, I have served my time at plastering; I might say I have done everything about a building from the draining to the roof.

Q. When did you see or inspect the apartment?

A. When they were being built I was around there, but I do not remember any details in connection with it; the most recent was last week.

Q. Before last week, when did you ever inspect them, if at all; I mean go through and examine with a view to sizing up?

A. I did not make a thorough examination, not when I would be going through in a casual way, just as all real estate men do when they pass a new building, they generally stop, especially a building of that size. 20

Q. Last week did you make an examination?

A. Yes, a thorough examination last week.

Q. Alone? A. No.

Q. Who was with you?

A. The janitor of the building and Mr. Dane was with me.

Q. Is that Mr. Fred Dane? A. George Dane.

Q. What is his business? A. Real estate, I understand.

Q. What time did you start with the janitor to go through?

A. I started about four o'clock in the afternoon.

30

Q. And finished at what hour?

A. We did not finish, we came back the next morning.

Q. What hour did you leave for supper?

A. About dark, say five or five-thirty.

Q. Back the next day at what time?

A. About ten o'clock the next morning.

Q. The same gentleman with you? A. Yes.

Q. The janitor again? A. Yes.

Q. What time did you leave, going in at ten?

A. About, say, one-thirty, till we considered we had seen every section of the building. 40

Q. You gave some favourable and unfavourable factors in connection with the building; did you take the favourable factors into account in reaching your figures? A. Yes.

Q. And did you take the unfavourable factors into account in reaching your figures? A. Yes.

Q. How much above average did you allow for the favourable factors?

A. I considered the location fairly good, particularly good just for the reasons stated there, proximity to High Park.

Q. The location is one, outlook over the lake, proximity to High Park and Humber, never mind going through them again; how much over an average location did you allow for the favourable factors that you say you figured on reaching your conclusion?

A. I would not say I have taken that; I have taken it in a general way into consideration.

10 Q. Did you reduce it to percentage or dollars?

A. It would not offset the unfavourable, but it would, we will say, to the extent of, say, two-thirds it would offset the unfavourable.

MR. SLAGHT: Did you take percentages over the average in connection with the favourable factors or the unfavourable?

A. No, I considered as it is a particularly good location it would offset the plan and the numerous other objections to some extent.

Q. The unfavourable were about three to two against the favourable?

A. I would say about that extent.

Q. Did you apply that percentage in reaching a value for the land?

20 A. No.

Q. Just for the building? A. Yes.

Q. But for these unfavourable factors you think overshadowing the favourable ones by three to two, what would your valuation have been?

A. If the other factors had been in keeping with the location, a buyer, I would say, would pay seven times the gross revenue or probably better; with the favourable location and defect in the building plan and so on, I have computed it on a basis of six and a half; if it is an unfavourable location it would go as low as five.

Q. You really are getting at your figures largely on a gross revenue basis?

30 A. Not altogether; I have taken them from several angles.

Q. Is that a factor? A. The income?

Q. Yes.

A. Absolutely one of the big factors in an income property of this type especially.

Q. Are you prepared to state you know what the income was in 1923 and 1924? A. No.

Q. Make any inquiry?

A. No, I was renting apartments at that time.

40 Q. But this apartment you don't know and you made no inquiry as to the income in 1923 and 1924?

A. No, I don't know the income in 1923 and 1924; I can make an estimate according to my experience and knowledge, according to real estate values and renting.

Q. Take your seven times as the factor; if the income was \$42,500. at that time, what valuation would the building carry?

A. If we could say that it would produce a revenue of \$42,500. consistently over a period of years I would say it would be seven times, six and

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a half times, but, where there was not a chance of producing that revenue consistently over a period of years, I would ignore the one year that would produce an abnormal income; in a new apartment we always say we get five or ten per cent extra by the fact of it being new, people want to go into a new apartment, and we capitalize that as much as we can; but we cannot take one isolated year.

Q. Let me ask you to do this; get yourself in an armchair back in 1923 and 1924 and forget that you are any ahead of that, and that this building in 1923 and 1924 was bringing in a revenue of \$42,500. a year, what would be on your basis the value at six and a half times? 10

A. I would not make a valuation on one year's income, so I could not tell you what it would be, unless I could be reasonably assured it was going to consistently produce income for several years; I would not attempt to put a valuation on it for one isolated individual year; I don't think it would be fair to anybody whom I might be acting for.

Q. You don't want to be put back in 1923 and 1924, but if you had been and it had been then producing an income of \$42,500. per annum, do you suggest that you would have expected that income to fall off in the next two or three years, foreseeing a world depression?

A. No; ignoring the world depression, and having a knowledge of real estate, of building construction, for a period of twenty-five years, I would know you could not consistently expect a revenue of that amount absolutely. 20

Q. Some people are pessimists and some optimists; on your figures, if you could think that it could carry on at that rate, six and a half times \$42,500. would give us \$276,000, roughly? A. Well—

Q. If it was producing that revenue at that time, and you did not fear it was going to drop, that would be a fair figure for it according as I understand you? A. That would be your conclusion, but it would not be mine.

HIS LORDSHIP: Of course that is a matter of inference. He says it would be six and a half times the annual income, but he says the first year is not the proper year; if you can arrive at a proper year that would be the ratio. 30

MR. SLAGHT: That is about a summary of what he is telling us. Then, Mr. Lancaster, do you know Mr. W. N. Lonsdale? A. Yes.

Q. When did you meet Mr. Milligan?

A. I met Mr. Milligan just as he was going out of the apartment I came in that day at four o'clock.

Q. You have been in contact with him here?

A. Yes, we have been in contact here, due to our presence here.

Q. Did you know that he was fixing 44 cents, and you decided on 45 cents? A. No; I have not gone over his figures. 40

Q. Did you discuss the fact that you were both going to give evidence?

A. We discussed the cube; I asked him if he had cubed the building, what he made the cube, and we were within a few thousand feet.

Q. Did you discuss values?

A. Not to any great extent, because he was not interested in value; he was interested in construction costs.

Q. You are interested in costs or value of the building, and you say you did not discuss your idea of the value of the building?

A. I had my own independent idea, and I think I was as familiar with costs as he.

Q. I am asking you if you did not discuss your idea of the value of the building with Mr. Milligan?

A. Yes, I think we discussed it casually; he did not influence me in any way, but we might have discussed it.

Q. Then you know Mr. Lonsdale; how long have you known him?

10 A. I do not know him intimately, but I have been in contact with him, I suppose, for eight or ten years.

Q. He has been the valuator for the Toronto General Trusts Corporation for a number of years? A. Yes.

Q. A man you regard as a man of integrity and capacity as a valuator?

A. Yes.

Q. And have you seen his valuation made in 1924 of these premises?

A. No.

Q. Or a copy of it—because your description of the details you found there is almost word for word running along with his, and it struck me; were
20 you furnished with a description of the details of the building?

A. No; we took the details of the building; there were some bathrooms that were tiled—

Q. My point is, were your furnished or did you create your own?

A. I created my own by going through the building in detail; I have given you a rough sketch of each apartment.

Q. Did you have furnished to you anybody else's valuation or description of the building? A. No.

Q. Have you engaged Mr. Lonsdale yourself or has he made valuations for you at times?

30 A. I think he did, one particular occasion, or two.

Q. You engaged him as your valuator; what year was that?

A. A company I am interested in.

Q. With your approval? A. Yes.

Q. What year was that? A. About 1927 or 1928.

Q. I think you have told me you regard Mr. Lonsdale as a man of integrity and capacity in the business of valuating?

A. According to my knowledge, I am not intimately acquainted with him, but from what I know of him I think he is a capable valuator.

Q. Have you ever bought an apartment house? A. Yes.

40 Q. A large apartment? A. Not a large apartment.

Q. Ever sold one? A. No, I would not say, not this size.

Q. Have you personal knowledge, your own knowledge of any real estate transactions in the immediate vicinity or in the locality where this apartment house is, from 1923 to the present time, of your own knowledge?

A. A sale took place, the sister apartment to this, I have the offer here, 18 suites—

Q. You are telling me something you had to do with?

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A. No, I did not sell it; I have knowledge of the sale.

Q. You mean someone has told you about it?

A. The vendor told me what he got for it, and furnished me with an offer.

Q. He gave you a copy of a document to bring along here?

A. He gave me the original.

Q. Aside from that, have you any personal knowledge, except being armed with something that somebody else knows about, have you any personal knowledge of the sale of any property in this locality, apartment house or otherwise, from 1923 down to the present time, because I cannot take from you the second-hand information you are about to offer? 10

A. I sold a small apartment house on Harvard; that is about a block and a half from this particular property.

HIS LORDSHIP: There is no other apartment?

A. There have not been any sales in that immediate vicinity that I know of during that time of an apartment house of this size or immediately adjacent to this particular apartment house.

MR. SLAGHT: Q. If Mr. Lonsdale inspected this apartment in 1924 and valued it, would you think he would be as capable as you are inspecting it now; do you think he would be as reliable as you and your valuation?

A. From the actual work he has done for me, and the results that I have received through his valuations, I would not say that he would be. 20

HIS LORDSHIP: I don't think it is very proper to ask one witness to pass an opinion on another.

A. He might not be as familiar with actual construction as I would be.

MR. SLAGHT: You valued the land at \$30,000.; how do you get at that \$30,000. valuation? Do you take the two frontages and depth, or is it just a jump?

A. I took that particular piece of property for the use it is put to as worth \$30,000. for the particular use it is put to.

Q. Have you any way of getting at that? Do you take the frontages into account at so much per foot or do you not; can you tell me? 30

A. It is worth approximately \$200 per foot on each frontage, a depth of 100 feet; it is 199 feet deep, it could be used either as for one particular project or as two frontages with an apartment house on King Street and stores and apartments on Queen.

Q. Is that the way you did it?

A. Yes, I considered \$30,000. to be a fair marketable value as to what I could get for that particular purpose, or as an oil station.

Q. Give me that again; you said \$200. a foot on Queen Street? A. Yes. 40

Q. By a depth of—? A. 100 feet; it is 199 feet deep.

HIS LORDSHIP: There would be two frontages? A. Yes.

Q. Practically 100 feet depth to each frontage?

MR. SLAGHT: That is the same as taking \$400. per foot on 76 feet?

A. Yes, that would be the maximum value that you could put on Queen Street frontage, that would be \$400.

Q. I thought you said \$200.?

A. \$200. a hundred feet deep and \$200. one hundred feet deep on King St.

HIS LORDSHIP : Is one just as desirable as the other on King and Queen ?

A. I would say King Street is more desirable for apartments, and Queen Street is a little more desirable for stores; there would not be a great deal of difference in the two.

MR. SLAGHT : Queen Street is the business street, and King is residential ?

A. Yes; it is not what is considered one hundred per cent location for stores, but it is a fair location.

CROSS-EXAMINED by Mr. Singer :

Q. Did you ever see an application for a loan in connection with this
10 property; was one shown to you ?

A. Not to my knowledge; I might have seen it.

Q. I am very curious, because the wording in your description of the property follows almost word for word with Exhibit 11 which has been filed in this action.

HIS LORDSHIP : In answer to Mr. Slaght he said he created his own description.

MR. SINGER : I am asking did you create your report having in front of you an application for a loan that had been made in connection with this property ?

20 A. No; I would not say I did not see it, but I created my own report, because I saw the building throughout and made a sketch of each apartment.

Q. This is a copy of Exhibit 11; does that recall anything to your mind ?

A. I do not recollect seeing that. I recollect seeing some description of the building; whether it was Mr. Rice's description or a different description I would not say; it might have possibly been that.

Q. He gave you that document ?

A. I think Mr. Dane showed it to me.

Q. You don't know where he obtained it ? A. No.

Q. Did you do any apartment house building in 1923 ? A. No.

30 Q. When did you first start to build apartments ?

A. I built apartment houses fifteen years ago, small apartment houses down in the east end.

Q. When did you first build your first fireproof apartment house ?

A. 1927.

Q. That would be four years after the by-law came into effect ?

A. Yes; it is not absolutely fireproof building; it is semi-fireproof.

Q. You know this locality, Queen and King Street, very well ? A. Yes.

40 Q. Can you tell me what change took place down in that locality just about 1924 which made that section very much less desirable for apartment house purposes ?

A. I think at that time the cars changed and went right through to Sunnyside and Y-ed at the Humber, but that is a peculiar situation there; it is different from what would happen in most cases; take for instance the corner of Broadview and Danforth, when the cars were changed there it completely changed the complexion of the district; there were new sections established at Pape Avenue and Woodbine, and other sections.

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Q. I am not dealing with business sections ?

A. In this particular section the cars arrive no place, there was no new retail centres established by the cars going through to Sunnyside or to the Humber.

Q. It created a great deal more traffic around this corner than there was there before ? A. It would affect the corner somewhat, not materially.

Q. And makes the corner much less desirable for apartment house site than it had been previously ?

A. If the cars were going through I would naturally think there would be less traffic.

HIS LORDSHIP : Was this about the time the Sunnyside Amusement Park was started, or was it some years after ?

A. It was about the time the amusement park was started, and the cars would go right through to the amusement park, and it would be through traffic instead of transferring.

Q. Did the establishment of the amusement park render it less desirable ?

A. I would say so; it is an attraction for certain type of apartments; if you had an eight-roomed suite where there were families living in the apartment, and some wanted quiet, it might be detrimental, but the type of apartment of this particular building I would not say it would be so very detrimental.

MR. SINGER : Have you any idea of the rents that were paid for this apartment in 1923 ? A. No.

Q. Would you be surprised if the rents paid just after the construction of this building, if we could receive \$125. per month rent for the stores ?

A. I would be surprised to hear that.

Q. Would you be surprised to learn that tenants were prepared and did pay \$125. per month for the apartments ?

A. I would be very, very much surprised.

Q. What rents are they bringing today, do you know ?

A. I have a memorandum of the rents here.

Q. I want the approximate amount ?

HIS LORDSHIP : Just what somebody told him; that is not evidence in cross-examination any more than it would be in examination in chief.

MR. SINGER : Where did you get your information ?

A. From the manager of the building.

Q. Not from the tenant—

HIS LORDSHIP : It would not make a particle of difference, it would be hearsay evidence, and it is not admissible in cross-examination any more than in examination in chief.

MR. SINGER : You gave some figures as to the cost of running the building before; you said something about six thousand dollars a year ? A. Yes.

Q. Will you tell me how you make up those ?

A. I deducted certain repairs when the building was new that would not be necessary in the present state of the building, decorating the building, the building would be decorated, a matter of \$1,105.; and another item of \$1,295., that would be general repairs.

Q. Do you mean this \$6,000. is additional cost ?

A. That is deducted from the present operating expenses.

Q. Did you mention your total amount of annual running costs? A. Yes.

Q. What are they? A. Operating expenses, \$9,090.30 for 1930 and 1931.

Q. Is that information that has also been given to you by somebody else?

A. That information has been given to me by the managers of the building.

Q. You cannot give that? A. Not of my own knowledge.

HIS LORDSHIP: Only hearsay, how could he tell?

MR. SINGER: You arrived at the value of the building on the basis of
10 a certain proportion of the rentals received, didn't you?

A. No, not altogether; that was one factor.

Q. That is on the basis of information that somebody else gave you?

A. No, it is——

Q. You don't know the rentals, except by what somebody told you?

A. Yes.

Q. His Lordship has ruled that cannot be used in giving your evidence; I want you to eliminate that item.

HIS LORDSHIP: Was it on the basis of what somebody told you, or was it on your own estimate of what the rents should reasonably be?

20 A. I estimated the rents are reasonable at the present time; I checked this over, and I think it reasonable according to my judgment.

Q. They are your own estimate?

A. Yes; at the present time, I would say that this is excessive operating expenses.

MR. SINGER: Q. If your Lordship is prepared to allow his own estimate as based on hearsay information——

HIS LORDSHIP: No, it is checked by him.

MR. SINGER: I want you to give me the result of your own checking of your hearsay information and let me know the rents which you say are reasonable for that apartment; take two or three typical examples?

A. A four-roomed apartment in the front, overlooking King Street and the lake, Sunnyside and harbour improvements, four rooms at \$75. is fairly reasonable; and there are the three-roomed apartments that are renting for \$45. in that location, that is fairly reasonable, it seems a little bit high to me, but it is fairly reasonable considering the location and the demand for that price apartments. The rentals, there are very few at \$75.; they range from \$45. to \$55., that is a popular-priced apartment, and there is a good demand for that.

40 Q. Your rentals in this apartment, the ones fronting on King Street, \$75.; what are the ones fronting on Queen Street, what would you say is a reasonable rent for those? A. \$50. to \$55.

Q. And for the stores? A. \$75. with the basement.

Q. The total rent on the basis of this figure would have considerable bearing on the valuation you placed on this property? A. Yes.

Q. And an increase in the rental would have some measure of importance in coming to a conclusion as to the values? A. Yes.

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Q. If those rents could be considerably increased, your valuation would also be considerably increased?

A. If they could be maintained at that increase for a period of years it would influence my valuation.

Q. Your present rentals today must be considered in the light of some of the modern apartment houses that have been erected since 1923? A. Yes.

Q. In 1923 do you know of any other fireproof apartment houses in the City of Toronto?

A. There were several; The Earnscliffe was a fireproof building.

Q. There were very few? A. There was not so very many. 10

Q. That was before the by-law?

A. Yes, unless they were over three storeys.

Q. The by-law was passed in 1922?

A. For a certain number of storeys it had to be fireproof even previous to that, if there were eight storeys; that accounted for the Earnscliffe being fireproof.

Q. The fireproof by-law dealt with buildings two and a half storeys and over? A. Yes.

Q. Prior to this time in 1923 there were very few fireproof apartments?

A. Yes. 20

Q. Since 1923 we have had a great many of them?

A. Not so many fireproof apartments.

Q. A great many apartments? A. Yes.

Q. A different class of architecture and layout has been found in your apartment houses since 1923?

HIS LORDSHIP: That, I suppose, lessens the value of the ones built previously? A. Yes.

Q. Both for renting and sale?

A. Yes. The Canadian market called for a certain plan; the American plan never took yet here; we could not sell them; we built houses in Buffalo 30 on the American plan, we built a few here on the same plan, and we could not sell them; the American plan is where you enter directly into the living-room without any vestibule or hall, and this is the same—

MR. SINGER: Q. That is one of the items you seriously complain of in this apartment? A. Yes.

Q. You built these places in the States and they sold very well? A. Yes.

Q. With all your fifteen years' experience you came back in Toronto and built the same class of house?

A. We thought they might take, but they did not; we built one or two.

Q. You believed, as a result of that experience, that that class of house 40 was going to sell in Toronto?

A. According to our experience in Buffalo we thought we might introduce something new.

Q. It is not remarkable that the architect who erected this apartment house had the same idea as you had? A. No.

Q. He built the same class of place?

A. He would not pick an isolated case, such as myself building one or two houses, and invest a couple of hundred thousand dollars.

Q. In addition to changes of methods of construction and layout of apartment houses, a great many new apartment house districts have been opened up since 1923? A. Yes.

Q. In practically every one of the northern sections of the city. A. Yes.

Q. Very desirable apartment house sections from the viewpoint of locality? A. Yes.

Q. That has had a tremendous effect on practically all the downtown apartment houses? A. It has had some effect, yes.

Q. You have a tremendously increased apartment accommodation in the City of Toronto today? A. Yes.

Q. That has had an effect on the question of values and rentals?

A. Yes, sir.

Q. So that you have all these things that have happened since 1923 that would tend not only to depreciate the rentals, but the general sale value of this apartment house? A. Naturally the competition would have some effect.

Q. You have had all this in mind, and all this must have been before you when you fixed your value as of today, \$175,000.; taking all these factors out of the picture and going back to 1923, will you tell me what your value should have been in that year?

A. My value would be from seven to seven and a half times the gross rental for one particular case, and I might have taken seriously the rent you say you got.

Q. If the rent that was obtained at that time was on the basis of \$42,000. or \$43,000. a year, that would place your value slightly above or around \$300,000.?

A. No; I have told you I would not take one isolated year; according to my judgment I would have to be satisfied that they would consistently produce that revenue over a period of years.

Q. You have built apartment houses? A. Yes.

Q. And you have made applications for loans on them? A. Yes.

Q. And the loan companies have asked you to fix what you think should be their values? A. Yes.

Q. Do you mean to tell me you start to consider the rental you are going to receive for a period of years before you fix the values of these apartment houses? A. Yes, what I could reasonably expect over a period of years.

Q. Notwithstanding the changes that might take place, how could you foresee those things?

A. We cannot, but we have to be absolutely up-to-date when we are building an apartment; we would not put in a brine system when the people demand an individual electric system of refrigeration.

Q. Do you think that electric refrigeration could be put in at reasonable cost in 1923? A. If it was not quite so reasonable we would put it in.

Q. It would have added greatly to the cost of this apartment house?

A. It would have added some.

Q. You have told me of improved apartment houses, improved plans and

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different locations and increased apartment space; I am asking you to try and forget all those things and put yourself back in 1923, and, forgetting those things, tell me what your value would have been?

A. One very, very serious factor is four storeys; you completely eliminate a certain type of tenant, elderly people; they won't walk even three storeys, let alone four, and that was one very serious detriment in connection with this apartment, and I can hardly understand a man putting up a four-storey apartment without an elevator.

Q. I am asking you to forget what happened in those eight years?

A. I cannot.

Q. I did not think you could? A. I cannot forget that.

Q. What has happened in the last eight years has had an effect upon the valuations you have given to the Court today?

A. It has an effect, yes, because we are in slight depression at the present time; it affects the rentals in this particular apartment; there are vacancies of twenty per cent at the present time; under normal conditions it would be, no doubt, ten, due to location.

Q. Drop the idea of depression and come back into a normal period?

A. I have made my valuations as at a normal time; I have given ten per cent vacancies, and there are fifteen to twenty per cent existing at the present time; I have assumed this is an isolated year, the same as the rentals you speak of.

Q. Have you heard of the Canadian Ice and Refrigerating Company; they are manufacturing refrigeration systems in 1923?

A. I might have heard of them; I do not recollect that.

Q. Do you know any company that was manufacturing refrigerating systems in 1923? A. Jack Frost refrigerators and Frigidaire.

Q. For apartment houses?

A. Yes; and I think Kelvinator; there were several on the market.

Q. You never heard of the other name? A. No.

MR. WALSH: Where are they now?

MR. SINGER: I will be glad to find out for you; I don't know.

Q. Did you see the plans and specifications of this property? A. No.

Q. Did you make any endeavour to see them at all?

A. No; I went to see for myself what actually existed there.

Q. You could see that on the plans and specifications, could not you?

A. Yes, but I preferred to see it.

HIS LORDSHIP: Sometimes there is some difference between the plan and completed structure.

MR. SINGER: Sometimes it might be worse and sometimes better? 40

A. Yes.

Q. Did you take down sufficient data to work out the cost of construction as of 1923?

A. I took the cubical contents, measured the cubical contents of the building, and I checked my figures.

Q. Did you work it out on that basis of the cubic contents? A. Yes.

Q. Did you make any allocation of amount as to different trades, electric wiring, plumbing and steamfitting?

A. No; I just took the general cubical contents; after all, it is the market value that counts; I understood I was to put a valuation as to the market value.

Q. I am not interested in the market value as of today; I am particularly interested in the cost as of 1923; having that in mind, did you do anything to try to determine the cost of the building in 1923?

A. Yes, I have the cost of my own construction in 1923 and I have the costs for 1931.

10 Q. For fireproof apartment?

A. No; I have taken fireproof and have added practically the same percentage that would approximately apply in this case.

Q. You built no apartment houses in 1927? A. No.

Q. Where did you get your calculations for cost of apartment houses in 1923?

A. Because the construction would be practically on the same ratio as smaller buildings; the same ratio would apply.

Q. You came to London with Mr. Dane, I understand? A. Yes.

Q. Is he being called as a witness in this case? A. I would not say.

20 Q. Is he a valuator or real estate man in Toronto? A. Yes.

Q. What discussion did you have between you on your way up as to the figures you were going to give at this trial?

A. We collaborated and checked some figures; he arrived at his valuation in one way, and I arrived at it in another way, according to my experience in construction, and he had extensive experience in connection with real estate; we did not altogether agree; we arrived at our conclusions by different methods.

Q. Pretty close? A. I would not say as to that.

RE-EXAMINED by Mr. Walsh:

30 Q. My learned friend wanted to know if you made any due allowances. I think you told his Lordship you put the market value of that building in 1931?

A. Yes.

Q. As a normal price at how much? A. \$175,000.

Q. What did you put that value as of 1923? A. \$211,500.

Q. So that you are giving Mr. Singer \$36,000.? A. Yes.

MR. SINGER: That is depreciation of three per cent a year?

A. Practically three per cent a year.

MR. WALSH: Did you take into consideration any change there had been during the years? A. Yes.

40 Q. My learned friend, Mr. Slaght, mentioned Mr. Lonsdale; what would you say as to a valuation in 1924 of \$300,000. odd—

HIS LORDSHIP: We have not any sworn evidence here yet that Mr. Lonsdale made that valuation.

MR. WALSH: I will leave that.

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WALTER KEITH COLIN CAMPBELL, Sworn. Examined by Mr. Walsh :

Q. What do you do ?

A. I am Chief Inspector of the Department of Insurance for Ontario.

Q. Are you under the Loan Corporations ?

A. Yes, Loan and Trust Corporations Act.

Q. That is at the Parliament Buildings in Toronto ? A. Yes.

Q. Have you got the custody of the files relating to that department relating to London Loan and Savings Co. ?

A. I have them with me; I have correspondence files which the Registrar permitted me to take. 10

Q. Will you tell his Lordship, have you the by-laws, the certified by-laws with corporate seal of the company ?

A. I have a copy of the by-laws certified not under corporate seal.

Q. Are not they under the seal ?

A. No; these were filed at the same time as we requested everybody to, at least all of the companies to file their by-laws just about this time; it was in 1928 these were filed. I know that that is the one that was filed with me, because I had it in my personal departmental file.

HIS LORDSHIP : Is there any question, Mr. Slaght or Mr. Singer, about these being the by-laws ? 20

MR. SINGER : We have no knowledge, or as to whether they were properly passed.

HIS LORDSHIP : Mr. Slaght, your clients ought to have all that knowledge.

MR. SLAGHT : I have not taken it up; on examination it was put forward, and one of my clients said they were not the proper by-laws, and I have not since investigated; but I will endeavour tonight to go into that and see if we can help some on getting at what or where the real by-laws are; I had thought there was a book of by-laws that my friends would have, official by-laws.

HIS LORDSHIP : When were those printed ?

MR. SLAGHT : I don't know; in fact, I have not got one of those by-laws. 30

HIS LORDSHIP : Do you know when they were printed, Mr. Gray ?

MR. GRAY : In 1915; the certificate is on p. 23, printed certificate.

HIS LORDSHIP : There must be somewhere the original of this, because that is certified—"Passed at first general meeting of shareholders of said company held at London on the 15th May, 1877, with amendments and additions. As witness the seal of the said company under the signature of the President and Manager and Treasurer hereto affixed, 20th April, 1915"—the original of that must be somewhere, because that apparently was certified under the seal—

MR. GRAY : We have had a careful search made for the original and have 40 been unable to find it.

MR. SLAGHT : I understood from Mr. McCormick that these by-laws were changed from time to time and records kept with the company, and I expected to find them given in some by-law book or other from the custody of my friends.

HIS LORDSHIP : This is apparently as of the 20th April, 1915, and included all the amendments up to that date; they may not have been amended since. 4

MR. GRAY : Would your Lordship look at the note of the certificate of the manager of the company there ?

HIS LORDSHIP : Certificate of Mr. Hambly, a true and correct copy of the by-laws as of this date.

MR. GRAY : And that date is 1928.

HIS LORDSHIP : June 13th, 1928. Of course, under the Joint Stock Companies Act a copy of the by-law, certified under the hand of the proper officer, is receivable in all Courts as *prima facie* evidence of the by-law; so if you file one of these it will be *prima facie* evidence. It is under Section 143 of the Companies Act : "A copy of any by-law of a corporation under its seal, signed by any officer of the corporation, shall be received as *prima facie* evidence of the by-law"—this does not advance it any further, because it is not under the seal of the manager, Mr. Hambly; if it was affixed it would make it *prima facie* evidence.

MR. WALSH : We will get that certified by Mr. Hambly.

Q. Mr. Kent wrote to the Registrar of Loan Corporations, Toronto, October 1st, 1925; he wrote to that department having in mind the provisions of the Loan Corporations Act of Toronto.

HIS LORDSHIP : What does that say ? Perhaps that makes that evidence.

MR. WALSH : No, this goes a lot deeper. This is another subject. I am leaving that other. Mr. Kent wrote a letter after he returned to the office in October, 1925, a letter dated October 1st, 1925, to the Registrar of Loan Corporations, Parliament Buildings, Toronto, having regard, your Lordship, to his ability under the Section 118 of the Loan and Trust Corporations Act of the Province of Ontario, so that he would be under no obligation, your Lordship, under the provisions of that Act, in connection with this Durno deal, and in that letter, your Lordship, he states his position very clearly as to this Durno transaction; that letter was written by him to the Department.

HIS LORDSHIP : How would that be evidence, and to what extent ?

He is now dead and he cannot speak.

Being dead, a statement of his made in pursuance, an entry of his made in pursuance of his duty would be evidence, but would—

MR. SLAGHT : Against the corporation.

HIS LORDSHIP : Against the world.

MR. WALSH : Because it says in this section—he evidently was a half lawyer—

HIS LORDSHIP : What does the section say ?

MR. WALSH : (Reads Section 118) : "The Registrar may request any corporation to dispose of and realize any of its investments acquired after the 14th April, 1925, and not authorized by this Act, and the corporation shall, within sixty days after receiving such request, absolutely dispose of. . . . The directors of the Corporation shall be jointly and severally liable, etc. . . . enters on the minutes of the Board of Directors his protest against same and within eight days thereafter gives notice of his protest by registered letter to the Registrar, such director may thereby and not otherwise exonerate himself from such liability."

HIS LORDSHIP : There are two requisites; first, he must enter it in the

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Minute Book, and that must be followed up within eight days by a letter of protest to the Registrar.

MR. WALSH: From what Mr. Kent knew of the law, he wrote to this department on October 1st, 1925, and your Lordship will remember the evidence.

HIS LORDSHIP: What is the object—to show he did make a protest?

MR. WALSH: Yes.

HIS LORDSHIP: It is evidence that far, but no further.

MR. SINGER: Might I take this objection: a letter written to the department to escape liability by Mr. Kent on his own behalf, and not on 10 behalf of the company, is not evidence that made a protest for the company.

HIS LORDSHIP: No, it is evidence that he individually made it.

MR. SINGER: Not to the company; he may have made his protest to the department.

HIS LORDSHIP: I will receive it for what it is worth; as to its effect I will reserve that for argument.

MR. SINGER: Subject to objection?

HIS LORDSHIP: Yes.

MR. SLAGHT: Granting all that has been said about it, that is not evidence against either of my clients, because it is not an issue in this trial between 20 the Plaintiff and Defendants whether or not Kent did make a protest.

HIS LORDSHIP: No.

MR. SLAGHT: To put it in as evidence of the fact that he made a protest is not a proper ground to put it in; and, secondly, to put it in in order to have it before the Court to see with regard to some of the facts stated in it is again not evidence.

HIS LORDSHIP: It is not evidence of the fact stated; it is evidence of the fact that he made a protest, no more.

MR. SLAGHT: My submission is that it is of no consequence whether or not he made a protest, but that is not an issue here, and to put in evidence 30 of the fact is unfair to my clients and improper.

HIS LORDSHIP: It is evidence in this respect; I gather from the cross-examination by the Defendant's counsel that it is intended to claim the company were fully aware and its manager were fully aware of all the transactions in connection with these apartments, and Mr. Kent is not here to answer for it, but there is a letter here that he wrote making a protest; that may be very helpful to the Court in arriving at a conclusion as to whether or not when witnesses swear he did know about it, that I am satisfied that it is true or not—

MR. SLAGHT: It might very well deceive the Court if the statements in 40 it are untrue.

HIS LORDSHIP: It is not the statement; it is the fact that he protested to the department.

MR. SLAGHT: Then that fact, my Lord, is not a fact that is in issue here.

HIS LORDSHIP: It would show, if a witness swears that Mr. Kent knew all about it and was satisfied with it, that would be inconsistent with the fact that Mr. Kent made a protest afterwards.

MR. SLAGHT : At the same time that would not make this evidence, nor has any witness sworn to the fact your Lordship indicates.

HIS LORDSHIP : I am going to allow it to be filed now, subject to objection.

MR. SINGER : In the section read a moment ago, that notice to the department depended upon, first, a notification given by the department to the loan company to dispose of certain properties.

HIS LORDSHIP : To be effective—

MR. SINGER : There is no evidence of any notice given by the department.

HIS LORDSHIP : This is not an issue whether or not Mr. Kent was personally reliable; but the defence, as I see at the present minute, is endeavouring to establish that he knew of it, and that he was satisfied with it, and this evidence is put in to show he made a protest shortly afterwards, which would be inconsistent. I am not saying it is conclusive, but it is some evidence and I am going to receive it.

MR. WALSH : The letter is dated October 1st, 1925, from M. J. Kent to the Registrar, Loan Corporations, Toronto :

“*Re* S. B. Green and H. A. Morine mortgages Numbers G.41 and G.46, \$35,000. and \$21,000. respectively.

“Have just returned to business after several months’ illness and find the company have sold the Buckingham Apartments in Toronto for \$225,500. to R. S. Durno of 392 Bay Street, Toronto, with \$3,500. to be paid in cash; the assumption of the balance owing to Huron and Erie Company of \$147,000. and a mortgage back to this company for balance, \$77,000. at 7%, and in accordance with the request of your inspectors, Messrs. Harrington and Henry, ‘to advise you regarding all large loans,’ I am at once sending you this information, as the carrying out of sale means a new loan for \$77,000. to Mr. Durno.

“It only came to my knowledge yesterday afternoon that company released good personal security for the amount of the former mortgages we held in this case of \$21,000. and \$35,000. respectively, and interest (namely, Mr. and Mrs. Morine), to which releasing I strongly object.

“I presume this notification will cover any requirements of the Loan and Trust Corporations Act of 1925 to save me from any personal liability in this matter.”

HIS LORDSHIP : What is the date of that ?

A. October 1st, 1925. Then he has put on the side of that letter :

40	“Deposit	\$ 3,500.
	“Balance Huron and Erie Mortgage	147,000.
	“Second mortgage back	77,000.

\$227,500.”

EXHIBIT No. 267 : Letter dated October 1st, 1925, from M. J. Kent to Registrar, Loan Corporations, Toronto.

WITNESS : By reason of the fact that that is an official departmental letter, would it be possible for me to have a certified copy substituted ?

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HIS LORDSHIP: I think so. There cannot be any objection to that I should think.

MR. SLAGHT: I object to that, my Lord; I mean to say I object that the letter should go in at all, and I feel very strongly about it, your Lordship has disposed of that; and I object now that the letter should be removed from the files of the Court and a copy put here in its place, because there may later on be reasons why that course would not be satisfactory.

HIS LORDSHIP: Possibly if I have power to order the substitution of a copy I will do so, but I cannot say at the moment.

MR. SLAGHT: At the conclusion of the trial, then, I think it could be done. 10

HIS LORDSHIP: I think there is some provision where it is a departmental document the Court may direct that in lieu thereof a certified copy may be given. However, I am not going to make any order at all till I am sure of it.

MR. WALSH: Do not answer this: I have two types of questions I want to ask you, two types of productions; first, your Lordship, the department in 1924 or the end of 1923 questioned this very loan, they demanded a valuation; it was not forthcoming, and they insisted—

MR. SLAGHT: I object to this sort of statement.

MR. WALSH: I am only stating; I want to know if I can put the letters in.

HIS LORDSHIP: He is only suggesting the kind of question. 20

MR. SLAGHT: I suggest he ask them.

HIS LORDSHIP: Mr. Walsh tenders evidence along a certain line, and I cannot rule as to its admissibility until I know what the nature of it is, because I am not going to have to rule on a whole lot of letters, I hope. What is the general nature of this?

MR. WALSH: The general nature is as to that valuation of Mr. Lonsdale's, and what the department did.

HIS LORDSHIP: No; their opinion might be altogether wrong.

MR. WALSH: The next type of question was this: about letters sent in by the company to the department showing the classification of the apartment 30 after the sale became abortive; my learned friend, Mr. Singer, asked certain questions like that—

HIS LORDSHIP: As I remember that is contained in the returns to the department.

MR. WALSH: These were in addition letters that passed between the department and the company as well on that particular subject.

HIS LORDSHIP: I don't think that is pertinent to this case at all.

MR. WALSH: That ends that, and I cannot on your Lordship's ruling ask that.

CROSS-EXAMINED by Mr. Slaght: 40

MR. SLAGHT: I want to cross-examine, subject to my objection that it is not admissible. Where did you get this (Exhibit 267)?

A. That is from the files of the Department of Insurance.

Q. When did you first see Exhibit 267?

A. Probably I saw it soon after it came into the office, but no doubt a letter of that nature I would not remember any particular individual letter.

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Q. Can you tell me when you first saw the document with any assurance?

A. I don't think I can tell you that.

Q. You looked it up in your file; you found it in your file?

A. I found it in the file.

Q. Except for finding it in your file when you looked up your file or got it assembled in the last day or two, are you able to say you ever saw this document, Exhibit No. 267, before?

A. I am able to say I must have seen it before, but I cannot say when, because it is on the official file of the department, and I would have that file
10 before me very frequently during my time of office.

HIS LORDSHIP: It is produced from the files of the department.

MR. WALSH: I don't know, my Lord, whether I am out of place or not; I see a little stamp on the bottom, "Department of Insurance received October
2nd, 1925, Ontario"——

HIS LORDSHIP: You might ask him if that is the usual stamp used by the Department.

WITNESS: That is, sir.

JOHN H. HAMBLY, Sworn. Examined by Mr. Walsh.

MR. WALSH: Your Lordship, I wanted, if possible, to wind up with this
20 witness tonight; he has already made one of these with the corporate seal—
Mr. Hambly is the manager (referring to copy of by-laws).

HIS LORDSHIP: You don't need to ask me anything about it; file it as an Exhibit. You can ask him if he is the manager.

MR. WALSH: What is your name? A. John H. Hambly.

Q. What is your business now?

A. I am with the Huron and Erie Mortgage Corporation.

Q. Before you went with the Huron and Erie Mortgage Corporation, what were you doing? A. I was manager of the London Loan Company.

Q. How long were you with the London Loan and Savings Company?
30 A. About four years.

Q. In what capacity did you serve in the London Loan and Savings Co.?

A. I went there as accountant and served in that capacity for about a year, was subsequently made assistant manager, and then manager.

Q. Whom did you succeed? A. Malcolm J. Kent.

Q. In the first place, I want to ask you about a mortgage; do you know the Buckingham Apartments? A. I do.

Q. There was a mortgage on there of \$180,000., \$150,000. to the Huron and Erie Mortgage Corporation; did you know that? A. Yes.

Q. And there is evidence here of the company having paid the Huron
40 and Erie—the London Loan and Savings Co.? A. They did; they paid it off.

Q. What did you get from the Huron and Erie?

A. We got an assignment of their mortgage.

Q. Why did you get an assignment of their mortgage?

MR. SINGER: Surely, my Lord.

HIS LORDSHIP: There may be some special reason; I cannot say now.
Go on.

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MR. WALSH : Why did you get an assignment of the mortgage from the Huron and Erie ?

A. In order to retain the original mortgagors on the covenant.

Q. That was the reason why it was done ? A. That was right.

Q. Do you remember a persistent firm known as Martin, Currie & Company in Edinburgh ? A. Yes.

Q. They were persistent letter writers; did you write any letters to them ?

A. I did, yes.

Q. I have two letters that you wrote to Martin, Currie & Co.; the first is dated September 28th, 1927, and the next is dated——

HIS LORDSHIP : Are these in as Exhibits ?

MR. WALSH : No, my Lord; you told me to wait till I got Mr. Hambly.

HIS LORDSHIP : All right.

A. Yes, I remember writing those letters.

MR. WALSH : Will you tell his Lordship if the Defendants, Brickenden and McCormick, knew you wrote those letters ?

A. Yes; these matters were submitted to Mr. McCormick, also Mr. Brickenden before the replies were sent out.

MR. SINGER : May I file objection on behalf of the Defendant Morine ?

HIS LORDSHIP : They are not being tendered as against him; they are certainly evidence against the men they were submitted to; I cannot see at present how they would be evidence against your client. If it subsequently develops he was a party to it they may, but it is hardly the proper time now. There is nothing as yet appearing to make it evidence against you.

MR. WALSH : This letter, I notice, is dated September 28th, 1927, from the London Loan and Savings Co. to Martin, Currie & Co.

EXHIBIT No. 268 : Letter September 28th, 1927, from London Loan and Savings Co. (John H. Hambly, Manager) to Martin, Currie & Co., Edinburgh.

Q. Then there was a reply to that letter from Martin, Currie & Co. of the 22nd October, 1927; do you identify that reply ? A. Yes.

MR. SINGER : My objection will apply to all this series of letters.

HIS LORDSHIP : This is a statement made by them. How is that evidence ?

MR. WALSH : Because Mr. McCormick wrote a postscript at the bottom of the letter, "Please address all communications to Mr. Hambly."

HIS LORDSHIP : It will be notice to Mr. Hambly of something they say; that is all. Let me see that particular clause before you read it. (Looks at letter.) You can read that.

MR. WALSH : "We are favoured with your letter of the 28th ultimo"——

HIS LORDSHIP : Just read the one paragraph.

MR. WALSH : (reads) "With regard to the Buckingham Mansions transaction, we beg to point out that Mr. McCormick's letter of 14th April last did not adequately explain why Mr. Morine was relieved of his covenant in respect of your company's loan, nor did our Mr. Falconer receive a satisfactory explanation on this point from Mr. McCormick or yourself."

EXHIBIT No. 269 : Letter from Martin, Currie & Co. to J. H. Hambly, Manager, London Loan and Savings Co. dated October 22nd, 1927.

Then letter of May 2nd, 1928, from London Loan and Savings Co. to Martin, Currie & Co. (from Mr. Hambly, manager)—I will not put in anything else but the Buckingham Mansions :

“In connection with the Buckingham Mansions, as intimated in our letter of the 9th November last, we have paid the first mortgage on this property held by the Huron and Erie Mortgage Corporation, taking an assignment of their mortgage. This practically puts us in control of the property. Since that time we have been negotiating a sale of same, which we expect to get closed out in the course of the next few days.”

10

EXHIBIT NO. 270 : Letter May 2nd, 1928, from London Loan and Savings Co., J. H. Hambly, Manager, to Martin, Currie & Co., Edinburgh.

Q. You notice that a direct pertinent question was put to you by Martin, Currie & Co., and I notice there was silence in that letter in your reply—you noticed that?

HIS LORDSHIP : Does not the letter speak for itself?

MR. WALSH : Yes.

Q. Did you have any personal knowledge of this Durno deal yourself?

20

A. The whole transaction regarding Buckingham Mansions, in so far as the negotiation of the loans was concerned, took place prior to my going into the employ of the company.

Q. This Durno transaction in 1925——?

A. That took place prior to my going into the employ of the company.

HIS LORDSHIP : When did you go in?

30

A. October, 1925. Any information I got regarding the previous transactions on the property, the information I got in connection with same, came from Mr. McCormick or Mr. Brickenden, and not being in connection with the company at the time the deal went through; I was not conversant with the previous history of it.

MR. WALSH : When Martin, Currie & Co. persisted in their endeavours to get adequate explanations, you went to Mr. McCormick and Mr. Brickenden?

A. I did.

Q. When Mr. Braden was in the witness box he referred to a Lymberry offer with Canusa Oil in it; did you ever hear of that deal, have you any knowledge in your head as to that deal?

A. I did; it did not come before me officially; as a matter of information I was talking over it in a casual way; it came through Mr. Brickenden's office.

Q. That offer?

40

A. Yes; the Canusa Oil Company or Mining Company was a mining company that proposed to put up some, I don't remember, I think it was 1,200 or 12,000 shares of stock as the initial deposit in connection with the purchase of this property, but I don't think, as far as I recollect, the deal was never put before the Board; I received no official, no documents were presented to the company in connection with it as far as I recollect.

Q. Just the offer came through Brickenden? A. Yes.

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Q. And then it came before the Board, and there is a minute; it says, laid over? A. It may have been before the Board.

Q. Was not the very reason why that was laid over——

HIS LORDSHIP: Do you know of any reason?

A. We looked into the question of the Canusa Oil Company's stock, and it was not satisfactory.

HIS LORDSHIP: I thought it was a mining company?

A. It is a mining company, gold mining company.

MR. WALSH: Was there any person in favour of carrying that deal out?

A. I don't remember the matter coming before the Board, and it may have come before the Board, and if so the minutes would disclose it; I have no recollection now. 10

Q. Do you remember, was there any solicitor notified you as a director of the company that the deal was not to go through?

A. Mr. Braden notified me to that effect.

HIS LORDSHIP: Were you a director? A. Yes, I was at that time.

Q. When were you a director? A. I think it was in 1927.

MR. WALSH: You were notified? A. I was notified by Mr. Braden.

Q. Could you tell his Lordship, you say this offer came through Mr. Brickenden, why was it necessary for Mr. Braden as a solicitor to notify you people about that deal not to go through? 20

HIS LORDSHIP: No, no; the fact is he did; the other is a matter of inference and argument.

MR. WALSH: May I put this question: will you tell his Lordship who on the Board of Directors had given his or their benediction to that offer?

MR. SLAGHT: Mr. Hambly said it did not come before the Board.

HIS LORDSHIP: Do you remember it being before the Board?

A. I do not.

Q. Or any of the directors expressing to you their approval of it?

A. The matter was brought before the Board and laid over; I have no recollection even of that taking place, consequently I am not in a position to say whether it received the sanction or the approval of any member of the Board. 30

HIS LORDSHIP: You could not be expected to remember all the details.

MR. WALSH: You mentioned in the correspondence about the Huron and Erie having a first mortgage, and you told his Lordship the reason for taking an assignment, the London Loan had, when you were manager, a mortgage on this apartment? A. A second mortgage.

Q. I see there is certain correspondence which passed and which has been filed as an Exhibit where you demanded payment of interest and everything else? A. That is right. 40

MR. SINGER: My learned friend does not put in the evidence.

HIS LORDSHIP: As I understand it all these letters are in.

MR. SINGER: There is some evidence coming out now, and I prefer my learned friend should not put in the evidence.

HIS LORDSHIP: Do not ask leading questions.

MR. WALSH: Q. Did you always show that mortgage as a mortgage?

A. We did.

MR. SINGER: Might I suggest that that is the type of question that I am objecting to; he has a perfect right to ask this witness how the record shows.

HIS LORDSHIP: Yes, that is the better way.

MR. SINGER: Not to put an answer in his mouth.

HIS LORDSHIP: Yes, that is right; always showed it as a mortgage—that is in the records—

MR. SINGER: No, the records show it is not a mortgage at a certain time.

10 MR. WALSH: You heard Mr. Singer's objection, and heard his Lordship's ruling; will you tell me as the manager of this Trust Company what was that mortgage shown as, treated as, and everything else?

MR. SLAGHT: What do you mean by shown? If it is shown, is it shown in the books?

MR. WALSH: In the mortgage ledger?

A. In the general ledger accounts of the company there were three accounts, first mortgages, second mortgages and real estate on hand; this mortgage was kept in account to the company under the heading "Second Mortgages."

20 MR. SLAGHT: It may be so or not; my friend is offering evidence as a Plaintiff in a case of a fact that is in a book, in writing, and it is awfully dangerous. I don't know whether that is true or untrue; my friend, Mr. Singer, thinks Mr. Hambly is mistaken.

HIS LORDSHIP: The book should be produced, and Mr. Hambly should be given the opportunity of referring to it.

MR. WALSH: What books do you want for that?

A. The mortgage ledger account will show it.

MR. GRAY: Exhibits 142 and 143; and Exhibits 140 and 141 of the prior mortgages.

30 MR. WALSH: I guess you know these sheets better than I do.

HIS LORDSHIP: When you are referring to them mention the Exhibit number.

A. Those are the original mortgage sheets of the company (referring to Exhibits 140 to 145 inclusive).

MR. SLAGHT: I suggest, unless you want to confuse, you ought to show him in that Exhibit 143 where it is transferred to the real estate department.

MR. WALSH: Thanks very much; the witness is not confused; you may confuse me.

40 MR. SLAGHT: You are asking a witness to look at Exhibits already in which show a different state of affairs from the suggestion you are taking from him.

HIS LORDSHIP: The witness wanted the mortgage sheets to support his evidence; follow it up.

MR. WALSH: Show us your different mortgages in that now; where you had your mortgage, first for \$35,000. and next for \$20,000., you have got your mortgage sheets for them.

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HIS LORDSHIP: The witness will take some little time to go through them; I suggest you have him go through them so that he can give his evidence intelligently and perhaps more quickly when he gets in the box.

A. In explanation I might say the entries made here of the transfer to the real estate account are made under the date of the year 1930, which is subsequent to my leaving the employ of the company. Up to the time of my employment with the company, which was September, 1929, it was still in mortgage account.

Q. Treated as a mortgage?

A. Yes; these entries are made in 1930; that was subsequent to my 10
leaving the company and going over to the Huron and Erie.

MR. SINGER: That is not correct, as appears by our copies. Exhibit 143, it was transferred to real estate account on December 28th, 1926.

A. This is 143.

HIS LORDSHIP: I think you had better let the witness have a chance of going through the sheets before he gives this, and let him familiarize himself with them.

MR. GRAY: May I show the witness what Mr. Singer is referring to?

HIS LORDSHIP: Yes.

MR. GRAY: Mr. Singer is referring to that; what do you understand 20
that means, that endorsement there?

A. I have no explanation to offer for it, transferred to R. E., December 28th, 1926. The real estate account comprises accounts of properties that were brought to sale under the power of sale proceedings and proved abortive; after the sale had taken place they were transferred from mortgage account over to real estate account, or properties of which the company had taken quit claim deeds, and this mortgage did not come under either one of those clauses.

HIS LORDSHIP: Subsequent to that entry that Mr. Singer has pointed out, was it still continued in the mortgage—? 30

A. The entries still continued beyond that date; this transfer is on the 7th November, 1929, and there are entries continuing right down through the year 1930 and 1931, and if it was transferred to real estate account—

MR. SINGER: May I suggest to the witness that he has perhaps forgotten, because if he will look up his annual reports, the annual return made to the Registrar for the year 1926, it shows this property was always held as real estate. I am trying to assist the witness.

HIS LORDSHIP: The witness should have an opportunity of seeing these documents. It is unfair to a witness to bring him here; he has not seen the documents for a while, and it is unfair to bring him here and ask him about 40
them.

MR. WALSH: I may say as far as Mr. Singer is concerned, there will be evidence called on that, a witness from the department, why that was done.

MR. SINGER: I am trying to assist the witness.

HIS LORDSHIP: I think as it is so near the hour of adjournment it will shorten matters and give the witness a chance to see these documents before he goes in the box again, and he can have them fresh in his mind, we had better

adjourn now. It is unfair to expect a man after years and perhaps thousands of transactions to remember what is in the books.

MR. WALSH: I have the by-law certified now under the seal.

EXHIBIT No. 271: Certified copy of by-laws of London Loan and Savings Co.

—Court adjourned at 6 p.m. to 10 a.m.

—Court resumed at 10 a.m., December 11th, 1931.

JOHN H. HAMBLY, Examination continued.

MR. WALSH: Q. Take these sheets, Exhibits 140 to 145, the first one
10 dealing with the \$35,000.; have you got that? A. Yes.

Q. That is Exhibit 140? A. Yes.

Q. Will you tell his Lordship what that sheet refers to, what mortgage?

A. This is the second mortgage from S. B. Green to the London Loan and Savings Co. for \$35,000.

Q. That sheet shows the disbursement of the moneys, is that right?

A. Yes.

Q. Does it show any payment of interest?

A. There is a payment of interest here of \$1,341.70.

Q. What date is that? A. That was on the 14th October, 1923.

20 Q. Will you tell his Lordship, while it was paid on October 14th, the due date of that interest—

HIS LORDSHIP: Do not ask the witness. The mortgage speaks for itself.

MR. WALSH: This is closed out by what?

A. That was closed out by a new mortgage taken, D. 42.

Q. I see on this valuation sheet the words, "date inspected, by, total,"
and I see these words, "M. J. Kent \$200,000."

HIS LORDSHIP: Whose writing is that?

A. That is in the handwriting of Mr. Benson, the auditor.

HIS LORDSHIP: Is Mr. Benson still alive?

30 MR. WALSH: Yes, your Lordship; he is sick in bed with pneumonia, and we could not get him here.

HIS LORDSHIP: Of course, if that entry is made by Mr. Kent in the ordinary course of business and he is dead, it would be evidence, but not by a living man.

MR. SLAGHT: We understand it was made long after, although we have no evidence of it.

HIS LORDSHIP: It is no evidence one way or the other; it is not evidence here.

MR. WALSH: You say this was carried forward to a new mortgage?

40 A. Yes.

Q. Tell his Lordship if you have the sheet there when the third mortgage for \$20,000. was closed out?

A. That mortgage was closed out by mortgage D. 42 for \$77,000.

Q. That mortgage for \$35,000. was carried forward to the new mortgage?

A. It was paid off and taken up by this mortgage here.

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—continued.

Q. It was paid off, taken up by the new mortgage of \$77,000.? A. Yes.

Q. That is the R. S. Durno mortgage? A. Yes.

Q. Tell his Lordship if there is any other mortgage which was taken up and included in this \$77,000. mortgage according to the sheets?

A. There was a \$20,000. mortgage here given on the 23rd May, 1923; it was also included in that.

Q. That is shown by Exhibit No. 141? A. Yes.

Q. Then the next mortgage you say is shown on Exhibit No. 142, that is the \$77,000. mortgage? A. Yes.

Q. Will you tell his Lordship, according to this Exhibit 142, if there is any interest paid on that mortgage? 10

A. There are two payments of interest, one made on the 8th December, 1925, for \$2,696.96, and there was a payment made on the 10th December, 1925, of \$3.60.

Q. Then I notice there are certain charges on January 4th, 1926, included on that; who put those on—insurance premiums—?

A. Fire insurance premiums and payments made to the Huron and Erie on a first mortgage they held on the same property.

Q. I see those are all put on that sheet? A. Yes.

HIS LORDSHIP: What is the amount of those? 20

A. Fire insurance premiums to date the 4th January, 1926, for \$637.50; on the 12th January, 1927, there is payment made to the Huron and Erie Mortgage Corporation for \$8,567.55; and on the 19th April, 1927, a further payment was made to them of \$2,457.66. On May 3rd taxes for 1927 were paid, amounting to \$2,724.72. On August 8th a further payment was made to the Huron and Erie of \$5,331.13. On the 8th May, 1928, taxes for 1928 were paid, amounting to \$3,338.67. That brought the total mortgage up till that time to \$100,057.23.

Q. Is that including interest? A. No, just the principal.

MR. WALSH: Will you tell his Lordship how you carried that mortgage at \$77,000.—how was it carried in your books? 30

A. That was carried as a second mortgage.

Q. Was it always carried as a second mortgage by you people?

A. Yes, down to this point.

Q. And then what point was that, give us the date?

A. This was down to the 8th May, 1928.

Q. On that sheet? A. Yes.

Q. Have you another sheet there?

A. That account was continued to be carried as mortgage account until I left the company's employ; that was in 1929. 40

Q. Will you tell his Lordship now, there are certain annual returns that were made, I see the annual return of 1926, which has been pointed out to his Lordship, was sworn to, I think, in February or March, 1927; was there any change shown on this property?

A. In the fall of 1926 any cases that had been put up for sale which had proved abortive were transferred into the real estate account, and the government inspector, Mr. Henry, in making his inspection late in the fall of 1926,

came across this account of R. S. Durno's and stated it should also be transferred to real estate.

—Mr. Slaght objects.

HIS LORDSHIP: In consequence of instructions that he gave, what was done? A. It was transferred.

Q. Where?

A. Transferred to real estate account. I questioned the reason of his doing this—

Q. Never mind; in consequence of his instructions, he is inspector for
10 loans? A. Loan Corporations for the Province of Ontario.

Q. Transferred to where? A. It was transferred to real estate account.

MR. WALSH: As the result of that?

A. As a result of his urgent request.

Q. And you did transfer it? A. I did transfer it.

Q. Have you the book where the transfer was done?

A. It was transferred 28th December, 1926, from second mortgages to
real estate for the purposes of the returns to the government.

Q. That was done? A. Yes.

Q. Was it continued in each annual return?

20 HIS LORDSHIP: Well, as shown.

MR. WALSH: Who was your Toronto representative?

A. Mr. H. A. Morine handled the Toronto business.

Q. Was interest entered or charged on mortgage or real estate accounts?

A. Not until it was paid.

HIS LORDSHIP: How is that—that is a double-barrelled question; was
interest charged on real estate accounts?

A. My Lord, it was not charged on any accounts at all, first mortgage,
second mortgage or real estate; it was not charged until it was actually paid

Q. There would not be an entry made at that time? A. No.

30 Q. It would be charged, and the amount of payment would be made at
the same time? A. Yes.

MR. WALSH: That was your policy?

A. That was the policy of the company.

Q. Was that the policy during your regime?

A. Yes, I understand it was the policy prior to my going there.

HIS LORDSHIP: By the books? A. The books showed that.

MR. WALSH: Do the books show that you continued the former policy?

A. We did.

40 HIS LORDSHIP: There are two methods, that one and the one at the due
date to charge up the interest.

MR. WALSH: And yours there was nothing done till you got the money.

A. Till we got the money.

HIS LORDSHIP: Assuming you got only part of it?

A. It was placed in a savings bank and left to accrue there until the
balance came in, and the whole transfer was made.

MR. SLAGHT: There was some correspondence with Dyas about that way
of doing.

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MR. WALSH: You say you succeeded Mr. Kent? A. Yes.

Q. You had no personal knowledge of this Durno transaction? A. No.

Q. Except as you stated to his Lordship yesterday when you wrote to Martin, Currie you got the information on this from Mr. McCormick and Mr. Brickenden? A. That is right.

Q. Apart from that, did you have any knowledge of the Durno transaction? A. No.

Q. Will you tell his Lordship if you ever heard of any deed from Durno to the Consolidated Trusts Corporation in trust?

A. In the fall of 1926, at the time that the government inspector was making his inspection of the office in connection with the Durno property, he said that there was a deed held by the Consolidated Trusts Co.

HIS LORDSHIP: In the fall of 1926?

A. And the Consolidated Trusts Company's office was at the rear of the London Loan, and he and I went into the office, and the deed was produced by Mr. Clewes, the Manager of the company, a deed from R. S. Durno, dated in June, 1925, I think it was, to the Consolidated Trusts Co. in trust, but it did not show in whose behalf or on what conditions the trust was held.

HIS LORDSHIP: Is not there a copy of the deed in?

MR. WALSH: Yes, my Lord.

A. I inquired from Mr. Clewes and could get no information from him, further than that the Consolidated Trusts Company were in receipt of the rents from Mr. Morine and were in due course turned over by the Consolidated Trusts Co. to the London Loan.

Q. Were you ever able to get any information?

A. I never got any information on whose behalf the trust was held.

Q. Is that the first you ever heard of that deed?

A. That is the first I ever heard of it.

Q. I think you have said that Mr. Morine was the Toronto representative; was the subject of change of the Toronto agent ever brought up?

A. In connection with the real estate we had there on two or three occasions, the question arose as to the advisability of placing that real estate in two or three or four real estate firms' hands in Toronto to dispose of, and, at the time that that was brought up, Mr. McCormick in explanation—

MR. SINGER: Was Mr. Morine there at this time? A. No.

MR. SINGER: I object to the evidence.

HIS LORDSHIP: It is not necessary to object; it would not be evidence against Mr. Morine so far.

A. In explanation of the change, Mr. McCormick said he understood Mr. Morine had some prospective purchasers for some of these properties, and he thought it would not be to the benefit of the company to make a change at that time, and on that ground the matter was laid over.

MR. WALSH: Who was Mr. Clewes?

A. Manager of the Consolidated Trusts Company.

Q. Was he ever an employe of the London Loan and Savings Co.?

A. Never to my knowledge.

Q. Did you ever have any inspecting director?

A. We did not, as far as I understood.

Q. Who was the general solicitor for the London Loan and Savings Co.?

A. Mr. Brickenden.

Q. I see the minutes in the book here of the London Loan and Savings Co. of a meeting on May 9th, 1921 (p. 450 of Exhibit 13) : "Solicitor. G. A. P. Brickenden appointed general solicitor for the London Loan and Savings Co."?

A. That is correct.

HIS LORDSHIP : Is there any question about that ?

MR. SLAGHT : No, my Lord. Mr. Braden had proved that as well.

10 HIS LORDSHIP : I thought it was admitted in the record.

MR. WALSH : Do you know anything about notices or amalgamation agreements that were sent to the shareholders ? A. I do.

Q. Do you know if a copy of that was sent to all the shareholders ?

A. A copy was sent to every shareholder in the country at that time by registered mail.

Q. I have here the registered letter delivery sheet, "London, Ontario, August 1st, 1929, G. A. P. Brickenden, London Loan Building, London"—is that the Mr. Brickenden who is the Defendant in this action ? A. It is.

Q. I suppose if necessary the post office record could be produced—

20 MR. SLAGHT : No, it is not; I inquired last night, and at some stage or other both my clients received that printed circular.

HIS LORDSHIP : Very well.

MR. WALSH : I understand Mr. Morine's is there, too.

MR. SINGER : He also received it.

HIS LORDSHIP : When the other side is in a position to prove, then they admit it.

CROSS-EXAMINED by Mr. Singer :

Q. Will you please refer to Exhibit 140, the sheet covering the \$35,000. mortgage ? A. Yes.

30 Q. That opens originally on or about the date the mortgage was obtained in February, 1923 ? A. This opened on the 12th February, 1923.

Q. That is when the second mortgage was obtained ? A. Yes.

Q. The last entry on the sheet is a memorandum, September 8th, which says, "All papers put in new safe, R. S. Durno, Toronto" ?

A. D. 42, R. S. Durno, Toronto.

Q. That refers to what happened after the sale to Durno, taking back a second mortgage for \$77,000. ? A. Yes.

Q. I see a pencil memorandum just above that which says, "See M. W. Wilson adjustments," is that on your ? A. It is not on this sheet.

40 Q. You only show the one entry for moneys received, that is the entry of October 14th, 1923, \$1,341.70, or rather that is the first entry; let me put it that way ? A. That is the first entry, yes.

Q. Of moneys received ? A. Yes.

Q. What is the entry of September 8th showing receipt of \$3,596.37 intended to be ? A. That is a savings bank entry of \$1,384.92.

Q. The entry just above that, \$3,596.37 ?

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—continued.

A. That was the amount apparently transferred to mortgage D. 42, a balance.

Q. Transferred to the \$77,000. mortgage? A. Yes.

Q. And the entry of \$1,384.92 is transferred from the savings bank account to the credit of this account? A. Yes.

Q. I notice also on the portion of receipt just above these entries of cash received and paid out, there is an entry December 1st, 1924, "W. N. Lonsdale \$310,400."—do you know what that is?

A. That is a valuation that was furnished by Mr. Lonsdale.

Q. Did you know anything about that yourself? A. No.

Q. Did you ever see it?

A. The entry was made by me, apparently a valuation report was furnished by Mr. Lonsdale under the date December 1st, 1924.

Q. You would have seen the valuation before you made that entry?

A. In filling this in I would get that information from Mr. Lonsdale's report.

HIS LORDSHIP: Valuation made December 1st, 1924? A. Yes.

MR. SINGER: We transfer from that; I want to take you for a moment to the \$20,000. mortgage sheet, Exhibit 141; we find pretty well a similar method followed on this sheet showing the transfer to D. 42 of the \$77,000. mortgage? A. That is right.

Q. Then we open up with the sheet of the \$77,000.; can you tell me where you closed off these two sheets covering \$35,000. and \$20,000. mortgage, what happened to them—

HIS LORDSHIP: Were you with the company at that time?

A. No, I was not.

MR. SINGER: You were not with the company when the first sheet was opened of the \$77,000. mortgage? A. No.

Q. Did you ever discuss with Mr. Kent, the general manager of the company, about the closing of those two sheets? A. I did not.

Q. So then, when you came to the company, you found open Exhibit 142, the mortgage sheet covering the mortgage for \$77,000.? A. Yes.

Q. And I notice the first entry on the sheet is just about the time you came with the company, September 1925; you came early in October?

A. This is the 18th September, 1925, this account was opened up, and I came to the company on the 1st October, 1925.

Q. It had just been entered when you came with the company? A. Yes.

Q. And did you carry on the subsequent entries after that? A. I did.

Q. The entries on this sheet go down to some time in May, 1928?

A. That is right.

Q. I notice you have only one entry of any moneys received, two entries, one for \$2,696. and one for \$3.60? A. Yes.

Q. Will you tell me, did not you receive other moneys in connection with this property in addition to that?

A. Moneys received, we received the moneys periodically from the Consolidated Trust Co., which were put in savings bank accounts; a clause in the mortgage provided where payments were not paid complete that, if

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partial payments were received, they may be placed in savings bank accounts to accumulate until such time as there were sufficient moneys on hand.

Q. Whom did you receive those moneys from?

A. Consolidated Trusts Company.

Q. Those were collections of rents? A. Yes.

Q. Did you ever credit those moneys so received to D. 42?

A. As the payment fell due and funds were sufficient in the savings bank account, they were credited to this account.

10 Q. Do you mean there was nothing sufficient to cover any payment after the entry of \$3.60?

A. There may have been a credit there, a balance, but not sufficient to cover a full payment; there were certain expenses to be paid out; the fuel had to be provided to heat the building, which was quite an expensive item.

Q. Do you mean all expenses of carrying the building, including payments—? A. They were deducted out of the rents before they were remitted.

Q. Fuel, management, taxes, payment on the first mortgage, would that be deducted first?

A. No, first mortgage payments were charged to this account.

Q. The running expenses of the building would first be charged up?

20 A. A large amount of them were.

Q. And the money would be paid over by the Consolidated Trusts Co. to you? A. Yes.

Q. You told us before that Mr. Henry, the inspector of the department, came down to see you and advised you that he had found on the records of the Consolidated Trusts Co. a deed made by R. S. Durno to the Consolidated Trusts Co. in trust? A. He did.

Q. You went into the office of the Consolidated Trusts Co. with him and examined this deed? A. I did.

30 Q. And after you came back, did you make the entry shown on this ledger sheet, Exhibit 142—I believe it is in your handwriting, you might look at it? A. I did.

Q. It reads, the 26th June, 1925: "Deed R. S. Durno *et ux* to Consolidated Trusts Co. in trust"? A. I thought I made that entry.

Q. Was it not as a result of Mr. Henry's findings that the Consolidated Trusts Company held a deed of this property that he directed you to transfer this account to your real estate account? A. I understood it was.

Q. Now, did not Mr. Henry tell you that you could not be both mortgagee and owner of the property?

A. I don't know that that matter was discussed at all.

40 Q. But the Consolidated Trusts Co. had the deed of the property?

A. They had the deed of the property, but they did not state in whose behalf the trust was held.

Q. But they still held the deed? A. They still held the deed.

Q. And the moneys they received from time to time, they remitted to the London Loan and Savings Co.? A. They did.

Q. And everything that was being done with respect to that property at

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that time, was being carried on as if the property were owned by the London Loan and Savings Co., is not that right?

A. It was handled in the same class as mortgagees in possession.

Q. Was it not because of this deed that Mr. Henry told you to transfer this to real estate?

A. Yes, it was on the understanding of that; I had not seen that deed before.

Q. It was after Mr. Henry found out you held the deed of the property in the name of the Consolidated Trusts that he told you to make this transfer to real estate? A. Yes.

Q. And in that real estate account you keep property owned by the company, including your head office?

A. No, the office account was kept in a separate ledger account.

Q. I am addressing myself for the moment—was not the real estate which you transferred to real estate included in your annual returns to the Registrar in a lump sum of the value of real estate owned by the company?

A. Yes, but it was kept separate from the office building.

Q. Nevertheless, in your annual returns you lumped them together and included them together?

A. There was one account for office building and one account for real estate on hand, two separate accounts.

Q. In your books? A. Yes.

Q. But in the returns to the department you lumped them?

A. I would not be sure about that; I think they were separate.

Q. I think you told the Court yesterday there were three classes of property included in your real estate; one was real estate owned by the company, second was property in connection with which a power of sale had taken place and proved abortive, and that was put into real estate account; the third, property with respect to which you had received quit claims? A. Yes.

Q. Did not you class this property as the result of this deed which you found Consolidated Trusts Co. had, as property to which you had received a quit claim?

A. No, there were only two classes put into that real estate account; the properties which had been put up for sale and the sale proved abortive, and properties that the company had obtained a quit claim deed for, and the reason this Durno property was not transferred into the real estate account at the time the other accounts were transferred in it did not come up under either one of those two classes; we had not exercised power of sale proceedings, and, in so far as the deed was concerned, there was a deed held by the Consolidated Trusts Co.

Q. And the company controlled the Consolidated Trusts Co.?

A. It was a subsidiary company of the London Loan.

MR. WALSH: That is material for your Lordship—

HIS LORDSHIP: Never mind.

MR. SINGER: The London Loan and Savings Co. controlled the majority of shares of Consolidated Trusts Co.? A. They did.

Q. The company as a company, or was it the shareholders?

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A. The Trust Company conducted a regular trust business.

Q. Was the majority of the stock held by the London Loan and Savings Co.? A. It was held by the London Loan.

MR. SINGER: And then the transfer was made from Exhibit 142 to the continuation sheet, Exhibit 143, that you have before you which is marked R.E. D. 42; what does R.E. at the top of that sheet stand for?

A. Real Estate.

Q. So that, at the time this sheet was opened, this property was undoubtedly included in the real estate account?

10 A. It was transferred on the 28th December, 1926.

Q. That is shown by an entry in the upper left-hand corner of this sheet, Exhibit 143? A. It is.

Q. And it is continued right down to May, 1931, I think?

A. The 4th May, 1931.

Q. Do you credit on this sheet in the meantime all rents received from time to time?

A. The rents received were credited on this account down to the time of my leaving the company; these items, subsequent to the year 1930, I cannot vouch for those.

20 Q. What is the meaning of that entry there, where it says, "By real estate, \$6,823.05. Surplus 1929-30"—what does that mean?

A. I cannot explain that item; that item was put through by the London Loan Assets.

Q. You are not in a position to explain that? A. No.

Q. We go for a moment to a further exhibit, which is shown by Exhibit 144; there are two sheets, one headed loan No. 57 and the other headed R.E. 57?

A. That was the payment made to take up the Huron and Erie first mortgage.

30 Q. You opened a new sheet after the Huron and Erie first mortgage was assigned to the company? A. Yes.

Q. You never made any charge or gave any credits so far as that first mortgage was concerned? A. No.

Q. Why?

A. The revenues received from the account up to the time of my leaving the company were all applied on the second mortgage.

Q. Why did not you apply them on the first charge against the property?

A. Well—

HIS LORDSHIP: They did not do it.

MR. SINGER: Did you receive any definite instructions?

40 A. The taxes and other charges that were paid out for the upkeep of the property was all charged against the second mortgage.

Q. You charged up receipts and all disbursements against the one account? A. Yes.

Q. And made no charges against this account at all? A. No.

Q. You remember a letter was read to you yesterday that you had written to Martin, Currie & Co.? A. Yes.

Q. And amongst other things referred to in that letter you said you were

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taking over the first mortgage with the Huron and Erie, and that Mr. Morine would be on the covenant in the mortgage? So that you might be in absolute control of the property for the purpose of a sale; do you recall?

A. That was right.

Q. Tell me what you meant by that?

A. There had been some prospective purchasers Mr. Morine had been in touch with—the second mortgage to the Huron and Erie, if I remember correctly, bore interest at $7\frac{1}{2}$ per cent—

Q. The first mortgage?

A. Yes; it was a ten-year mortgage, bearing $7\frac{1}{2}$ per cent for approxi- 10
mately \$140,000., and that was an obstacle in the sale of the property; a prospective purchaser did not want to assume a mortgage of that size, bearing interest at that amount, when the money could be raised at that time for a lower rate of interest; and, in order to dispose of that, the first mortgage to the Huron and Erie was paid off.

Q. That was paid off so that if you had a purchaser for the property you would be in a position to—?

A. Mr. Morine was endeavouring to negotiate a sale of the property, and, in order to assist him to do so, we took up the Huron and Erie first mortgage in order that he would be in a better position to complete the transaction. 20

Q. You would complete the sale? A. Yes.

Q. He would find a purchaser for you? A. Yes.

Q. And if he found a purchaser you would be in a position then to discharge all encumbrances on the property and take back a first mortgage for your unpaid purchase money? A. That was the idea.

Q. And that was the chief reason the company took over an assignment of that mortgage, was it not?

A. It was certainly to assist in the sale of the property.

Q. Did you ever advise Mr. Morine or do you know if he was advised by the company, before that mortgage was purchased, that your company 30
intended to purchase it? A. I don't know whether he was or not.

Q. May I put it this way; so far as you know, the mortgage was purchased by your company without advising Mr. Morine at all?

A. That might have been the case.

Q. And, after you obtained this assignment of mortgage, the London Loan and Savings Co. was in absolute control of this property?

A. They were mortgagees of the property.

Q. They were in control—

HIS LORDSHIP: Just a moment; that is not a proper question.

MR. SINGER: Anyway, you took over an assignment of the first mort- 40
gage? A. Yes.

Q. Can you tell me, during the whole period that you were with the London Loan and Savings Co., was any demand ever made by the London Loan and Savings Co. upon Mr. Morine personally for the payment of any moneys in connection with any of the mortgages on this property?

A. Not during the time that I was with the company.

Q. Not during the time that you were with the company? A. No.

Q. Do you know why? A. I do not.

Q. You never received instructions from any one to demand payment of any moneys, principal or interest, from H. A. Morine? A. I did not.

Q. And my friend referred a moment ago to the question of Mr. Morine being the Toronto representative of the London Loan and Savings Co.; might I put this to you: did the London Loan and Savings Co. have any agents?

A. Practically all the business that the London Loan did during the period I was with them came through Mr. Morine's office.

Q. Do you mean that all of the applications that were submitted to you from Toronto or nearly all of them were submitted by Mr. Morine?

A. They were.

Q. Did Mr. Morine receive any remuneration for any of that work, other than would be paid to any other broker who submitted a similar application which the company would accept?

A. No, he did not, outside of any commission he would get in regard to the collection of the rents and so on in connection with properties the company had there.

Q. You might turn over collection of certain rents to him? A. Yes.

Q. And he would be paid for those services?

A. He was paid commission.

Q. In other words he was paid for what he did for the company?

A. Yes.

Q. He received no retainer? A. No.

Q. Received no definite amount per month? A. No.

HIS LORDSHIP: Loan company agents do not get retainers; if they get loans they get commissions. The ordinary loan company agent, he is not an agent in the fullest sense of the term—an agent for the purpose of taking applications and doing work and being paid by commission.

MR. SINGER: Will you say there was no one else in the City of Toronto that the London Loan and Savings Co. would take applications from?

A. We never had any others.

Q. That may be, but—

HIS LORDSHIP: What is the sense of any question of that nature? Does not any person with any experience in the world know that anybody coming there with a loan would receive consideration, whether they were the regular agent or not?

MR. SINGER: I am glad your Lordship thinks so, but my learned friend did not think so.

HIS LORDSHIP: I don't think they had any such idea.

MR. SINGER: Mr. Hambly, do you know of any sale or proposed sale of this property that took place during the time that you were with the London Loan and Savings Co.?

A. There was a sale referred to yesterday in which the Canusa stock was mentioned.

Q. Apart from that, that was only an offer submitted; did you ever hear the name of May Rutherford before?

A. Yes; I do remember May Rutherford.

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Q. What connection was there between May Rutherford and the company and this property?

A. If I remember correctly, Mr. Morine submitted an offer from May Rutherford for the purchase of this property.

Q. What happened to the offer?

A. May Rutherford, if I remember right, she fell down on the deposit she was to make, and the deal was never completed.

Q. You mean the cash payable on closing was not paid?

A. Yes, a certain amount of cash was to be paid down and she was to give a mortgage back.

Q. Do you remember the name of a man named John Crawford as the real estate agent in connection with that transaction? A. No, I do not.

Q. What was the purchase price, can you recollect?

A. I don't remember that.

Q. At any rate she submitted an offer to the company? A. Yes.

Q. Was that offer accepted? A. It was accepted.

Q. May Rutherford was to pay the company a certain amount of cash?

A. If I remember right, about \$40,000.

Q. I am suggesting to you that the purchase price was \$275,000., payable \$40,000. in cash and \$235,000. by giving back to the company a first mortgage? 20

A. Well, I do not remember the price.

Q. You do recall something about \$40,000. cash? A. Yes.

Q. Do you remember who accepted that May Rutherford offer?

A. I think that came before the Board.

Q. You believe it was accepted under instructions from the Board?

A. Yes.

Q. Was the offer then handed over to the solicitor of the company to proceed with the closing of the transaction? A. That was the usual practice.

Q. Do you recall Mr. Brickenden and perhaps Mr. McMillan as well attending at Toronto for the purpose of closing this transaction? 30

A. No, I do not.

Q. At any rate you do remember that the deal was not finally closed?

A. The deal fell through.

Q. Do you know why the deal fell through?

A. I understood at the time because this Mrs. Rutherford did not put up the required deposit of \$40,000.

Q. Because the cash was not paid over? A. Yes.

Q. Did you hear anything about the reason being that someone else was arranging a subsequent mortgage on this property and insisted upon an agreement by the company permitting them to collect all rents until their mortgage was paid in priority to your company's mortgage? 40

A. Yes, I think there was something of that kind mixed up in the transaction.

Q. You do not know who that mortgagee was going to be? A. No.

Q. Then what documents were executed for the purpose of enabling that deal to be closed? A. None that I know of at all.

Q. Do you remember the deed ever being executed? A. Not by me—

Q. I am not suggesting it was executed by you?

A. It may have been, but not to my knowledge.

Q. Did you ever at any time before you left the employ of the London Loan and Savings Co. see any documents in the files of the company as deeds, discharges or anything else necessary to close this transaction, see them in the files of the company when you left there? A. No, I do not——

Q. You don't recall that? A. No.

Q. Do you remember Mr. Crawford writing a letter to your company in connection with commissions; it was put in yesterday—this is a letter filed
10 as Exhibit 245, bearing date December 12th, 1928, written by J. C. Crawford to the London Loan and Savings Co.?

A. I do not remember the letter, although evidently I must have had it, because I notice a pencil notation on the top of it by myself.

Q. It must have been before you at some time? A. Yes.

MR. WALSH: When your Lordship said it was not evidence, if that letter was just read to your Lordship it would show the true character and nature——

HIS LORDSHIP: You can read it again. The real evidence in this case is confined to a very narrow compass.

20 MR. SINGER: There was one long letter, if I remember correctly, dealing with Martin, Currie's letters just for the moment, there were a number of letters written to Martin, Currie & Co. while you were in the employ of the company, and do you remember in particular a letter that was first drafted with the assistance of Mr. Brickenden, afterwards submitted to the Board before it was sent out? A. I do.

Q. What was that letter; do you remember the date of it?

A. No, I do not recall the date of it. It was a long letter in which Martin, Currie was asking certain information relating to Buckingham Apartments and other properties, particularly Buckingham Apartments, and the information
30 that they asked for apparently all pertained to transactions that had taken place prior to my going into the employ of the company.

Q. And the letter was submitted to the Board from Martin, Currie & Co., and I believe they gave instructions that that letter should be answered?

A. Yes.

Q. What did Mr. Brickenden have to do with it?

A. I got the information from Mr. Brickenden principally, and the letter was drafted up, and both Mr. McCormick and Mr. Brickenden saw the letter before it was submitted to the Board and finally passed by the Board and forwarded to Martin, Currie.

40 Q. Look at Exhibit 197, letter July 25th, 1926; is that the letter that was drafted by yourself and Mr. Brickenden and then read to the Board of Directors——?

MR. WALSH: Do you know of any minutes in which it was read to the Board? A. The date of this letter was prior to my going with the company.

MR. SINGER: July 5th, 1926? A. I did not go with them till later.

Q. Yes, you were there then; you went there in 1925? A. Oh yes.

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Q. I think the draft filed with that letter, if you will look at the draft you will find something in it to assist your memory?

A. Yes, I remember that letter distinctly.

Q. That is letter, Exhibit 197, that was drafted by Mr. Brickenden and yourself? A. Yes.

Q. You say it was then submitted to the Board of Directors and then read over to the Board? A. Yes.

Q. Do you recall who were present at the Board meeting when the letter was read? A. No, I cannot recall that.

Q. Did the Board approve of the letter going on to Martin, Currie & Co.? A. They did. 10

Q. There are a great many subjects dealt with in that letter, a great many items as to Buckingham Apartments and as to Mr. Morine? A. Yes.

Q. And that letter was read completely to the members of the Board? A. Yes.

Q. You say the Board approved of it, Mr. McCormick signed it, and the letter was then sent on to Martin, Currie & Co.? A. Yes.

Q. Did any member of the Board take any objection to any of the statements made in that letter? A. Not that I recollect of.

Q. There was an Exhibit filed, No. 271, which was a certified copy of the by-laws of the company; I believe you certified them yesterday? A. Yes. 20

Q. I believe that was filed with the department some time in 1928; did you, in making up your certificate certifying that these were the by-laws in existence at that time, have before you any separate book which contained the various additional amendments and substitutions and alterations to the previous by-laws of the company—the reason I am asking you that is this, that printed book was made, I think, in 1915, and your certificate was put on in 1928; there was a lapse of some thirteen years, and it would appear if your certificate is correct that there never had been an amendment or an addition or alteration to those by-laws. 30

MR. GRAY: That is not correct; the amendments are made in pen and ink in the printed form.

MR. SINGER: Where did you get those amendments from? Was there a separate book kept for those? A. Not that I remember.

Q. How do you know what amendments and changes and additions had been made to the by-laws?

A. We had a printed copy in the office, and the changes as they were made from time to time were inked in the printed copy.

Q. Inked in on that printed copy? A. Yes.

MR. GRAY: Show him the document. 40

MR. SINGER: You had before you, when that request was received, a printed form of by-laws made in 1915? A. Yes.

Q. And you say on the printed form of these by-laws which you found in the office, certain changes or alterations or additions had been made in pen and ink on that copy? A. Yes.

Q. All you did then was to send on to the department a certified copy of that document as you found it in the office? A. Yes.

Q. You do not know then, of your own personal knowledge, whether these changes were ever authorized that appeared in the document?

A. I accepted the copy that was in the office as being correct.

Q. You don't know when the amendments were made?

A. No, I did not check them up.

Q. Or how they were introduced? A. No.

Q. Nor whether they were ever properly authorized? A. No.

Q. Have you been able to find at any time any separate book or document containing by-laws or resolutions of the company outside the minute book itself? A. No.

Q. You were with the company from approximately 1925, the latter part, until some time in 1929? A. Yes.

Q. I believe the directors of your company were Mr. McCormick, Mr. Kent up to the time of his death or the change in ownership, Mr. Hunt, Mr. Robinson and Mr. Baker? A. Yes.

Q. You took whose place on the Board after that?

A. Mr. Kent's place.

Q. From time to time it was necessary for the company to execute certain documents under the seal of the company? A. Yes.

Q. Can you tell me which of the directors would sign those documents from time to time?

A. The majority of the documents were signed by Mr. McCormick and myself.

HIS LORDSHIP: The validity of that would not depend on who usually signed it; it would depend on who was authorized to sign it by by-law.

MR. SINGER: I am not dealing with the question of validity; I want to show the custom of this company and perhaps argue the question of estoppel.

HIS LORDSHIP: No, you cannot estop in that way.

MR. SINGER: The custom of the company and certain acts that have been done, I am going to submit to the Court as an argument, and I would like to have those facts.

HIS LORDSHIP: I think you are entitled to have the facts, but I happen to have dealt with that sort of estoppel before.

MR. SINGER: Do you remember that Mr. Robinson, one of the directors, used to sign documents under seal on behalf of the company?

A. Yes, he was Vice-President of the company.

Q. Do you remember Mr. Hunt, one of your directors, used to sign documents under seal of the company?

A. I think probably he signed half a dozen documents in four years.

Q. He did sign some? A. Yes.

Q. Was it not the practice amongst your directors, particularly during the summer months, that, where your regular signing officers were away, any of the other directors would sign in their behalf—

HIS LORDSHIP: This is a question of fact; the witness is entitled to give it, but I think it is absolutely of no avail at all.

A. I don't think the occasion ever happened where that either Mr. McCormick or Mr. Baker or Mr. Robinson were not, either one, in the city

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at the time that a document of that kind was required to be executed, even in the summer months.

MR. SINGER: Do you know that Mr. Hunt was sometimes styled as acting manager of the company or acting president? A. Yes.

Q. At that time that he was acting manager or acting president, would not he sign documents on behalf of the company? A. He did.

Q. The same thing applies to Mr. Baker?

A. Mr. Baker was entitled to, under the by-laws.

Q. That covers your list of directors? A. Yes.

Q. Did you hold an office outside of being a director? 10

A. I was manager of the company.

Q. And you also signed documents on behalf of the company? A. Yes.

HIS LORDSHIP: The by-laws provided you could sign? A. Yes.

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CROSS-EXAMINED by Mr. Slaght:

Q. Exhibit 268 is a letter that went in yesterday, it is another letter to Martin, Currie & Co., dated September 28th, 1927; this one was signed by yourself? A. Yes.

Q. I think you told us yesterday that you and Mr. Brickenden saw that and can you tell me whether that was before the rest of the Board or not before you would dispatch it? A. I don't think it was. 20

Q. With regard to the other one that was before the Board, the one that Mr. Singer asked you about, was there a formal resolution, or was it just talked about? A. Just talked about.

Q. Authorized by talk, but no formal resolution? A. No.

Q. How long have you known Mr. McCormick?

A. I have known Mr. McCormick fifteen or twenty years.

Q. Having regard to your knowledge of him and your association with him in business, what can you tell me as to whether or not you found him a man of high integrity?

HIS LORDSHIP: No, I will not listen to that; I am going to try this on 30 his acts in this case; you cannot give character evidence in a civil case.

MR. SLAGHT: Perhaps I am wrong. I thought perhaps, so far as his associations with him in business in this company was concerned, it would be a proper question.

HIS LORDSHIP: It would be rather unheard of to introduce character evidence in civil cases.

MR. SLAGHT: A charge of conspiracy in this very company.

HIS LORDSHIP: It is not a criminal trial.

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RE-EXAMINED by Mr. Walsh:

Q. Mr. Singer read you a letter of Martin, Currie, written by J. H. 40 Hambly to Martin, Currie, dated November 9th, 1927, and he read you a few words from it, but he did not read the other part of the paragraph: "On the 5th November we served notice on the Huron and Erie Mortgage Corporation we intend to pay off their mortgage, which will be five years in existence on

the 7th February next. Our intention is to take an assignment of this mortgage which I understand Mr. Morine is party to, and in that way he will again be on the covenant to the extent of their mortgage; in the meantime rental collections can be collected on account of the second mortgage which we hold, so that I do not see that our position has been impaired very seriously"—you wrote that letter? A. Yes.

HIS LORDSHIP: After submission to the parties you mentioned?

MR. WALSH: Yes; will you tell his Lordship why you did not just take a discharge of that mortgage?

10 A. It was for the purpose of retaining the original mortgagors on the covenant; that was discussed.

Q. And Mr. Singer was very curious to know why no demand was made at that time on Mr. Morine; tell his Lordship who were president of the company and the solicitor at the time you took the assignment—

HIS LORDSHIP: We have that, Mr. McCormick and Mr. Brickenden; I don't know that demands are necessary. People ought to know what they owe.

MR. WALSH: You kept the minutes at the time the Rutherford deal was on? A. Yes.

Q. You are asked whether that came before the Board? A. Yes.

20 Q. Do you know there is not a minute about the Rutherford deal, not a thing in the minutes about it; are you sure that came before the Board; just think—there is not a thing in the minutes?

HIS LORDSHIP: Is that agreed? Have you been through the minutes lately? A. I have not.

MR. WALSH: It occurred to me that an important matter like that would be mentioned in the minutes before the Board, would not it?

A. In the ordinary course it would; it may be possible in this particular case the urgency of the case, it was considered by a committee of perhaps two or three—usually a matter of that kind was required to be dealt with quickly; Mr. McCormick and Mr. Baker or one of the other directors would consider it, then it would be subsequently brought before the Board for confirmation.

HIS LORDSHIP: In a case like that, would it appear in the minutes or would it not?

A. In view of the fact we may have got information that the deal was going to fall through before the next meeting of the Board was held, and in that case there would be no reference made to it.

Q. If it had come up in the first instance before the Board?

A. It would be dealt with in the regular way and recorded in the minutes
40 of the meeting.

Q. This may have been something that occurred between Board meetings? A. Yes.

Q. I suppose that very often happens in company affairs? A. Yes.

Q. And if nothing comes of it, no reference is made? A. No.

MR. WALSH: You say the Rutherford deal came from Mr. Morine?

A. Yes.

Q. And it never went through? A. No, it never went through.

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Q. You were talking about that defence, if I may call it, the defence to the Scottish debenture-holders that you wrote that Mr. Singer referred to; do you know if that ever came before the Board in reality now?

MR. SINGER: My learned friend is not going to contradict his own witness?

HIS LORDSHIP: He has a right to; he has a right any statement that he makes to you Mr. Walsh has a right to re-examine him, even if it is his own witness.

MR. WALSH: July 5th, 1926, Exhibit 197, were you a director then?

A. No.

Q. Do you know if that came before the Board?

A. My recollection of that matter was it was discussed in an informal way; there was nothing put on the minutes about it.

Q. Were you at the meeting of the Board?

A. I remember it, yes, I attended the meetings of the Board before I was appointed a director.

HIS LORDSHIP: Did you act as secretary of the meetings? A. Yes.

MR. WALSH: You say you think it was discussed in an informal way?

A. Yes.

Q. Whatever was discussed in an informal way and put in writing never satisfied the people who had money in it, did it? 20

HIS LORDSHIP: Do not make your argument now.

MR. WALSH: About the by-laws; there is a copy certified by you; do you know of any amendments that have been made to these that you have not recorded in the certified copy? A. I do not.

HIS LORDSHIP: Until it is shown to the contrary, I am going to accept it.

MR. WALSH: Mr. Singer asked you about the shares that the London Loan had in the Consolidated Trusts; was there any converse to that case, were there any shares that Consolidated Trusts held in the London Loan?

A. Yes, there were.

Q. It was both ways—

MR. SINGER: But not a majority.

HIS LORDSHIP: Did Consolidated Trusts Co. as a company hold shares in the London Loan? A. Yes.

MR. SINGER: Would your Lordship ask him if it was the same position there, whether they held a majority of shares?

HIS LORDSHIP: They did not hold the majority? A. No.

MR. WALSH: Am I right in this, they had such a nice block of stock that in a fight for the control they were of the utmost importance?

A. 1,300 shares.

HIS LORDSHIP: A substantial block? A. Yes.

Q. But the London Loan had the majority block?

A. In the Consolidated Trusts, yes; I think the capital stock of Consolidated Trusts was about \$256,000., and there were about \$249,000. of that held by the London Loan.

MR. WALSH: And at the very meeting that Mr. McCormick lost the 40

presidency and Mr. Brickenden the solicitorship, were those shares of Consolidated Trusts Co.—

MR. SLAGHT : I do suggest on re-examination such a topic as this being gone into, a matter of control and so on.

HIS LORDSHIP : I don't think it makes the slightest difference; I don't think it is proper, because it did not arise out of the cross-examination.

MR. WALSH : Mr. Singer asked you something about a transfer there at the date you made this transfer of the Durno apartments; were there any others transferred at that date? A. There were some eight or ten other cases.

10 Q. That is from your book also; you have it in front of you?

A. This is the journal.

Q. Did you have any title to them?

A. No, we had no title to them then.

HIS LORDSHIP : Just as mortgagees?

A. Yes; put up the property for sale, and it was abortive; we had no title beyond that.

MR. WALSH : In the agreement that was sent at the time of the amalgamation in July, 1929, with that copy of the amalgamation agreement, did this printed circular letter accompany it to each of those shareholders? A. It did.

20 EXHIBIT NO. 272 : Printed circular letter, dated July 30th, 1929.

MR. WALSH : I am not going into the question of signing; I take it that is a matter of the by-laws.

HIS LORDSHIP : I should think so.

MR. WALSH : I think that covers all with this witness.

MR. WALSH : I think your Lordship said as far as the Martin, Currie correspondence, any one I could link up, and I think with the ones that have already been put in by me and Mr. Singer there is a letter from Martin, Currie & Co. to Thomas Baker, Vice-President, London Loan and Savings Co., dated the 4th August, 1925, which is linked up with the others.

30 HIS LORDSHIP : In what way?

MR. WALSH : By acknowledgment of receipt, and then by a reply later on. It forms a chain.

HIS LORDSHIP : Show it to the other side.

MR. GRAY : Yesterday I promised to obtain particulars with regard to the incorporation of this company, how it was constituted, and I now tender a certificate obtained from the Department of the Registrar of Loan Corporations, duly certified under seal of the Registrar, to which is attached a copy of the declaration filed with the Clerk of the Peace for the County of Middlesex on the 2nd May, 1877.

40 HIS LORDSHIP : That is the method they incorporated a lot of companies in those days.

MR. GRAY : Pursuant to the general act, "An Act respecting building societies," chapter 53 of the Consolidated Statutes of Upper Canada and the amendments thereto.

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EXHIBIT No. 273 : Certified copy of declaration filed with Clerk of Peace for the County of Middlesex, dated May 2nd, 1877, *re* the incorporation of "The London Loan Company of Canada" under Act Respecting Building Societies.

MR. GRAY : May I mention in this report of the Registrar of Loan Corporations of Ontario for 1927, this statement appears under the heading of "Constanting Instruments;" and if my learned friends do not object I will read that to the Court—

MR. SLAGHT : I don't know anything about its accuracy; I don't see how it has a bearing one way or the other. 10

HIS LORDSHIP : What is it about ?

MR. GRAY : It says, my Lord, "Incorporated under the Building Societies Act (Consolidated Statutes of Upper Canada, Chapter 53) by declaration filed with the Clerk of the Peace for the County of Middlesex, May 2nd, 1877. The lending and the borrowing powers are governed by the Loan and Trust Corporation Act, R.S.O. 1914, Chapter 184."

HIS LORDSHIP : Of course, reference to the Statute would show that anyway.

MR. WALSH : Did you look over this letter ?

MR. SLAGHT : Yes; I don't think it is evidence, Martin, Currie & Co. 20
to Baker.

HIS LORDSHIP : Was the letter from Baker put in ?

MR. WALSH : Yes, my Lord.

HIS LORDSHIP : This is a reply.

MR. SLAGHT : What Martin, Currie & Co. wrote Baker, unless it came to the attention of my clients, is not evidence.

HIS LORDSHIP : You put in the letter from the company as being evidence against it—I don't think it is important.

MR. WALSH : Very well, I won't bother.

HIS LORDSHIP : Except, I suppose, they are tendered to show there was 30
no satisfactory explanation given of the transaction, and inferences will be asked to be drawn from that fact.

MR. WALSH : The papers were praeciped down from Toronto in the Renton application to postpone proceedings.

HIS LORDSHIP : Have a copy filed, because that copy should not go out of Court.

MR. WALSH : I will see that copies go in.

EXHIBIT No. 274 : Copies of proceedings on injunction motion.

MR. SLAGHT : Are the affidavits there ?

MR. WALSH : Yes, everything complete. 40

MR. SLAGHT : Who was the plaintiff in that ?

MR. GRAY : It is Higgins *v.* Renton.

MR. WALSH : Before closing my case, I think Mr. Braden was to give a few papers or to be asked some questions.

HIS LORDSHIP : Are there some examinations to be read ?

MR. WALSH : Yes, they will be very short.

MR. SLAGHT : Just before this last matter is disposed of, I understand this

was in connection with the application for postponement of the mortgage sale?

MR. WALSH : Yes.

MR. SLAGHT : Where Mr. Justice Kelly made an order, I was wondering how it would be evidence.

MR. WALSH : It just happened to be that one Renton was deposed.

MR. SLAGHT : It was in this action that the application was made.

HIS LORDSHIP : Somebody was asked about some affidavit as to value.

MR. SLAGHT : As long as it was the same matter.

J. A. E. BRADEN, Recalled.

10 MR. WALSH : I think you were to get certain information; have you got what they want? A. I think I have.

HIS LORDSHIP : Not what they want, but what they asked for.

MR. WALSH : Now what is it?

A. One item I was to look into was the question of the amounts paid to the Huron and Erie Mortgage Corporation; I have a letter which details the amount detailed; the total amount is \$139,432.50; that was for the first mortgage, made up in this way : Principal, \$132,000.; interest, \$4,950.; bonus three months' interest, \$2,475.; assignment fees, \$7.50; making a total of \$139,432.50.

20 EXHIBIT No. 275 : Letter January 19th, 1928, Huron and Erie Mortgage Corporation to the London Loan and Savings Co.

WITNESS : Another thing I think I was asked to produce was the ledger sheet of the London Loan Assets Limited, showing how the \$50,000. was applied. I have it here.

MR. SLAGHT : That is what you were to bring for me.

A. I have the ledger sheet showing the account from its inception.

MR. SLAGHT : Is this the original?

A. Yes. I would like to substitute a copy.

Q. Yes?

30 A. There is an item in this on July 4th of \$30,616.48. Then there is another item, June 28th, cheque for \$15,000.

Q. Those are both in?

A. Yes; and this ledger sheet shows \$50,000. was applied generally on the indebtedness—\$50,000. paid for the assignment of the mortgage—

Q. This looks like a sheet written up all at one time?

A. It was handed to me as the original ledger sheet. That account was kept in the mortgage ledger of the London Loan Assets Limited.

EXHIBIT No. 276 : Original ledger sheet of London Loan Assets Limited, showing how the \$50,000. was applied. Copy to be substituted for original.

40 Q. You were invited yesterday to ascertain if there was any further stock register of the London Loan and Savings Co. beyond Exhibit 264; you said you knew of none? A. No.

Q. Have you verified the fact that this is the only stock register of that company?

A. Yes. Then there was a statement I think I made to your Lordship about Mr. Morine paying one of the Durno cheques; your Lordship asked me

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to verify that; I looked into the matter further, and I think I was mistaken on that particular cheque, but there were a number of others that were paid; that is where the confusion arose.

MR. SINGER: I do not think he should say there were a number of others.

HIS LORDSHIP: Perhaps it is rather unnecessary; you were mistaken?

A. Yes.

Q. There were others and you mistook this one? A. Yes.

MR. WALSH: Mr. Slight inquired about \$50,000. being—

HIS LORDSHIP: That is put in.

MR. WALSH: I have a couple of matters I want to ask you now; did 10 every shareholder of the London Loan and Savings Co., when you came to put through this agreement, that was on record holding shares in that company get their proper shares in London Loan Assets? A. Yes, every shareholder.

HIS LORDSHIP: Why bother about that?

MR. WALSH: The by-laws have been put in; could you tell his Lordship, if you have looked through the minutes, if there was ever any appointment of Mr. Clewes as acting manager?

A. I have looked through them again, and there is no appointment; Mr. Clewes was not appointed manager at any time that I can find by looking through the records of the minutes of the directors' meetings of the London 20 Loan and Savings Co.

Q. Was he ever appointed Assistant Manager?

A. No; there is no record of his appointment in any capacity whatsoever.

Q. Is there anything to show on the books that Clewes was ever an employee of the London Loan and Savings Co.? A. Not that I know of.

Q. Have you prepared a statement for his Lordship as to the amount owing on the first, second and third mortgages?

A. I have; the amount owing on the first mortgage—

HIS LORDSHIP: Just file it.

A. Made up to the 11th December. 30

HIS LORDSHIP: If there is any dispute as to that, either party will have a right to a reference.

EXHIBIT NO. 277: Statement of amount owing on first, second and third mortgages to the 11th December.

MR. WALSH: Looking over the minutes, was there ever any appointment of an inspecting director? A. No; none whatever.

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MR. WALSH: I wish to read from the examination.

HIS LORDSHIP: One of the examinations has been filed and marked as an Exhibit; bear that in mind when you come to them, because they should be marked as Exhibits when anything is read from them, but only the particular 40 portion that is read goes in evidence—just the particular part, but for the purpose of having before the Court so that the Reporter may set them out in his notes they have to be marked as an Exhibit. Mr. Morine's examination was already marked.

MR. WALSH : There is one question I just want to satisfy myself; there was a bundle of agenda put in that thick, as I understand it they are not all evidence, only certain ones referred to.

HIS LORDSHIP : Which is that ?

MR. WALSH : Your Lordship said they were to be no evidence of the contents.

MR. SLAGHT : Only the matters in the agenda which refer to the Buckingham Apartments or these transactions; that was his Lordship's indication when they were put in.

10 HIS LORDSHIP : That is all.

MR. WALSH : I took an objection at the time and your Lordship said they only went in as notice.

HIS LORDSHIP : It is not evidence of the truth of the facts; but it is evidence that certain matters were before them.

MR. WALSH : And as I understand it, the whole of the agenda is not in, just the particular one that is referred to.

HIS LORDSHIP : No, the ones that refer to this matter.

MR. WALSH : The Buckingham Apartments.

HIS LORDSHIP : Yes.

20 MR. WALSH : As long as that is understood. Then I read from Mr. Morine's examination.

MR. SLAGHT : If my friend will permit me, lest we overlook it, particulars were demanded on behalf of Mr. McCormick and Mr. Brickenden of certain allegations in the statement of claim, and particulars were furnished, and Mr. Ferguson tells me the particulars as furnished have not been included in the record that my friend passed.

HIS LORDSHIP : They should be annexed to it.

MR. SLAGHT : I ask my friend now if we can put in the demands, and my friend will furnish copies of the particulars, so that the Court may have that
30 and it become part of the record.

MR. WALSH : Whatever demand was made and whatever particulars were served, I will be only too glad to see they get in.

HIS LORDSHIP : Very well; have them annexed to the record. Mr. Morine's examination is Exhibit 150.

MR. WALSH : I will read questions 1 to 6 :

"1. Q. Mr. Morine, you are one of the Defendants in this action ? A. Yes.

"2. Q. Do you know the Defendant, G. A. P. Brickenden ? A. Surely.

"3. Q. How long have you known him ?

"A. Oh, eleven or twelve years, I guess.

40 "4. Q. Do you know the Defendant, George G. McCormick ? A. Yes.

"5. Q. How long have you known him ?

"A. Eighteen or twenty years.

"6. Q. Now you have known these Defendants very well, have you not ? A. Yes."

Question 121 :

"121. Q. Now this mortgage is dated the 13th day of February, 1923, registered on the 16th day of February, 1923. Will you tell me who looked

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after the interest of the London Loan and Savings Company in putting through that mortgage? A. I imagine Brickenden & Company."

Questions 125 to 134 :

"125. Q. Well, was there a search of the title made?

"A. I don't know. I did not.

"126. Q. You don't know whether there was or not?

"A. I don't know. I did not.

"127. Q. Well, were there any legal fees paid in connection with that mortgage? A. Yes.

"128. Q. How much? 10

"A. Whatever the County of York tariff, or the tariff in force at that time—whatever that was.

"129. Q. To whom? A. In that one?

"130. Q. Yes. A. I imagine Brickenden & Company.

"131. Q. To Brickenden & Company. And could you find out for me the amount of the fees? A. Can you not make it up?

"132. Q. No, I cannot.

"A. I can find out what fees were paid. I cannot tell you now.

"133. Q. Were they paid by cheque or by cash?

"A. I cannot tell you now. 20

"134. Q. Did you pay any fees by cash to Mr. Brickenden or were they all paid by cheque? A. They have been paid by cash."

Question 477 :

"477. Q. Can you tell me, Mr. Morine, how long you have known Mr. Durno? A. Oh, about twelve years."

Then questions 525 to 533 :

"525. Q. Mr. Mason points out to me that you were to find out the amount you received from the Company?

"A. You have all that I received already. Do you want what I paid for legal fees? 30

"526. Q. Yes.

"A. First mortgage, three hundred and sixty-two dollars and fifty cents, and forty dollars for registration fee.

"527. Q. Now will you tell me who that was paid to?

"A. It was paid to the Registry; the three hundred and sixty-two—

"528. Q. The whole thing?

"A. Brickenden & Company, not the forty dollars; the forty dollars was paid to the Registry Office.

"529. Q. Do you know whose cheque went to the Registry Office for that? Was it yours? A. It was not mine. 40

"530. Q. Or was it Mr. Brickenden's, do you know? A. I don't know.

"531. Q. How were those fees paid, and to whom?

"A. To Mr. Brickenden.

"532. Q. By cheque or by cash?

"A. I would presume that was cash, three hundred and sixty-two dollars and fifty cents; I imagine that is cash. I have no recollection now.

"533. Q. Well, why do you say you think—

"A. I have a record. It is charged to the Buckingham account."

Questions 537 to 551 :

"537. Q. Have you the exact date that that money was paid to Brickenden & Company? A. About February 13th.

"538. Q. Who paid it? A. I did.

"539. Q. Yourself personally? A. Yes.

"540. Q. Where?

"A. My opinion is, in London. I cannot recall definitely; I would say in London.

10 "541. Q. That is your recollection? A. Yes.

"542. Q. Paid to whom? A. Mr. Brickenden.

"543. Q. Personally? A. Yes.

"544. Q. Was anybody present but just the two of you?

"A. I have no recollection.

"545. Q. Now the next one? A. Two hundred and twenty-five dollars.

"546. Q. That is on the twenty thousand dollars? A. Yes.

"547. Q. Who was the solicitor in that case?

"A. Brickenden & Company.

"548. Q. They acted for the mortgagees? A. Yes.

20 "549. Q. And were there any fees payable on that mortgage?

"A. Two hundred and twenty-five dollars.

"550. Q. Does that include the disbursements too?

"A. No, there was a registry fee. I just forget what that was.

"551. Q. Registration fees in addition to that? A. Yes."

Question 559 :

"559. Q. Now, have you got any vouchers or bills from Mr. Brickenden in that transaction at all? A. No, there would not be——"

Then I'll go back to questions 196 to 211 :

30 "196. Q. There was an order signed by Mr. Green in connection with the thirty-five thousand dollar mortgage? A. Yes.

"197. Q. Why was that made payable to you, on the thirty-five——?

A. Because I was financing Mr. Green from time to time.

"198. Q. Beg pardon?

A. I was financing Mr. Green from time to time, and those moneys advanced under their mortgages would be coming to me on account of the financing I was doing.

"199. Q. You had a financial arrangement with Mr. Green?

"A. On specific things. A financial arrangement with Mr. Green in regard to the Buckingham Apartments.

40 "200. Q. Now, what was that agreement with Mr. Green—what was your agreement with Mr. Green in connection with the Buckingham Apartments in so far as referred to these mortgage moneys?

"A. The proceeds of the mortgage moneys?——

"201. Q. Yes?

"A. ——would be to pay up the advances from time to time to Green——

"202. Q. Well, were you financing him at the time of that mortgage?

"A. Yes.

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“203. Q. And did you have an agreement in writing with Mr. Green?

“A. I am not sure. I will look it up and find out for you.

“204. Q. Now, here is a copy of an agreement dated May 1st, 1922, between Horace A. Morine and Samuel B. Green—

“MR. SINGER: I will check up and see if we have the original in the office. The witness cannot tell you whether that is a true copy or not.

“205. Q. Well, I understand, Mr. Morine, there were three agreements, one dated the first of May, 1922, between you and Mr. Green; another one dated the thirteenth of February, 1923, and another one dated the eighteenth day of June, 1923, between you and Mr. Green? 10

“A. I don't know. Probably I can check up and find out.

“206. Q. You can check and find out? A. Yes, I will check up.

“MR. SINGER: I will look up and see if we have those and I will produce them if we have them.

“MR. WALSH: Well, I will go on with these copies in the meantime.

“MR. SINGER: Well, I don't know if they are true copies.

“MR. WALSH: Well, I wish to examine on them in the meantime.

“A. I would rather see the original. I will look up the originals.

“207. Q. Well, in this agreement, the first one, of the first, 1922, ‘Witnesseth that the parties have agreed to become partners for the purchase, improvement and management of lands on the north side of King Street West in the City of Toronto. 20

“‘The name of the partnership shall be S. B. Green & Company. No enterprise shall be undertaken or transacted by the partnership other than the purchase, improvement and management of the said lands.

“‘That the partnership capital shall consist of such sums as may be necessary to complete the improvement of the lands over and above moneys borrowed for that purpose on guaranteed security, and such capital shall be contributed by the partners in equal shares’—

“A. Will you just let me see that a minute? 30

“208. Q. Yes. (Producing document to witness.)

“MR. SINGER: I am going to object to the witness answering any questions on a copy of a document that I do not know whether it is a copy of the original or not. It is not signed by Mr. Morine, according to your copy it is only signed by Mr. Green. Now if there are agreements I have them and I will get them for you and you can question on them as much as you like; I do not mind that.

“MR. WALSH: All I know is that these were accepted in Court.

“MR. SINGER: I don't care whether they were accepted; I have no idea; I was not connected with the other action and I don't know anything about it. 40

“THE EXAMINER: Well, subject to their being copies—

“MR. SINGER: Well, I don't know that it is fair to question a man on a document when I don't know if it is a copy or not. We can look those up during the lunch hour and I will bring them.

“MR. WALSH: Mr. Braden says that he will undertake they are copies.

“MR. SINGER: I am saying if there are originals I will get them for you at lunch hour and you can question on them, but I object to the witness an-

swearing any questions on these documents because I don't know whether they are copies or not.

"MR. WALSH: Well, I will tell you they are true copies.

"MR. SINGER: I don't know that, and I want to know.

"MR. WALSH: Well, if you cannot find them I want to examine on these copies.

"MR. SINGER: We will discuss that later.

"209. Q. There is no doubt that there was an agreement between you and Mr. Green, is there, Mr. Morine, or several agreements, at least—or is there any doubt about it? A. Great doubt.

"210. Q. There is. Well, have you any recollection of any agreements ever made between you and Mr. Green? Have you any recollection about that?

"A. I will look up and see.

"211. Q. You would prefer to defer answering on that until you have looked up your records? A. Yes."

Then I will read questions 565 to 571:

"565. Q. Now, at the date of both these mortgages, were you interested as a partner in the property?

"A. On February 13th I became interested as a partner.

"566. Q. What date?

"A. February twenty-third—after that thirty-five thousand, or about the time of that thirty-five thousand dollars.

"567. Q. Who with? A. S. B. Green.

"568. Q. Now, have you the agreements there?

"MR. SINGER: We are objecting to produce them on the ground that they—

"MR. WALSH: This morning you told me that you would look and see if you had the originals of the agreements.

"MR. SINGER: I did.

"569. Q. Did you look to see if you had the originals, Mr. Morine?

"MR. SINGER: I say we have the originals of the last two agreements which bear date the 13th of February, 1923, and the 18th of June, 1923, and the agreement of which you produce a copy bearing date May 1st, 1922, was never executed.

"570. Q. Have you a copy of it or a duplicate of it?

"MR. SINGER: We have a copy of the draft of the agreement which was drawn and never signed.

"MR. WALSH: Drawn and never signed?

"MR. SINGER: Yes.

"571. Q. You have heard what your counsel, Mr. Singer, says about the first agreement—

"MR. SINGER: It might save time to say that we refuse to answer any questions relating to the arrangement, financial or otherwise, as between S. B. Green and H. A. Morine."

Then I read questions 583 to 586 inclusive:

"583. Q. Was there an agreement dated the 13th of February, 1923?

"MR. SINGER: It has already been admitted.

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“584. Q. What?”

“MR. SINGER: That there was such agreement. Also one dated later in 1923.

“585. Q. Was that the 18th of July, 1923?”

“MR. SINGER: Yes. Both of those have already been admitted by counsel.

“586. Q. May I have both of them?”

“MR. SINGER: No, we object to produce them.

“MR. WALSH: I would like to know why.

“MR. SINGER: We say they are not relevant to the matters at issue 10 in this case.”

I asked my friend to produce those documents. They were partners at the time.

HIS LORDSHIP: Why did you not move to have them produced?

MR. WALSH: I did move.

MR. SINGER: The matter was taken on appeal before the Honourable Mr. Justice Rose just a few days before we came up to London, and the Honourable Mr. Justice Rose held the agreements were not in issue in this action and declined——

MR. WALSH: May I say what transpired on that? There were a number 20 of questions that were moved on; we moved on this question and also another question where Mr. Morine was asked, were you worth the amount of that covenant at that time, and Mr. Morine refused to answer. The Master, about two weeks ago, made an order that he re-attend and answer them all. My learned friend appealed before His Lordship Mr. Justice Rose, and Mr. Justice Rose ordered that he re-attend on the one, what he was worth on the covenant. That judgment was handed down last Friday, and this case started, and we did not have an opportunity to re-attend.

HIS LORDSHIP: I don't know whether if the agreement was produced you would be in a much better position than refusing to produce it. 30

MR. WALSH: All right, your Lordship.

Then I read questions 609 and 610:

“609. Q. Now, Mr. Morine, this morning I think I asked you for some further papers—that the Exhibits that were put in showed that the proceeds of both the second and third mortgages, which totalled fifty-five thousand dollars, were deposited to your credit in the Canadian Bank of Commerce, Queen and Yonge. Now have you the statements showing the receipt and disbursements of those mortgage moneys?”

“MR. SINGER: What do you mean, showing the receipt and disburse- 40 ment—we acknowledge we received the moneys.

“610. Q. Well, have you got a book showing the receipt of these moneys?”

“MR. SINGER: Yes, we have a statement of the Buckingham account showing the receipt of the moneys and the manner in which they were disbursed, and we refuse to produce it because it is irrelevant to the matters at issue in this case.

“RULING: Statement should be produced.”

HIS LORDSHIP: Was it produced?

- MR. WALSH : No, my Lord.
- MR. SINGER : This matter was also dealt with by Mr. Justice Rose and was ordered not to be produced.
- MR. WALSH : I was not there, but I understand Mr. Justice Rose was in grave doubt, and he said, you cannot go on with your examination anyway, you are on the eve of the trial.
- HIS LORDSHIP : It does not matter. The order was not made.
- MR. WALSH : The next question is on that covenant, why they did not pay it. Questions 852 and 853 :
- 10 "852. Q. I see from the certified copy which was put in as Exhibit No. 9, Mr. Morine, that the mortgage fell due on the 22nd day of December, 1930; that is the whole principal sum. Was there any reason why you could not pay that on the date it fell due, Mr. Morine ?
- "MR. SINGER : Objects to the question.
- "RULING : Question should be answered.
- "853. Q. Was there any reason why you did not pay it then, Mr. Morine ?
- "A. It was open for them to take proceedings."
- Questions 854 and 855 :
- 20 "854. Q. If they wanted to—well, why was it not paid, Mr. Morine ?
- "A. It was open for them to take proceedings; proceedings were not taken.
- "855. Q. Well, why were they not taken ?
- "A. I don't know; ask them."
- Questions 860 to 865 :
- "860. Q. Now what was the reason why you did not send them a cheque and take an assignment of the mortgage and deal with it as far as the shareholders and depositors and the people interested in the London Loan were concerned that had your guarantee or covenant; why was not the money collected from you, Mr. Morine ?
- "A. Well, you will have to ask them why they did not take proceedings
- 30 against me, but I am giving you my reason why I did not send the money. That is what you are asking now.
- "861. Q. Well, do you know; did they ever tell you their reason for not taking proceedings against you ?
- "A. Did they ever tell me the reason why they did not take proceedings ?
- "862. Q. Yes, against you ?
- "A. Except that the mortgagee behind me had come to them and said he was going to pay them off—pay off the mortgage and take the property.
- "863. Q. But he did not do it, did he ? A. He did not do it.
- "864. Q. Well, then, why was not the money collected from you then,
- 40 Mr. Morine ? A. Well, they put it up for sale under their mortgage.
- "865. Q. Well, why were you not sued on the covenant and an execution against you for the amount of principal and interest ?
- "A. You will have to go to them."
- Then question 869 :
- "869. Q. You were in a position then, if they had sued you or taken proceedings against you, to pay the principal and interest and costs under these mortgages ?

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“MR. SINGER : The witness refuses to answer on advice of counsel.

“RULING : Question should be answered.”

HIS LORDSHIP : Was it answered ?

MR. WALSH : No, my Lord; I never got an answer to that question.

SIR ALFRED MORINE : Mr. Justice Rose thought that should be answered

and Mr. Morine has never been examined since.

MR. WALSH : Then questions 834 and 835 :

“834. Q. He was not—who employed M. W. Wilson; was he employed by the London Loan or employed by Durno ?

“A. Employed by the London Loan and Durno, my recollection, my 10
idea of it.

“835. Q. He was acting for both of them, was he ?

“A. I should say so.”

Then questions 840 to 842 :

“840. Q. Was Mr. Durno ever out to this property—to see the property, the Buckingham Apartments ? A. I don't know.

“841. Q. Did you ever hear of him being out to see them ?

A. Hear of him being out ?

“842. Q. Yes, did you ever hear of him being there before the offer to purchase—out to the premises ? A. No, I never heard of him being there.” 20

The next questions are those liens. Your Lordship told me to leave them alone; there is a temptation to read these questions.

Questions 938 and 939 :

“938. Q. Well, the London Loan had no cause to worry, anyway, because their moneys were advanced before the liens going on, were they not ?

“A. No, there were no liens on the Buckingham when the London Loan mortgages were on.

“939. Q. So they had priority over the liens then ?

“A. That is a legal matter. There were no liens when the London Loan mortgages were advanced.” 30

Also questions 943 and 944 :

“943. Q. And the moneys were advanced for the purpose of a loan on the building in construction ? A. Yes.

“944. Q. A building mortgage, as we call it ? A. Yes.”

Then questions 968 to 976 :

“968. Q. So I can take it then that the consideration that Mr. Renton got for making the fourth mortgage of forty-six thousand dollars was a half interest in the property ?

“A. He had half of the interest in the property—in the equity of redemption, as you call it, with priority to the extent of his mortgage. 40

“969. Q. Well, you gave him a half interest in the equity of redemption. Was that given to him in consideration of his loaning forty-six thousand dollars on the fourth mortgage ? A. Yes.

“970. Q. Beg pardon ? A. I would say yes.

“971. Q. Now was there any declaration of trust by Mr. Dyas for you two—any document drawn ?

"A. I think Cassels, Brock & Kelley drew one up; I am pretty sure there was.

"972. Q. It is in writing? A. Yes, we will get it for you.

"973. Q. Beg pardon? A. Yes.

"974. Q. What was the reason of having the property in the name of Mr. Dyas instead of registered in the name of Mr. Renton and yourself?

"A. Would not I be the mortgagor of the property?

"975. Q. Do you mean if that were the case that you would have to sign his mortgage as mortgagor to Mr. Renton? A. That would be it.

10 "976. Q. I see. That was the reason? A. I presume."

Questions 952 to 959 :

"952. Q. Now, Mr. Morine, on September 28th, the date of that letter that I read to you, the property appears to be registered in the name of Mr. Dyas—and you say Arthur W. Dyas is Trustee for you and for Mr. Renton?

"A. Yes.

"953. Q. For the two of you? A. Yes.

"954. Q. In what proportions did you two hold it? A. Fifty-fifty.

"955. Q. Now, he held it for you two as Trustee? A. Yes.

20 "956. Q. And when did Mr. Renton first get to have an interest in the property? A. When he registered his mortgage.

"957. Q. Not before that date? A. No.

"958. Q. Up to the date of the registration of the mortgage, which was the same date as marked on the deed to Mr. Dyas, you were the sole owner then? A. Yes.

"959. Q. And then after the date of the registration of the deed to Mr. Dyas and of the mortgage to Mr. Renton, which is the 19th of September, 1923, you and Mr. Renton were equal owners?

"A. Fifty-fifty, is what Mr. Dyas held it as Trustee, yes."

Then questions 2333 to 2340 :

30 "2333. Q. Do you know of any case?

"A. It is not my duty to find out what the London Loan did.

"2334. Q. Please answer the question. Do you know of any case?

"A. I am not worrying about what the London Loan do.

"THE EXAMINER: Do you know of any loan that they did put through except through you? Do you happen to know of any?

"A. I am not the London Loan and Savings Company. I have no knowledge of what they do.

"THE EXAMINER: I think Mr. Gray is entitled to a specific answer.

40 "2335. Q. Do you know of any loans placed by the London Loan and Savings Company on real estate property in the City of Toronto during the years nineteen hundred and twenty-three to nineteen hundred and twenty-seven, except through you? A. I again say—

"2336. Q. Now—?

"A. I am going to answer this way: that is all you will ever get.

"2337. Q. All right.

"A. That I am not the London Loan and Savings Company; I have no knowledge of their business except the business of my own.

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Supreme
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No. 22.
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from
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for Dis-
covery of
Defendant,
H. A.
Mordine,
11th Decem-
ber, 1931.

—continued.

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—
No. 22.
Extracts
from
Examination
for Dis-
covery of
Defendant,
H. A.
Morine,
11th Decem-
ber, 1931.
—continued.

“2338. Q. (The Examiner) Well, you can answer that question No.

——“Is the answer to my question ‘No’? A. You have my answer.

“MR. SINGER: Well, make it definite.

“A. I have no knowledge of the London Loan business except my own with them. That is all you will get.

“2339. Q. Was the loan to Dale Furniture Company of forty thousand dollars, on a property on the south side of McGill Street, made on your application or through your office? A. First, no. Second, yes.

“2340. Q. Please explain.

“A. The Dale Furniture Company loan was first held by the Mutual 10 Life, and the Dale people went to negotiate a loan——”

MR. SINGER: Read the next question.

Mr. Walsh reads questions 2341 and 2342:

“2341. Q. Well, was the Lonsdale valuation attached to the original application?

“A. Attached to the original application that went before the Board and was considered.

“2342. Q. Did you value that property for the London Loan and Savings Company?

“A. Never made a valuation for the London Loan and Savings Company 20 in my life.”

That was never produced.

MR. SINGER: That record was produced as to that item only.

MR. WALSH: Did you ever produce anything showing the disbursements of that mortgage money?

MR. SINGER: No.

HIS LORDSHIP: Do not have these controversies; they are of no consequence.

MR. WALSH: Your Lordship will remember yesterday in Mr. Braden’s evidence the question of the St. Ives mortgage was mentioned; that is the one 30 that was in arrears at the time of the Durno transaction.

HIS LORDSHIP: Yes.

MR. WALSH: I wish to put in the original application for that loan, and that is proved, your Lordship, by questions 2571 to questions 2573:

“2571. Q. Is that Mr. Durno’s signature on this copy?

“A. No, that is my signature.

“2572. Q. You signed Mr. Durno’s name?

“A. I signed Mr. Durno’s name. This is an application on the first loan you have got here——

“2573. Q. But you signed Mr. Durno’s name on that? 40

“A. I put it there for that purpose, to identify the loan.”

“(Copy of application marked as an Exhibit.)”

EXHIBIT NO. 278: Application for loan dated August 20th, 1923, signed R. S. Durno.

MR. WALSH: I will not take time with any more questions. I will take the time up later.

HIS LORDSHIP: If you consider them material, put them in.

MR. WALSH : Now, Mr. Brickenden's examination.

HIS LORDSHIP : That will be Exhibit No. 279.

MR. SLAGHT : Your Lordship's previous suggestion covers this as well; it is marked as an Exhibit with reference to those questions and answers—

HIS LORDSHIP : Yes; it does not go in in toto.

MR. WALSH : I think it might save time if the Defendants go into the witness box and be cross-examined—

HIS LORDSHIP : You cannot force them to go into the witness box unless you want to make him your witness.

10 MR. WALSH : If Mr. Slaughter was going to call him—

HIS LORDSHIP : You are trying to draw fire.

MR. SLAGHT : We will decide those matters at the proper time.

MR. WALSH : All right. As far as that is concerned I will withdraw it, and Mr. McCormick's, and wait for them to go into the box; I will just take that examination.

MR. SLAGHT : Then 279 will be struck out ?

HIS LORDSHIP : Yes.

MR. WALSH : That closes my case.

20 MR. SLAGHT : On behalf of the Defendant McCormick and also on behalf of the Defendant Brickenden I apply for a non-suit. Your Lordship indicated yesterday your general practice in important cases is not as a rule to grant non-suits, and the indication I take it was rather a plain indication to us in this case that even up to that stage your Lordship with your ruling on the non-suit would be likely to refuse it—

30 HIS LORDSHIP : For this reason; if it is held that the non-suit should not have been granted, then the defence evidence is not before the Court, and the better practice now is for the Defendant to give whatever evidence he should give, and if he wants to rely on the weakness of the Plaintiff's case he can do so; but it is to prevent sending actions back for new trials and all the rest of it. So I think almost the universal practice now is in non-jury cases to say to the Defendant, if you wish to make your motion formally you can do so, and you can renew it again at the close of your evidence if you are calling any.

MR. SLAGHT : There are in this case some matters which to my mind as counsel make it reasonably clear that no cause of action whatever has by any possibility been established against either of the clients I represent, and it would not take me very long to put those forward to your Lordship if you thought there was any question of your changing your view.

40 HIS LORDSHIP : I think not. If you are confident in that position you need not call any evidence, and rely when the case is closed, on the weakness of the Plaintiff's case with respect to your clients, but if you want to give any evidence, now is your opportunity.

MR. SLAGHT : In view of your Lordship's direction in that respect, I won't trouble the Court with the several grounds, and possibly—

HIS LORDSHIP : You can renew it at the close.

MR. SLAGHT : All of which are open to me as though presented to the Court now.

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No. 22.
Extracts
from
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for Dis-
covery of
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H. A.
Morine,
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No. 23.
Motion for
Non-suit by
Mr. Slaughter
on behalf of
Defendants,
McCormick
and
Brickenden,
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No. 23.

Motion for
Non-suit by
Mr. Slaght
on behalf of
Defendants,
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and
Brickenden,
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—continued.

HIS LORDSHIP: Yes; a case particularly of this nature, I think it is extremely desirable if there are any defence witnesses they ought to be called and have the matter settled as far as the Trial Court is concerned once for all.

MR. SLAGHT: Sometimes I have heard in other Courts that when counsel have grounds for non-suit on which they rely strongly and do not put them to the Court, it is said they ought to have done so.

HIS LORDSHIP: You have made the motion.

MR. SLAGHT: I have made the motion, and I do not want to try to press your Lordship to hear me in the matter now that your Lordship has expressed the view you have in reference to it.

HIS LORDSHIP: It is much better to have the evidence all in. There is only one possibility sometimes that the evidence of the defence might make out the case.

SIR ALFRED MORINE: I desire to place on record a motion for non-suit for the Defendant Morine, but for the reasons which your Lordship has given that you will not entertain it, I refrain from presenting an argument at all.

HIS LORDSHIP: Very well; the reporter will record your motions.

MR. SLAGHT: Will your Lordship allow me two or three minutes for conference?

—Defence counsel confer.

—Court adjourned at 12.30 p.m. to 2.15 p.m. (weekly court being taken during a portion of the adjournment.)

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No. 24.
Motion for
Non-suit by
Sir Alfred
Morine
on behalf of
Defendant
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DEFENCE.

—Court resumed at 2.15 p.m.

GEORGE G. McCORMICK, Sworn. Examined by

MR. SLAGHT: I can give your Lordship now the particulars I referred to this morning. There is a copy which was filed with the Clerk of the Court here.

HIS LORDSHIP: Annex them to the record.

MR. SLAGHT: There is, in addition to those being annexed, a second set of particulars delivered which apparently were not filed by my friend, but were delivered, and my friends have undertaken to put those in so that
10 it will be furnished to the Court.

HIS LORDSHIP: Have them filed now.

Particulars attached to the record.

MR. SLAGHT: The two demands served for those particulars can be handed in if your Lordship so approves.

HIS LORDSHIP: The demand is not necessary at all; it is the particulars that count.

MR. SLAGHT: Then I won't bother with them.

HIS LORDSHIP: No; if they were not satisfactory they could have been moved.

20 MR. SLAGHT: Mr. McCormick, you are an old-time resident of this City of London? A. Yes, sir.

Q. Having been born here in Middlesex County? A. Yes.

Q. I understand you had your early schooling here and were brought up and carried on business during your entire life in this city and county? A. Yes.

Q. Went to school, perhaps through the public school and then some high school? A. The old Union School, and then the high school.

Q. And then you did not go on to the university in your day? A. No.

Q. And have been engaged in business; you were for a long time, I understand, connected with the McCormick Manufacturing Co.? A. Yes.

30 Q. But you retired from that business a number of years ago; how many years ago? A. Possibly fifteen to twenty years ago.

Q. And then you were down until 1929 for a great many years a director of London Loan and Savings Co.? A. Yes.

Q. And for some years concurrently, I understand, a director of the Consolidated Trusts Corporation? A. Yes.

Q. Then you were President of the London Loan and Savings Co. for how many years prior to your retiring from that Board? A. I cannot recall.

Q. A great many years? A. A good many years.

Q. And back of the year 1923 at all events? A. Yes.

40 Q. I understand since last year you have been in ill health? A. Yes.

Q. And under the doctor's care continually? A. Yes.

Q. I want to take up with you the first transaction that we are interested in in this case, and that is a loan which the company granted to S. B. Green and H. A. Morine of \$35,000. on a second mortgage made in the month of February, 1923; you will recall that is one of the transactions we have heard about in this case? A. Yes.

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—continued.

Q. You were President of the Board at that time? A. Yes, sir.

Q. And we have heard who your fellow directors were? A. Yes.

Q. Mr. Kent who has been mentioned was, I believe, Manager of the company for forty or fifty years?

A. More than that; since the inception of the company.

Q. Since 1877? A. That would be right.

Q. I am going to show you first what has been put in as an application, Exhibit 11, for the \$35,000. loan, and on the back of that we see your initials "Geo. G. McC." and the word "President"? A. Yes.

Q. Those are in ink? A. Yes.

Q. Above that I see some pencil writing memorandum, bonus \$4,000., H. A. Morine to guarantee; commission one per cent; is that your handwriting, the pencil writing? A. Yes.

Q. Whose is that, do you know? A. The managing director.

Q. The managing director at that time was Mr. Kent? A. Yes.

Q. This question will perhaps cover a number of other documents that I do not want to bother with in detail; during the course of the trial there are a number of Exhibits that have been put in which bear writing on the back, sometimes in pencil and sometimes in ink, in writing other than yours, and underneath that appear your initials as President like this does here? A. Yes.

Q. Could you tell me what the practice was as to getting your name on the back of these documents; first, how that happened—what was the practice?

A. The manager would always make these notations before a Board meeting if he was home, always made the notations, and then he would read what the notations were and the contents of a letter or whatever was in the matter to the Board. After doing that he would turn the documents over in front of my desk and I would ask the Board if this met with their approval; and if they approved I endorsed it as President of the company.

Q. That was the general practice? A. That was always the practice.

Q. The offer here as we have heard in this case mentions a bonus of \$4,000., Mr. Green's application to be guaranteed by Mr. Morine; I want to call your attention to the minute which is at page 517 of Exhibit 13, your Minute Book, and then ask you a question or two about that. I see on that page, reading you the entire entry here: "S. B. Green, lend \$31,000. at 7½%. Commission 1% to H. A. Morine. Bonus \$4,000. H. A. Morine to guarantee." And then your signature as President is at the foot of the minutes, that day, and the signature of Mr. Kent as manager at the end of the minutes, that day also; do you observe that?

A. Yes; it would be the following week after that meeting.

Q. What would be the following week? A. After the minutes were read.

Q. You had the habit of putting your signatures on the next week?

A. Yes.

HIS LORDSHIP: The minutes would not be in that shape.

A. The manager always dictated the minutes from his matter in hand.

MR. SLAGHT: The minutes indicate that all were present save Mr. Robinson; you perhaps do not remember that? A. No.

Q. Was there any dissent in connection with this loan at that time, or any other time in connection with this loan?

A. There would not be any dissent or I would not have signed.

HIS LORDSHIP: Do not the majority rule in the company? A. No.

MR. SLAGHT: Did not you have majority rule?

A. No; everybody had to be favourable.

Q. Perhaps what you mean is in regard to loans, because may I suggest to you that with your Board, if a controversial matter came up, some might vote one way and some the other, and if the majority carried a resolution
10 what would happen to that?

MR. WALSH: After that speech, will you please say if he elected his own Board that difficulty could not arise?

MR. SLAGHT: You heard Mr. Walsh, who is always happy to assist us in anything; you heard the remark he made: will you tell his Lordship as to whether or not, with respect to loans, what the practice was if somebody dissented from a loan being made, would it go through?

A. The loan would not be made.

Q. Then I see at the next meeting, on page 518, Mr. McCormick, held on the 19th February, 1923, a week later, the Board met; all present save Mr.
20 Robinson, and the minutes of the last meeting were read and confirmed, so that Mr. Kent signs that as manager and Mr. Baker as Vice-President this time; apparently at the meeting a week later that loan resolution, whatever it meant, was read and confirmed again by the Board? A. Yes.

Q. Is that correct? A. Yes.

Q. Then can you recall what you knew about the property as to value, or what investigation if any you made or what you had before you prior to deciding to pass upon this loan on the 12th February?

A. We would pass the loan on the valuation.

Q. What valuations or valuation, if any, as you recall it, did you see in
30 connection with this loan?

A. I think our first valuation of that property was by Mr. Fetterley.

Q. Who was Mr. Fetterley? A. He was valuator for the Huron and Erie.

Q. That is another company? A. Yes, sir.

Q. The application for the loan—at all events the Huron and Erie had a first mortgage on it at that time? A. Yes.

Q. And what is your memory just as best you can give us and not any more than you can recall, as to seeing a Fetterley valuation, through whom and under what circumstances? A. Mr. Kent had the valuation, I think.

Q. You think Mr. Kent had a valuation by Fetterley? A. Yes.

40 Q. Did anybody read it, go over it?

A. I presume Mr. Kent read the valuation.

Q. Did you see it? A. I think I did; I cannot just recall.

MR. WALSH: May I ask you where that is now?

HIS LORDSHIP: Before they give the evidence of the contents they will have to show.

MR. SLAGHT: You will have the valuation.

Q. You are putting it that you think you saw that valuation, and that

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it was from Mr. Fetterley, and it was produced to you through Mr. Kent?

A. I feel very sure that I saw the valuation.

Q. Was there either in or out the meeting—we see the minutes disclose that Mr. Kent voted both for the resolution on its passing and for confirmation of the minutes, and signed them on both occasions—was there ever any dissent from Mr. Kent at any time with respect to that loan? A. No.

Q. Are you quite clear about that? A. Yes.

Q. Or from any other of your directors? A. No.

Q. I pass to the next loan that is in review in this case, and that would be the \$20,000. loan which appears to be dealt with at page 531 of Exhibit 13, your Minute Book; I call your attention to this minute; these minutes appear to be signed by you with initials as President and by M. J. Kent as Manager, on the 28th May, 1923, dealing only with this matter: "H. A. Morine and S. B. Green. Lend \$20,000. on a third mortgage on their apartment house which Mr. Morine values at \$400,000. Subject to a first mortgage \$150,000. to Huron and Erie, and a second mortgage of \$35,000. to London Loan and Savings Company, Mr. Morine to personally guarantee the loan. Terms 7½%, no commission, bonus \$1,000. to be paid company by Mr. Morine. Loan to be repaid on December 20th, 1923." At that meeting those present are indicated as Messrs. McCormick, Baker and Hunt; do you recall whether there was any objection by any director to that loan being made? 10 20

A. Did the loan pass?

Q. Yes. A. There was no objection then.

Q. Can you tell me what valuations, if any, or further valuations, if any, were before you prior to your passing upon that loan being made?

A. I think in the meantime or about that time we had a valuation from Mr. Lonsdale.

Q. That is Mr. W. N. Lonsdale of the Toronto General Trusts?

A. I do not remember his initials; he was with some Trust Company in Toronto. 30

Q. Do you know whether later on Mr. Lonsdale did or did not make a second valuation for your company?

A. It seems to me that on the request of the Department of Insurance that he asked us to get the valuation of some of our Toronto properties.

Q. And was a valuation furnished of Mr. Lonsdale in connection with a request made by the Department? A. I think so, yes.

HIS LORDSHIP: Did it occur to you if you have a valuation you would apply to the same man?

A. I think that his name was given to the department and he was satisfactory. 40

HIS LORDSHIP: Perhaps it is difficult to remember all these things; but there is a valuation put in here at a later date by this man Mr. Lonsdale; you already had one, I should not think you would go back to the same man for a second one.

MR. SLAGHT: What is your best memory about that; what can you say?

A. My memory tells me we had a second valuation by Mr. Lonsdale; that is all I can recall.

Q. His Lordship is pointing out you said you believe you had a valuation from Mr. Lonsdale in May of 1923, and the other one was December 24th, which is here, and why would you go back to or get from the same man a further valuation if you already had in your files a valuation from Mr. Lonsdale taken at the time the loan was granted; what can you tell us, if anything, about that? A. It is such a long time ago it is hard to recall.

HIS LORDSHIP: You cannot be expected to remember everything.

MR. SLAGHT: What, if any, effect upon your memory or your capacity to remember has your illness for the past year had?

10 HIS LORDSHIP: Quite apart from any illness, the matter happened eight years ago.

MR. SLAGHT: Has your illness had any special influence or effect upon your memory? A. It has had an effect upon my nervous system.

Q. Has it or not affected your memory? A. Yes.

Q. Markedly or not markedly? A. Very markedly.

Q. At all events you say you think a second valuation was obtained from Mr. Lonsdale, and a valuation in December, 1924, has been put in as Exhibit No. 211 in this trial; whereby Mr. Lonsdale values the property at \$310,400, that is in December; can you tell me whether or not as far as you know, that is
20 the first valuation of Lonsdale, or whether you think there was an earlier one?

A. I think there was an earlier one.

Q. Then the second loan, \$20,000., which was the third mortgage, the minutes of the 28th May were apparently read and confirmed on the 5th June, 1923, and you signed as president and Mr. Kent as manager again in that connection. Now we leave the year 1923 and come along to the year 1925; let me ask you some questions with regard to the next transaction in which you are attacked, that is what we call the Durno transaction, when your company sold the Buckingham Apartments to Mr. Durno; do you remember something about that? A. Yes, sir.

30 Q. Looking again at Exhibit 13, page 631 this time, I find here there are in the Minute Book, both of them initialled by you, two pages numbered 631 and dealing with this particular matter on the first of the pages. "R. S. Durno. Accept offer to purchase Buckingham Apartments for company's claim as of June 1st and take mortgage back for \$77,000. as part of purchase money subject to Huron and Erie first mortgage \$147,000."—does that recall the transaction to you?

A. I recall the transaction, the sale to Durno; I cannot recall the minutes.

40 Q. At that Board meeting the minutes say there were present yourself, Baker, Robinson and Hunt, and Mr. Robinson signs as acting manager; and then the second page of the same minute reads this way, and there is an alteration in handwriting: "Accept offer to purchase Buckingham Apartments for company's claim as of June 1st and take mortgage back for \$77,000. as part of purchase money subject to Huron and Erie first mortgage of \$147,000."—that is signed at the bottom by you, and that looks to me like your handwriting; can you tell me whether or not it is?

A. I think that is my handwriting; I cannot dispute it anyway.

Q. I don't know that I have appreciated the exact difference in the words;

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have you any memory as to why there would be two pages, or why there is a change in some of the language as to the way the resolution is put; have you any memory about that? A. I cannot recall.

Q. We find that at the next meeting, June 30th, 1925, where yourself, Baker and Hunt were present, that the minutes of the last meeting were read and confirmed. Mr. Kent appeared from the records not to have been present at either the meeting where this was passed in June or the next meeting where the minutes were confirmed; do you remember anything about Mr. Kent's health that year in 1925 at a time when this matter would be up in the office?

A. I could not remember the dates.

Q. Was he sick for a while? A. Yes; he had an accident to his hip.

Q. And was at the house? A. He was at his house I presume.

Q. Did you or did you not have occasion to visit him at his house during the time he was laid up with the hip? A. Yes.

Q. Did you visit him just occasionally or frequently?

A. Quite frequently.

Q. Did you or not at the house talk business matters with him, or do you remember about that?

A. Business was often talked; the mail went to him every day.

Q. Was that by arrangement?

A. He wished for it; it was by arrangement.

Q. I suppose you did not see the letters carried every day, but that was the arrangement made? A. Yes.

Q. Was it carried out so far as you know?

A. So far as I know it was carried out every day.

Q. What kind of mail; from where?

A. All the business mail connected with the London Loan Company would be taken up to Mr. Kent.

Q. A little later on Mr. Kent has something to do with this property, according to the minutes; I see at a meeting of September 22nd, which you signed again the minutes of, that all of the members were present save Mr. Baker and Mr. Kent. "Re mortgages G. 41 and G. 46, Buckingham Apartments. Sale confirmed."—those two numbers refer to the \$35,000. and the \$20,000. mortgages. At the next meeting, on the 29th September, I see that the Board met, and they were all present, and Mr. Kent signs the minutes of the 29th along with you, and that shows that the minutes of the last meeting were read and confirmed, and Mr. Kent's signature with yours. It has been suggested that Mr. Kent at some stage or other took objection to the sale to Durno; what do you say as to your entire contact with Mr. Kent in the business of the company, he as manager and managing director and you as president, and whether at any time and when Mr. Kent took any exception to the sale to Durno? A. Not that I can recall.

Q. If he had, do you think you would recall?

A. If he had, there would have been something done at the meeting; everybody had to be unanimous.

Q. As your best recollection, do you recall in any way Mr. Kent taking exception to the Durno transaction? A. No.

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Q. Either at any meeting or outside of any meeting? A. No.

Q. Or to you or to anybody that you knew of in any way? A. No.

Q. I would like to ask a question or two with regard to an Exhibit I was very strong in feeling should not have been admitted, and I presume I can examine on that without waiving my objection?

HIS LORDSHIP: Yes.

MR. SLAGHT: Yesterday a letter was put in which was produced by the Department of Insurance gentleman here which bears the name of M. J. Kent, and it is suggested was written by him, dated October 1st, 1925, to the Registrar, making certain personal explanations on his behalf; did you know anything about Mr. Kent writing such a letter as this?

A. Never heard of it until yesterday.

Q. I want to call your attention for a moment to the Durno offer or to Exhibit 69 which was put in as an offer from Durno, and its acceptance on the bottom inside is signed by Thomas Baker as Vice-President, and on the outside I see your initials again in ink over the word "President", and some pencil writing as we found before, June 23rd, 1925, "Accept offer for \$227,500." Whose writing would the pencil be above your signature?

A. It looks like Mr. Kent's.

Q. I ought to have asked you earlier: Mr. Baker's name strikes me now, in connection with the earliest occasion or in connection with the loans or one of them of \$35,000. and \$20,000. made on the Buckingham Apartments, which are in Toronto, do you know whether any members of the Board outside of any official valuations, whether any members of your Board personally inspected the Buckingham Apartments?

A. I think Mr. Baker looked at them pretty thoroughly.

Q. Did he report to you the result of his looking at them?

A. I think on one occasion I was with him; I did not make a thorough inspection.

Q. You were at the Buckingham Apartments in Toronto?

A. I think once with Mr. Baker.

Q. You want us to understand you visited them with him, but you did not make a thorough inspection yourself?

A. No, I did not make a thorough inspection.

Q. Do you know whether Mr. Baker went more than once, or just the once? A. I think Mr. Baker inspected them himself independently.

Q. Did he make any report to you or give you any information with reference to his inspection of the Buckingham Apartments?

A. It is so long ago I cannot recall.

Q. Do you recall whether or not he told you he had inspected them?

A. I feel pretty sure he did, and I feel pretty sure he told me he had.

Q. Do you recall whether or not on any occasion of any Board meeting Mr. Baker made any report or not with reference to the fact that he had or had not inspected the Buckingham Apartments personally?

A. I think he did.

Q. And to whom? A. The Board.

Q. Then do you remember the general purport of the report as to whether

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it was favourable or unfavourable towards the granting of the loans ?

A. I think it was favourable.

MR. WALSH : The loans were already granted by that time.

MR. SLAGHT : No.

HIS LORDSHIP : You can develop that in cross-examination if it is so.

MR. SLAGHT : At all events Mr. Baker signs apparently one of the mem-
bers of the Board for the acceptance of the Durno offer, and I see by one of
the Exhibits that there was insurance on the property at that time to the
extent of \$200,000.; do you recall that ? A. No.

Q. Did any other official or director inspect the property in connection 10
with the granting of the loans or either loan ?

A. I think Mr. Kent looked at it once, but to what extent I don't know.

Q. Did he report to you that he had done so ?

A. Mr. Kent recommended the loan in the first place; it is my belief
he had seen it.

Q. That is the \$35,000. loan ? A. Yes.

Q. And it is your belief that he had seen it ?

A. I think he had seen it.

Q. Belief is not very useful, at the same time I don't want to press you
at all beyond how you wish to put it, but can you tell his Lordship whether or 20
not you recall Mr. Kent's stating to you that he had seen the property at the
time that the first loan was put on ?

A. He favoured the loan; that is all I can remember.

Q. You have told us you believe he saw the property; on what do you
base your evidence that you think Mr. Kent saw the property ?

HIS LORDSHIP : He is giving the best of his recollection.

MR. SLAGHT : All right, my Lord. We have heard of the Consolidated
Trusts Corporation of which you were also a director; was or was not that a
subsidiary of the London Loan Co. ? A. Yes.

HIS LORDSHIP : Subsidiary in some respects, but its business is entirely 30
trust, just subsidiary in the respect that the stock was held—

MR. SLAGHT : Yes, as his Lordship puts it, it was entirely trust, and you
were a loan company with broader, wider powers ? A. Yes.

Q. At the time of the sale to Durno will you just tell us whether or not
any deed, so far as your recollection goes on the matter now, was taken from
Durno at that time, and how that came about ?

A. I think there was a deed in trust to the Consolidated Trusts Com-
pany.

Q. Who was that deed taken to the Consolidated Trusts Co. for, as
you recall it ? A. It would be on behalf of the London Loan. 40

Q. It is not so stated in the deed we have learned now, but that is your
recollection you are telling us ? A. Yes.

Q. Have you any recollection as to why your company were having a
deed taken from Durno to whom you were selling, taken back immediately
to the Consolidated Trusts Company in trust, why was that being done so
far as you recall it from your recollection of the discussion of the matter at
the time ? A. They were to collect the rents.

- Q. Who was to collect the rents?
 A. The Consolidated Trusts Co., I think, were to collect the rents.
 Q. Any other reason you recall?
 A. I think one was that if Durno fell in arrears or anything, that the Consolidated Trusts Co. could sell the property again.
 Q. Did you know Durno yourself? A. No.
 Q. Ever see him? A. No.
 Q. Have anything to do with him?
 A. I think he had a mortgage or two with the London Loan previous to
 10 that.
 Q. You do not recall knowing the man personally?
 A. Never met him that I know of.
 Q. Let me ask you in connection with the sale to Durno; did you put any particular store or value upon the covenant of Durno as a man of substance at all? A. I looked upon it as a *bona fide* sale.
 Q. Did you regard Durno as a man of any particular means of substance personally? A. I do not recall that I had any reason to doubt it.
 Q. Had you any reason to think that he was, or did you regard him as possibly of doubtful substance because you were taking a deed right back
 20 from him? A. I did not regard him as doubtful, no.
 Q. Have you any recollection of anything that might or might not have been said to you about Durno at that time?
 A. I cannot recall that there was anything derogatory to Mr. Durno.
 Q. Going back to a matter I should have asked you about before: at the time of the loans to Green and Morine, \$35,000. and \$20,000., were those loans made by you relying as far as your company's protection was concerned, to what extent, if any, upon the personal covenant of Mr. Morine or Mr. Green so far as you recall at that time?
 A. We were not in the habit of loaning on covenants on any consideration.
 30 HIS LORDSHIP: That is not the point; could a man of substance get a loan quicker than a man of no substance?
 A. No; we would have to have the security; it might have some consideration.
 Q. It might have some influence? A. It might, no doubt.
 MR. SLAGHT: What did you know, if anything, about Mr. H. A. Morine; did you inquire or did you know or make inquiries as to whether or not he was or was not a man of substance? A. I had no personal knowledge.
 Q. Had you any report one way or the other about it?
 A. Only that he was considered to be a man of means.
 40 Q. Do you know whether or not after the sale to Durno the Consolidated Trusts Company did, through other people, take on the collection of the rents of the premises? A. My recollection is they collected the rents.
 HIS LORDSHIP: That appears to be plain from what is put in.
 MR. SLAGHT: Yes. I just want one step further as to his recollection of the reasons why it was done that way. Then, Mr. McCormick, it is charged against you in this action that you fraudulently conspired with Mr. Brickenden and Mr. Morine to defraud your company of which you were president—first,

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let me ask you the general question, whether or not you conspired or planned or schemed with either of those men to defraud your company in any way?

A. No.

Q. Directly or indirectly? A. Neither way.

Q. Mr. Brickenden, it is true, is your son-in-law? A. Yes.

Q. Married to your daughter? A. Married to my eldest daughter.

Q. Have you any business interests or connections or partnership with Mr. H. A. Morine? A. No.

Q. Did you ever have? A. Never had.

Q. Did you ever receive from Mr. Morine, Mr. Brickenden or anybody else in the world, directly or indirectly, any money or consideration of any kind for yourself out of the \$35,000. loan, the \$20,000. loan, the sale to Durno, or any other transaction that they or anybody else ever had with your corporation? A. No; absolutely no.

Q. Can you tell me anything with reference to any interviews that Mr. Morine may have had with your company or any of you at any time with reference to some profit or otherwise that he would get if a sale of the Buckingham Apartments was made after the sale had been made to Durno; do you remember anything of that kind talked about?

A. Yes, I remember Mr. Morine being present at a Board meeting. 20

Q. When about would that be, having regard to the date of the sale to Durno, which was in June, 1925, when would the matter as near as you can tell me when would it be that Mr. Morine talked to the Board about it?

A. It would be some time later; I could not fix a date.

Q. Do you know how much later? A. It would be quite a spell.

Q. Just as near as you can, what occurred, what talk did he have, do you know if there was any record of it in the minutes?

A. No, I cannot recall any; it was a conversation he had with the Board.

Q. What occurred as near as you could tell?

A. He suggested he could sell the property at a good profit, and he asked then if it would be agreeable to, first I think he asked what commission they would pay, and I think the Board decided they would pay no commission whatever, and then he suggested if there was any profit in the sale, that we would divide the percentage 40 and 60.

Q. What do you mean by any profit in the sale?

A. Over and above the claim.

Q. Over and above your company's claim? A. Yes.

Q. Who was to have 60 and 40?

A. Mr. Morine was to have 40 and the Loan Company was to have 60.

Q. Was there any agreement come to about that, or was there any resolution as you recall? A. No.

Q. And the minutes do not disclose any; was that carried any further, or what did the members of the Board express themselves?

A. It was only verbally; the Board understood it that way.

Q. There was no written agreement that you knew of? A. No.

HIS LORDSHIP: It never was carried out, was it? A. No.

MR. SLAGHT: Because Morine never sold the property? A. No, sir.

HIS LORDSHIP: Never any profit to divide.

MR. SLAGHT: I have asked you about whether you ever made any profit directly or indirectly, did you ever, with Mr. Brickenden, who was your son-in-law, talk with him privately about the sale of the Buckingham Apartments to Durno, or the granting of these loans to Morine and Green? A. No.

Q. Did you ever talk with Morine privately about either the granting of these loans by your company or the sale to Durno? A. No.

Q. Exhibit 197 is a letter to Martin, Currie & Co., dated July 5th, 1926, which bears your signature, and it is a long one of twenty-one pages; do you recall how this letter that you signed here came into existence; did you dictate it or did you have help preparing it? A. I did not prepare it at all.

Q. You went over it and signed it? A. It was read to the Board.

Q. And then did the Board express themselves about it in any way—why was it read to the Board? A. To get their approval before I signed.

Q. Did they or not approve before you signed? A. Yes.

Q. There does not appear to be any resolution approving of it; do you know why that would be? A. No, I cannot recall.

Q. You do recall it was read to the Board? A. Yes.

Q. And the express approval—?

A. All letters were read to the Board that I signed.

Q. You were president and Mr. Kent was managing director, or at least a director and general manager; how much did you dip into the details of carrying out the business of the company, either the technical or actual business transactions of the company as president, did you go into those? A. No.

Q. On whom did you rely, if upon anybody, with regard to that detail of carrying out transactions? A. The managing director.

CROSS-EXAMINED by Mr. Walsh:

Q. For how many years were you president of the London Loan?

A. I cannot recall; the records will show.

Q. As President of the company you drew a salary, didn't you? A. Yes.

Q. In 1923, what was that salary? A. \$1,500.

Q. And in addition to that there was a thousand dollars directors' fees?

A. The same as all other directors.

Q. Each director got a thousand dollars and the president, in addition to that, got \$1,500.? A. Yes.

Q. That made \$2,500.? A. Yes.

Q. That was for directing the affairs of the company?

A. That is what was paid the president.

Q. This second mortgage of \$35,000. which you took in February 13th, 1923, the first that the London Loan Company heard of that loan was the application that Mr. Slaght was referring to, was it not, and this is the application here that came before your Board on February 12th, 1923; that was the first your company ever heard of the application for that loan?

A. I presume it was.

Q. Did you know that application came from Mr. Morine, one of the Defendants in the transaction? A. It came from Mr. Kent to me.

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- Q. You know that application? A. It was Mr. Kent presented it first.
- Q. You knew it came from Mr. Morine? A. I presume it did.
- Q. You see right on the top, H. A. Morine?
- A. I did not see that part of it at all.
- Q. This is not when you were sick; you were able-bodied and able-minded in 1923, were you not? A. Better than I am now.
- Q. In full possession of your faculties that you then had?
- A. I hope so.
- Q. And on that date you tell me, as president of the company drawing \$50. a week, you never knew where that application came from? 10
- A. It was presented by Mr. Kent and read by Mr. Kent at the Board meeting.
- Q. Of course you remember and know that Mr. Kent is now dead? A. Yes.
- Q. And the application bears your signature, that is the acceptance, G. G. McC., President? A. Yes.
- Q. And any president that was looking after the affairs of the company would not sign a document without reading it, would he?
- A. I signed lots of them without reading.
- Q. Take it on faith? A. Mr. Kent would read them.
- Q. Would Mr. Kent read this to the meeting? A. Yes. 20
- Q. And you saw when he read it to the meeting that it was from H. A. Morine?
- A. I presume we knew it was through H. A. Morine the application came.
- HIS LORDSHIP: He was getting your loans in Toronto for you?
- A. Nearly all of our loans was through Mr. Morine.
- MR. WALSH: And you were paying him one per cent commission? A. Yes.
- Q. And did he disclose to you at that time that he was an owner of that property? A. I cannot recall.
- Q. As a matter of fact, there was deception from top to bottom in connection with that application, was there not? A. Not that I know of. 30
- Q. Did you know he was the owner at that time of one half interest of partnership in that property? A. I cannot recall that.
- Q. He was there in London at the time; he was there in body, because he took home with him the cheque; do you recall that? A. What time was that?
- Q. February 12th, 1923; you would not hardly believe that?
- A. I probably was not in London at all, only attending Board meetings.
- Q. Mr. Morine was there with that application personally, was not he?
- A. I cannot tell you that.
- Q. He took the cheque home with him?
- A. I cannot tell you anything about that; I did not sign the cheques. 40
- Q. You never heard of him being there? A. I may have at the time.
- Q. He was there personally; the engineer was there, was not he?
- A. I don't know.
- Q. What would he be up for? A. He would probably be seeing Mr. Kent.
- Q. And he made very frequent trips to London, did not he?
- A. I don't know how many he made.

Q. Whenever there was a matter of business of any importance, he came personally, did not he? A. I don't know.

Q. Whenever there was anything of importance, Mr. Morine was by your side, was not he? On your two fights for control he was there as your spokesman in those crucial days when the fight for control was on in 1927 and 1929, he was there, was not he? A. I guess he was at some of them, yes.

Q. He was at those two, was not he?

A. I think he was at one of them, anyway.

Q. And he was there in the fight for control in 1927 when Mr. Kent was
10 at that meeting and when that Riddell, Stead and Graham report was read to the meeting and exposed Mr. Morine in these loans; you remember Mr. Kent being there then? A. Yes; never opened his mouth.

Q. You remember me opening my mouth, don't you—I was there, was not I? A. I guess you were.

Q. You remember me representing Mr. Kent, and that that Riddell, Stead and Graham report referring to Buckingham Apartments was read to that meeting, was not it? A. I cannot recall it.

Q. You cannot recall that? A. No.

Q. You remember the trust about Durno; you have a recollection of
20 that? A. What do you mean?

Q. You told Mr. Slight this Consolidated Trusts deed was in trust for the London Loan; you remember that? A. Yes.

Q. Why don't you remember the other part that when your dollars were at stake and your position was at stake, and your all was at stake, you do not remember the reading of that report to that meeting; why don't you remember that? A. I cannot recall it.

HIS LORDSHIP: Memory is a very fickle thing.

MR. WALSH: Do you remember Mr. Morine getting up instead of you, to defend it? A. I cannot recall it.

Q. Do you remember calling upon Mr. Morine? A. No.

Q. Well, I do; you called upon Mr. Morine to address the meeting; do you remember? A. No, I cannot recall that.

HIS LORDSHIP: Better not make statements of fact, Mr. Walsh.

MR. WALSH: You have no recollection of that?

A. I cannot recall it; I do not dispute it.

Q. Did you know your mortgage for \$35,000. on this apartment house, the second mortgage for \$35,000., did you know that at that very hour that Mr. Morine got that cheque he had made an agreement with Mr. Green whereby he was to get twenty per cent of that money? A. No.

Q. \$7,000. of it for himself; did you know that? A. No.

SIR ALFRED MORINE: I must object.

HIS LORDSHIP: He has a right to ask the question.

SIR ALFRED MORINE: Yes, but not make statements of his own.

HIS LORDSHIP: You are quite right there. I think, Mr. Walsh, if you will put it in the form of a more direct question; it is rather objectionable to make statements and then add at the tail end of it, is not that so, although it is still a question.

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MR. WALSH : Did you ever hear of any such agreement? A. No.

Q. Would not you think that was a material thing for you, as president of the company, to know if that agreement had been executed under seal with Mr. Green?

A. I never was called on to pass an opinion on any such agreement.

Q. I am asking you. A. I don't know.

Q. That would be twenty per cent, that would be one-fifth.

HIS LORDSHIP : Is this so, if an agent who was accustomed to loaning money for your company made an application for a loan to himself, you would be particularly careful about that? A. Yes. 10

Q. You would be more careful than a loan he presented for somebody else? A. (No answer.)

MR. WALSH : I find the commission was 25% of that money—

HIS LORDSHIP : That is not in.

MR. WALSH : I read from the examination for discovery—

MR. SINGER : My learned friend is referring to an agreement which was held irrelevant.

HIS LORDSHIP : It has not been held—it might have been irrelevant on the examination, but I think it is perfectly relevant here; there is sufficient to found a question upon. 20

MR. WALSH : Did you know, would it have been material for you to have been told by Mr. Morine that he was getting 25% of that money together with a bonus of \$2,000.? A. He did not tell me.

Q. He is not the same Mr. Morine you are writing about to Scotland, a man of unimpeachable integrity and a lucky man for you to be associated with; that would not be the same man, would it? A. I think so.

Q. Would a man you would be proud to associate with, would you think that would be a man that would make an arrangement like that?

MR. SINGER : Is the witness being asked to pass his opinion upon the character of another co-defendant? Surely my friend is going too far. 30

HIS LORDSHIP : You cannot give it in chief.

MR. SINGER : I did not myself cross-examine as to facts, but surely your Lordship would not allow me, and I believe did not allow Mr. Slaght to bring in questions of character.

HIS LORDSHIP : That was giving evidence as to the good character, but this is a different story. If a man gets in the witness box under cross-examination,—but I think, Mr. Walsh, it is not a very desirable form of cross-examination.

MR. WALSH : He did not tell you he was the owner, he did not tell you he was the half-owner, did he? A. I cannot recall that he did. 40

Q. As a matter of fact, the application is signed by S. B. Green to show that he was not owner, was it not?

A. I do not know; Mr. Kent would read that.

HIS LORDSHIP : Do not put too much on the dead man; I don't like that attitude at all. It speaks for itself.

MR. WALSH : As far as that application is concerned, we have it this way, that he took away with him that very night a cheque?

- A. I don't know; I would not know.
- Q. Did you know who registered that mortgage?
- A. No; that is a matter of detail I would not know.
- Q. I think when you were examined for discovery when you were asked you did not know of any other valuation at that time but Mr. Morine's own—you had Mr. Morine's valuation at \$325,000?
- A. So you say. We never loaned money on Mr. Morine's valuations.
- Q. What other valuation did you have at that time?
- A. I cannot recall now.
- 10 Q. Mr. Braden has gone through the papers and can find none but Mr. Morine's for \$325,000.; will you dispute that, the records of the company disclose no valuation but one of Mr. Morine's for \$325,000?
- A. I cannot dispute that he could not find them.
- Q. There is none in the records of the Company? A. I can't help that.
- Q. Then it came to the third mortgage on the property to you people for \$20,000.; did you know that? A. Yes.
- Q. Did you know that Mr. Morine was two months behind paying his interest on the first one he got? A. No, I did not.
- Q. Did you go down every day to the office? A. No.
- 20 Q. You had your own office there?
- A. During the summer months I was only there part of one day a week.
- Q. It would not be the summer, it would be October when he paid; it was due in August, and you would be back then?
- A. I would not know anything about it.
- Q. You loaned him \$20,000.?
- A. I think there was an application for a loan of \$20,000.
- Q. Did you have any valuation for that one? A. I think we did.
- Q. Whose valuation did you have for that?
- A. I think it was Mr. Lonsdale's valuation.
- 30 Q. Before you made it? A. Yes.
- Q. Who got that valuation?
- A. I presume Mr. Kent got it, or it may have been Mr. Morine; I don't know who got the valuation.
- Q. Did you know the only valuation there was one in December of 1924 from Mr. Lonsdale? A. No.
- Q. After your money had gone you had a valuation?
- A. We had a valuation before the money was gone.
- Q. By Mr. Morine—
- HIS LORDSHIP: Was there a separate application or is it in the minutes
- 40 that it appears, the valuation by Mr. Morine of \$400,000.?
- MR. WALSH: Yes, your Lordship, that is the one, in the minutes.
- MR. SLAGHT: It appears in the minutes.
- MR. WALSH: It says right in the minutes Mr. Morine's valuation \$400,000.?
- A. I think I answered that I would not loan on Mr. Morine's valuation.
- Q. It was of sufficient importance to put it in the minutes?
- A. I don't know.

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Q. You did not put anybody else's valuation in the minutes but Mr. Morine's? A. I did not put anything in the minutes.

Q. You signed the minutes? A. That might be too.

Q. You read them over before you signed them? A. No.

HIS LORDSHIP: They were read out? A. Yes.

MR. WALSH: You noticed when they were read out there was none but Mr. Morine's there at the time? A. I cannot recall.

Q. And that application came from Mr. Morine, didn't it?

A. I cannot recall that, where the application came from.

Q. Then you had on the property \$55,000.?

10

A. I presume that is what the record would show.

Q. Mr. Morine never was able to pay or did not pay that mortgage on December, 1923, when your third mortgage of \$20,000. became due; you remember that? A. I cannot recall it, no.

HIS LORDSHIP: What was the practice in that respect: mortgages in arrears would surely be reported at the directors' meeting? A. Yes.

MR. WALSH: And it was reported and you gave it to the solicitors, to Mr. Brickenden, didn't you?

A. I presume so, if you say so; I don't remember it; I don't know.

Q. At that very hour Mr. Morine was on that covenant, was not he? 20

A. I cannot tell you that.

Q. Do you tell me you don't know that?

A. Those are details that the managing director looked after entirely.

Q. \$55,000. of money after a big first mortgage; that is no detail for some person in the office, is it?

A. The managing director was competent to look after it, I think.

Q. Who was the one that put in, who stipulated as a condition of these two mortgages that Mr. H. A. Morine would personally guarantee the loan?

A. I cannot recall that.

Q. It was of great importance, was it not?

30

A. I presume it was.

HIS LORDSHIP: Q. I suppose being a second mortgage you would want to be more fully assured than you would in the case of a first mortgage?

A. It would have some effect.

Q. I should think it would have very great effect.

MR. WALSH: You had Green on there as owner on your application, and then you insisted upon Morine to be on the covenant?

A. Yes, it may be too.

Q. It is the fact, is it not? A. We were not lending on covenants.

Q. But you were getting them? A. We always get all we can.

40

Q. In this case you got Mr. Morine's covenant?

A. So you say; I cannot recall it.

Q. You told Mr. Slight today he was reputed to be a wealthy man?

A. Yes.

Q. Why did not you or the solicitor in whose hands it was put, realize the second mortgage on that covenant from Mr. Morine? A. I don't know.

Q. I want an answer, Mr. President, and I am going to have it. I am going to get that answer; why did not you get that money from Mr. Morine on that covenant, or make an endeavour to get it?

A. One reason is, I never gave instructions.

Q. You were on the Board when instructions were given?

A. Instructions would be given by the managing director through the authority of the Board.

Q. I am going to take one as a sample; January 20th, 1925, page 608, signed by yourself, I think I remember your signature, George G. McC.,
10 Buckingham Apartments: "The manager reported loans in arrears for both interest and principal. Solicitors to collect."

A. The manager signed it; he is the one that would give instructions, not me.

Q. You knew that minute was passed?

A. I presume; the records show that.

Q. Will you tell me why was that money not collected from Mr. Morine on that covenant when he was reputed to be a wealthy man?

A. I don't know.

Q. Have you any satisfactory reason or explanation to give his Lordship;
20 if so, I want it? A. I don't know.

Q. Can you give any? A. I don't know of any.

Q. You were never able to satisfy Martin, Currie, were you?

A. I did not know anything about that at all.

Q. You paid \$75. to your son-in-law to write letters to satisfy them, even drafting of letters, and you could not satisfy them, could you, as to why you did not take proceedings and get the money on that covenant; is not that right? A. I don't know.

Q. Did you never hear of your son-in-law being paid \$75. for drafting letters to Martin, Currie & Co. on that covenant? A. No.

30 Q. Never heard of that? A. No.

Q. Why, you were president at the meeting that authorized the paying of it? A. I know I was president of the Board.

Q. He took \$75. worth of drafting of letters, and then you could not satisfy Martin, Currie, could you? A. I don't know.

Q. Will you give one explanation to his Lordship why Morine was not pressed at any time, either in 1923, 1924 or 1925, for the payment of that principal and interest then in arrear? A. I don't know.

Q. It is mysterious, is it not? A. I don't know.

40 Q. When the man was reputed to be wealthy you did nothing; is not that the duty of the president of a company that has \$50,000. at stake with accrued interest, which at that time had nearly \$70,000. in that property; was not it your duty as president to know why that money was not collected?

A. It was the duty of the manager to give the instructions.

Q. It was not your duty? A. No.

Q. What do you think of the solicitor that was handed that to collect?

HIS LORDSHIP: No, no.

MR. WALSH: I will reserve that.

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Q. When did your association with Mr. Morine begin, looking back over the years? A. I cannot tell you that; I don't know.

HIS LORDSHIP: How long before this loan?

A. Oh, years and years before, a great many years.

MR. WALSH: He was with the Huron and Erie, too, getting loans for the Huron and Erie, was not he? A. So you say; I don't know.

Q. What, knowing Mr. Morine all these years? Your innocence surprises me. A. Hearsay is not anything.

Q. We will take a little hearsay from you; did you ever hear that he brought applications to the Huron and Erie Mortgage Corporation before 10 and at the time of this one in question?

A. The only one I knew of was this first mortgage.

Q. Never heard of any others? A. No.

Q. Did you ever hear of the dispensation of his services by the Huron and Erie?

HIS LORDSHIP: No, no.

SIR ALFRED MORINE: I object to that.

HIS LORDSHIP: It is not evidence here. You might ask Mr. Morine when he is in the box; it has nothing to do with this unless it was before this transaction. 20

MR. WALSH: He says he never heard of it; you never heard of it?

A. I did not say I never heard of it.

Q. When did you hear of it? A. I don't know.

Q. Who was the one that conceived the bright idea of this Durno deal; who was the man that thought this Durno deal out, can you tell me? A. No.

Q. You mentioned the words *bona fide*? A. Yes.

Q. Do you know what those words mean?

A. Just what I said, I thought he was a *bona fide* purchaser.

Q. Do you know what the words *bona fide* mean? A. Good.

Q. Do you want to tell his Lordship that that was a good deal? 30

A. I thought it was a *bona fide* sale.

Q. How did you ever think that? A. I cannot remember now.

Q. It would take a lot of faith to believe that, would not it?

A. Not necessarily.

Q. It has got all the earmarks of a fictitious affair?

HIS LORDSHIP: No, no, you have no right to say that now.

MR. WALSH: I suggest to you, Mr. McCormick, you have bought and sold a lot of real estate, have you not? A. No.

Q. Did you ever sell a piece of real estate?

A. I don't think so; I cannot recall any. 40

Q. Would you be surprised to hear of a man when he sold a place, of paying registration fees to the tune of \$400. on the purchasers' deed?

A. I would not know anything about that.

Q. Did you ever hear of a thing like that in your life?

A. I don't think I ever heard anything about registration of the papers.

Q. Where did Durno come from? A. I don't know.

Q. You had a deal in the London Loan and Savings Company of a mortgage to Mr. Durno before this deal? A. Yes, I think we did.

Q. And at the very time this property was deeded to Durno, at that very date in July, 1925, he was overdue in interest on a small mortgage from the month of February, 1925, and he could not even pay that small amount of mortgage; what do you think of that?

HIS LORDSHIP: Did you know of it? A. I did not know of it.

MR. WALSH: When you wrote to Martin, Currie, were those truthful statements contained in that letter?

10 A. I did not write to Martin, Currie.

Q. You signed a letter as president to Martin, Currie? A. That is true.

Q. And you went over it before you signed it?

A. It was read to the Board.

Q. You and Mr. Brickenden went over that letter? A. No.

Q. Never? A. No.

Q. Did you ever go over it alone? A. No.

Q. Never went over the draft of the letter? A. No.

Q. Did you ever go over any draft of a letter to Martin, Currie?

A. I cannot recall that I did.

20 Q. Did you ever go over any draft of a letter to Martin, Currie?

A. Only as they were presented to the Board.

Q. Mr. Hambly has sworn that two of the letters he wrote that they were not shown to the Board, but they were shown to you and Mr. Brickenden; is he correct? A. I think he is mistaken.

Q. Can you suggest any reason why Mr. Hambly would be mistaken?

A. No, he is a pretty good fellow.

Q. And he is so good he says he showed it to you first; he got all his information of the Durno deal from you and your son-in-law?

A. He did not get it from me.

30 Q. He is mistaken in that? A. Yes.

Q. In that letter that you wrote to Martin, Currie, do you remember this phrase in the letter that was signed by you, you said, "We are indeed glad to have Mr. Durno buy the property"? A. I do not recall it.

HIS LORDSHIP: Show him the letter; he cannot be expected to retain in his memory all the letter.

MR. WALSH: Page 6 of Exhibit 197:

"Mr. R. S. Durno was an independent builder in the City of Toronto who has been constructing properties, and I was quite glad to have him buy this property from us"—is that right? A. I presume it is.

40 Q. Quite glad to have a man buy a property for \$227,500. when he could not pay the interest on a mortgage of \$6,500. and eventually had to be taken over by the second mortgagee; he was a fine man to have buy an apartment house at that price? A. I thought he was all right.

Q. You thought he was all right? A. Yes.

Q. That was your opinion of him. This deal of Durno's, you had a lot to do with it? A. No.

Q. You signed the deed? A. True enough.

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Q. You signed the deed of the property; do you remember that?

A. No, I don't recall signing the deed.

Q. And the Mr. Kent you are talking about; he was sitting right at his residence with a broken leg and he could have signed that deed if he had been in favour of it, could not he? A. If it had been presented to him, perhaps.

Q. You did not present it to him, you presented it to a man named Clewes for signature? A. I cannot recall that detail.

Q. That deed was signed by you and by Clewes as assistant manager?

A. All right.

Q. Why did not you take that up to Mr. Kent and have it signed by him? 10

A. I don't know.

Q. Mr. Kent's letter clearly shows what he thought of this deal, does it not? A. Which letter?

Q. Mr. Kent's letter to the department of October 1st.

A. I never heard of that letter till yesterday.

Q. Do you know that a copy of that very letter was on file with the London Loan and Savings Company?

HIS LORDSHIP: Would Mr. McCormick be familiar with the files? I would hardly have thought so. If he was, he would be rather a model director, I should think. 20

MR. WALSH: In this letter of Mr. Kent's he says, "It only came to my knowledge yesterday afternoon"—as a matter of fact Mr. Kent was not present at the meeting. I see there are certain minutes put in here, a minute of the meeting of September 22nd, 1925, Mr. Kent was absent from that meeting, was not he? A. I don't know; was that the time he was ill?

Q. Yes. The next meeting he was present at was the meeting of September the 29th, the first meeting he was present at for about four months, and he wrote this: "It only came to my knowledge yesterday afternoon that the company released good personal security for the amount of the former mortgages we held in this case of \$21,000. and \$35,000. respectively, and interest, 30 (namely, Mr. and Mrs. Morine), to which releasing I strongly object." (Exhibit 267.)

The next meeting was September the 29th, and the day after we find he writes to the department that he objected to the releasing of that covenant?

A. He never expressed any objection to me.

Q. Mr. Braden has sworn, I think you told Mr. Slaght that you never heard of Mr. Kent expressing any dissent to anybody; is that right—you told Mr. Slaght that you never heard of Mr. Kent making an objection to anybody in connection with the Durno deal?

A. Anybody at the Board; I never heard of him expressing any objection. 40

Q. Any conversation that Mr. Braden had with you?

A. About what? I never had but one or two conversations with Mr. Braden.

Q. Mr. Braden has sworn he had a conversation with you about this very deal? A. I cannot help that.

Q. You heard his evidence? A. I don't remember.

HIS LORDSHIP: He has not contradicted it yet.

MR. WALSH : I want to give him an opportunity if he wishes.

HIS LORDSHIP : You can give him the opportunity if you think it desirable, but if he does not contradict perhaps it is a little stronger.

MR. SLAGHT : It was my fault; I saw it in my notes and I overlooked it.

MR. WALSH : I don't think he will contradict.

MR. SLAGHT : Ask him.

MR. WALSH : You remember having a conversation with Mr. Braden about the Buckingham Apartments ?

A. No, I cannot recall I ever did.

10 Q. You don't know whether you did or not ?

A. I don't think I ever did; the only conversation I ever had with Mr. Braden, Mr. Brickenden was present.

Q. Did you have one that he was not present ?

A. When Mr. Brickenden was not present ?

Q. Yes. A. No; I would not talk to him without my solicitor being present.

HIS LORDSHIP : Mr. Braden said that he had a talk with you in your office in February, 1929; he says, "I told Mr. McCormick that Kent had told me that Buckingham deal with Durno was put through without his consent and behind his back, and that you said you had seen the apartment and that
20 Kent was misinformed, but you did not deny what Kent had said ?

A. I deny that Mr. Braden told me that.

Q. It is what you told Mr. Braden ?

A. I deny telling Mr. Braden that.

HIS LORDSHIP : Very well.

MR. WALSH : You never had any such conversation with Mr. Braden ?

A. No.

Q. Never did ? A. No.

Q. Did you have anything to do with the signing of any cheques in
30 connection with this Durno deal ?

A. I don't think so; I cannot recall signing any.

Q. You took a little personal interest in this ?

A. Very rarely I would sign a cheque unless the manager was away.

Q. Do you recollect signing a cheque ?

HIS LORDSHIP : How can a man from all these transactions ?

A. I recognize my signature here.

MR. WALSH : Do you remember that cheque to the Huron and Erie Mortgage Corporation for \$9,539.95 ? A. No, I do not remember the cheque.

Q. Do you remember when the Durno transaction was first discussed ?

40 A. No.

Q. Do you remember what took place at the first Board meeting when it came up ? A. I cannot recall that.

Q. Can you tell me anything at all about this Durno deal ?

A. Nothing more than I have already told you.

Q. Tell me now shortly all you know about this Durno deal ?

A. I cannot recall anything more than I have already told you.

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Q. You knew that Mr. Morine collected all the rents of the apartments after this Durno deal? A. No, I do not know it.

Q. Never knew that? A. No.

Q. You knew that Mr. Morine sent in the first payment of interest that was due? A. I do not doubt it.

Q. Why was Mr. Morine sending in the first payment of interest that was due? A. I do not doubt it.

Q. Why was Mr. Morine sending in the first payment of interest that was due? A. I don't know.

HIS LORDSHIP: How would he know? 10

MR. WALSH: Would not Mr. Morine, sending in the cheque for the first six months' interest due on the Durno mortgage, indicate to you that he was the man behind the purchase of that property, and the real purchaser of it?

A. Not necessarily so.

Q. It would be some indication to your mind, would it not? A. No.

HIS LORDSHIP: That might be a very good argument to address to the Court.

MR. WALSH: All right, your Lordship.

Q. The acceptance of the Durno offer; where was it accepted, in Toronto, was it not? A. I don't know. 20

Q. Was Mr. Morine up when the matter came formally before the Board of Directors? A. I cannot recall that.

Q. Was Mr. Morine up? A. I don't know.

Q. Do you recall him being up? A. No, I do not recollect it.

Q. Do you recollect any discussion at all? A. When would that be?

Q. In 1925, in June? A. I would not be there at all in June.

Q. In July?

A. I would not be there in July unless Board meetings during all the summer months.

Q. Would it surprise you to know that you were at the meeting in June when the matter came up? 30

A. I was at nearly every Board meeting, but I used to drive up from my country home purposely and immediately go back after the meeting.

Q. After coming up from your country home to the meeting, do you recollect Mr. Morine being at that meeting? A. I cannot recall it.

Q. I think you told Mr. Slaght there was some deed from Durno in trust; when did you first hear about that?

A. I presume it would be about the time the deed was given to the Consolidated Trusts.

Q. Is that right? A. When the deed was given to the Trust by Durno. 40

Q. Do you know there is nothing in that deed to show what the trust was? A. I did not read over the deed.

Q. There is not one paper that can be found in any way relating to the trust? A. I would not know anything about it.

Q. Why would not you? A. Because I did not look into those details.

Q. Who was looking into it?

A. The different managers, the managing directors.

- Q. You heard Mr. Hambly state that he has never been able to find any record of any trust and never knew it?
- A. I would not know anything about that.
- Q. You never heard of any trust agreement saying for whom the Consolidated Trusts Corporation held the property in trust, did you?
- A. I cannot recall anything about it in that respect.
- Q. Know nothing about it?
- A. I knew the deed was given to the Consolidated Trusts in trust.
- Q. You do not know who it was in trust for? A. I don't know.
- 10 Q. We have not heard anybody yet that knows; after three and a half days we have not had anybody to tell us who the Consolidated Trusts held that property in trust for; can you tell his Lordship?
- A. You tried for four days to get it out of me and I could not tell you.
- Q. And that is a pretty good man to ask, the president of both companies, to know who it was in trust for, was it not?
- MR. SLAGHT: Mr. Hambly told me who it was held for, that the returns were all made to the other company by them.
- HIS LORDSHIP: No, Mr. Hambly said he could not find any record showing what the trust was. This witness or Mr. Hambly, I don't recall
20 which, said that it was to enable them to collect the rents and to sell if an opportune offer came along.
- MR. SLAGHT: Mr. Hambly said he could not get any record of it; my learned friend says nobody knows.
- MR. WALSH: Mr. Hambly was asked that.
- HIS LORDSHIP: He said there was no record.
- MR. WALSH: And he did not know. The Consolidated Trusts sent rents over to the London Loan, and they were credited on account of the mortgage according to Mr. Hambly; was that your understanding?
- A. I don't know anything about that.
- 30 Q. Mr. Hambly has sworn that this Durno mortgage was treated as a mortgage for \$77,000., and he applied it on account of the mortgage?
- A. You have his evidence.
- Q. Do you wish to contradict him?
- A. No; why would I contradict it? I don't know anything about it.
- Q. Am I to take it that you intended to give Martin, Currie & Co. a true version of these Buckingham Apartments in the correspondence? That when letters were written to Martin, Currie in reply to their demands of why Mr. Morine was released from his covenant, and about the ownership of the property, that you were giving them a true statement of the facts?
- 40 A. I did not prepare the answers, so I cannot tell you.
- Q. You signed it? A. Yes.
- Q. You want to stand by that letter?
- HIS LORDSHIP: Was that letter written by Mr. Hambly?
- MR. WALSH: No, my Lord; that was included in the seventy-five dollars.
- HIS LORDSHIP: Was it after Mr. Hambly was in the company?
- MR. SINGER: Yes; July 5th, 1926.
- HIS LORDSHIP: Of course Mr. Hambly did not know anything about

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the Durno transaction except what he got from you and the other officials?

A. The only thing I instructed Mr. Hambly would be that he might prepare the letter with the assistance of Mr. Brickenden from the records and the books.

Q. It was not from the records; there are a whole lot of things outside the records? A. I knew very little about it.

Q. Mr. Hambly would have no personal knowledge except what he gathered from some other source? A. They prepared the letter.

MR. WALSH: In every letter that went to Martin, Currie from the London Loan Co. they led Martin, Currie & Co. to believe that that mortgage was a subsisting mortgage right down to the end; didn't you know that? 10

A. I cannot recall it.

Q. And they got impatient at the end, and in May 28th, 1928, in their letter—

HIS LORDSHIP: That may be all right to point out, but this man and his letters, he must be judged from his own acts, not by what somebody else took from them; it is for the Court to say what the fair construction is to put upon those letters.

MR. WALSH: I will leave it that way; I can give you references, I have looked it up to ask Mr. McCormick, and in each case he refers to it being still a mortgage. 20

HIS LORDSHIP: The letters are there and speak for themselves.

MR. WALSH: Do you know that in every one of these letters there is not one word about the Consolidated Trusts Co. holding this property in trust for the London Loan or anybody else? A. I don't know it.

Q. Can you suggest any reason to his Lordship why people that were interested to the extent of half a million dollars in your company were not told that there was a conveyance from Durno to the Consolidated Trusts for some undisclosed person, can you tell me why that was not put in the correspondence? A. No. 30

Q. Why was not the real truth told to these people that had a large interest in your company? A. I think it was told.

Q. You thought the truth was told? A. Yes.

Q. Do you know if Durno ever collected the rents of this property?

A. I don't know.

Q. Mr. Durno never collected rents in his life, did he? A. I don't know.

Q. Do you know the date or did you ever hear of the date that Mr. Durno left for the south? A. No; I don't know the date.

Q. Never heard; would you be surprised to know he never went out to see the property? A. I don't know anything about it. 40

Q. Do you remember you got a valuation from Mr. Lonsdale eventually in a hope to satisfy the department of insurance; do you remember that?

A. I think so.

Q. And Mr. Lonsdale's valuation, am I not right in this, did not satisfy the Department of Insurance for the Province of Ontario?

A. I did not know that.

Q. What? A. I did not know that.

Q. If I produce a letter to you, would you doubt it?

A. I do not dispute it; I don't know it.

Q. I can show you from a letter that they would not take it?

MR. SLAGHT: I think it is my duty to ask my friend to let me interrupt him and let me point out a mis-statement that he reiterated two or three times to the witness which is not correct; the statement of my friend was to the effect that throughout the correspondence to Martin, Currie they never disclosed at all that there had been a deed to the Consolidated Trusts, and always treated as a mortgage, whereas in Exhibit 254 there is this stated in the letter
10 of October 13th, 1925: "In order to secure payment by Mr. Durno to the London Loan and Savings Co. we insisted upon a deed to the Consolidated Trusts to be held in trust so that Mr. Durno could not sell this property to anyone without our knowledge and consent."

HIS LORDSHIP: Yes, that is a correction.

MR. SLAGHT: My learned friend had better withdraw that.

MR. WALSH: No. Why did not you put in that letter who he held it in trust for? A. I don't know.

Q. Tell Mr. Slaght and myself now why did not you put in that letter whom the Consolidated Trusts held it for? A. I did not prepare the letter.

20 MR. SLAGHT: That was written by Mr. Kent.

MR. WALSH: And do you remember, here is a letter I am sure when I show it to you you will know it.

HIS LORDSHIP: Is that the original?

MR. WALSH: Yes, original letter dated Feb. 3rd, 1925, from Mr. Foster, Registrar of Loan Corporations, to Mr. George W. McCormick, 298 Dufferin Street, London, Ontario, which I take it is you? A. Yes.

Q. In this letter it refers "I personally or through the Chief Inspector of the Department, inspected a sufficient number of properties upon which your company hold mortgage loans in Toronto to confirm my original view
30 that an independent valuation of the properties mentioned in my letter of the 15th October, 1924, will be necessary. It will be remembered that it was understood during the course of your interview with the Minister that if I was not satisfied with the valuations submitted by the company you would consent to an independent valuation at a cost not to exceed \$500. As I am not satisfied with the valuation submitted I would ask you to implement your verbal agreement." Do you remember that?

A. I do not remember the letter.

Q. Do you remember that Mr. Lonsdale's valuation was obtained and sent purposely for the department in the fall of 1924—and they were not
40 satisfied with Mr. Lonsdale's valuation, were they?

A. I don't remember now.

Q. Looking at that letter, does it not refresh your memory to the extent of showing you that they were not satisfied?

A. No; that letter would be handed over to our managing director; I would not deal with it.

HIS LORDSHIP: Apparently from that letter you had a personal interview with the Minister or somebody; is that right? A. I may have, your Lordship.

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Q. Don't you remember? A. I should think that would be me.

Q. "As I told you in the interview——"

MR. WALSH: "It will be remembered that it was understood during the course of your interview with the Minister," it even got into the Attorney-General's hands by that time?

A. I cannot dispute it; but I cannot just recall it.

Q. As a matter of fact, when it got so serious that it got to the Minister's hands, the Attorney-General of this Province was more concerned with the London Loan than its own President; is not that right? Mr. McCormick, you deny Mr. Braden's evidence in toto, don't you? A. I did not say so. 10

Q. You had no such interview as he says?

A. I did not have that one interview his Lordship spoke of.

Q. Never had that interview with him?

A. That was not said in the interview.

Q. You are putting the responsibility on Mr. Kent's shoulders as far as that responsibility can be lifted from your own?

A. That is where the responsibility belonged mostly.

Q. If the responsibility can be taken off your own shoulders, that is the place you are wanting to put it on Mr. Kent?

A. I am not wanting to place it anywhere where it does not belong. 20

Q. And Mr. Kent is not in a position to give evidence and that is very convenient spot to put it, is it not?

A. I did not make it as a matter of convenience.

Q. May I tell you, is it not right that you did everything to obtain control of the London Loan and Savings Co. so that the real light could not be shed upon the affairs of that company? A. No.

Q. Do you remember in 1929? A. Yes.

Q. Those were the fateful days in your history, is not that right?

A. You are saying so.

Q. And they were fateful days in Mr. Brickenden's history; is not that right? A. You are saying it. 30

Q. And the Consolidated Trusts that Mr. Singer has been greatly interested in, and your own counsel, Mr. Slaght, held 1,331 shares that you considered to be of the most vital importance in that fight for control?

A. I don't know.

Q. Come on now, in the meeting of February, 1929, when you had 1331 shares of the Consolidated Trusts, that was a vital factor in who was to be in control of the London Loan, was it not?

MR. SLAGHT: Perhaps you will correct your statement that I am interested in the Consolidated Trusts; I have no interest. 40

MR. WALSH: I am going to submit to his Lordship this is a very proper subject for cross-examination; you were vitally interested in the control at that time.

HIS LORDSHIP: Mr. Slaght is not interested in this action. Mr. Slaght in his cross-examination though brought out something about the Consolidated Trusts.

MR. SLAGHT: If my friend means in that way; I thought he was stating I had an interest in the Consolidated Trusts.

HIS LORDSHIP: Why not, that was not my understanding; as counsel in this case—

MR. SLAGHT: Oh.

MR. WALSH: I would not in the world suggest it.

Q. Those 1,331 shares on the vote in February 5th, 1929, were of tremendous importance to you? A. They were of some importance.

Q. And you produced a proxy at that meeting of February 5th, 1929, and wanted to vote on those shares, didn't you? A. Yes.

Q. And if that vote had been on a legal proxy and had been a valid one, you would have been sitting there today, would not you?

A. It was a legal proxy.

Q. You would have been sitting in the saddle today, and his Lordship would not have been hearing this case?

—Mr. Slaght objects.

HIS LORDSHIP: That is an inference.

MR. SLAGHT: Is it relevant?

HIS LORDSHIP: I think perhaps it is to show the credit of the witness.

MR. WALSH: Do you see that proxy? A. Yes.

Q. Who prepared that proxy?

A. I suppose it was prepared in the office; I did not prepare it.

Q. Prepared by your son-in-law, was it not, on February 2nd, 1929?

A. I could not swear to that.

Q. Signed by whom? A. Signed by me as President of the company.

Q. The seal of the company put on it? A. Yes.

Q. The seal was put on that document, was it? A. Yes.

Q. And by whom? A. I cannot recall that.

Q. Just show it to his Lordship; tell his Lordship what document you took off that seal and pasted it on there; tell me what document that seal was taken off? A. It was not taken off any document.

Q. Do you remember that being shown to Mr. Justice Orde, and he took it the way his Lordship did, and he looked at the back, and there is no impression goes through that paper whatever?

A. That was quite a common occurrence.

Q. What did Mr. Justice Orde say about that?

HIS LORDSHIP: No.

MR. WALSH: It was sworn and never denied by you; it was sworn in affidavits before Mr. Justice Orde and never denied by you that you had no right whatever to sign any document; you had not the custody of the seal at that time, and at that very hour there had been passed a resolution of the Board of Directors of the Consolidated Trusts that there was to be no voting on those particular shares; is not that right? A. I had no chance to deny it.

Q. You had competent counsel?

A. Had no counsel present on that occasion.

Q. A good one, too? A. I had no counsel present on that occasion.

Q. You had no lawyers? A. We had no notice of the appearance.

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—continued.

Q. Just taken right off your feet?

A. It was done in our absence entirely.

Q. I am told Mr. Hamilton Cassels was down there fighting bravely against heavy odds of that proxy?

A. That proxy was perfectly legitimate as far as I was concerned.

Q. You knew there was a minute of the Consolidated Trusts Company you were not to use that proxy?

A. No. There were minutes one year that I was to have the proxy.

HIS LORDSHIP: I think it has gone far enough; it is entirely collateral. I allow it with regard to the credit of the witness, but further than that—? 10

A. It was quite a common occurrence to attach these seals in that way.

HIS LORDSHIP: I must say in my short life I have never known it to be done in that way.

A. I think I can produce some.

MR. WALSH: You could not satisfy Mr. Justice Orde?

A. I had not any chance to satisfy him; I was not there, I was not represented.

Q. Your son-in-law was down?

HIS LORDSHIP: Do not pursue that.

MR. WALSH: I want you to help me if you can in this; once again you 20 got an assignment of the first mortgage of \$135,000; Mr. Hambly, your manager, wrote to the Old Country and has sworn before his Lordship that that was for the direct object and purpose of getting Mr. Morine back on that covenant; Mr. Hambly has sworn that to his Lordship in the witness box this morning; will you tell his Lordship why—that letter was shown to you—will you tell me why the London Loan and Savings Co. and their solicitors did not go after Mr. Morine on that first mortgage covenant?

A. I don't know why.

Q. Can you give me an explanation? A. I don't know why.

Q. Can you give me any explanation? 30

A. I cannot recall anything, I don't know why.

Q. You could not satisfy Martin, Currie why?

HIS LORDSHIP: Never mind Martin, Currie; the question is to satisfy this Court.

MR. WALSH: Can you give me any explanation, once again? A. No.

Q. If we stayed for a week you could not give any explanation?

A. I think I would get more muddled than ever.

Q. Do you remember Mr. Morine being at any Board meeting? A. Yes.

Q. Do you remember him at some Board meeting where it was suggested about a sale of the property, was it not? A. Yes. 40

Q. 40 and 60? A. Yes.

Q. There is not a minute on the book about that?

A. So you say; I don't know.

Q. There is not a minute on the book about that?

HIS LORDSHIP: From memory he cannot recall.

MR. WALSH: All you can say, there was discussion? A. Yes.

Q. Nothing more than discussion; that was all?

A. There was a discussion.

Q. Just one other thing; did you ever hear of your son-in-law getting either a large legal fee or a commission on loans of the London Loan and Savings Co.? A. No.

Q. When did you hear that first, in this very Court room, did you, or did you not?

A. I think I heard something this morning about some fees Mr. Morine paid him.

Q. You were in this very Court room and you heard in the case of the
10 London Loan vs. Biggs where your own son-in-law got \$500. for obtaining a mortgage for \$13,500 from the London Loan and Savings Co., which has become a total wreck; you heard that evidence, didn't you?

A. I don't know that I did.

HIS LORDSHIP: No, no, that is going too far.

MR. WALSH: May I examine Mr. Brickenden perhaps on that?

HIS LORDSHIP: Well, I know, but it is not proper here to ask did you hear so and so swear.

MR. WALSH: It was found as a fact—

HIS LORDSHIP: It does not make a particle of difference. I am not trying
20 that case. You ask a witness if he heard something sworn to, and he had no chance to deny it—

MR. WALSH: Before the Durno deal was put through, do you remember being warned, that is the President of the London Loan and Savings Co. being warned by the auditors just about these transactions; do you remember the warning your own auditors in October 6th, 1924, when Mr. Morine was mortgagor and guarantor on both those mortgages, and before the Durno deal, do you remember that letter to the President and Directors of the London Loan and Savings Company from William C. Benson dated the 6th October, 1924? A. I cannot recall it, no.

30 Q. Would you just read it?

HIS LORDSHIP: Who is it addressed to?

A. To the President and Directors of the London Loan and Savings Co.

Q. That would come before you?

A. It would come before the Board, your Lordship.

MR. WALSH: May I just read that?

A. Yes, I do remember something about it.

EXHIBIT No. 279: Letter October 6th, 1924, from Wm. C. Benson to the President and Directors of the London Loan and Savings Co.

Q. That was a warning in connection with loans, Toronto loans of a
40 speculative character, quite a large amount, was it not?

A. Does it say Toronto loans?

Q. Do you want me to read it?

A. I don't remember what it said. Is there any endorsation on it?

Q. No, I do not see any endorsation on it. I see a letter here from Oscar Hudson & Company (letter heading) signed William C. Benson, to G. G. McCormick, President London Loan and Savings Co., on the 20th July, 1925; did you get that? A. I presume I did.

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Q. "We note with regret that a new loan of \$70,000. has just recently been put through,"—the auditors even were dissatisfied.

EXHIBIT No. 280: Letter from Wm. C. Benson to G. G. McCormick, President, London Loan and Savings Co., dated the 20th July, 1925.

Q. Here is the protest of the auditor of the 6th October, 1925, to put himself on record—did you receive that? A. I cannot recall it.

Q. Read it over and see if you can recall it?

HIS LORDSHIP: Have you any doubt you did get it?

A. I would not dispute it.

EXHIBIT No. 281: Letter from Wm. C. Benson to the President and Board of Directors of the London Loan and Savings Co., dated October 6th, 1925. 10

Q. Do you remember a lawyer by the name of Mr. J. J. Maclellan?

A. I never met and never saw him until the day before yesterday.

Q. He says that on April 21st, 1925, he phoned you?

A. He said he telephoned me.

Q. You heard his evidence? A. I heard most of it.

Q. Was that correct, what he swore to, to his Lordship?

A. I could not hear it all.

Q. He says he phoned you about this matter? A. I do not dispute that. 20

Q. He said you refused to discuss the matter with him; he also asked for a personal interview with you and you refused it?

A. Yes, certainly I would.

HIS LORDSHIP: You remember that?

A. Yes; I would not give anybody a personal interview; I would tell him they must come to the Board through the manager.

MR. WALSH: You heard his evidence he was referred to you, Mr. Kent sent him to you? A. I don't think Mr. Kent would send him to me.

Q. Can you give me one reason why the London Loan turned down the excellent offer of Mr. Maclellan that he would pay the \$20,000., your last mortgage, and the arrears on your first; why did you turn that down? 30

A. I do not remember the details of it.

Q. Why did you turn it down?

A. I cannot tell you; probably we hoped he would pay off the whole mortgage.

Q. Did he offer to pay? A. I don't know.

Q. Were you willing to take the \$20,000. without the other?

A. We were willing to take our claim.

Q. The whole thing? A. Yes.

Q. Not willing to take \$20,000. only? A. I cannot recall that. 40

Q. Mr. Maclellan has sworn you were not, and he says he got the letter you would not take it; you would take nothing but the whole claim; was that right? A. I presume so; I don't know.

Q. Will you tell me why you took the absolutely opposite position with Martin, Currie; when you wrote Martin, Currie you said that Mr. Maclellan had the opportunity to pay the \$20,000. mortgage and would not do it; why did you tell that in that letter you signed? A. I don't know.

MR. SINGER: I don't think that statement is correct, that they had the opportunity to pay the \$20,000.; I think the statement is they had the opportunity to pay off the whole mortgage.

HIS LORDSHIP: Don't make any statements that are not in accordance with the documents.

MR. WALSH: Here is the letter of October 13th, 1925: "I am assured by our solicitors that proper notices were served on all the interested parties, and Mr. Maclennan must have had full knowledge of these facts because he called on me and asked us to delay proceedings, but did not offer to assume our mortgages, and step into our legal position, which he could have done by the payment of approximately \$20,000. at that time." I won't ask for an apology from them; it is there.

Why were Martin, Currie told a diametrically opposite thing from what Mr. J. J. Maclennan was told? A. I don't know.

Q. A few words of the Riddle, Stead and Graham report; do you remember saying it was a fair report, and they acted honestly—do you remember that statement you made in your letter?

A. I may have made it, but I cannot recall the statement.

HIS LORDSHIP: Is the report in?

MR. WALSH: Yes, 197-A. (Page 5):

"R. S. Durno (D. 42) \$77,000.: The security for this loan is the Buckingham Apartments. We obtained the history of the transaction from Mr. McCormick, the President of the company, Mr. Brickenden, the company's solicitor, from Mr. Morine, who introduced the loan, and from the correspondence and documents on file."

MR. SINGER: I object to this as being evidence against Mr. Morine. My learned friend has a method of introducing first-hand evidence.

HIS LORDSHIP: It is only evidence at the moment—Mr. McCormick apparently said in the letter he wrote a fair report, and now he is being asked to confirm that, and if he gave it, and if it affected your client you have a right to examine.

MR. SINGER: I am dealing with reports made by Riddell, Stead and Graham; I submit this is not the proper method.

HIS LORDSHIP: It is not evidence against Mr. McCormick, or Mr. McCormick could not give any evidence now by admission that that document is correct to make it evidence against Mr. Morine; you are quite right.

MR. WALSH: He gave the sources from which he got it, and one is yourself and Mr. Brickenden and Mr. Morine; you notice Mr. Kent is not in it:

"Mr. Samuel B. Green, of Toronto, a well-known contractor, was engaged in building the Buckingham Apartments. He went to Mr. H. A. Morine, of Toronto, a financial agent, to arrange his building loans, and out of which Mr. Morine was to be paid a commission. Morine secured an advance of \$150,000. from the Huron and Erie Mortgage Corporation on a first mortgage dated the 7th February, 1923, but the Mortgage Company insisted that Mr. Morine's name be on the covenant. It was then arranged that Mr. Morine should receive one-half interest in the property for

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“\$35,000., which he says he paid to Mr. Green without receiving any security. On 13th February, 1923, Morine arranged a second mortgage loan of \$35,000. from the London Loan and Savings Company. In May, 1923, a further advance of \$21,000. was obtained. Shortly afterwards Morine discovered that a large number of construction accounts were unpaid and which Mr. Green could not discharge. It was then agreed that Green should release his interest in the property to Morine, who would pay the outstanding bills. Mr. Morine states that he advanced about \$50,000. for this purpose, making his personal investment \$85,000. He then interested W. L. Renton in the property and agreed to give him one-half interest for an advance of \$46,000., but on condition that Morine’s name should not be on the covenant. Morine thereupon conveyed the property to his son-in-law, Mr. Dyas, who gave the mortgage to Mr. Renton. Mr. Morine says he applied some of the money received from Renton in payment of the remaining bills for construction, leaving his net investment in the property, exclusive of interest, at \$48,000. This building was completed in the autumn of 1923, but difficulty was found in obtaining tenants at the rentals required. The first and second mortgages fell into arrears and Morine came to the conclusion that there was no equity in the property. When sale proceedings were instituted early in 1925, Morine decided not to bid for it. The sale was fixed for the 25th of April, 1925; but on application to the Court by the Renton interests, it was postponed for one month. It was held on the 23rd May, 1925, when no bids were received. Subsequently it was sold by private sale to R. S. Durno of Toronto, a contractor, the consideration being the assumption of the Huron and Erie mortgage for \$147,000, the London Loan and Savings Co. mortgage for \$77,000., and payment of \$3,500. in cash, a total of \$227,500. The cash was used to pay the costs of the transaction and some arrears of interest on the Huron and Erie loan to 1st June, 1925. A conveyance to the Consolidated Trusts Corporation was made to prevent Durno dealing with the property without the consent of the Loan Company. The charges which increased the company’s mortgage to \$77,000. are shown in the following summary.”

1923.			
G. 41.	23rd March	Cash Advance	\$35,000.00
1925.			
	28th May	Paid Principal, Huron and Erie	3,000.00
		Paid Interest, Huron and Erie, to 7th February, 1925	6,961.63
	1st June	Interest to date, London Loan Company capitalized	3,600.37
		Paid Mechanics’ Liens	4,194.00
			\$52,756.00

	1923.				
G. 42.	22nd May	Cash Advance.....	\$20,000.00		
	29th Dec.	Cash Advance.....	1,000.00		
	1925.				
	1st June	Interest to date, capitalized.....	3,299.72		
				24,299.72	
				\$77,055.72	
				55.72	
				\$77,000.00	

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10 “There appears to be no explanation why the Company should have
“sacrificed the personal covenant of Morine, who is reputed to be a
“wealthy man. Renton’s actions appear to have been very ill advised.
“The sale to Durno, while the consideration was little more than the
“assumption of the mortgages, nevertheless takes the property
“off the Company’s hands and provides some one to look after it.
“We asked Mr. Morine if he had now any interest in the property
“and he replied that he had none. His son-in-law, Mr. Dyas, is,
“however, collecting the rents for Durno.

20 “This also was a building loan subject to a very large first
“mortgage. The money was advanced before the building was com-
“pleted, suggesting lack of supervision, as in the previous instances.
“There has been a shrinkage in value, due to the fact that the revenues
“from the property are not proportionate to the cost. It may yet
“be early to form an opinion as to how the investment will turn out,
“but it is possible that the property is not now worth \$227,500., the
“price paid by Durno, and which is only slightly in excess of the
“total mortgage principal outstanding.”

Was that a fair and a just summary of that?

A. Does he say I told him those things?

30 Q. He says he got this from George G. McCormick, the President; Mr.
Brickenden, the company’s solicitor; and from Mr. Morine; can you suggest
to his Lordship any better three people to go to in that deal than those three?

A. He did not get his information from me; he had the books at his dis-
posal, and that is the whole thing.

Q. Am I right in this: I read that report to the meeting, and in 1927
you were sustained; you elected Mr. Hunt and you elected Mr. Robinson on
the Board as two of your nominees, didn’t you? A. I cannot recall.

40 Q. And after the reading of that report, when the next fight came around
they too were against you, were not they; is not that right? Even your friend
Thomas Baker followed afar off, he was wobbling between the two of you;
was not that the truth of it?

HIS LORDSHIP: No, no, I am not concerned in the quarrels between the
stockholders of this company.

MR. SLAGHT: The learned counsel will be repeating to the Court his
speech on that occasion.

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MR. WALSH : They never knew the truth; Mr. Hunt and Mr. Robinson never understood this until they heard the facts in that report, did they?

A. I think they did.

Q. Did you understand it? A. I presume that letter was read.

Q. Did you understand this whole deal at the time?

A. I do not recollect it at all, that part of it.

Q. You have heard that report read; is there anything you would like to say on it that is not contained there, or if I have said anything that is not fair to you I want you now to be given the opportunity to correct it, for I would not do you an injustice; now is your chance; if there is anything, give us it. 10

A. I would like to speak to my counsel first before I answer the question; might I speak to Mr. Slaght?

HIS LORDSHIP : It is hardly proper to consult as to the answer you should give.

A. I was not going to consult as to the answer I should give.

Q. Then you don't need to; answer the question if you are able to answer it? A. I am not used to Court proceedings; I hardly know what position to follow.

Q. It is not an entirely novel situation to you? A. It is to me. 20

Q. Oh, well, Mr. Slaght will develop anything that you may wish to say in explanation; I am sure he won't miss anything.

MR. WALSH : If you look over this offer to purchase?

A. I don't think I would understand it.

Q. You don't know whose writing that is?

HIS LORDSHIP : That memorandum on the outside.

MR. WALSH : That is Mr. Crowley's; do you know?

A. I would say that is Mr. Kent's writing.

Q. I am told it is Mr. Crowley's? A. I think it is Mr. Kent's writing; I would say it is Mr. Kent's writing. 30

Q. How do you know? A. It looks like it.

Q. It does not appear——? A. It is my signature.

Q. Are you sure of anything else but your own?

A. I think it is Mr. Kent's writing.

Q. Do you know the very date of that Board meeting he was not at it; look again? A. I don't know anything about it.

Q. Mr. Kent was absent?

A. That might be, but he may have made this endorsement at his house.

Q. Was there any suggestion that you went to the house with that offer to Mr. Kent; do you want to suggest you did? 40

A. I said awhile ago that all the business matters went to his house.

Q. Did you take that to his house? A. I did not take it anywhere.

Q. Do you know of a soul that did take it?

A. I presume it was taken to his house.

Q. How do you know?

A. Any business matters were taken to his house and submitted.

Q. Did you take the deed to his house? A. Somebody did.

- Q. It never was taken to his house at all? A. I don't know.
 Q. The \$3,500.; you never saw any of Mr. Durno's \$3,500., did you?
 A. I never saw it.
 Q. You never heard of anybody that saw that \$3,500.?
 A. I don't recall it at all.

RE-EXAMINED by Mr. Slaght :

Q. You were asked as to some parts of the Riddell report as to whether you agreed or disagreed with it; did you agree with the portion of the report where they said that it was at that time too early to form an opinion as to whether or not the security would be sufficient?

A. Let me understand that question again.

Q. My friend was asking you whether you agreed with the Riddell report which he read over to you rather rapidly, and whether or not you agreed with all portions of it, but in part of it which he read quite rapidly it stated in effect that it was too early yet to form an opinion as to whether or not the security would be sufficient; do you agree, or do you not agree, that that was a proper statement at that date to make?

A. I did not agree with the report.

Q. Perhaps you do not quite catch what I mean; my friend asked you a number of times as to why not sue Mr. Morine on the covenant instead of taking power of sale proceedings, as was done, and selling the property to somebody else and taking a deed back to the Trust Company; let me ask you, do you know of any case where your company sued the mortgagors on the covenant and foreclosed, or did they practically always attempt to force securities by way of power of sale proceedings?

MR. WALSH: I object to that question.

HIS LORDSHIP: I am going to allow it; go on. It is already in evidence.

MR. SLAGHT: I think so.

HIS LORDSHIP: That is the practice they followed; Mr. Hambly said that.

MR. SLAGHT: As a matter of fact, the witness said as far as he knows, in every case he did.

A. Power of sale proceedings.

MR. SINGER: Mr. Braden I think——

MR. SLAGHT: You say by way of power of sale proceedings? A. Yes.

Q. Do you recall any instance where the other course was followed; it is suggested you were doing an unusual thing?

HIS LORDSHIP: Taking power of sale proceedings, and they did not realize enough on the sale they could still fall back on the covenant.

MR. SLAGHT: Do you know of any case where any course was taken where suit on the covenant was taken——

MR. WALSH: I want to be fair on this thing; I have been informed that the London Loan has often sued on covenants.

HIS LORDSHIP: The writs will be right down in Mr. Weld's office.

MR. WALSH: We can have a search.

MR. SLAGHT: This is a poor time to say that. Mr. Braden two days ago said he knew of none; you had better back it up.

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—continued.

MR. WALSH : We will go down and make a search. Mr. Braden has issued several through me.

HIS LORDSHIP : That is subsequent; it is about this time and prior to it.

MR. SLAGHT : Mr. Walsh was putting a number of questions to you with reference to Mr. Kent's knowledge of the Durno transaction and whether or not Mr. Kent told the truth if he did write that letter of October 1st stating that he only learned of it the day before; my friend did not call your attention to Mr. Kent's letter, Exhibit 88, of September 1st where he writes to the Consolidated Trusts *re* Buckingham Apartments, and says: I have got back to business and would be glad to know the position of this property. 10
As manager of the Trusts Corporation you are collecting the rents, and if so, what balance have you in hand and when will you make returns? Have you a deed of the property for the purpose of handling the revenues? We have an inquiry from Scotland for particulars."

MR. GRAY : My friend is inadvertently in error; the letter is dated October the 1st; the date on the copy from which he is reading is badly blurred, and it might be either, but the original is available and shows the date to be October the first.

MR. SLAGHT : I thought this was September the 1st.

Q. I wonder if you are able to express an opinion as to whose writing 20
this is; it is on the back of a letter of September the 15th to the London Loan, and it is a memorandum there—if you are not able do not guess at it, but if you think you can, I wish you would tell me?

A. I could not swear to it; it is very similar to Mr. Kent's writing.

HIS LORDSHIP : Is it in pencil?

MR. SLAGHT : Yes.

HIS LORDSHIP : It has not the same characteristics as pen.

A. His endorsements were nearly always in pencil.

HIS LORDSHIP : We will resume this case on Thursday next at 10 o'clock.

—This case was adjourned until Thursday, December 17th, 1931, 30
at 10 a.m.

—At 10 a.m., December 17th, 1931.

—N. W. ROWELL, K.C., appeared with Mr. Betts for the Consolidated Trusts Corporation.

HIS LORDSHIP : You are appearing with Mr. Betts, Mr. Rowell?

MR. N. W. ROWELL : Yes, my Lord.

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Defence.
No. 26.
Herbert
Milton
Deeth,
Examination
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ber, 1931.

HERBERT MILTON DEETH, Sworn. Examined by Mr. Slaught :

Q. You live in Toronto? A. Yes.

Q. And by occupation I believe you are a builder and contractor? A. Yes.

Q. And have had some thirty-odd years' experience in Toronto in that 40
sort of work? A. Yes, sir.

Q. Have you had to do with houses and apartment houses and stores and buildings of various kinds?

A. I have built about two thousand houses or better, seven or eight apartment houses, some stores and general work.

Q. Duplexes? A. Yes; all sorts of.

Q. Any factory buildings? A. Yes.

Q. Amongst the apartment houses that you have built, I understand were the Ernestcliffe Apartments on Sherbourne Street, that is an apartment with about a hundred suites? A. Yes, sir.

Q. Also the Wellsboro Apartment with some sixty-five suites?

A. Yes, that was on Jarvis St.; I built and owned that, my brothers and myself.

Q. Those two buildings, I understand, were what is known as the semi-
10 fireproof type?

A. Fireproof halls and semi-fireproof in the other parts.

Q. In 1923 did you have plans prepared for an apartment house structure then?

A. Yes, I had a plan of a ten story block, one quarter part of the Ernestcliffe prepared, and had tenders taken on it, and they were pretty high and involved a lot of money, something over six hundred thousand dollars.

HIS LORDSHIP: In 1923?

A. Yes, your Lordship. Then we cut the plan down and made it as compact as we could to a seven story building and we took tenders on that
20 again.

MR. SLAGHT: In 1923 what would you say building costs were in Toronto as compared with 1914? A. Fully sixty per cent higher.

Q. In 1923 as against the cost in 1914? A. Yes.

Q. Do you recall in connection with the property where you had your plans and took your tenders on ten and seven story building, did that go forward? A. No, it did not go forward.

Q. Can you tell us at what rate per cubic foot these tenders—

HIS LORDSHIP: No, that won't do. That is no evidence of the cost.

MR. SLAGHT: Do not answer this: Having regard to the cost which
30 your tenders disclosed to you, how would that work out, from that cost how would that work out on a cubic foot basis?

HIS LORDSHIP: That would be only secondary evidence of what somebody else figured; we do not know what profits they had or anything else. It would not be evidence except that you received tenders for so much; it would not be evidence of what building prices were. If the man actually did the figuring himself it would be a different thing.

MR. SLAGHT: Did you do figuring yourself as to probable cost of this building?

A. I employed an architect and we worked together, but he took the
40 tenders and we discussed it pretty thoroughly, we knew where we were at.

Q. Did you put your own mind to it?

A. No; it is intricate to figure a building that way; the trades are more or less experts; experts have to figure it.

MR. SLAGHT: I still think that is permissible.

HIS LORDSHIP: What would it be evidence of?

MR. SLAGHT: It would be evidence of an actual *bona fide* effort to construct.

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HIS LORDSHIP : I don't know whether it is *bona fide* or not, and how much profit or anything else. Surely it would not be evidence.

MR. SLAGHT : Did you examine the Buckingham Apartments on Monday last ? A. Yes.

Q. For the purpose of preparing an estimate of the cost for the erection of those apartments in the year 1923 ? A. Yes, sir.

Q. About how long did you spend examining the premises and what did you do ?

A. I spent the morning from quarter to nine until nearly one in measuring and looking over the whole work and checking up the quality of the work and materials and so on, and I would not be able to make an estimate from contracts or materials; I just made my estimate of the cubical contents, on that basis, having in mind the kind of material, etc., that had been used in the building. 10

Q. We had another gentleman here who did that.

HIS LORDSHIP : That is a fair way of going at it ? A. It is the usual way.

MR. SLAGHT : Then did you spend some time later on in preparing your estimate ? A. Yes, I worked in the afternoon, I went over it.

Q. The cubic measurement of the building proper, including the areas under the court and the rear and side of the building, totals what ?

A. I figured them out at 481,000 cubic feet. 20

Q. And that is your result as to the cubical contents of the building proper ? A. Yes.

Q. At what cost per cubic foot do you say would be, first, your estimate of the cost per cubic foot for that building to erect in 1923 ?

A. From my experience and from my connection with the, if it is right, your Lordship, to mention the things I was working on at that time—

HIS LORDSHIP : That is where you got your information ?

A. From my knowledge that I had in my own work, in connection with our own work of the price we obtained then, I placed the cost per cubic foot at 55 cents. 30

Q. As you told me, the cubical contents of the building proper were 481,000 cubic feet; were there in addition to that some additional areas under the court and at the rear and side of the building ?

A. Yes; quite large extensive areas.

Q. Counting that in as cubic feet as well, what increase does that make; what total would that give you ?

A. I estimated that around 27,000 cubic feet.

Q. Twenty-seven thousand cubic feet additional; taking it in the way you have said, what figure in dollars do you estimate as the cost of this building in 1923 ? 40

A. I think around \$280,000., that is the building—\$279,000. I think I made it.

Q. Does that take into account the cost of architect supervision ?

A. No, just the contracts.

Q. Does that take into account profits to the builder ?

A. No, that is not.

Q. Of course it does not take in the land itself ?

- A. Well, I estimate the land at \$36,500. at that time.
- Q. That would be on top of the \$279,000.? A. Yes.
- Q. That makes \$315,500.; is that in your opinion what it would have cost in 1923? A. Yes, sir.
- Q. In 1923 what can you tell us as to the location of this apartment house as an apartment house site at that time?
- A. One of the best I would say in Toronto.
- Q. Were there any elements that lead you to say that?
- A. Yes; a beautiful view, and still is, over Lake Ontario to the south-west, no obstructions whatever, and it was a splendid business corner on Queen St.; it is a junction there, three streets coming together, and one of the busiest places.
- Q. What can you tell us as to the cost of erection in 1923 as against cost later on for a similar type of building?
- A. Well, in 1922, 1923 and 1924, I think that there is no doubt we were at our peak in prices.
- Q. Why would that be; were there any factors?
- A. The prices have sagged off a little from 1924 to 1928, a gradual decline, and then in this particular class of building in Toronto the Fire Commissioner insisted on a better class of building in apartment houses, and the cost was so serious, cost of building smaller type of concrete buildings that they eased up the by-law to some extent, so that in 1928 and at the present time, probably earlier than 1928, a more inexpensive concrete building could be built.
- Q. As I understand you, the by-laws or the building regulations for fire-proof building in 1923 were more severe than later on when the city eased them off? A. That is right.
- Q. And what materials did that affect; did it affect the steel?
- A. The load of concrete was reduced, and of course lighter steel would be used to carry the load, and it made a cheapening of that part of the work.
- Q. Under the easing off of the regulations? A. Yes.
- Q. What do you say as to the layout of the apartment as in 1923?
- A. I have had some experience in working our own apartment layout; I would say the architect used considerable skill in planning the building, having in view the location of the lot and the length of the building, etc. I think it is all right, very good.
- Q. Some question came up as to the brine system of refrigeration; are you familiar with that? A. Yes, we put in two ourselves.
- Q. What do you say in 1923 as to whether or not the brine system was or was not a high class system of refrigeration?
- A. It was the only, the best that could be bought at that time.
- Q. What do you say as to today with regard to the brine system?
- A. I would say today that it is quite the equal of the individual boxes; it is superior in efficiency and it may be probably found in a few years we will go back to it; there is a splendid plant in this building.
- Q. Can you give me any information as to the cost of building and the supplies used in 1923 as to cost of supplies, etc., at that time?

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A. Supplies of what nature?

Q. Any nature that you know and that can be of any assistance to us and the Court in this matter in question, lumber, concrete?

A. All materials were up fully, depending on the particular material, they were up twenty-five to one hundred per cent, some of them, an average of sixty per cent would not be too much.

Q. Over against the cost in 1914? A. Yes.

Q. I should have asked you in connection with the Ernescliffe; you built the Ernescliffe in 1914? A. Yes.

—*continued.* Q. What price per cubic foot did it cost you to build the Ernescliffe in 1914? 10

A. We figured when we started that we could get it under thirty cents; we found when we were through it cost us fully thirty-two cents.

Q. You have that in mind in reaching the fifty-five cents in 1923 for this type of apartment?

A. Well, you see, in 1914 we were paying carpenters 35 and 37 cents; in 1923 we were paying them 90 cents; bricklayers we were paying 50 cents in 1914, and in 1923 we were paying them \$1.10; and it was the same way all through; it was the same way in the material, piping for plumbing and that was really double. 20

Q. I hope there has not been an increase in lawyers' fees?

A. Yes, they have gone up too.

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CROSS-EXAMINED by Mr. Walsh :

Q. Under what name did you carry on business? A. Deeth & Sons Ltd.

Q. When was that company incorporated? A. In 1912.

Q. How long did that company stay in existence?

A. Up to the present time.

Q. It is still going? A. Yes.

Q. Did not that company assign? A. No.

Q. What is it doing? 30

A. Their assets are being controlled by a liquidator, who is endeavouring to give us a chance to work out.

Q. When did it go into the liquidator's hands? A. In 1928.

Q. What liquidator did it go into? A. Moffatt and Hudson.

Q. Will you tell his Lordship what your liabilities were in 1928?

A. I could not do that.

—Mr. Slaght objects.

HIS LORDSHIP : No.

MR. SLAGHT : I have no reason to conceal it, but we have been in world disaster and depression. 40

HIS LORDSHIP : It was a little early for world disaster.

MR. WALSH : Do you know of any world disaster in 1928?

A. Did I say in 1928? I mean 1930, just a year ago.

Q. Did you make an authorized assignment?

A. We did not make an assignment.

Q. What happened? A. There was a receiver.

- Q. In bankruptcy? A. Yes.
- Q. As a matter of fact, for some time before that you were not able to pay your liabilities; is that right? A. No, that is not right.
- Q. Did you ever have any mortgages from the London Loan and Savings Company?
- A. I am not sure; I think we had; we had so many; we borrowed a lot of money.
- Q. There was one I noticed that it is in the letter sent from the London Loan and Savings Co. to Mr. Foster, dated January 27th, 1927, H. M. Deeth, 11 Oakmount Road; was that you?
- A. Yes, but I did not own the house at that time; I had parted with that house before that.
- Q. You were on the covenant? A. I guess so.
- Q. And you could not pay it?
- A. I did not have to; they did not ask me to; no one ever asked me to pay that.
- Q. You were a friend of Mr. Morine's, were you not?
- A. Just in a business way.
- Q. You had Mr. Morine take it up with the London Loan and Savings Co. not to take proceedings against you?
- A. No; Mr. Reid, my solicitor—I got more money from Mr. Reid than any man in the City of Toronto; that loan probably was put on by Mr. Reid.
- Q. With the London Loan and Savings?
- A. We got money from these London companies; we borrowed a million—
- Q. 11 Oakmount Road is referred to in a batch of about 15 bad mortgages?
- A. I am going to tell you now, when I come to think of it I am quite certain I got that from Mr. Reid, and I will tell you why; it was my own home, it was built away back in 1913, and Mr. Reid was doing practically and putting on all the loans at that time that Deeth & Sons at that time got.
- 30 MR. SLAGHT: I have no desire to exclude anything that is proper, but it has occurred to me we are far afield even on cross-examination.
- HIS LORDSHIP: If he connects it up with Mr. Morine, well and good. You say Mr. Morine never had anything to do with that?
- A. I am quite certain about that.
- Q. What ones with the London Loan and Savings Co. did he have to do?
- A. I could not tell you, we have so many.
- Q. Did you have so many with the London Loan you do not remember?
- A. I am saying this: I have not been carrying where I got loans in my head for years and years, and I would not attempt to say I got a loan from
- 40 the London Loan or the Huron and Erie or where we got a loan; we got a lot of private loans.
- Q. Will you give me one reason why you could not pay off your own mortgage on your own house?
- A. I told you I had disposed of the house and everything went with it, and if the man got the house and bought it off me and he did not pay he probably subsequently did pay; as a matter of fact, I never had anything to do with it.

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Q. How about 875 St. Clair Ave. West?

A. I got the property, Deeth & Sons got those properties in an exchange; we had nothing whatever to do with the mortgages.

Q. On 875 you had nothing to do with the mortgage?

A. The property came to us with the mortgages and we did not place that mortgage.

Q. You had no liability on it at all?

A. No; any more than our liability, of course—

HIS LORDSHIP: You took it subject to the mortgage? A. Yes.

MR. WALSH: You preferred not to redeem the property?

A. We could not in view of the conditions that were going; I could not get the mortgages renewed and so I had to drop the property.

Q. When was that that you dropped the St. Clair Ave. West?

A. I think it went to, Mr. McLaughlin and Johnston were handling that, they were very reasonable and they gave us several months and they tried themselves to renew those mortgages and we eventually had to give it up.

Q. McLaughlin and Johnston had nothing to do with the London Loan mortgage on 875 St. Clair Ave. West?

A. They took the same stand, they knew the conditions, they did not care to renew the mortgage themselves as far as I understood, and they gave us 20 time to go out and borrow the money and no one would lend.

Q. No one would lend on that property?

A. Due to the scare that had happened in October, 1929.

Q. How long have you owned this property on St. Clair Ave.?

A. I would say five years.

Q. There was no scare on during all the five years, was there?

A. The mortgages were running and when they matured they happened to mature just at the time the trouble was on.

Q. I suggest to you that you were never able to take care of the mortgage on that property or even to pay the covenant on the mortgage on your home 30 on 11 Oakmount Road? A. I had not any covenant to pay on that mortgage.

HIS LORDSHIP: Well, we are not going into all this.

MR. WALSH: You say you never asked Mr. Morine?

A. No; I said I had not any recollection as far as I remember.

Q. I suggest to you that Mr. Morine telephoned Mr. Braden to give you time on your mortgage as a result of your seeing Mr. Morine?

A. I am not going to contradict you, because I did ask Mr. Morine and many other people, a dozen or more, to see if they could replace those loans or renew those loans; what Mr. Morine did it was his own business, and if he did that for me he did as I wanted him to act.

Q. You had considerable to do with Mr. Morine?

A. I borrowed through his office quite a lot of money on property that we were building.

Q. On a very large number?

A. Well, I borrowed not so many, but I borrowed on the Ernescliffe.

Q. He had a mortgage on the Ernescliffe?

A. I think I got the Wellsboro mortgage through Mr. Reid.

10

40

Q. Whom did you get the Ernescliffe one through? A. Mr. Morine.

Q. How much did you get on it? A. We got two loans.

HIS LORDSHIP: We are not going into that.

MR. WALSH: You measured up the cubical contents? A. Yes, sir.

Q. Will you please give them to me as I want to check them up?

A. Do you want them actually?

Q. Yes; just give them to me now?

A. I would have to refer to my figures; I have a summary of them which I thought I would just use to refresh my memory; I have it estimated here
10 at a total in the building proper of 481,000 cubic feet.

Q. I don't want that, I want to know how you make it up; give me the figures?

A. I have in the main building 5,160 feet of area; I estimated that height at 58 feet; that is 299,280 cubic feet. There is an entrance from the court to the apartments over the stores about 14 by 15 feet; it begins one story up; it really runs part of a story higher than the other work, but anyway I estimated that at 210 square feet, 40 feet high, that is 8,400 cubic feet; and the Queen St. block averaged, it is not a square property, it is a difficult matter to hold the tape—

20 HIS LORDSHIP: A little narrower towards the west?

A. Yes; I averaged the tape measurement at 40 feet; it was 55 feet on one side and on the other side I could not get at it, and the height was 60 feet, and the total contents in that, 172,800 feet; that is a total of 481,000 cubic feet. In addition to that, the light court in between the front wings has been excavated and steel beams put over and concrete slab with prisms in, and on either side of the building for 50 feet long and about six feet wide, taking in the thickness of the wall, further courts have been made going down to the foundation of the building, and at the rear of the building, right across the
30 whole rear of the building, a further excavation measured 12 to 14 feet by about 75 or 76 feet was all excavated and covered with concrete slab. I estimated the contents of this particular excavation with their covers and everything would cost practically the same as the cubical contents of the building, because the excavation alone at that particular time would cost about 25 cents a cubic foot fully. The excavation would take care of almost half the cost, and then there was the deepening of the walls, there are big retaining walls on each side, some places running nearly twenty feet, allowing for the three feet or so that they went into the ground below the other footings and at the boiler room probably six feet below; the boiler room on the west side, the by-law called for a boiler room to be 12 feet in height, and the boiler room
40 is easily six feet below the average foundation, and a large boiler room at that, running to probably 4,000 additional cubic feet alone.

Q. You put it in at 55 cents? A. Yes.

Q. Mr. Milligan took the wings—dimension No. 2, width 27 feet by 25 feet 5, height 49 feet, cubic feet 67,473?

A. He is wrong in his height, he is wrong in the story height; he is wrong considerably, he is wrong eight or nine feet.

Q. You measured them, did you? A. Yes.

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Q. And he is out on that? A. He sure is.

Q. Is he out in his length?

A. I could not say that because that would require examining; he took the whole thing and complicated it whereas it is a very simple matter; he divided the whole thing up.

Q. He spent considerable time?

A. He made so many figures he got himself mixed up; you don't need to do that; you can take your whole building instead of cutting it in pieces.

Q. Just do it roughly?

A. No, do it accurately, and more accurately. If I want to measure this 10 room I don't want to make a measurement to the desk and another one to the seats there, but rather take the measurement of the whole room, the length and the width and get it accurately and sensibly; that is the way to do it. You can do it much more accurately and better than that.

Q. You took the building at 58 feet high?

A. It is a difficult matter to say what height you should take, because the foundations at the boiler room go down six or seven feet more, and the foundations at the boiler room would be over 62 or 63 feet, and a man figures it at 49 feet he is not accurate at all.

Q. He figured some places at 51 feet? 20

A. He is wrong; he is not deep enough.

MR. SLAGHT: The figures given by my friend are out of something he has in his hand; why were not they sworn to?

HIS LORDSHIP: They were not given in evidence.

MR. WALSH: Do you know the value of this building?

A. From my own calculation I placed a value on it at that time.

Q. What time?

A. As of 1923 I placed a valuation on my contents of 55 cents.

Q. That was an estimate made by you? A. Yes.

Q. And 1914 the war had started? A. Yes. 30

Q. And prices had started to be high then?

A. They did not start till 1918.

HIS LORDSHIP: 1914 and 1915 were the lowest prices in the last twenty-five years?

A. Our building was just ahead of the war, just finishing as the war broke out.

MR. WALSH: Had you finished before the war?

A. No, we were not quite completed.

Q. And it cost you 32 cents? A. Yes.

Q. You say it was an average how much higher than that——? 40

HIS LORDSHIP: He said 60 per cent?

A. I would say fully 60 per cent in 1923 than in 1914.

MR. WALSH: How does it compare now with 1923?

A. A little lower; now at the present time considerably, I would say 25 per cent probably now lower.

Q. What were they in 1930? A. Lower.

Q. How would you compare them in 1930 with 1923?

A. I would say 1930 and 1931 not so very much different; building material is not very much down in the last year; if anything, a little down rather than up.

Q. How would it compare last year with 1923?

A. Oh, five, seven and a half, maybe ten per cent on some things lower than 1923; fully ten per cent.

Q. Fully ten per cent lower last year than in 1923?

A. Yes, depending on the particular line.

Q. You have seen the layout of these apartments? A. Yes.

10 Q. What rooms have you got to go through to get to the bathroom?

A. It would depend; the suites, of course, are varying and they do not all conform to the layout.

Q. You have to go through the living-room?

A. The first one I went into had a magnificent living-room, 12 by 14.

Q. What did you have to go through to get to the bathroom?

A. In that particular one there was a little private hall, and that private hall you went into the bathroom and you can go along the hall a little further and you come into a very nice bedroom, you go along a little further and you come to the kitchen; I thought having in view my knowledge of apart-
20 ments that it was a very nice arrangement.

Q. What apartment was that?

A. That was a front apartment on the east wing.

Q. Were you in any apartment that you had to go through the living-room to go to the bathroom? A. Yes.

Q. There was no elevator in this building?

A. We never put elevators in a four-story building; it is not done, it is too costly, it is not needed.

Q. In a large apartment like this?

A. This is not a compact building; there are several entrances to this
30 building and it does not lend itself to a system of elevators; it did not need elevators.

Q. You do not put them in?

A. Not in a building of this design; we put them in five and six and seven story buildings.

Q. Are they not put in a four-story building?

A. I do not know of any; not in an apartment house.

Q. You do not know a four-story apartment house in Toronto that has elevators?

A. No, I don't think there is one with an elevator in and four stories.

40 Q. Would you be surprised to hear of any? A. Tell me the name.

Q. Would you be surprised to hear of any?

A. I would, because I am pretty certain there is nothing of the kind.

Q. What would the rents be of this apartment?

A. The rents are down terribly.

Q. In 1923 and 1924 were the rents good then? A. Yes, fine.

Q. What did this property rent for in 1923 and 1924?

A. I should say that first one I went in—

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HIS LORDSHIP : Does this man profess to be a valuator or just a builder ?

MR. WALSH : Mr. Slaght qualified him as an expert on the value.

HIS LORDSHIP : No, I don't think so. He was asked as to the cost of building, but he was not asked anything except the value of the land.

MR. WALSH : This apartment ought to have paid well according to your evidence.

HIS LORDSHIP : Choice location and good layout.

MR. WALSH : It ought to have paid real well ?

A. If it was rented and had been kept rented at the 1923 prices, there is not the slightest doubt. 10

Q. Mr. Morine was doing it ?

A. I know nothing whatever of this apartment until last Monday.

Q. Who got you to go out ?

A. Mr. Morine asked me to go and make an inspection of the building.

Q. Would it surprise you to know that the revenues that they got, whatever was done with them, they could not pay the interest on the first mortgage of \$6,000, arrears of taxes and interest on the second and third mortgages—

MR. SLAGHT : I object.

HIS LORDSHIP : That is not in evidence yet.

MR. WALSH : Yes, your Lordship. 20

HIS LORDSHIP : Hardly put in that way; the amount received is put in but I don't know that the calculation has been made as to the amount of interest, etc.

MR. SLAGHT : It has not.

HIS LORDSHIP : It can be made by you in your argument but at present it is not down to that basis.

MR. WALSH : On St. Clair Ave. you were on the covenant; in December, 1928, had you signed an agreement covenanting to pay the amount of the mortgage ? A. Did they renew the mortgage ?

Q. Yes; signed ? 30

A. Well, I don't know that that happened—we had three buildings there and these three buildings were under separate mortgagees, and we were not signing one up until we got the whole three in line.

HIS LORDSHIP : Never mind a long explanation.

Q. How did prices of apartment houses in 1923, 1924 and 1925 compare, were they pretty uniform in those three years, good demand for property and so on ?

A. Along this street, Queen St., and along King St. too, a number of very fine apartments were built, and the people had in their heads, the builders, that that was— 40

Q. I am asking you, how did prices remain, fairly uniform during 1923, '24 and '25 ? A. Yes; I would say after that they came down.

Q. During those three years they remained fairly steady and uniform ?

A. Coming on in 1925.

Q. That will do.

WILLIAM N. LONSDALE, Sworn. Examined by Mr. Slaght :

Q. You live in Toronto? A. Yes, sir.

Q. You are, I understand, the superintendent of real estate in the Toronto General Trusts Corporation? A. Yes, sir.

Q. And have been superintendent since 1909? A. Yes, sir.

Q. And have valued properties in Toronto and other parts of the province for some twenty-seven years? A. About 27 years.

Q. Have your valuations included stores, apartment houses, factories and practically all kinds of buildings? A. All kinds of real estate.

10 Q. In connection with your work of that character, was it or not part of your work to be familiar with the various kinds of construction?

A. Yes, sir.

Q. Various types of construction such as fireproof, semi-fireproof and not fireproof at all in the technical use of the term? A. Quite necessary.

Q. Have you on occasion valued a good many apartments using different kinds of construction? A. Yes, sir.

Q. When was your first connection from a valuator's standpoint with the Buckingham Apartments in Toronto? A. In the early part of 1923.

Q. What did you do in the early part of 1923?

20 A. I inspected the property, which was not quite completed at the time I was there.

Q. About what month was that in?

A. I would not like to say the exact month; it was shortly before the apartment was finally completed; I believe the apartment was completed in June or July.

Q. Then did you make a valuation at that time? A. I did.

Q. At what figure? A. \$310,400.

Q. What did you do with it? A. I sent it to Mr. H. A. Morine.

30 Q. Then did you later on at any time make a second valuation of the Buckingham Apartments? A. I did, sir.

Q. When would that be? A. In December, 1924.

Q. Do you remember any circumstances as to your being asked to make a valuation, a second valuation? A. I have not any idea.

Q. What brought it about? A. No, I have not any idea.

Q. In your second valuation, December, 1924, what figure did you reach on that occasion? A. The same as before, \$310,400.

Q. Is this your signature I am showing you, on Exhibit 211?

A. Yes, sir.

Q. And this is your valuation dated December 1st, 1924? A. Yes, sir.

40 Q. I see in this you valued the land at \$30,400.?

A. Yes, sir; \$400. a foot, with the double frontage.

Q. Seventy-six feet double frontage by 199 feet deep; the building, I see, you value at \$280,000.? A. Yes.

Q. Making the total as appears, \$310,400. As I understand your evidence, you did not reach any different conclusion in December, 1924, from what you did prior to June in 1923? A. No, sir; I made no difference.

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Evidence for
Defence.
No. 27.
William N.
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—continued.

Q. Then we have heard by several witnesses this is a fireproof type of construction? A. Absolutely.

Q. In 1923, on the cubic foot basis, what would you say would be the cubic foot price which it would cost to erect this building in 1923?

A. At that time I figured 55 cents per cubic foot.

Q. How did these apartments at that time—how were they at that time as to whether or not there were other fireproof apartments in Toronto; were they common things?

A. No, sir, there were very, very few of them; in fact, I think this was about the first fireproof apartment house that was erected in Toronto. 10

Q. At that time the building by-laws were they the same requirements as they were later on?

A. No, sir, the by-laws at that time were much more stringent than they were a little later on, requiring heavier construction.

Q. And heavier construction costs money? A. Yes.

HIS LORDSHIP: The later by-laws required fireproof construction?

A. Yes.

Q. Would one set off against the other? A. I would say so.

MR. SINGER: This is fireproof construction?

HIS LORDSHIP: I know it is, but this was not required in 1923 to be 20 fireproof?

A. Yes, it was, sir, after it went up so many stories; originally it was the intention to put this building two or three stories, eventually it was made four stories, which necessitated fireproof construction.

MR. SLAGHT: Looking back to 1923 when you made your first valuation, and I presume it would carry in 1924 as well, what is your view as to the site of that apartment house at that time? A. Very desirable.

Q. And for stores, etc.?

A. Yes, it was a transfer point from the city cars to the suburban lines, and there was a tremendous crowd there both in the morning and in the evening, and I would say it was a desirable situation for store properties on that account. 30

Q. From the residential standpoint, the transfer point was not at the building? A. No, at the corner, which was only about fifty feet away.

MR. WALSH: The transfer point was at least 250 feet from these stores.

MR. SLAGHT: From your experience and from your examination, what do you say now as to whether or not in your view at that time and with the then conditions and information you had, your valuation was one in your opinion that was accurate? A. Absolutely, sir.

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CROSS-EXAMINED by Mr. Walsh :

40

Q. You say the building was completed when? A. June or July, 1923.

Q. And it was just shortly before that you saw the building first? A. Yes.

A. About the month of May?

A. I would not like to swear to that; April or May.

Q. Either one of those months? A. Yes.

Q. On whose instructions did you make the valuation? A. Mr. Morine's.

- Q. You figured it then at \$310,400.? A. Yes, sir.
 Q. The building at \$280,000.? A. Yes.
 Q. The cubic feet at 55 cents per cubic foot? A. Yes.
 Q. Have you got the papers showing how you make that up?
 A. No, sir; I did not keep the cubical contents once I figured out the valuation.
 Q. What else would you have to get to justify that expense?
 A. My recollection is I figured that the gross revenue would be about \$47,000. a year.
 10 Q. And that that would stay at that figure; you would not figure that on one year, of course?
 A. Oh, no, I figured it on that year, yes, the particular year I made the valuation, and I could not tell you five years after that what it would rent for.
 Q. A mortgage that lasts for five years, or three years or two years, you would not figure on one year only, would you?
 A. I would figure on what the revenue would be for that particular year; it might be greater the next year.
 Q. Or it might go down after? A. You cannot tell anything about that.
 Q. You just figured for the one year only?
 20 A. I figured at that particular time.
 Q. How much would this apartment have to rent for to produce that?
 A. A four-roomed apartment should rent for about \$110. a month; a three-roomed apartment from \$80. to \$90.
 Q. How much would that produce?
 A. The stores are there too; I think those did rent after that at \$125. a month, five stores on the Queen St. frontage.
 Q. These stores were quite a distance from the corner?
 A. I don't know accurately how far it is; it is a little piece from the corner.
 30 Q. Quite a piece? A. No, it is some distance from the corner.
 Q. And when a person has to transfer they do not run down three or four hundred feet to stores? A. They do for certain things.
 Q. Now, what was in those stores that they would run down for?
 A. I can name one they would go into, a drug store, for instance.
 Q. There was a drug store already there? A. I don't know.
 Q. Did you ever hear of a drug store in these Buckingham Apartments?
 A. No.
 Q. Did you ever hear of one there? A. No, I cannot say I did.
 Q. Was not your valuation in this very optimistic?
 40 A. I would not say so; I figured that that was the actual value of it.
 Q. In December, 1924, you put it in at the same price? A. Yes, sir.
 Q. Did you ever make one afterwards? A. Yes.
 Q. You made one for the department, and you put it in for the same price; do you remember making one that went to the department?
 HIS LORDSHIP: That is the one in December, 1924?
 MR. WALSH: The one in December, 1924, that was for the department?
 A. No, sir, that was for Mr. Morine.

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—continued.

Q. Did you know it was to be used and to be submitted to the Department of Loan Corporations at the Parliament Buildings? A. No, sir.

Q. Never knew that was the purpose? A. No, sir.

Q. You got a number of other valuations from Mr. Morine?

A. A great many of them.

Q. Before I come to the other valuations, will you please tell me where is your valuation, the one you made in May or June, 1923?

A. I could not locate it; I looked for it but I could not find it; I usually keep duplicate copies of them but I could not find it.

Q. Tell me on what basis you fixed your valuations which you made, 10 what was the basis you fixed it on? A. I do not quite understand.

HIS LORDSHIP: Was it on the cubical contents? A. Cubical contents.

Q. Or the general completed value?

A. Completed value and the land in addition.

MR. WALSH: You based it on completed value? A. Yes.

Q. How? A. At 55 cents per cubic foot.

Q. You have no record of—

HIS LORDSHIP: Is not that more by way of fixing of cost valuation than an actual selling valuation? A. It is absolutely the cost valuation.

Q. Entirely a cost valuation? A. Yes. 20

Q. You were not valuing it for a cost valuation?

A. That is what I was valuing it for, for the purpose of what it cost to erect, plus the value of the land.

Q. Would that necessarily be the selling value?

A. No, I would not say that; in many instances the selling value is considerably higher.

Q. And in some cases lower?

A. Of course under certain conditions it might be.

Q. Were you valuing what it ought to cost for the owner? A. Yes.

Q. Who actually paid for the building? 30

A. That is what I valued it at, what I considered was the actual cost of the building.

Q. You did not know it was being valued for the purpose of obtaining loans?

A. I rather think I did; I am not positive but I think it was mentioned to me it was for loaning purposes.

MR. WALSH: Loan purposes by whom? A. Mr. Morine.

Q. Mr. Morine's loans; you knew at that time that Mr. Morine owned the building or was interested in it?

A. No, sir, I did not—now perhaps I should not say that, I think Mr. Morine told me he had had some difficulty with the builder and that he had 40 practically taken it over.

Q. Do you remember making those seven valuations for Mr. Morine?

A. I don't remember making them, but they are my signature anyway.

Q. Look at them. A. Yes, those are my signatures.

MR. SLAGHT: What were they?

MR. WALSH: Valuations that he made.

MR. SLAGHT: Of this property?

MR. WALSH: No.

Q. They were for Mr. Morine, were not they?

A. His name does not appear on all of them but I presume they were for him.

Q. Mortgages that the London Loan and Savings Co. took?

A. I know nothing about that; absolutely nothing.

Q. Would you be surprised to hear in every one of those valuations the company have had the property on their hands?

MR. SLAGHT: I object to that.

10 HIS LORDSHIP: It is not here in evidence.

MR. SLAGHT: I submit it is entirely improper form of evidence; it would not be allowed to be proven if it were tendered.

HIS LORDSHIP: No; strike it out of the record. It is not proper. You cannot get in the evidence in that way.

MR. WALSH: I will put it this way: Do you remember making a valuation of 296 Spadina Rd.?

A. I do not recall it, no, but that is my signature; I made it, I guess.

Q. Do you remember, on November 28th, 1924, you put a valuation on the property for \$22,000.? A. I do not recall it, but if it is on that.

20 MR. SLAGHT: Is that evidence, my Lord?

HIS LORDSHIP: I don't know where it is going to lead to; it is evidence so far.

MR. WALSH: Would you be surprised to hear—

HIS LORDSHIP: No, no.

MR. WALSH: What would you say would be the reason why the London Loan had to sell that property you valued at \$22,000. for \$17,250.?

A. There are any amount of them being sold in that way.

—Mr. Slaght objects.

HIS LORDSHIP: That is not proper, no.

30 HIS LORDSHIP: This valuation you made for Mr. Morine; I suppose your valuation fee was paid by him?

A. I rather think he paid the first one, and I think the company paid the second one, or rather they both came from him to me, I don't know who paid it.

MR. WALSH: You got the money from Mr. Morine?

A. Yes, I got it from him; I think it was from him I got them.

Q. I think you said you figured the cost at 55 cents per cubic foot; will you let me have your figures showing the cubic contents you figured on?

40 A. I can get them; I have not got them with me. As a matter of fact, I think that I destroyed my slip with the cubical contents on. You see what I usually do, I take a valuation pad and I put the dimensions of the building on that, and then when I come back I figure it up.

HIS LORDSHIP: How were prices in that particular location in 1923, 1924 and 1925; were they about the same? A. The cost?

Q. Selling values?

A. 1923 and 1924 they were very much better than they are today.

Q. 1923 and 1924 and 1925, was there any variation in those years?

A. 1925 it started to depreciate slightly.

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Philip
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17th Decem-
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PHILIP FETTERLEY, Sworn. Examined by Mr. Slaght :

Q. You live in London? A. I do.

Q. And have for a great many years. You are now retired on pension with the Huron and Erie Mortgage Corporation? A. I am.

Q. Having been a valuator in their employ for a good many years?

Q. When did you first start as valuator for the Huron and Erie?

A. On the 1st February, 1903.

Q. Then you continued on in that capacity actively down to what year when you became less active and went on pension?

A. About the middle of March, I think, 1928, some time, a little over 10 twenty-five years; I do not just remember the date.

Q. In the beginning of 1923 do you recall that you made a valuation for your company, the Huron and Erie, on the Buckingham Apartments in the City of Toronto? A. I did.

Q. Have you a copy of that valuation?

A. I have not; I saw though yesterday.

Q. The original is here in Court; may I have the original?

MR. ROWELL: The Plaintiffs have subpoenaed the Huron and Erie to produce certain documents; this is one of them included, if your Lordship thinks—

HIS LORDSHIP: Yes; show it to the witness. It need not go in, but he can use it to refresh his memory.

—Valuation produced.

MR. SLAGHT: I understand that there were different valuations that you made at different dates? A. Yes.

Q. I wonder if you would look at these and tell me—

HIS LORDSHIP: Take the earliest one.

MR. SLAGHT: Take the first one, and let us know what value you placed upon Buckingham Apartments, the date of it, and what your valuation then was? A. The first one is dated April 6th, 1922, my valuation then is \$240,000.

Q. Is that the land and building both?

A. That is the land and the prospective building; the report says nothing yet done; I mean the building operations had not started.

HIS LORDSHIP: I suppose it was for the purpose of a building loan?

A. Yes.

MR. SLAGHT: Can you tell me, looking at that valuation, whether that was this building contemplated a three-story apartment house?

A. I see there are four on it here, but it was supposed to be for three; I do not understand that.

Q. Are you looking at the first one? A. Yes.

Q. What is the next one? A. The next one is in November, 1922.

Q. What is that at?

A. The valuation is raised to \$270,000., all on the building; the building is then roof on, plumbing and wiring in and ready to plaster.

Q. That is November, 1922, \$270,000. exclusive of land?

20

40

A. No, including the land, \$240,000. and the land remains the same as in the first.

Q. What was the land? A. \$30,000.

Q. When is the next valuation? A. February 1st, 1923.

Q. What is that valuation?

A. That valuation is \$305,000., the land remaining the same, and the building is \$275,000.

Q. Does that conclude your valuations there? A. That is all.

10 Q. Did you inspect this property in connection with the making or prior to the making of each valuation? A. Yes.

Q. And then the valuations you now have were filed by you with your company, I presume? A. They were.

Q. Have you a duplicate yourself of the \$305,000. valuation? A. No.

Q. Did you have the benefit of inspecting the plans and specifications and quantities as well as the actual building as you told us?

A. I was furnished for the first with plans and specifications as at that time; then later the building was there and I do not recall any difference in the plans excepting an additional story was to go on, and certain things were said, I see it is in the report here, about change in city by-laws requiring a
20 more substantial building.

Q. As I understand, there was a change at some date for an additional story that would be bringing it ultimately to four stories, is that right? A. Yes.

Q. Do I understand it was ever contemplated there should be five?

A. My report does not say so; this is some time ago.

Q. Looking at your valuation of \$305,000. made on the first February, 1923, do you recall whether or not you furnished a copy of that to either Mr. Morine or Mr. Kent of the London Loan and Savings Co. at some time shortly following on that? A. I recall furnishing one to Mr. Morine.

30 Q. Under what circumstances; where did you discuss the matter with Mr. Morine? A. I happened in his office one day and Mr. Kent was there.

MR. WALSH: I object to that discussion of this witness with Mr. Morine.

HIS LORDSHIP: Yes, it is not evidence.

MR. SLAGHT: Taking the occasion that Mr. Kent was there with Mr. Morine, Mr. Kent was in 1923 the managing director of the London Loan and Savings Co.; what occurred in the presence of Mr. Kent?

MR. WALSH: I submit that is not evidence.

HIS LORDSHIP: I am going to receive it.

A. I was asked to get from the company a copy of my valuation.

MR. SLAGHT: Did you do so? A. Yes.

40 Q. Which valuation? A. This last one.

HIS LORDSHIP: The \$305,000. one? A. Yes.

MR. SLAGHT: For what purpose were you asked to get it; did Mr. Kent or Mr. Morine or any one when Mr. Kent was present indicate the purpose?

A. They were getting a second mortgage.

Q. Who?

A. Mr. Morine was getting a second mortgage from Mr. Kent's company.

Q. That is the London Loan and Savings Company? A. Yes.

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—continued.

Q. Who asked you for it, do you recall?
A. Mr. Kent spoke to Mr. Morine; it was Mr. Morine asked me to get the valuation.

Q. Were you there when Mr. Kent spoke to Mr. Morine?

A. I was there; the three of us were there.

Q. And he did ask in the presence of Mr. Kent? A. Yes.

Q. How did you get the copy of the valuation; did you get a copy of the valuation?

HIS LORDSHIP: From the file of the company or did you have one yourself? 10

A. No; I got it from the files of the company; I asked one of the officials and they got me a copy.

MR. SLAGHT: You got a copy of your own valuation? A. Yes.

Q. What did you do with it? A. I gave it to Mr. Morine.

Q. Do you recall whether you ever spoke with Mr. Kent on the subject again?

A. I do not recall; it is some time ago; I saw Mr. Kent at different times but I do not recall that he ever discussed the Buckingham.

MR. SLAGHT: I would like to have the valuation marked for identification.

HIS LORDSHIP: It is not evidence at all, it is just for the purpose of 20 refreshing this witness' memory.

MR. SLAGHT: Having been asked by Mr. Kent for a copy, and a copy having been procured—

HIS LORDSHIP: There is no evidence that Kent ever got it.

MR. SLAGHT: I will have evidence.

HIS LORDSHIP: When it is procured it will be time enough.

MR. SLAGHT: Perhaps it can be left.

HIS LORDSHIP: Yes, in the meantime.

MR. SLAGHT: You furnished a copy obtained as you have told us of this valuation for \$305,000.? 30

HIS LORDSHIP: It was not the original that is now produced.

MR. SLAGHT: No, it was a copy of it.

HIS LORDSHIP: He got something purporting to be a copy from the officials of the company and he handed it to Mr. Morine.

MR. SLAGHT: Did you look at the document that they handed to you to see whether you were getting a copy of your own valuation? A. I did.

Q. And then you handed that to Morine? A. Yes.

HIS LORDSHIP: It can be marked.

EXHIBIT No. 282: Valuation made by Mr. Fetterley, dated 1st February, 1923, for \$305,000. 40

MR. SLAGHT: This is your signature on Exhibit 282, signed at the time? A. Yes.

Q. What do you say as to whether or not in February, 1923, the valuation that you then reached was or was not in your opinion a fair valuation?

A. I think it was a fair valuation.

Q. As I understand it, you were making it for loaning purposes? A. Yes.

Q. That was the real purpose of your valuation? A. Yes.

HIS LORDSHIP: The loan to your company was what, \$140,000. or \$150,000.? A. \$150,000.

MR. SLAGHT: That is what it ultimately became. At a later date I believe some difficulties cropped up between yourself and your company with reference to the transaction that was had with Mr. Morine? A. It did.

MR. WALSH: This is by way of anticipation, my Lord.

HIS LORDSHIP: I don't know what it is yet.

MR. SLAGHT: By way of having the Court understand the whole situation: when did this matter crop up; do you remember what year?

10 A. In 1924, in the fall.

Q. After that matter came up did you continue on for the company, in what capacity and in what way? A. The same capacity.

Q. Did you continue to make valuations for your company? A. I did.

Q. In 1928 they retired you on pension? A. They did.

Q. And that is the position down to the present time? A. Yes.

Q. Do you still carry on to some extent with your work as valuator for other people? A. Yes.

Q. The Hydro-Electric?

A. Yes; I do not value, I am a special arbitrator for the Hydro-Electric.

20 Q. That is in connection with the values of property?

HIS LORDSHIP: That is the same as anybody else, a judge; he does not value.

MR. SLAGHT: Any other matters for people?

A. I value for the city and for others here and for the Ontario Government; I do their valuing here for succession duty.

Q. You are the present valuator for the Ontario Government for succession duty purposes? A. Yes.

Q. And you have done work for the City of London? A. Yes.

30 you recall or can you give us any opinion as to what the cubical contents cost of that building would be in that way of going in 1923?

A. I figured that at 55 cents a cubic foot.

CROSS-EXAMINED by Mr. Walsh:

Q. The first valuation made of this property was, I think you said, on the 6th April, 1922, and then the next was November, 1922, and February 1st, 1923; who was the owner of that apartment?

A. I understood it was S. B. Green.

Q. You knew it was being built in partnership with Mr. Morine?

A. I heard that later; that developed as the building went on.

40 Q. In February of 1923? A. I knew by then; at least I was told so.

Q. Did Mr. Morine tell you that?

A. I could not say; it was generally known.

Q. The application was put in the name of S. B. Green to the company?

A. Yes.

Q. And Mr. Morine received a commission of one per cent?

A. I could not say that.

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—continued.

Q. Do you know it was put through his agency? A. I don't know that.

Q. Do you know whether he did or not? A. No.

Q. Do you remember the date that Mr. Kent got this valuation?

A. Well, it was early in, it was right after our loan had been increased, but I could not give you the exact date; it was early in 1923.

Q. You could not tell me the month?

A. It would not be later than some time in February.

Q. Why do you say that?

A. Because our loan was finally put through early in February, and it was very shortly after that; I would not say for sure it was in February, it 10 might have been March, but it was early in 1923.

Q. It might have been March? A. It might have been.

Q. You never gave it to Mr. Kent? A. No.

Q. You don't know whether Mr. Kent ever received it? A. No.

Q. You gave it to Mr. Morine? A. I did.

Q. Have you ever seen it since, that copy?

A. I don't know; I saw a copy, it is pretty difficult to say whether it was the same one, it was substantially the same, I could not swear it was the same.

Q. Where did you see it? 20

A. I saw it, I think, among Mr. Morine's papers down at the hotel.

HIS LORDSHIP: Lately or when?

A. Yes, within the last, not this week but I think last week when this Court was held.

MR. WALSH: Was that the same copy you gave to him?

A. I could not say that; it looked the same.

Q. You gave only one copy? A. Only the one copy.

Q. It looked to be the same copy? A. It looked much the same.

Q. If you saw it in Mr. Morine's possession and you only gave the one, how would Mr. Kent ever get it? A. I don't know. 30

HIS LORDSHIP: That is a question for you to argue.

MR. WALSH: My learned friend asked you about some trouble; I do not want to go into it in great detail, but the result, as I understand, perhaps you can tell me; you were not allowed after 1924 to do any valuating for the London Loan in the City of Toronto? A. I would not say that.

Q. For the Huron and Erie, I should say? A. I would not say that.

Q. Did you do any for the Huron and Erie in the City of Toronto after 1924? A. I could not say.

Q. Do you recollect any? A. No.

Q. You were not allowed to do any valuing in connection with any loans 40 connected with Mr. H. A. Morine?

A. Mr. Morine was cut out; Mr. H. A. Morine was not allowed to act in connection with any more loans.

Q. When was that he was cut out by the Huron and Erie?

A. I think that was in the latter part of 1924.

Q. The whole thing came up, did not it? A. Yes.

Q. Mr. Morine's relations with yourself and his associations with the company, didn't it? A. Yes.

Q. And I think you put in, in 1924, your resignation to the company, didn't you? A. Yes.

Q. I want to see the resignation?

MR. ROWELL: If your Lordship thinks it should be produced?

HIS LORDSHIP: I suppose he could put in an officer of the company first to make him produce it.

—Mr. Rowell produces resignation.

10 MR. WALSH: Is that the resignation you put in?

A. I think it is, yes.

HIS LORDSHIP: The document need not go in, nothing special.

MR. WALSH: This is London, December 1st, 1924:

“Dear Mr. Cronyn:

20 “With strange and sickening feeling, mingled with shame and
“regret, I am resigning from my position as inspector of the Cor-
“poration. I can plead some extenuating circumstances, but of
“course this only gives but little comfort. I would like the oppor-
“tunity of discussing the matter with you at an early date, as the
“suspense in my poor condition of health is almost unbearable.
“I trust the directors will deal as leniently with my case as possible;
“sparing my family when I can make no such request for myself.
“This is hard to break after so many years, and I have learned,
“as many have, that the way of the transgressor is hard. With
“sincere regret.
P. FETTERLEY.”

And that was over Mr. Morine?

A. Yes, that was over certain happenings there in Toronto with which Mr. Morine was connected.

30 Q. Is there anything you want to say about it; it was Mr. Slaght that brought the subject up, so I thought it was only fair to my own client—

A. I can only say I was away on a trip in the States and was caught there with appendicitis, and when I got home I learned from two of the officials of the company what S. B. Green had said, and other things, that monies had been given to me. I said this is not so, but I did tell Mr. Cronyn that I had previously borrowed in connection with a timber deal \$2,500. from Mr. Morine, and I told Mr. Cronyn that I never received or was promised anything, and when we were getting rid of our timber stock, Mr. Morine had a bunch of it. I advised him to get rid of it; I don't know even that I asked him, he has my notes but has never collected that \$2,500.—I told Mr. Cronyn I
40 practically got the \$2,500, but it was borrowed money.

Q. When this exposure took place, Mr. Morine's association with the Huron and Erie terminated?

A. I think so, and I might say though that Mr. Cronyn told me I would remain on and as a matter of fact the general manager, when my retiring time came, he wanted me to continue longer, and I said no, I am going to retire.

Q. As a matter of fact you were two years from pension then?

A. Oh, no, I was four years.

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Q. Four years from pension, and they put you on pension?

A. I retired on pension in 1928.

Q. And as I said before, after that date when this came out there was no valuation by you of Toronto properties?

HIS LORDSHIP: He has said that already; why repeat?

MR. WALSH: My learned friend Mr. Slaght referred to earlier valuations; Mr. Rowell handed Mr. Slaght one, and I noticed that in a report of Mr. Fetterley March 10th, 1922, you based your valuation on a four-story building?

A. Is that the first?

Q. Yes.

A. Yes, that is on the plans and specifications, and I think I made a mistake there; there was no building then. It is some time ago, I cannot recall, but I understood there was to be an extra story put on that building, but my reports do not show that.

Q. You had nothing to show the cubical contents at all of the building?

A. Not now; I had at the time.

Q. As you said, you were last week talking to Mr. Morine about this when you saw that valuation? A. What is that, sir?

Q. You were talking to Mr. Morine last week when you said you saw a copy of your valuation? A. Yes, I saw what I thought was a copy.

Q. You were talking this morning to Mr. Lonsdale?

A. We were just chatting.

Q. And you were talking to Mr. Deeth?

A. Just came in, and we were not discussing values.

Q. Discussed values with nobody?

A. Yes, I discussed my values with Mr. Morine and I think I discussed them with Mr. Singer, but not with Mr. Deeth or Mr. Lonsdale.

Q. You discussed the values with Mr. Morine?

A. They asked me different things.

Q. And Mr. Morine called Mr. Deeth, or at least Mr. Deeth says he is a friend of Mr. Morine, and Mr. Lonsdale says he made a valuation for Mr. Morine, and you are all 55 cents per cubic foot? A. I cannot help that.

MR. SLAGHT: If my learned friend wants to make these speeches—

HIS LORDSHIP: He will only repeat them when he comes to argument.

MR. SLAGHT: We will get two doses of it.

HIS LORDSHIP: It may not be music to your ears.

MR. SLAGHT: I am serious in saying that it is an improper question to ask this witness, because he is reciting a lot of things that this witness is not competent to deal with.

HIS LORDSHIP: He is just pointing out three valuations of 55 cents, but it is not necessary to do that. The witness is not responsible for the other two.

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—continued.

RE-EXAMINED by Mr. Slaght :

Q. I wonder if you procured a few weeks ago at Mr. Morine's request or gave him a copy then of the valuation again you had with the Huron and Erie?

MR. WALSH : I object.

HIS LORDSHIP : I will allow you to cross-examine; this is something new?

A. What is the question?

MR. SLAGHT : Do you recall whether within the last few weeks you procured for Mr. Morine a copy of your original \$305,000. valuation from the
10 company for Mr. Morine?

A. I do not remember getting one; I remember going there and seeing mine.

Q. Do you recall within the last few weeks getting a valuation or giving to Mr. Morine what you believe to be a copy of your original valuation?

A. I think I did, but I cannot be sure.

Q. The matter of the loan that you procured from Mr. Morine, what Mr. Walsh developed with you, was that before or after February of 1923 when the Buckingham Apartment matter was up?

A. It was just then; my report went in before, of course, dated February
20 1st, now I fancy they passed on it a few days after.

HIS LORDSHIP : That is not the question; it is this loan of \$2,500. from Morine.

MR. SLAGHT : When did you get it?

A. I got that some time during the summer of 1923—no, it was close to Christmas.

Q. About when was it?

A. I think it was, I think it was about Christmas holidays.

HIS LORDSHIP : Did you give a note?

A. Yes, I gave a couple of notes; they were made smaller; he put them
30 in the Bank of Commerce.

MR. SLAGHT : The first note would be the date you got the loan? A. Yes.

Q. Let me ask you this : in connection with your valuation of the Buckingham Apartments, had the matter of this loan which you afterwards got been discussed or had that anything to do with your valuation of the Buckingham Apartments for your company? A. Absolutely nothing.

Q. And in connection with that valuation of the Buckingham, Exhibit 282 in this case, was there anything that occurred between Mr. Morine and yourself, any promise of future loans, or any consideration of any kind that happened between you? A. None whatever.

40 Q. This letter you signed, where were you when that letter was signed by you, and what was your condition of health?

A. I was home very poorly with an open wound, and I was called over to a neighbour's house, Mr. Aylesworth and Mr. Clark, and they told me what Green had said; I said that is not so, I never got a penny for anything, but I did, and they knew too of the transaction, and I admit it was the wrong thing for me to do, placed as I am, and I am very sorry I did, and am still.

Q. Is that the transaction referred to in your letter? A. Absolutely.

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Q. Is there anything else referred to in that letter?

A. Nothing whatever.

MR. SINGER: May I ask a question?

HIS LORDSHIP: Mr. Slaght has been examining largely on behalf of Mr. Morine.

MR. SINGER: This is as a result of the general statement made by Mr. Walsh as to Mr. Morine.

MR. SLAGHT: In view of your Lordship's observation that I have been examining on behalf of Mr. Morine, I have not at all had that in mind, but this is on behalf of Mr. McCormick? A. Him only, and Mr. Brickenden. 10

HIS LORDSHIP: They are not mixed up in this so far.

MR. SLAGHT: Not at all, but the valuation; your Lordship will recall Mr. McCormick said he believed, his best memory was he had seen a valuation at that time of Mr. Fetterley; now there will be further evidence which I think will make it clear that Mr. McCormick did see a copy of the valuation made by Mr. Fetterley, and it is purely on behalf of Mr. McCormick that I have been conducting my examination of Mr. Fetterley.

MR. WALSH: Mr. McCormick was asked that by me.

HIS LORDSHIP: We will not get into a controversy now. Go on, Mr. Singer. This will be subject to Mr. Walsh's right to cross-examine. 20

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EXAMINED by Mr. Singer:

MR. SINGER: In connection with the loan made by the Huron and Erie Mortgage Corporation under their first mortgage for \$150,000., did Mr. Morine at any time make any improper suggestion to you as to an increase in the valuation of that property? A. He did not.

Q. Did he at any time ever promise or offer to give you any reward or compensation in connection with your valuation? A. He did not.

Q. Did Mr. Morine at any time in connection with the whole of your experience with him while valuating for the Huron and Erie, at any time pay you money or offer you money or give you any promises of remuneration to do anything improper in connection with valuations being made by you for the company? A. He did not. 30

HIS LORDSHIP: You can cross-examine on that, Mr. Walsh.

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CROSS-EXAMINED by Mr. Walsh:

Q. S. B. Green was in partnership with Mr. Morine, was not he?

A. You say so.

Q. You heard that? A. I have heard rumours of it.

Q. And Mr. Green came up or saw the Huron and Erie?

A. I don't know.

Q. I think you said Green told the Huron and Erie? 40

A. No, I did not say that.

Q. What did they say he told them—

HIS LORDSHIP: That was after when he was called over about the time he tendered that resignation.

MR. WALSH: What did Green tell the Huron and Erie that brought about your resignation? A. How could I tell that.

Q. What did they say Green said?

A. I don't know; I cannot recall at this time; there was a lot of wild stories, there was no truth in any of them; I could not repeat them.

Q. What date did you get the money from Mr. Morine?

A. I did not get any money; it was paid for timber stock out at Vancouver; I cannot remember what channel that went through but it went through one of the members of the staff; I was in with the rest of them.

10 Q. You gave him a note? A. Yes.

Q. What date did you give him the note?

A. I cannot tell you; it was made in 1923.

Q. Are you sure it was not in 1922?

A. Because our official was here from Regina, and he used to come down at Christmas time, and it was at that time.

Q. Are you sure it was not in 1922 now? A. Absolutely sure.

Q. Was it in 1924?

A. No; 1924 I was away sick, I did not do any business in 1924.

Q. This was a great surprise, was it not, to the Huron and Erie?

20 A. I don't know.

Q. It must have been, according to the way you worded your letter?

A. It was a great surprise to me, I confess; I should not have had any business of that kind with Mr. Morine, but I was drawn into it.

Q. Drawn into it by whom? A. You would not like to hear.

Q. May I put it this way: Mr. Green, who was a partner of Mr. Morine, came up to London and spilled the beans?

MR. SINGER: I object.

HIS LORDSHIP: He has a right to ask the question.

MR. SINGER: My learned friend is making a statement.

30 HIS LORDSHIP: He is asking a question, but he is putting it in a rather offensive form.

A. I have no knowledge of it; I think you are wrong.

MR. WALSH: How did this come to the attention of the Huron and Erie?

A. I don't know.

Q. As far as you know? A. I cannot tell.

Q. You mentioned S. B. Green's name? A. I did not.

HIS LORDSHIP: I think, Mr. Fetterley, you said that when you were called over to that interview you were told certain things that Mr. Green had said?

40 A. Yes; I said that Mr. Aylesworth and Mr. Clark called me over and we three discussed it.

MR. WALSH: And they said Mr. Green had told them certain things?

A. I don't know that he told them, but he has said certain things; I don't know whom he has said it to.

HIS LORDSHIP: Well——

MR. WALSH: Well, that is all I want, your Lordship.

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JAMES McMILLAN, Sworn. Examined by Mr. Slaght :

Q. You are a practising barrister and solicitor and have been with Mr. Brickenden's firm for some years? **A.** I have, yes.

HIS LORDSHIP : Covers the period in question?

MR. SLAGHT : When did you start with Mr. Brickenden?

A. I think it was in June, 1923.

Q. At that time also I believe there was a Miss Harrison, a young barrister, also in Mr. Brickenden's office? **A.** Yes.

Q. I don't think you had to do with the business for the London Loan in connection with the two first loans on the Buckingham Apartments, that would be \$35,000. and \$20,000.; you did not personally handle those? **10**

A. Nothing whatever.

Q. Miss Harrison, the documents show she had to do with them?

A. I don't know.

Q. Later on, when your firm took proceedings under power of sale, did you have to do with that in your office? **A.** I did.

Q. To what extent, speaking generally, did you have to do with handling that matter?

A. I received instructions from the London Loan in the form of a slip or statement, I think it is produced by our firm. **20**

HIS LORDSHIP : It is not in yet.

MR. SLAGHT : Would that be 1 and 1-A? **A.** Yes.

Q. About what date would that be, early in 1925, would it be?

A. Yes, about the end of January, I believe.

HIS LORDSHIP : 57 and 58 are statements.

MR. SLAGHT : Yes, they are both dated January 22nd, 1925; are these what you had in mind? **A.** Yes.

Q. Whom did you receive these from?

A. I do not recall now; they are usually sent in by one of the stenographers in the London Loan. **30**

Q. Do I understand these emanated from the London Loan? **A.** Yes.

Q. Whose writing is on the bottom of these, or do you know?

A. I think it is Mr. Kent's writing.

Q. On both of them?

A. Yes; it is checked and initialled by Mr. Kent, initialled by Mr. Kent anyway.

Q. Under the checking, both of them? **A.** Yes.

Q. After getting these statements or about the time of getting these statements, what were your instructions from the company and from whom in the company if you recall? **40**

A. As I recall it, when I got these statements I prepared the notice of sale, but there were several things in the notice of sale or in the statements that I did not understand, and I went back to Mr. Kent, I think; for one thing the mortgage on its face called for \$20,000. and the statement called for \$21,000. principal, and for another thing they were charging on the third mortgage, which was overdue, a sum of money for preliminary expenses under the notice of sale, which I did not think they could collect—

Q. I see here, perhaps that is the item, looking at Exhibit 58 in the statements they sent you, they tacked on preliminary expenses, paid \$200.?

A. Yes.

Q. Is that the item you had in mind when you were speaking?

A. Yes; they meant by preliminary expenses the amount paid for commissions or any other expense when they took the loan; as this loan was overdue I did not see how they could collect from the mortgagor preliminary expenses.

Q. You had occasion to discuss that feature of it with Mr. Kent? A. Yes.

Q. You prepared some notice of sale?

10 A. I might say Mr. Kent insisted on the item going in when the notice of sale was finally completed.

Q. Looking at Exhibit 216, which seems to be a notice of sale prepared by your firm, prepared by yourself for your firm? A. Yes.

Q. This is in connection with the \$20,000., and I see you are right; you put in the preliminary expense item of \$200. in that? A. Yes.

Q. That is signed with a rubber stamp, London Loan Co. of Canada, Mortgagees, M. J. Kent, Manager; is that signed by Mr. Kent?

A. That is signed by Mr. Kent.

20 Q. Looking at the other one, notice of sale, Exhibit 215, which appears to have been prepared in connection with the \$35,000. mortgage, that seems similarly signed by Mr. Kent, etc.? A. Yes.

Q. Was this prepared by you also?

A. Yes; that was never used; we could not sell under both mortgages at the same time.

Q. You went forward under the notice of sale as referred to under the third mortgage? A. Yes.

30 Q. In such interviews as you had in connection with this branch of the matter, with Mr. Kent, you have told us of one or three where you discussed this matter of expenses and so on; did you ever receive any instructions from him to proceed in any other way except by the sale proceedings you were carrying on?

MR. WALSH: I object to that.

HIS LORDSHIP: Admitted, subject to objection.

A. No, I did not.

MR. SLAGHT: We come further now to a period when there was a sale to Durno; will you tell me whether or not you had to do with any of the legal matters in your office in connection with the sale to Durno? A. I had.

HIS LORDSHIP: Those are in 1925? A. Yes.

MR. SLAGHT: They are dated February?

40 A. They are both dated February 13th, I think.

MR. SLAGHT: Before we come to the sale to Durno, I see a couple of letters here to your firm, one from Cassels, Brock and Kelley, do you recall this letter in connection with the matter, reporting on the Court application, there were some Court proceedings? A. Yes, I received that letter.

MR. WALSH: A letter from Cassels, Brock & Co.?

HIS LORDSHIP: That is not evidence of what the result of the Court proceedings was or what took place at all.

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MR. SLAGHT : I am putting it forward to show a report of a certain incident and matter because Mr. Brickenden is charged with fraud in this case.

HIS LORDSHIP : How will that letter prove anything except that they received the letter?

MR. SLAGHT : That is all, and that they were told certain things, but it does not prove the truth of them.

HIS LORDSHIP : That is quite right.

EXHIBIT 283 : Letter from Cassels, Brock & Co. to G. A. P. Brickenden & Co., dated April 23rd, 1925.

MR. SLAGHT : Then did your firm receive this letter of April 25th, 1925, 10 in connection with the same matter from Melville W. Wilson? A. Yes.

EXHIBIT No. 284 : Letter from Melville W. Wilson to Brickenden & Co., dated April 25th, 1925.

MR. WALSH : I submit if they want to prove it it cannot be proved by the production of that letter.

HIS LORDSHIP : They will have to prove the fact stated by some other means.

MR. SLAGHT : You had to do in connection with a sale to Durno, and what did you have to do with that, you told us you handled that in your office?

A. I received, at least an offer for the purchase of the property was for- 20
warded by letter to our office, and I believe it reached our office on the last day for acceptance, and was forwarded immediately to the London Loan.

Q. By you? A. By me, I believe.

Q. Then what contact did you have with anybody in the London Loan with reference to that matter? A. I think on the 23rd June that—

Q. I am not particular about the dates exactly?

A. Well, Mr. Baker and Mr. Brickenden and I think Mr. Morine came in to my office on that day and—

Q. Who was Mr. Baker?

A. He was the vice-president of the company; and they instructed me 30 that the offer had been accepted by the company—I am not sure that Mr. Morine came in at that time; but he was in the office that day.

Q. They instructed you that the offer had been accepted? A. Yes.

Q. What further did you have to do with reference to carrying out that transaction?

A. I think I was instructed at that time to carry out the transaction; I was also instructed to give Mr. Morine at that time what declarations and other papers we had in connection with the sale proceedings, which I did; I think I enclosed them in the form of a letter.

Q. This has been put in as the Durno offer (Exhibit 69) to purchase, 40 marked Mr. McCormick's initial, do you recall whether that would be the one, at all events it was the Durno offer, there has only been one produced here—? A. I think that is the offer.

Q. That is Exhibit 69; were there conveyances and a deed and mortgage passed in the matter? A. Yes.

HIS LORDSHIP : They are all in.

MR. SLAGHT: The matter was finally closed up. we have heard, by a transfer to Durno, which is in, and a mortgage back from Durno and a deed to the Consolidated Trusts, in trust, and then we have heard of another document, I think it is later on, a quit claim deed to Consolidated Trusts; do you remember all those? A. I remember seeing all those.

Q. Do you recall why the deed was taken from Durno to the Consolidated Trusts?

MR. WALSH: It is a conveyance, not a quit claim deed; it is a conveyance in trust.

10 MR. SLAGHT: Is it in?

MR. WALSH: Yes.

MR. SLAGHT: A conveyance in trust, and then there is a quit claim deed as well.

MR. SINGER: The quit claim deed has not been put in.

MR. SLAGHT: Well, the deed was taken by the Consolidated Trusts; tell us anything you know about it?

A. When I was given instructions I was told to protect the London Loan—

MR. WALSH: Was there anything in writing?

20 HIS LORDSHIP: Were the instructions verbal? A. Yes.

MR. SLAGHT: By whom?

A. By Mr. Baker—to protect the London Loan with regard to the gross rents of the property for the period under the mortgage; the first payment on the mortgage would not fall due for six months, to protect them with regard to those rents there was a trust deed taken to the Consolidated Trusts to enable them to collect the rents in the meantime.

MR. SLAGHT: That was registered? A. Yes.

Q. Was there another deed taken, a quit claim deed taken?

MR. SINGER: That has not been filed; I have a copy of it.

30 MR. SLAGHT: Was there a quit claim deed prepared at the time?

A. I did not prepare any; I did not prepare any of the documents as a matter of fact.

Q. In connection with the Durno transaction did you have anything to do with Mr. McCormick at any time?

A. No, I don't think I had anything to do with him.

Q. Gave you no instructions in the matter? A. No.

Q. And you did not discuss it with him; apparently Mr. Melville W. Wilson acted in Toronto in connection with the closing and registration and carrying out of the Durno transaction? A. He acted.

40 HIS LORDSHIP: Was he your agent there? A. For this purpose only.

MR. SLAGHT: You mean in this transaction? A. Yes.

Q. He is not your regular agent? A. No.

Q. Tell us who your regular agents were and how Melville Wilson came to act in this matter?

A. Cassels, Brock and Kelley were our usual agents, and our registered agents in Toronto; Mr. George M. Kelley was fourth mortgagee on this

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property as trustee for certain persons and it was considered it would not be a proper thing to use him.

Q. So you employed Mr. Wilson specially? A. Yes.

Q. Who selected Mr. Wilson?

A. As far as I know, Mr. Kent selected him.

HIS LORDSHIP: As far as you know? A. That is my recollection.

Q. Did he tell you anything about it?

A. He knew Mr. Wilson was being used at the time I was talking to him before the notice ever went down to Toronto.

Q. As far as you know and as far as you remember, which was it? 10

A. That is the best I can say about it.

Q. It is very indefinite.

MR. SLAGHT: Do you recall anything that was said by Mr. Kent?

HIS LORDSHIP: Remember Mr. Kent is dead and we have heard a whole lot of attempts to put things on him here.

A. He was the only man I was dealing with in connection with the matter.

MR. SLAGHT: I trust your Lordship does not mean attempts to put anything on him other than—

HIS LORDSHIP: I am not suggesting that any of the counsel are, but some of the witnesses I am afraid are. 20

MR. SLAGHT: Mr. Wilson had to do with this in Toronto and a question came up as to, you have not been in Court, you have been excluded, so you do not know about this, but in Mr. Braden's examination a question came up as to Mr. Wilson in a statement to the London Loan having sent forward a statement which showed he had paid \$3.70 for registering of the deed to Durno and \$454. for the tax on that deed; I will just call your attention to that item in Exhibit 71; first there is paid, registering deed to Durno from the London Loan, \$3.70; paid tax thereon \$454., and we have heard also of certain monies sent by the London Loan to Wilson in two cheques which appear to be credited also on this statement; will you tell us from this statement what 30 the position was so far as monies—in the first place perhaps you observed that contract with Durno was to adjust matters as of the 1st June, 1925; is that correct? A. Yes.

Q. These monies that were sent to Wilson; will you tell me as appears from his statement whether they were employed for payment of the full arrears of taxes down to the 1st June, 1925, or whether the matter was closed, leaving still unpaid against the land certain arrears of taxes which Durno would thereby assume on the 1st June?

A. There were certain arrears of taxes and there were also certain arrears of interest on the Huron and Erie mortgage. 40

HIS LORDSHIP: There was a statement—

MR. SLAGHT: Look at a page in the bundle of papers that were put in as Exhibit 82, and which page is a typewritten copy of a statement from Wilson, the third from the back, which, if I may, I will put the letter "A" on, and included in that statement, Exhibit 82, do you find there a statement of all the arrears of taxes up to the 1st June, on the property—three items, are there not? A. Yes.

Q. Read them. A. Taxes for 1923 to date and penalties \$433.29.

HIS LORDSHIP: That corresponds with the amount there in that statement that is just before you, I think it is at the top.

MR. SLAGHT: No, this other statement that we just referred to does not contain the statement of the amount of taxes.

A. There is a third statement with that amount in.

Q. The one we did have, Exhibit 71, the Wilson statement of actual monies received and paid out and what for—I am showing you Exhibit 82, page A, which is headed Buckingham Apartments as of June 1st, 1925? A. Yes.

10 Q. And the taxes there you were starting to give me, \$433.29; taxes for 1924 and penalties \$2,384.45, taxes for 1925 to date \$1,417.18; those several amounts of taxes shown there as of June 1st? A. Yes.

Q. Looking back at Exhibit 71 with those as the arrears of taxes to June 1st which the company ought to have paid, will you show me how much Mr. Wilson paid of those from Exhibit 71; read the item?

A. Paid on account of 1923 taxes, \$525.

Q. Were there any other amounts in the transaction or any other payment of taxes made other than those made by Mr. Wilson and included in this statement? A. Not to my knowledge.

20 Q. He underpaid the taxes up to the adjustment date of 1st June by a substantial amount of money? A. Yes.

Q. Will you look and see whether in Exhibit 71 Mr. Wilson actually paid the arrears on the Huron and Erie mortgage up to the 1st June, 1925, the adjustment day, or whether he did not?

A. According to the statement, he did not.

Q. Looking at Exhibit 71, tell us what Wilson did as appears from his statement with reference to cleaning up or not cleaning up in whole to the first June the arrears of interest on the Huron and Erie first mortgage; read it?

30 A. He says here: "Paid on account of interest to Huron and Erie (total amount to June 1st is \$3,737.20, which leaves a balance of \$1,225.08)," and then he carries it in his column.

HIS LORDSHIP: Wilson would not pay the Huron and Erie, would he?

A. This is for interest prior to the 1st June.

Q. He would not pay that to the Huron and Erie, would he?

A. He did not; this is part of the adjustments.

Q. That is showing the net balances?

A. At the time of the sale the Huron and Erie was paid up, I believe, to the 7th February, 1925.

Q. And this would be from February to June? A. Yes.

40 MR. SLAGHT: So then that statement purports to be the actual amount for which Wilson issued his cheque on that score; it is a little clumsy in the reading? A. He carried that out into the column, \$2,512.12.

Q. In other words, he had paid on account of the Huron and Erie arrears \$2,512.12; is that right from the statement? A. Yes.

Q. And to have cleaned up the arrears to the 1st June he should have paid \$3,737.20? A. Yes.

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Q. And he says further in his statement here : “Which leaves a balance of \$1,225.08,” is that correct? A. Yes.

Q. So that there was that balance with reference to taxes the company should have paid up before Durno took over, and that reference to the arrears of interest the company should have paid up before Durno took over; now then, we find Wilson paid an item on the other side of \$454. which it is suggested would ordinarily be paid by Durno; you see that? A. Yes, I see that.

Q. We heard in evidence here a cheque for \$500. and a payment of \$3,000. which would under the contract be made by Durno in cash in connection with closing; you remember the offer disclosed those figures? 10

A. Yes, that is correct.

Q. We also heard in evidence that Durno did not actually pay to the company in cash the \$3,000. payment nor the \$500. because, although a cheque was put up with the offer, that cheque was never cashed, so that apparently there would be \$3,500. and \$454. more that Mr. Wilson paid out for Durno, will be \$3,954. that Mr. Durno ought to have turned over on closing; on the other hand you have found for us \$1,200. and those arrears of taxes that were not paid, and that Durno assumed, and would they amount to sufficient to offset the \$3,000., the \$500. and the \$454.?

HIS LORDSHIP: That is not right to ask a witness; that is entirely a 20 matter of argument.

MR. SLAGHT: In the contract so far as you knew of it, and having regard to the monies that were known to have been remitted to Mr. Wilson in Toronto, do you know of the company having paid either to Durno direct in cash or to the tax gatherers for the arrears of taxes or the Huron and Erie for the balances we have just found disclosed in the statement as unpaid up to the 1st June, do you know any other payment the company ever made for those items? A. Not other than shown on this statement here.

HIS LORDSHIP: That is none through your office? A. No, I don't know.

MR. SLAGHT: We had no evidence of any paid out by the company 30 at all; we will pass from that. By the way, you have found a receipt which you were asked about of papers from the London Loan to your firm, which is dated the 7th March, 1929, and which for a long time could not be found?

A. Yes.

HIS LORDSHIP: That is No. 285.

EXHIBIT No. 285: Receipt of London Loan and Savings Co. to G. A. P. Brickenden for papers received in connection with Buckingham Apartments.

MR. SLAGHT: When Mr. Brickenden was being examined he did not have this receipt, have you endeavoured to help look up and get the papers 40 together? A. Yes.

Q. And had you at that time found this receipt?

A. I found this receipt last fall after I received a message saying counsel was asking for the receipt.

HIS LORDSHIP: It is a receipt from the London Loan?

A. For documents sent.

MR. SLAGHT: Dated 7th March, 1929.

HIS LORDSHIP : Anything particularly in it ?

MR. SLAGHT : There are some documents in it I want to inquire about later on from Mr. Braden if he resumes the box; because it is in Mr. Braden's regime, or do you know ?

A. It was after Mr. Braden became solicitor, I believe.

Q. Who is E. P. Fletcher ?

A. She was a secretary in the company and she is now still secretary in London Loan Assets.

Q. This Exhibit 285 enumerates thirty-one documents, and it is signed
10 London Loan and Savings Co. by rubber stamp, with E. P. Fletcher's name on it ? A. She was a clerk there.

Q. I show you this letter, Exhibit 91, to the London Loan, that is already in, Brickenden per James McMillan, October 2nd, 1925 ? A. Yes.

Q. "We are today in receipt of a letter from M. W. Wilson, enclosing statement of adjustment in this matter, and as it speaks for itself we are enclosing herewith copy of same for your file. Will you kindly check over these statements and advise us as to whether they are satisfactory. Signed G. A. P. Brickenden & Co., per James F. McMillan." Did you ever have from Mr. Kent or anybody from the London Loan any communication asking you
20 to do anything further in connection with these adjustments ?

A. None whatever.

Q. In connection with the carrying out of the Durno transaction Mr. Brickenden was your senior; you would perhaps, or would you, have to see him at times in connection with it—I want to know to what extent you ran the matter or what if any conferences you had with him in any way ?

A. I think it would be discussed between us occasionally.

Q. Who had the real burden of the detail of carrying it out ?

A. I carried out the detail.

Q. In connection with the matter, I have already asked you about Mr.
30 McCormick, you say you had nothing to do with him in connection with it ?

A. Not as far as I recall.

Q. In connection with the matter, did Mr. Brickenden at any time ever suggest to you the doing of anything in connection with it to favor Mr. Morine, or that was improper or fraudulent or savoured of conspiring with somebody for some wrongful purpose ? A. No, nothing at all.

Q. Except for the occasion when you say Mr. Morine may or may not have been present when Mr. Baker gave you instructions; did you have anything to do yourself with Mr. Morine in the matter; did he have anything to do with you, or you with him in connection with your legal services to the
40 company ? A. No, I do not recall any.

Q. There was one exhibit here, a report on title, where it was called a first mortgage—it is attached to mortgage which is Exhibit 118; I show you the mortgage and your letter of February 2nd enclosing it to the company; that is signed by you ? A. Yes.

Q. And the certificate appears to have been signed by you ? A. Yes.

Q. Saying you investigated the title of above property and you find same quite sufficient, and that the said mortgage now forms a first charge

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on the said land—do you notice that word first? A. Yes, that is incorrect.

Q. How did that get in?

A. There is a clerical error in that certificate; I might explain to you that certificate, the London Loan made a practice of checking up all their documents and records after the rush of getting out the annual statement was over, and they would send up a request to us to furnish them with certified duplicate certificates—

HIS LORDSHIP: That would be for the purpose of the auditors, I suppose?

A. And other documents; in February this year the same request was made.

Q. But that accompanied the mortgage, did it not? A. No, my Lord.

Q. I thought that memorandum said something of that nature?

A. There is a letter that encloses the certificate only.

MR. SLAGHT: This is dated February 2nd, 1926, your letter is, and the certificate is dated the 2nd February, 1926, and is now physically pinned on to the mortgage? A. Yes.

Q. But the mortgage itself is dated June 1st, 1925, and was registered on the 8th July, 1925; so that this is a certificate many months after?

HIS LORDSHIP: Furnished later?

A. Yes; the mortgage was forwarded months before this certificate was furnished.

MR. SLAGHT: In case anything was made about that, I wanted to ask you about it?

A. I don't think the company ever treated this mortgage as a first mortgage, and I think either Mr. Hambly or Mr. Kent, who was there at the time, if they had seen the mistake themselves, would have called our attention to it.

HIS LORDSHIP: It was a third mortgage—

MR. SLAGHT: No, this is the Durno mortgage.

HIS LORDSHIP: It was for \$77,000. and the other had not been discharged at that time.

MR. SINGER: Yes, my Lord, the \$35,000. mortgage was discharged.

MR. SLAGHT: The discharge was registered at the time this mortgage was put on.

HIS LORDSHIP: I thought it was later?

A. On the 8th July, I think.

MR. SLAGHT: That was the closing date apparently; the abstract—

HIS LORDSHIP: Very well. The discharge was dated June 3rd, 1925, and was registered on July 8th, 1925.

MR. SLAGHT: So that that mortgage was discharged and the \$20,000. was discharged at the time the deed to Durno, giving Durno a clear title.

HIS LORDSHIP: No, it was not discharged.

MR. SLAGHT: At all events the 8th July is the date of the registration of the discharge. Since you did desire to make that explanation that you believed no one was deceived, I can show you again Exhibit 82 which was put in where in the statements forwarded to the company that you had got from Mr. Wilson, Mr. Wilson sets out the mortgage and refers to this: "Offset

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by second mortgage from R. S. Durno to London Loan and Savings Co. of Canada, dated June 1st, 1925, \$77,000."?

A. In addition to that there was a letter from the Huron and Erie to Mr. Kent, which Mr. Kent dealt with, I think it was the 4th or 5th February, about two or three days after the certificate.

HIS LORDSHIP: You must not give it. You can instruct the solicitors in the matter, and they will put it in at the proper time; you are not here to give evidence of contents.

10 MR. SLAGHT: Your Lordship called our attention to the fact that the certificate I just referred to was physically attached to the mortgage, and probably at the same time—

HIS LORDSHIP: No, it could not.

MR. SLAGHT: I am able to show you now by Exhibit 87, your letter to the company, you forwarded the mortgage from Durno back in September, 1925.

HIS LORDSHIP: That would likely be attached to that for the purpose of convenience of references.

—Court adjourned at 12.45 p.m. to 2.00 p.m.

—Court resumed at 2.00 p.m., December 17th, 1931.

20 MR. SLAGHT: During your connection with the services you rendered in the Brickenden firm in connection with the Durno sale, did Mr. Kent or any other director ever voice any suggestion of objection or objection to you in any way that you heard of in connection with the matter? A. No.

Q. Just one point that perhaps you can tell me; in connection with Exhibit 82, last night during the trial some question arose as to what became of the original sale papers, whether they were registered or not, and I see in Exhibit 82, looking at the last sheet, of Mr. Wilson's monies paid out, "paid registering sale papers, \$2.00"?

A. That would be for a deposit that was made of the sale papers.

30 Q. Do you happen to know yourself as to whether or not, have you ever searched as to whether or not the sale papers—? A. I have recently.

Q. And are they on deposit in the registry office? A. Yes.

HIS LORDSHIP: I thought there was a provision in the Act that where there is sale under power of sale a notice of sale accompanied by the affidavit of service must be filed, but here of course it was not at the sale, it was a private sale afterwards.

MR. SLAGHT: Yes, apparently it was not filed because I do not find it on the abstract, but it was deposited and \$2.00 fee paid, and there is apparently the provision for that.

40 Q. There was a transaction spoken of earlier in the case as the Rutherford transaction which occurred subsequent to the Durno sale; did you have anything to do with that, did you go to Toronto in connection with that?

A. Yes, I went to Toronto in connection with that.

Q. Who went with you? A. Mr. Brickenden went with me.

Q. Did you take any documents with you?

A. Yes, we took down a deed from the Consolidated Trusts to May

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Rutherford, and we had already approved a mortgage back from May Rutherford to the London Loan and Savings Co.

Q. There was to have been a \$40,000. cash payment on that transaction?

A. I believe the price was \$275,000. and \$40,000. in cash, and \$235,000. by this mortgage.

Q. At all events it never was closed? A. It was not completed, no.

CROSS-EXAMINED by Mr. Singer :

Q. Just a question or two as to the Rutherford transaction; who was acting as solicitor for the purchaser? A. T. H. Wilson of Toronto.

Q. At whose office did you attend for the purpose of closing the transaction? A. At his office.

Q. Were there any other solicitors interested in the transaction?

A. No other solicitors to his office, when we attended at his office, and he told me that this is what might be called a three or four cornered deal and we had to attend at Mr. McPherson's office; that was Hon. Mr. W. D. McPherson.

Q. Do you know whom Mr. McPherson was acting for?

A. I cannot recall.

Q. Were there any other solicitors present on behalf of other parties?

A. I think Mr. McPherson's son was there; I don't know whether he attended the conference or not; he was in the office.

Q. Do you recall Mr. Louis Heyd? A. Yes, he was there.

Q. Do you remember whom he was acting for?

A. No, I do not recall that.

Q. Why did the deal fall through?

A. Mr. McPherson wanted us to have signed by the London Loan an assignment or postponement of their rights to the rents of the property to some bank, I don't recall what bank it was now, to secure a loan which was apparently being made by this bank out of which part of this \$40,000. or all of this \$40,000. was being obtained; that would have the result of assigning the gross rents of the property to this bank.

HIS LORDSHIP: In other words, they wanted to pay the down payment out of the rents that were paid in advance?

A. That seemed to be the result of the thing or part of it.

HIS LORDSHIP: A sort of high finance.

MR. SINGER: That was Mr. McPherson's request to you? A. Yes.

Q. What attitude did you take as solicitor for the London Loan?

A. That we had no authority to do anything but accept \$40,000. in cash.

Q. And the deal was not closed? A. No.

Q. Can you recall what documents you had with you for the purpose of closing at the time of your attendance at Mr. McPherson's office?

A. I have already mentioned the deed; I think Mr. Wilson had the mortgage complete; I think we also had a discharge of the Huron and Erie first mortgage.

Q. That was the mortgage which was assigned to the London Loan and Savings Co.? A. Yes.

HIS LORDSHIP : It had been assigned at that time ?

A. Yes, I think we had the mortgage, the assignment and discharge.

MR. SINGER : What else ? A. Also the \$77,000. second mortgage.

Q. The discharge of that mortgage ? A. The mortgage and the discharge.

Q. Do you recall any further documents ? A. No.

Q. I call your attention to item number 20 in Exhibit 285, which is a release to Robert S. Durno and the Consolidated Trusts Corporation, dated the 8th July, 1925; will you tell his Lordship what that document was ?

HIS LORDSHIP : No, the document will speak for itself.

10 MR. SINGER : I will ask my learned friend to produce it; it is acknowledged in this receipt.

HIS LORDSHIP : Yes, it ought to be produced if it is available; has it been produced ?

MR. SINGER : No, my Lord.

MR. WALSH : Mr. Braden is having a search made on that. I asked before for that receipt and it was never produced, and he is now having Miss Fletcher and himself making a search.

MR. SINGER : May I produce this document which is marked release, dated 8th July, 1925, Robert S. Durno to the Consolidated Trusts Corporation, 20 signed by R. S. Durno and witnessed by Margaret M. Green; will you look at this document and advise me if you have seen that document or its duplicate original before ?

HIS LORDSHIP : That is produced from whose custody ?

MR. SINGER : From my client's custody, H. A. Morine; this is a duplicate original. A. This appears to be a copy of the release referred to.

HIS LORDSHIP : Were you familiar with that; do you recognize it as being the document that you took down ?

A. No, the document we took down may have been the one we sent to the London Loan.

30 MR. SINGER : I am not suggesting that that is the particular document you took down; my suggestion is it was the duplicate original of that document ?

A. It appears to be to the same effect.

HIS LORDSHIP : Did you ever have it in your possession ?

A. We had a document similar to this.

MR. SINGER : That would be the document referred to here under item No. 20 ? A. Yes.

Q. Release Robert S. Durno and Consolidated Trusts Corporation, dated July 8th, 1925; and these documents according to this receipt were forwarded by your office to the London Loan and Savings Co. and signed for 40 by them under the receipt dated March 7th, 1929 ? A. That is correct.

MR. SINGER : With your Lordship's permission we will delay the filing of this until my learned friend sees if they can find the original.

HIS LORDSHIP : Yes, it is not proven.

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CROSS-EXAMINED by Mr. Walsh :

Q. Just a few words on the Rutherford offer; you were to get \$40,000. when you were down there? A. That is correct.

Q. What were you to do with the \$40,000.? A. Hand it over to our clients.

Q. Your offer for purchase does not call for that, "and the London Loan is to pay me the difference, \$39,900. in cash, on closing"?

A. Let me see the offer.

HIS LORDSHIP : Where is the original offer?

MR. SINGER : That has not been filed. That was produced in our exhibits, 10 and I think my learned friend was advised that was not the offer on which the deal was finally closed.

MR. WALSH : Let us have the one on which it was finally closed.

MR. SINGER : I think that should come from your custody.

MR. WALSH : What is the one that is in?

HIS LORDSHIP : What year will that be in?

MR. WALSH : It is dated January, 1928.

MR. GRAY : Exhibits 155 and 156.

HIS LORDSHIP : 155 was produced by the Defendant Morine, and another one came from the possession of Mr. Brickenden but unsigned. 20

MR. SINGER : Neither accepted, my Lord.

MR. WALSH : 156 is the one produced by the Defendant Brickenden, and the other is the one produced by the Defendant Morine (155); am I right when I read these words in each : "The London Loan and Savings Co. is to pay me the difference, \$39,900., in cash on closing"?

A. May I see this offer?

Q. Yes. A. This is not the offer.

Q. It came from your possession?

A. The offer, this is dated the 12th January, 1928, I believe this offer was refused by the company. 30

Q. Where is the one the company accepted?

A. I have not been able to locate it.

Q. You had that as a copy in your files?

HIS LORDSHIP : Is that among the papers shown on that receipt?

A. No, my Lord.

Q. It must have been in your custody then?

A. As far as I know, those documents were returned immediately after this sale fell through.

MR. WALSH : Why would that be returned when the Durno ones were not returned until March, 1929, when Brickenden & Co. ceased to be solicitors 40 for this company?

MR. FERGUSON : That is not so.

MR. WALSH : When were they returned; let us see the receipt. Mr. Ferguson says I have the wrong date; what date is on the top of that receipt?

A. March 7th, 1929.

Q. Did Brickenden & Co. cease to be solicitors for the London Loan and Savings Co. previous to March 9th, 1929?

- A. I do not remember the exact date, it was around about that time.
- Q. Mr. Brickenden was no longer solicitor for the London Loan, was he?
- A. That is quite correct.
- Q. And the papers were returned according to that receipt?
- A. They were returned at the request, I think, of the London Loan.
- Q. How long had you those papers in your possession before that date?
- A. There were several proposed deals on this Buckingham, I don't know when this—they were in our file.
- Q. They were there for some considerable time, were they not; for some 10 years?
- A. They were in and out over a course of some years.
- Q. In and out? A. Yes.
- Q. When is the last record you have of receiving those papers?
- A. I don't think we have any record of receiving them.
- Q. You may have had them for some time as far as you are concerned?
- A. We may have had, except they check up their securities every so often, and if we kept them for a considerable period of time they would certainly ask for them; the Huron and Erie mortgage is there.
- Q. You would return the original offer to purchase of the Rutherford?
- A. As far as I know, it was returned.
- 20 Q. Where is it, it is not mentioned in the receipt?
- A. This is a year after.
- Q. So was this one; the papers in Exhibit 285, what deal did you get them out for?
- A. I cannot recall, but there were other deals, I think there was a deal in the fall of 1928.
- Q. Called the Lymberry deal, the Canusa deal, that is the one you mean?
- A. Yes; that was never accepted by the company.
- Q. You heard the evidence of Mr. Brickenden put forward, that offer to purchase, did you ever hear of the Canusa deal, Mr. Hambly said the offer 30 of Mr. Lymberry came through Mr. Brickenden?
- A. I did not hear that evidence; did he say that?
- Q. Yes, you heard of that deal, did you not?
- A. I think I heard of the deal.
- Q. What did you do in connection with that deal?
- A. I don't think I did anything in connection with that deal.
- Q. Have you any other offer or copy of offer in your possession on the Rutherford deal, other than Exhibits 156 and 155? A. No, we have not.
- Q. And under that the London Loan were to pay out \$39,900.?
- A. I am telling you that was not the deal we were instructed to close 40 at all.
- Q. What deal were you instructed to close?
- A. The offer was \$275,000., \$40,000. in cash and a mortgage for \$235,000., to take up the other two mortgages.
- Q. You never saw May Rutherford? A. No.
- Q. You don't know anything about her?
- A. No, nothing at all; I simply dealt with the solicitor who was supposed to be acting.

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Q. And the \$40,000. was not forthcoming? A. No.

Q. There was never anything but a promise of the \$40,000.?

A. No, I presume that is correct.

Q. You were discharging your first mortgage? A. Yes.

Q. And may I not say that you are the one that had correspondence with the Huron and Erie in connection with the assignment of the first mortgage, and you were very particular to insist upon the covenants in the assignment? A. I believe that is correct.

Q. You wanted to keep that mortgage on foot; you wanted to keep Mr. Morine on the covenant on the first mortgage—

MR. SINGER: Surely that is not the proper way to put that question.

HIS LORDSHIP: I should think so.

MR. WALSH: You wanted to keep Mr. Morine on the covenant on the first mortgage?

A. I wanted to see they got everything assigned to them they were entitled to under the mortgage.

Q. You did not want a discharge of the mortgage?

A. As a matter of fact, I think the London Loan paid out the money themselves before they came to us—

HIS LORDSHIP: What do you mean, before the mortgage was drawn? 20

A. No; speaking now of paying off the Huron and Erie first mortgage, I think they paid over their money and this is when they received the assignment or a draft assignment, whichever it was, from the Huron and Erie, that they sent them up to our office to revise; that is all I had to do with it.

MR. WALSH: I see you had correspondence; you wrote a letter on February 9th, 1928, to Cronyn and Betts? A. That is quite correct.

MR. SINGER: Exhibit what?

MR. WALSH: I don't think it is in.

MR. SINGER: May I say it is not evidence against the Defendant?

HIS LORDSHIP: He has a right to cross-examine him on it on the question 30 of credit; it would not make it evidence.

MR. SINGER: If that is the only intention I am quite satisfied.

MR. WALSH: Do you remember writing that letter of which that is a copy?

HIS LORDSHIP: Where is the original?

MR. WALSH: Cronyn and Betts have the original; there is a copy on Mr. Brickenden's file.

HIS LORDSHIP: Show him the copy.

MR. SLAGHT: What production of ours is it?

MR. WALSH: The date of the letter is February 9th, 1928, from Bricken- 40 den & Co. to Cronyn & Betts.

—Mr. Slaght produces copy.

MR. WALSH: Is that a copy of the letter you wrote?

HIS LORDSHIP: Is it written by you? A. Yes.

MR. WALSH: It is a letter dated February 9th, 1928, from G. A. Brickenden & Co. to Cronyn & Betts:

“*Re* London Loan, Buckingham Apartments, Toronto.

“The London Loan have handed to us a draft assignment of “the Buckingham Apartments mortgage for approval and as stated “in our telephone conversation this afternoon there are one or two “clauses we would like added to the last page of the assignment. “We would like to have the first paragraph extended to read as “follows: ‘together with the said mortgage and all the monies now “owing thereunder as aforesaid, and all monies that may hereafter “become due or owing in respect of the said mortgage and the full “benefit of all powers and all covenants and provisos contained in “the said mortgage.’ We would also like to have the covenant “inserted at the last of the assignment as follows: ‘that it has the “right to assign the said mortgage and lands.’

“We will be much obliged if you will have the assignment “amended in this way and have same executed by your client and “return same to us at your earliest convenience.”

EXHIBIT No. 286: Letter February 9th, 1928, from G. A. P. Brickenden & Co. to Cronyn & Betts (copy).

MR. WALSH: Was it not your purpose in taking that assignment instead
20 of a discharge to maintain Mr. Morine on the covenant of that first mortgage?

MR. SINGER: May I file my objection to that letter?

HIS LORDSHIP: Received, subject to objection.

A. It was my intention there to see that the London Loan got all the powers.

HIS LORDSHIP: Occupied the same position as the Huron and Erie?

A. Yes.

MR. WALSH: This offer of Rutherford's to the London Loan would have left that mortgage for \$235,000.; is that right? A. That is quite right.

Q. That is, if it had gone through? A. Yes.

30 Q. As far as the cash is concerned, nobody ever saw the cash?

A. We did not get any cash.

Q. There were so many corners to it, how many corners to it?

A. I don't know.

Q. Four corners at least?

A. No, I don't know how many corners there were.

Q. There were other parties to that? A. Yes.

MR. WALSH: The sale proceedings that were taken, Mr. H. A. Morine, the mortgagor, had something to do with them, did not he?

A. Not as far as I know.

40 Q. Never heard of that? A. I think there is a letter on the file there.

Q. More than that, now here is a letter that I read to his Lordship, Exhibit 59: From Mr. M. W. Wilson, February 26th, 1925:

“On instructions from Mr. Morine I completed the notice of “sale on the \$21,000. mortgage”——

HIS LORDSHIP: Is that the Mr. Wilson who was acting as your agent?

A. Yes; the last I recall about the sale proceedings or notice of sale was when I sent it in to the London Loan to be signed; I was not in the office at

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the time immediately before it was sent to Toronto and I don't know who sent it down.

MR. WALSH: Mr. Wilson was never on the scene until that letter was received as far as you are concerned, was he?

A. I cannot recall that now; I did not know Mr. Wilson at all; I don't think I had ever heard of him before this deal.

Q. That was the first intimation you received? A. I cannot say that.

Q. Can you say you ever heard of Mr. Wilson being in these sale proceedings before you got that letter? A. I do not recall.

Q. The London Loan gave instructions to the solicitors to collect this mortgage on January 20th, 1925, manager reported loans in arrears for both principal and interest, solicitor to collect. Again, on January 27th, letter from A. W. Dyas asking extension of time; company must have arrears paid. Solicitors collecting. Is that right? 10

A. I do not think so, no. We did get instructions by this slip, but apparently if you will look at Mr. Dyas's letter there, apparently the London Loan had called him about this matter after the 20th January.

Q. Which letter is that?

A. There is a letter there from Mr. Dyas to the London Loan referring to our telephone conversation with you, or something of that kind, that we would like to have an extension of time on the mortgage, and the London Loan proceeded to deal with that at the meeting of the 27th, and to write back to Mr. Dyas about this extension. 20

Q. And the instructions you received from Mr. Kent were, as you told me, on these two slips? A. Yes.

Q. That is what Mr. Kent told you to do? A. Yes.

Q. And it says, G. A. P. Brickenden & Co. to collect?

A. All their instructions came in in the same form.

Q. Just these memorandums? A. Yes.

Q. It was up to the solicitor to do what was right? 30

A. It was a custom between the company and the solicitor before I did any work for the London Loan at all to take sale proceedings on those cases and to take them at once without entering into any correspondence with the mortgagor—

Q. As a matter of fact—

HIS LORDSHIP: Let him finish.

A. I think in 95 per cent of the cases they took sale proceedings; they wanted to prove the amount of their security by having a sale before they did anything else.

MR. WALSH: You have nothing outside those slips to show any instructions from Mr. Kent? 40

A. No, but I took these sale proceedings in to Mr. Kent.

Q. After you had drawn them? A. Yes.

Q. And he signed that?

A. Yes, and he was quite satisfied with taking sale proceedings.

Q. He looked them over? A. Yes.

Q. You left this notice of sale with Mr. Kent, did you? A. Yes.

Q. The next we hear of them, Mr. Wilson is employed on that letter which I have just read to you, Exhibit 59; do you know that Mr. Wilson had done work for Mr. Morine? A. No.

Q. Never knew that?

A. I don't think I knew Mr. Wilson at all at the time.

Q. You had never employed him before?

A. I don't think I had had anything to do with him; I do not know even that the firm had employed him before.

Q. Did you know that Mr. Wilson also acted for Mr. Durno, he was 10 solicitor for Mr. Durno as well, purported to act for him, did you know that?

A. I may have known it in the summer of 1925; I don't know, I do not recall being told that.

Q. You corresponded, as I understand it, after you got this letter you corresponded from then on with Mr. Wilson about these sale proceedings?

A. Yes.

Q. And the clearing up with Durno, is that right?

A. Clearing up with Durno?

Q. Putting through this Durno transaction? A. Yes, that is right.

Q. You just had the charge of the details of the matter?

20 A. I imagine that is correct.

Q. Matters of substance were looked after by Mr. Brickenden?

A. What do you mean by matters of substance? Mr. Brickenden had conferences with me about it.

HIS LORDSHIP: You did the work that was in the line of preparing documents? A. I did the work.

MR. WALSH: In what day in June was it Mr. Morine and Mr. Brickenden and Mr. Baker were together?

A. I would not recall now, but it was immediately after the meeting when they passed this; I think as a matter of fact from seeing the documents 30 it was the 23rd June.

Q. That was the date, the 23rd June? A. Yes, that is right.

Q. Did you know at this time how the taxes stood, the arrears of interest?

A. There was a statement showing part of the taxes—

Q. The notice of exercising power of sale shows that? A. Yes.

Q. Here is the notice of exercising power of sale, dated the 13th February (reads statement)—those were the arrears on that third mortgage of \$20,000.?

A. Those were the arrears.

Q. Can you give me any explanation why, when the matter was placed in the solicitor's hands, rents were not stopped?

40 A. I received no instructions to stop the rents.

Q. How do you mean, it was placed in your hands to look after the matter? A. I would not say that.

Q. You were general solicitors for the London Loan and Savings Co., why were not those rents stopped?

A. It was not their custom to stop the rents.

Q. They never did that?

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A. They may have done it in some cases but we got special instructions to do it.

Q. In other words you do not want his Lordship to believe it was customary for the London Loan and Savings Co. to let four gale days and two years of interest go by without collecting any rents of the property?

A. They did not come into our hands for collection four gale days before the notice.

Q. You knew no other mortgage of the London Loan outside of Mr. Morine's that came into your hands with four gale days of overdue interest?

A. I don't doubt but what there was.

Q. Do you know of any? A. No, I don't know of any.

Q. Then we come to the other mortgage, the \$35,000., there were two gale days at least of interest unpaid on that mortgage?

A. There appears to be from that statement. Is not there a credit on the bottom there for one of those?

Q. No, there are three and a credit for one, that is the reason I only referred to two, there are three and a credit for one; after it was placed in your hands and the drawing of notice exercising power of sale there was no tying of the rents then? A. No.

Q. Mr. Morine or Mr. Dyas went on collecting those rents for the six months in any event up till the sale in June, 1925, didn't they?

A. We did not collect them anyway.

Q. You never heard of them being stopped, did you? A. No.

Q. And in the meantime the interest of \$6,000. had piled up on the first mortgage to the Huron and Erie, had not it?

A. I cannot tell you now exactly what was that.

Q. It was in these adjustments? A. All right.

Q. There were \$6,000. arrears of interest to the Huron and Erie; is not that so? A. I don't know.

Q. The letter that was put in this morning, Exhibit 283, from Cassels, Brock and Kelley, of April 23rd, 1925, to Brickenden & Co., says: "We have been served with notice, by special leave, of a motion on behalf of the Prudential Trust Co. before a judge in chambers tomorrow at 10.00 a.m. for an order postponing until the 23rd of May next the sale of the Buckingham Apartments, and we have forwarded these papers to Mr. Morine to hand them to the solicitor acting for the London Loan and Savings Co. in connection with the sale"—they knew whenever any London Loan papers came up whom to send them to? A. I don't know.

Q. It is quite clear in that letter they were given to Mr. Morine?

A. Might I point out in connection with that letter it is obvious there was not time to get any mail down to us or send papers to us before the sale would actually take place.

Q. How long have you been through? A. Since 1923.

Q. Eight years? A. Yes.

Q. In your eight years of practice did you ever hear of a mortgagor having a hand in the sale proceedings against himself?

A. I have often heard of a mortgagor giving a quit claim deed of the whole property.

Q. Did you ever hear of a mortgagor having a hand—

HIS LORDSHIP: It does not matter whether he ever heard of it or not.

MR. WALSH: Then you come down to this alleged sale to Mr. Durno. Will you please look that original offer over (Exhibit 69); do you notice the purchase price is \$227,500., \$500. cash to the vendor on deposit? A. Yes.

Q. Before any adjustments were ever made or ever received, there was never any attempt made to cash that cheque?

10 A. It was passed on to the London Loan.

Q. No attempt made to cash it? A. I don't know.

Q. You never heard of an attempt made to cash it?

A. No, or anything else about it.

Q. "A further sum of \$3,000. in cash on completion of sale," and then these words, "and assume a first mortgage now registered against the said lands for \$147,000., bearing interest at 7½ per cent per annum, payable half-yearly, and for the balance of the purchase price to give back to the vendor a second mortgage on the said lands, payable \$1,000. on account of principal, together with interest at 7 per cent., payable half-yearly, having five years
20 to run. All outstanding liabilities up to June 1st, 1925, to be paid by the vendor to that date. Adjustments as of June 1st, 1925." Will you tell his Lordship why did not Mr. Wilson collect the \$3,500. from Durno and use that to pay the taxes under that offer—I have heard a lot of camouflaging this morning, three sets of adjustments, why was not that \$3,500. collected and used to pay the arrears—

MR. SLAGHT: My learned friend should have rope and latitude, but for him to interject in that rapid way a slur such as he did, that he heard a lot of camouflaging this morning, whether he thinks he is directing it at counsel or at a very reputable member of the bar—

30 HIS LORDSHIP: It is not a proper remark to make.

MR. SLAGHT: I did not think I should let that go without protest.

HIS LORDSHIP: You are quite right to make a protest. I don't think it is justified at this stage to a witness.

MR. WALSH: Will you tell me why that \$3,500. was not collected?

A. I believe if you will figure up the adjustments on this thing you will find Mr. Durno assumed more than that \$3,500. in charges against the property.

Q. And never paid them?

A. He may not have paid them, I don't know whether he paid them or not.

40 HIS LORDSHIP: Is there any adjustment that shows he should have been credited with the \$3,500.?

MR. SLAGHT: The statement of adjustment to the London Loan Company in a letter that was referred to this morning, and my friends should produce it.

MR. WALSH: Your Lordship has the point; I am coming to where this witness insisted on getting cash on the closing at the time.

Q. You wrote letters to make sure the cash would be paid on closing, didn't you? A. I don't recall now.

Q. Here is a letter that is already in, Mr. Wilson to Mr. Brickenden,

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June 29th, 1925, "the taxes will, of course, be paid," and then June 30th, 1925, written by you to Mr. Wilson: "We are returning to you herewith deed under power of sale in the above matter, duly executed by the London Loan and Savings Co. This deed will, of course, only be used when all documents have been properly completed and handed to you on our behalf and the balance of cash in this matter paid over to you." (Exhibit 82)?

A. That is quite right.

Q. You wanted that balance of cash of \$3,000. paid over, didn't you?

A. We wanted whatever balance of cash was coming on the adjustment, I would say.

Q. You can see through this arrangement, can you, that this was just nothing but the London Loan being left exactly where they were, a deed being taken back, no cheque being cashed, no cash being put up?

HIS LORDSHIP: I don't hardly think that that is for this witness to say. You may draw that inference in your argument. That is not the charge against the solicitors, particularly this witness who was only carrying out the details.

MR. WALSH: On Exhibit No. 71, which says: "Statement of Disbursements," Mr. Wilson says: "Received by me from London Loan, \$9,539.95"; that was the exact amount that had to be paid to the Huron and Erie, was it not?

A. That was the amount that had to be paid to the Huron and Erie to pay their mortgage up to the 7th February, 1925.

HIS LORDSHIP: That was all past due interest?

A. Past due interest and it was paid about the 28th May before the Durno offer was ever made.

MR. WALSH: When was the property sold? A. In June.

Q. Never sold till then? A. No.

Q. Why Mr. Morine is quite clear on it. In a letter written by Mr. Morine which I filed as an Exhibit, referred to in his productions, on the 29th May to Cassels, Brock and Kelley, Bay St., Toronto:

"Re Buckingham Apartments, now that this property has been sold "under power of sale, and as all mechanics' liens, etc., have been "disposed of, is there any reason why the \$190. deposited into Court "cannot be withdrawn and returned?"

"Yours truly, H. A. Morine."

MR. SLAGHT: My friend is facing this witness with that statement—

HIS LORDSHIP: Whom is the letter to?

MR. WALSH: From H. A. Morine to Cassels, Brock and Kelley.

MR. SLAGHT: My friend might say that Morine was examined for discovery and he explained "now that the property has been sold," he referred to the fact that sale proceedings had been previously had and it had been offered for sale.

HIS LORDSHIP: But not sold; that is different from selling the property.

MR. SLAGHT: Yes. If Mr. McMillan is to be faced with the matter he should be faced with whatever there is to it.

MR. WALSH: Anyway, the cheque that was given to Mr. Wilson you say was May 28th, was it? A. My letter was written on May 28th.

Q. Sending that to Mr. Wilson? A. Yes.

Q. Had you ever heard of Mr. Morine writing the letter to Cassels, Brock and Kelley that the property has been sold under power of sale? A. No.

Q. Mr. Morine came up on the 21st June, was it, or the 23rd?

A. The 23rd June, he was there that day.

Q. Did Durno or the person that he represented pay the taxes for 1923 and 1924? A. Not through me anyway.

Q. Have you ever heard of them being paid from that source? A. No.

Q. It has been pointed out to me on the statement of disbursements where the registration fees on the deed to Durno from the London Loan are given, \$3.70, and paid tax thereon, \$454. "Paid registering deed Durno to Consolidated Trusts Corporation, \$3.70; paid tax thereon, \$454."—do you see those two sums? A. Yes.

HIS LORDSHIP: The company were paying the registration fees?

A. According to the adjustment Mr. Durno assumed more than the amount of that payment.

MR. WALSH: He assumed it and never paid it? A. He did not pay it.

Q. He never paid taxes, anything you say he assumed?

A. I don't know.

Q. Did you ever hear of them being paid? A. No.

Q. Will you tell me in your eight years' experience if you ever paid the registration fees of a purchaser's deed before?

HIS LORDSHIP: That does not make any difference. To whom is this statement of disbursements? It says: "Received by me," who was that?

A. Mr. Wilson.

MR. WALSH: Looking over that statement there is not one dollar of cash put up by Durno; is that right?

HIS LORDSHIP: It speaks for itself.

MR. WALSH: You were insistent even I notice in a letter here July 10th, 1925, from G. A. P. Brickenden & Co. to M. W. Wilson: "Will you kindly give us a statement of the position in this matter with regard to taxes and other adjustments and as to whether taxes have yet been paid on this property?" (Exhibit 82). A. That is quite correct.

Q. It was quite apparent to you then that he should have put up his cash or in the alternative pay the taxes, should not he?

A. There was still a considerable amount of money to be put up by the London Loan to take care of all the adjustments.

Q. But we are in a lawsuit now, you were not in a lawsuit then, and you were wanting the taxes paid in cash?

A. I wanted the thing cleared up the way it should be cleared up.

Q. Under that offer to purchase, the London Loan was to take a mortgage for the balance after \$3,500. had been put up; is not that the terms of that offer? A. Yes.

Q. And that offer was never complied with?

A. Subject to adjustments.

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Q. And as far as the adjustments were concerned they were never put through in the ordinary way, were they—those adjustments were never put through in the ordinary way? A. As far as I know they were.

Q. In any event Mr. Durno's nominee got the property without putting up any cash whatsoever and by giving a mortgage for \$77,000.?

A. As far as I know he did not pay any part of the \$3,500. in cash; on account of the adjustments it was more than offset.

Q. Did you take any steps as solicitors for this company to see that those taxes were paid by Durno?

A. We received this statement showing part of the taxes were paid. 10

Q. Paid by London Loan? A. Paid as a result of the adjustments.

Q. Paid by London Loan money?

A. We sent the statement on to the London Loan and asked them if the statement was not correct to let us know, which they did.

Q. As a matter of fact, Mr. Durno, or whom he represented, got away without paying taxes and without paying any cash, is not that the substance of it now? A. I don't think that is the interpretation.

Q. Why is it not, when he never paid taxes, interest or the cash, why is not that a fair deduction?

A. That may have been the ultimate result later on when he fell down 20 in his payments.

MR. SLAGHT: The Consolidated Trusts collected all the revenues.

MR. WALSH: You knew Mr. Morine or his son-in-law continued to collect the rents just the same?

A. I presume I knew Mr. Dyas was collecting part of the time.

Q. You knew they paid the first instalment, Mr. Morine and Mr. Dyas paid the first instalment of interest due on the Durno mortgage of \$77,000., you knew that? A. I did not know anything about it.

MR. SINGER: I object to that; the evidence is the rents were collected by the Consolidated Trusts and remitted to London Loan and Savings Co. 30

MR. WALSH: You sent certain documents to the London Loan and Savings Co., you sent the papers to the London Loan, didn't you? There is not one mention in any of that correspondence written by you of this document called a release from Durno to the Consolidated Trusts, dated the 8th July, 1925; will you tell me why?

A. I cannot explain that. The documents that came from Mr. Wilson in connection with this sale in his letter were forwarded to the London Loan.

Q. There is not one word in any of that correspondence of this so-called release of the 8th July, 1925, by Durno? A. There may not be.

Q. Any explanation for that? A. No, I have no explanation. 40

Q. When did you first hear of that document, if you ever did hear of it?

A. I heard of it all right; the first recollection I have of seeing the document is in the fall of 1925.

Q. When did you see it then?

A. Either in our office or the London Loan.

Q. How would it be in your office, where did it come from?

A. I don't know where it was received from; I did not receive it personally.

- HIS LORDSHIP : Who drew it? A. I did not.
 Q. You had nothing to do with it? A. No.
 MR. WALSH : You don't know where it came from?
 A. Well, there is no use my presuming; I was going to say I presume
 Mr. Wilson sent it.
 HIS LORDSHIP : Have you any recollection?
 A. No; I remember such a document was there; that is all I can recall.
 MR. WALSH : Do you know whether it was the fall of 1925 that you saw
 it? A. The fall of 1925.
 10 Q. How do you know it was?
 A. I am quite confident it was at that time at the wind-up of this deal.
 Q. The wind-up of the deal?
 A. The Durno deal—I mean when this final statement, etc., were passed
 through.
 Q. It was dated the 8th July, 1925; why was not it sent forward to the
 London Loan at the time if it were a genuine document?
 A. As far as I am concerned it may have been sent forward.
 Q. Your correspondence says not one word of it; why was it held back?
 A. This is the first time I recall seeing it, in the fall of 1925.
 20 Q. What did you do with it when you saw it?
 A. It went back to the London Loan.
 Q. Why was it in your office?
 A. It may have been sent to our office, I don't know.
 Q. Have you any correspondence on it at all?
 A. No, I don't think I have.
 Q. You don't know of your own knowledge, you don't know if it was
 ever in the hands of the London Loan?
 A. It was in the hands of London Loan.
 Q. How do you know it was? A. It came back to us years later.
 30 Q. How do you know it was in the hands of London Loan?
 A. It came back from the London Loan years later.
 Q. When? A. About the time of the Rutherford deal.
 Q. How do you know that? A. That is my recollection.
 Q. Whom did you get it from?
 A. Whoever sent up the papers; we got all the papers the London Loan
 had at that time.
 Q. Who had it when you first saw it?
 A. It may have been sent up with a clerk, I don't know; we may have
 got it from the manager, I don't know.
 40 Q. There seems to be a mystery surrounding that document, is not there?
 HIS LORDSHIP : Is it mentioned in any letters or any other papers you
 have, Mr. McMillan? I suppose you have been through them?
 A. No, I do not see any mention of it at all.
 MR. WALSH : You got it when, what date?
 A. I say I saw it in the fall of 1925.
 Q. You are only speaking from memory? A. Yes.
 Q. You don't remember whom you saw it with or anything else about it?

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- A. No, I don't know whom I saw it with.
- Q. How many copies did you see of it? A. Just one copy that I recall.
- Q. How long did you have it in your hands for the May Rutherford deal?
- A. I cannot recall that; it was eventually sent back in that receipt.
- Q. How long was it in your possession then?
- A. It may have been in our possession for some time or may have gone back right then; I think most of the documents in the May Rutherford sale went back at the time the sale fell through.
- Q. Will you tell me why it was in your possession from the May Rutherford deal up to March, 1929? 10
- A. I cannot tell you; if it was in our possession we simply neglected to send it off.
- Q. That release, that document dated July 9th, 1925, I am right in calling it, it is a mystery document, is it not?
- A. I do not see any mystery about it.
- HIS LORDSHIP: You are applying that title, not the witness.
- MR. WALSH: Will you tell his Lordship, did you ever see Mr. Morine with a copy of it?
- A. Not till after this action commenced, this present action. 20
- Q. Where did you see it then?
- A. I saw it in Mr. Morine's office, I think.
- Q. As a matter of fact, is not that the first time you saw this document?
- A. No, that is not correct, it is not the first time I saw it, it is amply proven.
- HIS LORDSHIP: Was it a duplicate you saw in Mr. Morine's office or a copy, a signed document or just a copy? A. It was a signed document.
- Q. It would be a duplicate?
- A. I would not want to swear it was the same document, but it looked like it. 30
- MR. WALSH: Can you give me any more light upon that document at all?
- A. No, I don't think I can.
- Q. Mr. Morine drew out the \$35,000. mortgage, it was drawn by Mr. Morine? A. I was not there.
- Q. I see a letter of yours, February 27th, 1925, written by you—
- HIS LORDSHIP: Were you a student in the office before you joined?
- A. No, sir, I had no connection at all.
- Q. When did you go in? A. June, 1923.
- MR. WALSH: Q. I see a letter here written by you February 27th, 1925, to Mr. Morine: 40
- “We are today in receipt of a letter from Mr. M. W. Wilson, “requesting that we forward the original mortgage to Toronto. As “this mortgage was drawn in your office, you no doubt have a third “copy of it there and we would ask that you let Mr. Wilson have “that copy.”
- A. Do I say it was drawn “in your office”?
- Q. Yes, in Mr. Morine's office.

A. I believe the mortgage was signed in Mr. Morine's office.

Q. You wrote this down at the time before your partner was sued, you wrote this in a letter, "as this mortgage was drawn in your office"?

A. I had no authority for it; I was not there at the time it was drawn; that was apparently my surmise as to where it was drawn.

Q. As a matter of fact, monies were advanced on that before the mortgage was even drawn or registered?

A. I have told you I was not there at the time.

Q. In connection with the putting through of this transfer to Durno, you only did the clerical work on that?

A. Yes, I did not interfere with the policy of the London Loan.

Q. And when it came to justify the transaction to Martin, Currie & Co., it was your partner that drew the letters?

A. I had nothing to do with any Martin, Currie letters.

Q. He was the one that attended to this? A. I don't know.

Q. You did not attend to that? A. No.

Q. You issued other writs, was it the policy of Brickenden & Co. not to sue on the covenant?

A. It was the general practice to take sale proceedings; there were cases where we were specially instructed to sue.

Q. Did you have many? A. Not a good many.

Q. As a matter of fact, you did sue, didn't you?

A. We had sued on the covenant, yes.

Q. Mr. Betts made that statement the other day, I had a search made, and do you know that at the very time that this sale was going through, March, 1928, London Loan and Savings Co. sued Nellie C. Bongard and C. W. Bongard March 18th, 1925, to recover \$2,399. on mortgage; did you have anything to do with that? A. I rather think I did.

Q. The London Loan and Savings Co. *vs.* Lucas, suit August 25th, 1925, against Harry Lucas to recover the sum of \$13,940. for arrears of principal and interest on four mortgages made in the years 1922-23-24; did you have anything to do with that suit? A. I think I may have.

Q. The London Loan and Savings *vs.* Lucas, another—

HIS LORDSHIP: This witness has not said—somebody else said or suggested that they always took proceedings by power of sale; however, you can give the evidence.

MR. WALSH: Perhaps I will put the certificate in. I have a certificate from Mr. Weld of the writs that were issued by G. A. P. Brickenden & Co.; will you look over that statement?

MR. SINGER: Surely that is not evidence?

HIS LORDSHIP: No, but if you like we can have the documents brought up into Court; he can bring the writs into Court if it is necessary.

MR. WALSH: Is that right?

A. I don't know whether I issued all these writs or not; I recall the Bongard writ, and there was the Lucas writ I had something to do with, and there was a Beatty writ—I am not sure about the Lucas.

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Q. I thought I could refresh your memory that Mr. Morine was put there for suit :

“Collections, handed to G. A. P. Brickenden for suit :

“G. 41, H. A. Morine, \$3,003. G. A. P. Brickenden & Co.

“G. 46, H. A. Morine, \$23,904.—

MR. SINGER : I object; whose book is this ?

HIS LORDSHIP : Whom is it kept by ? A. London Loan.

MR. WALSH : Do you see those initials, G. A. P. B. & Co.—whose initials are those ? A. They look like Mr. Brickenden’s.

MR. SINGER : Unless this witness has some knowledge of the book ? 10

HIS LORDSHIP : He is identifying Mr. Brickenden’s signature; it is evidence, I am going to receive it.

MR. WALSH : H. A. Morine, these very two mortgages, one on January 13th, 1925, and another January 22nd, 1925, and then there is your Bongard one on March 13th, 1925, is it not ?

A. Well, you will see there everything that was sent for collection to us from the London Loan is included in there regardless of what proceedings we took.

Q. Lucas is in there ?

A. I don’t know whether that is one we sued or not; there is Harry 20 Lucas there.

HIS LORDSHIP : You say that included those you were to sell under power of sale as well ? A. Absolutely.

Q. Any mortgage you got with instructions to collect they entered in that book ?

A. If we were to sue we got special instructions; they were familiar with the people they were dealing with.

MR. WALSH : Why would London Loan not leave it to their general solicitors to decide what action should be taken ?

A. Because they knew the people they were dealing with. 30

Q. Was there any reason why Mr. Morine should not be sued on his covenant ? A. I don’t know.

Q. Do you know of any reason why ?

A. No; it simply was not their practice to do that.

Q. It was the practice to sue Bongard at that time ?

A. We got special instructions to do that.

Q. It was the practice to sue Lucas, that was August 25th, 1926, Lucas was sued, and he was sued on January 3rd, 1924—

HIS LORDSHIP : Well, why pursue this further ? Sometimes they did take action when instructed, and other times they proceeded by power of sale. 40

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RE-EXAMINED by Mr. Slaght :

Q. As I understand what you told Mr. Walsh in connection with the Durno sale papers, you sent after the sale was consummated certain documents over to the London Loan and Savings Company then ?

A. That is quite correct.

Q. And you subsequently secured back from the London Loan and

Savings Company at one time when the Rutherford matter was on all the papers they had in connection with the title of Buckingham Apartments?

A. Yes, they were sent up, whether they really were essential to the deal or not, they were sent up.

Q. At another stage you did return to the London Loan and Savings Co. on March 29th as per receipt filed here——?

A. Yes, whatever we had in the file at that time.

Q. In connection with that question my friend put to you with regard to the——

10 HIS LORDSHIP: The notice of sale apparently was not mentioned in that receipt, was it? A. That was filed in Toronto.

HIS LORDSHIP: But the one that is produced here?

A. The copy of notice of sale?

Q. Yes. A. No.

Q. Had it ever been out of your possession?

A. I doubt it very much; it was deposited, the original with the complete affidavits attached to it, was deposited in Toronto; this was really a copy.

MR. SLAGHT: That appears to have remained on your own file? A. Yes.

20 Q. In connection with Wilson getting into the matter you told Mr. Walsh that having drawn the notices of sale you took them back to Mr. Kent to execute them, and the last you recall seeing them before Mr. Wilson came into the matter was leaving them with Mr. Kent? A. Yes.

Q. And then shortly after that you received a communication from Mr. Wilson that he is acting in the matter? A. That is quite correct.

Q. As we have heard and as Mr. Walsh put it to you, and I think the resolution put in, your firm were general solicitors for the company, but did you do all the legal business of the London Loan or did they at times as they desired select other lawyers to act for them?

A. I think there had been other lawyers selected for special purposes.

30 Q. In connection with this matter when Mr. Wilson sent forward the adjustments and various statements here from time to time, you sent those to the London Loan, asking them in this one instance to please check them over and if there was anything to be dealt with to communicate back with your firm? A. That is quite right.

Q. And I think you told me this morning you received no suggestions from them or communications back from the loan company?

A. I think as a matter of fact the correspondence shows they took the matter up themselves and received a certain amount of money in settlement of the whole matter.

40 Q. Wilson having come into it in the way you told us and you having passed on the adjustments, which, as you told Mr. Walsh, provided for a set-off of monies Wilson would have had to pay the company for monies the company would have had to pay out, from that on had you as lawyers any further to do with the matter, did you quit yourselves of it by turning it back to your clients?

A. I don't think we had anything further to do with it; they had the books to show there to check up this statement, and we had no documents.

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Q. So far as this property is concerned, until you were asked to come back in by the company again in connection with the Buckingham and any other specific matter, and came back in in the way you have detailed, had you any fatherly oversight or instructions or anything else to interfere with this matter?

A. I do not recall that I did anything at all in connection with it or discussed it.

MR. WALSH: If I may ask one question: They never received the adjustments until September, two months after the deeds were registered.

HIS LORDSHIP: Why do you say that?

MR. WALSH: Because your Lordship will see that in a letter September 30th, 1925, from Melville W. Wilson to G. A. P. Brickenden & Co.; I think that letter is in.

HIS LORDSHIP: Have it put in if it is not.

MR. WALSH: It is in, Exhibit 82: "Toronto, September 30th, 1925:

"G. A. P. Brickenden & Co., London.

"I now enclose statement of the monies received by me in this matter and the disbursement of the same. I believe that this statement is self-explanatory, and the title documents have already been sent to you. If there is any further information you require, "I should be glad if you would let me know."

HIS LORDSHIP: Well, the letter is already in.

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GEORGE ARTHUR P. BRICKENDEN, Sworn. Examined by Mr. Slaght:

Q. You are a barrister and have been practising in London since 1920, I believe? A. Yes.

Q. You were perhaps born here, were you? A. I was born here.

Q. Went to school here and to the Western University and the Law School? A. Yes, sir.

Q. And have lived here all your life? A. Yes.

Q. In 1921 I think it was you started to do some work for the London Loan and Savings Co.? A. I believe so.

Q. There is back I think in that year or at all events in the books a resolution where your firm were made general solicitors to the company?

A. I think that was 1922.

Q. You started I think with doing some work in 1921 and in 1922 there was this resolution? A. Yes.

Q. Let me ask you, generally speaking, whether your firm did all the legal business of the company or whether, when they chose to select or nominate somebody else, whether at times they did or did not do that, give work to other lawyers? A. They did give some work to other lawyers.

Q. Did you or your firm ever receive any retainer as such?

A. Nothing except for the actual work done.

Q. You had no retainer, you had no annual salary?

A. Nothing whatever.

Q. But you were paid from time to time for the actual work done?

A. Yes.

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Q. I suppose in many instances where loans are concerned you would be paid fees by the borrower? A. Yes.

Q. Although the work was done for your client—

HIS LORDSHIP: Would it or would it not come through the company and be deducted from the loan? A. Paid by the borrower.

Q. Direct to you? A. Yes; in most cases, yes.

MR. SLAGHT: You are a son-in-law of Mr. McCormick? A. Yes.

Q. He was the President of the company ever since you became connected with the legal work? A. Yes, until my retirement.

10 Q. The managing director, when you first had to do legal work for the company, was who? A. Mr. M. J. Kent was managing director.

Q. He had been there for a great many years before?

A. Since its inception.

Q. Forty or fifty years; from whom did you ordinarily or usually get your instructions? A. From the managing director.

Q. That would ordinarily be Mr. Kent; any other of the people connected with the company at times?

A. Sometimes from Mr. Crowley, the accountant, and sometimes Mr. Thos. Baker, and after Mr. Hambly came in sometimes Mr. Hambly.

20 Q. Going to the three transactions under review, let us first take the \$35,000. made in February of 1923 by way of second mortgage on the Buckingham Apartments; whom were your firm first instructed by in connection with that loan, do you recall?

A. Mr. Kent instructed us in connection with the \$35,000. loan.

Q. What did you have to do?

A. We were instructed to search the title.

Q. What did you do personally after those instructions were received?

A. I handed the matter over to Miss Harrison, who was a barrister in our office.

30 Q. After turning it over to Miss Harrison did you know of any of the details of the matter or have anything to do with it after that so far as you know? A. Nothing that I can remember.

Q. We have had in connection with that loan a good many letters put in, you remember, earlier in the trial, with regard to which somebody said they were all signed by Miss Harrison—she was a qualified barrister?

A. Yes, she was a barrister and a solicitor.

Q. Looking at Exhibit 14 which appears to be a letter signed by her July 19th, 1923, is that her signature?

A. That is Miss Harrison's signature.

40 Q. Then Exhibit 9, is that her signature? A. Yes.

Q. And here on Exhibit 10, is that her signature?

A. That is the name of the firm but it is signed by Miss Harrison, G. A. P. Brickenden & Co.

Q. She does not put in "per"? A. No; this is a certificate.

Q. It is a certificate of title dated May, 1923, and it bears the firm signature G. A. P. Brickenden & Co.? A. But written by Miss Harrison.

Q. As far as I can recall, all the correspondence in connection with both

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the \$35,000. and the \$20,000. loans appear to have been written by her and signed by her; is that your recollection, that she handled the matter?

A. That is my recollection.

Q. In connection with the \$35,000. loan your firm certified the title I see and received a fee we have heard of, how much, will you get me your ledger account? A. It is right down there.

Q. You have seen it and can state?

A. It is the Toronto tariff, my Lord, 1¼ per cent up to \$20,000.

MR. SLAGHT: Was that entered through your books in the regular way?

A. Yes.

Q. \$362.50; that you say is the Toronto tariff at what rate?

A. At 1¼ up to \$20,000. and three-quarters over \$20,000., I believe.

HIS LORDSHIP: I don't think there is any question.

MR. SLAGHT: It has been said that one of these fees, I think that one, I think Mr. Walsh indicated that it had been paid in cash; do you remember anything about it or whether it was paid in cash or not paid in cash; it is entered through your books in the regular way? A. I cannot tell now, I am sure.

Q. The entries in your ledger are kept—you do not keep your own books?

A. No, I have nothing to do with the books; I am interested only twice 20 a year, at the end of June and the end of December.

Q. In connection with that loan, do you remember when you spoke with Mr. Kent or he spoke with you about the matter, whether or not you saw any valuations in connection with that loan?

A. I was not particularly concerned with valuations, but Mr. Kent did show me a valuation which I understood was made by Mr. Fetterley.

Q. Was Mr. Fetterley at that time a valuator for your company, the London Loan?

A. No, Mr. Fetterley was valuator for the Huron and Erie Mortgage Corporation. 30

Q. Are you able to give any details or do you recall the amount even of the Fetterley valuation?

A. I cannot remember definitely what the amount was; it is \$300,000. and something, but Mr. Kent said if it were good enough for the Huron and Erie it must be good enough for him.

Q. You do not remember the details?

A. No, I cannot remember the exact amount.

Q. Do you recall whether or not in connection with that transaction you or anybody in your office so far as you know had anything to do with Mr. Morine who was one of the borrowers? A. Let me get that again. 40

Q. In connection with the \$35,000., did you or anyone in your office so far as you know have any contact or anything to do with Mr. Morine in connection with the granting or in connection with the legal business connected with that loan? A. Nothing that I can remember.

Q. You do not recall any contact with Mr. Morine in connection with it? A. No.

Q. Was there any occasion that you know of in connection with the legal

work you had to do for you to take up with Mr. Morine?

A. Not that I remember.

Q. We come to the second transaction, the \$20,000. loan, which came along in May of the same year, 1923; how did instructions come in connection with that?

A. They came in in the usual way, from the manager of the company.

Q. Who handled that legal matter for your firm?

A. That was handed to Miss Harrison too.

Q. Did you yourself have anything to do with that or with the searching
10 or the certifying or the drawing of the documents in connection with that loan? A. I remember having nothing to do with it whatever.

Q. That was taken over to her. Exhibit 14, is that a letter written by her in connection with that matter, July 19th, 1923?

HIS LORDSHIP: That has been already referred to.

MR. SLAGHT: Exhibit 15, I don't think I have referred to, that is certificate of title on that loan, also bearing the signature G. A. P. Brickenden & Co., who wrote that signature? A. That is Miss Harrison's writing.

Q. There is some pencil writing on that; do you know whose writing that is? A. That will be Mr. Kent's writing.

Q. Some pencil writing: "For \$35,000. at 7½ per cent," and then in
20 the margin: "Company's number G. 41"——

HIS LORDSHIP: That cannot be this mortgage?

A. That is the first one.

MR. SLAGHT: I think I did refer under another exhibit to her certificate of title on the second mortgage but not on the first one.

HIS LORDSHIP: Exhibit 10 was the certificate of title you referred to, but that is supposed to be in connection with the other mortgage.

MR. SLAGHT: I got them backwards, but now I have them both referred to by the witness at all events. Directing your mind again to the second
30 mortgage, the \$20,000. mortgage, had you anything to do with Morine in connection with that, the legal work of that mortgage?

A. I had nothing to do with Mr. Morine so far as I know.

Q. You have already told me you believe Miss Harrison carried that out. Your firm were paid by your ledger \$250. fee for that transaction?

A. That is right.

Q. Would that be the regular fee?

A. That is on the same basis, 1¼ per cent.

Q. I want to direct your attention to certain mortgage sale proceedings which appear to have begun in January, 1925, and so far as you know how did
40 instructions come to your firm for those sale proceedings in 1925?

A. Through some member of the London Loan and Savings Co.

Q. Did they have any contact with you personally about instructions?

A. I think when they first came in they would speak to me about it.

HIS LORDSHIP: Who?

A. The official of the London Loan, whoever that was at the time.

MR. SLAGHT: That is rather reasoning than remembering; have you any memory on it?

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HIS LORDSHIP: Did they see you personally or would any member of your firm be competent to take instructions?

A. No doubt they were, but I assume I am responsible for whatever is done by the firm.

Q. Did they always come to you and give you instructions?

A. No, they did not, my Lord.

MR. SLAGHT: It was not with a view of shaking responsibility but the fact as to the contact and how these things came into your office for attention; at all events, you appear not to have a distinct personal recollection of that instruction from anybody, but you are telling us that is the way it would come in to the firm? A. Let me see the instructions. 10

Q. There are a couple of little slips, Mr. McMillan had them in his evidence to testify (Exhibits 57 and 58, I think they are), these are what Mr. McMillan called the slips of instructions? A. That is correct.

HIS LORDSHIP: Is there any memorandum on them to show that they came personally to you? A. Nothing on there, my Lord, to show that.

HIS LORDSHIP: Have you any independent recollection?

A. It is initialled by Mr. Kent and the bottom is written in his handwriting.

MR. SLAGHT: Have you any personal recollection on the point as to whether this came to you as against some other person in your office at the time? A. No, I cannot say definitely. 20

Q. As we have heard from Mr. McMillan in connection with the sale proceedings, who in your office looked after that legal work?

A. That particular transaction was handled by Mr. McMillan.

Q. And he says he may have had a conference with you from time to time if it was necessary; do you remember any such in connection with these sale proceedings?

A. I know I discussed the matter with Mr. McMillan; I cannot remember a definite conference with him. 30

Q. Did you personally handle those sale proceedings yourself at all?

A. No, I did not.

Q. You did not attend the mortgage sale? A. No.

Q. It would appear that Mr. Melville Wilson acted in connection with those sale proceedings in Toronto, did he not?

A. Yes, he did act in that connection.

Q. And the correspondence indicates he reported back to your firm at times in connection therewith, do you recall that? A. Yes, he did.

Q. Did you or your firm engage Mr. Wilson for that task or did he?

A. Our regular registered agents were Cassels, Brock and Kelley, and because Mr. Kelley had some connection with this, Mr. Kent, who also knew this, asked us to see Mr. Wilson. 40

Q. Was there any reason given by Mr. Kent, do you recall anything in connection with why Wilson instead of fourteen hundred other lawyers might not have been doing it in Toronto?

A. Mr. Wilson had done some work for Mr. Kent.

Q. In London Loan?

A. It may have been London Loan; I think he did some personal work for him.

Q. That is the way Mr. Wilson was brought into this matter rather than your regular agents? A. That is right.

Q. I see a charge in one of Mr. Wilson's accounts for fees and disbursements in connection with the mortgage sale proceedings of \$420., which indicates \$300. were fees and \$120. disbursements; did Mr. Wilson make you any—?

HIS LORDSHIP: Then there is a further fee of \$150.

10 MR. SLAGHT: That comes in connection with the Durno sale; there is a fee of \$420. there, charged by Mr. Wilson and paid by the London Loan, and did Mr. Wilson make your firm as general solicitors, or you having something to do with it at this end, any allowance in that connection?

A. Yes, we received an agency allowance of \$75.

Q. Is that entry in your books? A. Yes.

Q. His Lordship has called my attention to \$150. item of Wilson's, I am not quite clear what it is for; do you remember what that is for, and did you receive any allowance back from Wilson on that?

A. We never received a dollar from that.

20 HIS LORDSHIP: Is not that \$75. the half of that—what is the \$75.?

A. The \$75. was understood to be an agency allowance in connection with the mortgage sale.

Q. But apparently fee *re* sale proceedings, \$150.; is it not more likely that that \$75. is half of that?

MR. SLAGHT: What is your recollection as to how the \$75. was got at?

A. I think we got one quarter of the original fee, of the mortgage sale fee.

Q. And what did you understand the mortgage sale to be?

A. I think it was \$300.

30 HIS LORDSHIP: You would likely have a letter from Mr. Wilson enclosing the cheque. I don't see that it is important.

MR. SLAGHT: We will look it up.

A. We admit getting it; we did receive \$75. as an agency fee.

MR. SLAGHT: Whether it was on the mortgage sale or the \$150., you received the \$75. but no more? A. That is all we received.

Q. There have been some statements sent forward by Mr. McMillan for your firm, a number of them are in as Exhibit 82, and another statement of adjustments was sent forward in another letter, which statement of adjustments has not been forthcoming, but did you personally go over or check 40 those adjustments or statements yourself at any time that you know of?

A. I did not check those statements because we did not have the books.

MR. GRAY: I am asking my friend if he has the letter to which he has referred in the question just asked; I would like to see it.

MR. SLAGHT: I am told it is Exhibit 91.

HIS LORDSHIP: Letter October 2nd, 1925, Brickenden & Co. to the London Loan.

MR. SLAGHT: That is it. (Exhibit 91.)

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MR. GRAY: The statement referred to in that letter is already filed as an Exhibit, and if my friend thinks it is not in, he is in error; it is part of Exhibit 82.

HIS LORDSHIP: Look at this and see if that is not the one. (Exhibit 71.)

MR. GRAY: I see the page just handed my friend Mr. Slaght is one page of three attached to Exhibit 82.

MR. SLAGHT: This is in as 71, and there is a similar page with other statements in Exhibit 82.

MR. GRAY: The point is, all the statements are in; there is no missing statement of adjustment as suggested by my friend. 10

MR. SLAGHT: The only point I want to trouble you about is this: apparently there came in from Wilson statements in connection with this matter which were passed on from time to time to the company, did you go over and analyze those personally before they went in, or did you not?

A. No, I did not analyze them.

Q. Let us go on to the Durno transaction which was in June of 1925?

HIS LORDSHIP: Mr. Slaght, before the Durno transaction, what possible statements could there be or adjustments? There was nothing to adjust.

MR. SLAGHT: I had in mind that Wilson sent statements in connection with each mortgage transaction, but I suppose that is true, there would not 20 be adjustments.

HIS LORDSHIP: There is nothing here to show any statements forwarded by Wilson until October, 1925.

MR. SLAGHT: That is correct; I am confusing the matter by referring to earlier statements.

Q. The Durno transaction came into your office so far as you know how?

A. After we received it from Mr. M. W. Wilson.

Q. In connection with the Durno transaction did your firm select Mr. Wilson to act in that matter?

A. No, he had been acting in connection with the mortgage sale pro- 30 ceedings and as he no doubt had been acting, this man Durno sent his application to us through Mr. Wilson, at least we received it from Mr. Wilson.

Q. The Durno application went before the Board as we have heard in June, I think the 23rd or 25th of June, 1925, and then was that turned over to you to carry it out?

A. It was turned over to our office, but I think on that particular occasion as Mr. McMillan had been handling the sale proceedings I wanted him to continue in connection with this.

Q. Did Mr. McMillan carry on the Durno transaction in your office?

A. Yes. 40

Q. And Mr. Wilson carried on the Toronto end as far as your know?

A. I think Mr. Wilson carried on practically all of it.

Q. He reported back through your office, at least to McMillan, and McMillan carried on the correspondence? A. Yes, that is right.

Q. In connection with that, do you recall Mr. Baker seeing you on an occasion in connection with the Durno transaction?

A. Mr. Baker signed the acceptance of the offer and he accompanied somebody into our office.

Q. You say your recollection is Mr. Baker signed the acceptance of the Durno offer. Exhibit 69 appears to be the Durno offer, the rubber stamp and then Thos. Baker as vice-president seems to have accepted that; what, if any, interview or instructions did you have from Mr. Baker in connection with the Durno matter?

A. When Mr. Baker came into the office he instructed us to take a deed to the Consolidated Trusts in trust so that they could collect the rents, so
10 that the Consolidated Trusts could collect the rents.

MR. SLAGHT: Your Lordship thought there was another Durno offer; I do not recall any other.

HIS LORDSHIP: There is one of these that there are two copies.

MR. SLAGHT: I think that is the Rutherford one; I don't believe there is any second Durno offer that we have had.

MR. WALSH: There were two minutes in the Minute Book relating to it.

HIS LORDSHIP: That is it.

MR. SLAGHT: Two pages in the Minute Book.

Q. Then anything else in your interview with Mr. Baker, do you know
20 whether Mr. Morine was there on that occasion or not? Mr. McMillan says his recollection is that Baker and Morine were both in at the office. I think he said they saw you?

A. I am reasonably sure he was but I cannot swear to it, that is the trouble.

Q. You think Mr. Morine was? A. I think Mr. Morine was there.

Q. Along with Mr. Baker at the time they came in there for that?

A. Yes.

Q. Anything else that you recall said by Mr. Baker at that time?

A. Yes, there was supposed to be a quit claim deed taken at that time.

Q. Who spoke of that or what was said about it as you can recall?

A. Mr. Baker was exceedingly cautious about the matter and spoke about
30 the interest not being due for six months, and he was very anxious to have those rents collected, and he also asked to have a quit claim deed secured, although not to be registered unless Mr. Durno should fall down or should not be able to make up the various payments.

HIS LORDSHIP: Was Mr. Durno there too?

A. No, I never saw him in my life.

MR. SLAGHT: Do you know whether there was a quit claim to the Consolidated Trusts? There was, as we know, a deed to the Consolidated Trusts, which was registered concurrently and immediately after the deed to Durno,
40 but that was a deed to the Consolidated Trusts in trust, do you recall seeing a quit claim deed at any later stage? A. Yes, I saw a quit claim deed.

Q. Who was that to from Durno?

A. To the Consolidated Trusts Corporation.

Q. Was that in trust also? A. No, that was a release, a quit claim.

Q. Did you draw that?

A. No, we did not; I don't think I personally drew any—my office drew.

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HIS LORDSHIP: I suppose the question is directed to your office; did your firm draw a quit claim deed? A. No, my firm did not.

MR. SLAGHT: Personally, did you draw any of these documents?

A. I don't remember drawing a thing.

Q. The Durno matter, was it or was it not carried out in accordance with instructions you received from the vice-president, Mr. Baker?

A. It was carried out in accordance with the instructions received from him but not exactly in accordance with that accepted offer; Mr. Baker put those additional stipulations in that it should be a deed in trust to the Consolidated Trusts, and also a quit claim. 10

Q. Except in that respect was it carried out as far as you know in accordance with Baker's instructions and the offer?

A. Yes; well I think there was another, I don't think it was accepted at the time, but in every other respect it was carried out.

Q. Time would not be of importance because Durno signed it in Toronto and your people signed it, so that in that respect it was carried out; you have told me already Wilson did most of the work in the reporting back through you and that was handled by Mr. McMillan; what remuneration, if any, did your office receive in connection with the Durno sale?

A. We received \$75. in connection with the other; I am satisfied we never got a farthing in connection with this, but now I see that \$150. I think we should make a claim for it. 20

Q. Is the \$150. a charge in connection with the Durno?

A. I cannot say.

HIS LORDSHIP: It says: "*Re* sale proceedings"?

A. The only money I know of getting in connection with that was the agency allowance which Mr. Wilson made us in connection with the mortgage sale proceedings, not the Durno sale.

Q. You have looked and examined your books also to corroborate that?

A. Yes. 30

Q. And you got no money from the Durno sale?

A. I got a \$4. discharge fee which the London Loan deposited.

Q. Is that entered in your book? A. That is entered somewhere

Q. There was \$15. paid you for something; what was that for?

A. The Huron and Erie first mortgage was a ten year mortgage, and the London Loan wanted to pay that mortgage off.

Q. Mr. Walsh referred to it, I think.

MR. WALSH: No.

A. We received \$15. for advising how to pay it off at the end of five years. 40

Q. We have \$362., \$75., \$4. and \$15.? A. Yes, sir.

Q. Outside of those amounts, did you receive either from the London Loan or from the borrowers or from anybody else anything whatever for legal services or any other service in connection with these several transactions, the Buckingham Apartments? A. Nothing whatever.

Q. That is your firm's receipts in the matter?

A. That is all we received.

Q. In connection with the sale to Durno, did you have any interviews that you recall with Mr. Morine other than the one you have already told us, when Mr. Baker and Mr. Morine came in together?

A. I don't think we had any. Mr. Wilson handled the transaction and it was not necessary for us to interview Mr. Morine; we may have interviewed him but I cannot recall any.

Q. In connection with these three transactions, the \$35,000. mortgage, the \$20,000. mortgage, the sale to Durno and the incidental matters arising in connection therewith, also the mortgage sale proceedings, did you ever have
10 any arrangement or collusion or conspiracy or arrangement of any kind with the Defendant Morine regarding those matters? A. Absolutely none whatever.

Q. Did you ever receive any profit in money or in kind or in promise of reward or any consideration, direct or indirect, from Morine or anybody else in connection with those transactions other than the legal position you have recited? A. None whatever.

Q. Mr. McCormick, while he is your father-in-law, you have to have something to do with him as president of the company? A. Some.

Q. Did you ever have any private discussions with Mr. McCormick regarding putting through loans, these two loans or putting through the sale
20 to Durno? A. Absolutely nothing.

Q. Did you ever have anything?

A. Nothing outside the London Loan officials.

Q. Any private discussions? A. No.

Q. Put your heads together to conspire or defraud the company or somebody in connection with it? A. Nothing whatever.

Q. Or anything of that kind with Mr. McCormick?

A. Absolutely nothing whatever.

Q. Was it or not the fact that Mr. McCormick was a very substantial owner of shares in the London Loan at the time when all these transactions
30 went through? A. He had a considerable block of stock.

Q. And if the company were to be defrauded I suppose as a shareholder at all events he would have that interest the other way? A. Absolutely.

MR. WALSH: I suppose that is not a legal question?

HIS LORDSHIP: It won't hurt.

MR. SLAGHT: I should not have asked that last question; I apologize for asking it.

Q. Were you and your wife at the time of this transaction holders of substantial holdings of shares in this company?

A. I regarded myself as a holder of a substantial amount; I suppose some
40 would not think it very substantial, but I did.

Q. And Mrs. Brickenden had some stock? A. Yes, she had some stock too.

Q. Mr. Braden testified early in the case of a conversation with you; were you at his office or rather when he was at your office in May, that would be May a year or so ago, or after Mr. Braden had come into the saddle as solicitor for the company?

HIS LORDSHIP: May, 1929.

MR. SLAGHT: Yes.

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HIS LORDSHIP : When he had the abstract with him ?

MR. SLAGHT : Did you have a talk with Mr. Braden at your office when he came over with the abstract, etc., and deed to the Consolidated Trusts with him ?

HIS LORDSHIP : Of course Mr. Braden was a witness, and you will have to use the language that Mr. Braden used.

MR. SLAGHT : Yes, I will; I want to identify it. Did you have a talk on an occasion of that kind when Mr. Braden came ?

A. Yes, I had a discussion with Mr. Braden in my office.

Q. Will you give me your recollection of what it was ?

10

HIS LORDSHIP : No; Mr. Braden is not a party to the action and this witness can contradict, but he cannot give evidence of the conversation.

MR. SLAGHT : I will come right to that point.

HIS LORDSHIP : He said it was not a genuine sale, and Brickenden said no, it was to clear up the title or something of that nature, eliminate liens and subsequent mortgages.

MR. SLAGHT : In recounting his conversation, Mr. Braden said you stated to him it was not a genuine sale; did you use that expression ?

HIS LORDSHIP : No, Brickenden said : "It is not a genuine sale," and this witness said : "No, it was to clear up the title"——

20

MR. SLAGHT : Mr. Braden has said that you said to him on that occasion, gave evidence to the effect that you said it was not a genuine sale; in the first place did you use the expression it was not a genuine sale ?

A. I never to the best of my knowledge used that expression.

Q. And then he said following that that you said it was for the purpose of clearing up the title, and so on; what did you say with reference to the title, if anything, or the sale ?

A. I said I had never seen Durno, I did not know him, but as far as we were concerned the deal was perfectly all right; and then I said even if it had not been all right it did serve a double purpose, that if Mr. Durno carried it out and paid up then the company would get their claim without any trouble; if, however, he did not the company were in an excellent position, from the title standpoint, in that Consolidated Trusts, which was a subsidiary company to the London Loan, the directors being directors on the Consolidated Trusts Corporation, they were in a position to deal with the property.

30

Q. Mr. Braden said you said on that occasion something with regard to mechanics' liens ?

HIS LORDSHIP : To eliminate liens and subsequent mortgages.

MR. SLAGHT : That it was to eliminate liens and subsequent mortgages; did you use that expression that it was to eliminate liens and subsequent mortgages ? A. No, I think some one is mistaken on that point.

40

Q. Tell us whether liens or mortgages were mentioned, and if so what you did say to Mr. Braden in that connection ?

A. Liens were mentioned, and I pointed out that Mr. Morine had paid off the liens, and therefore the title was in perfectly good shape.

Q. What else, if anything, in that connection did you say to Mr. Braden ?

A. I cannot recall any further conversation.

HIS LORDSHIP : He cannot give that; he can deny what the witness said, and perhaps as far as it is connected with the denial give the exact conversation.

MR. SLAGHT : I will try and confine myself to that. My recollection is Mr. Braden said that on that occasion you stated that Mr. Morine had had, or had represented that he had, a large investment in the property, and Mr. Morine would also recoup his loss; was that said ?

A. I think I said that Mr. Morine had a large investment in the property; I don't remember anything about saying he would recoup his loss.

Q. Did you give or not Mr. Braden any statement as to who wanted
10 sale proceedings and why ?

MR. WALSH : That is a leading question.

HIS LORDSHIP : Mr. Braden did not say anything about that.

MR. SLAGHT : When you told Mr. Braden that Mr. Morine had paid liens, did you believe that to be true ? A. I believed that to be true.

Q. To what extent ? A. In dollars, do you mean ?

Q. Yes. A. I understood it was somewhere around \$20,000.

Q. So far as the Durno deal was concerned and you or your firm were concerned, was it or not—leave out whether it was valuable or wise sale—was it or not a genuine transaction ?

A. It was absolutely a genuine transaction, but we had nothing to do
20 with the accepting or the rejecting of the offer; we were very glad to get legal business.

HIS LORDSHIP : There was another talk on July 17th, 1929.

MR. SLAGHT : Yes; Mr. Braden said that he saw you in July in his own office this time, and that you suggested on that occasion that he should call the Board together, and it would be well to adjust the matter with Mr. Morine.

HIS LORDSHIP : Morine threatened to take action to prevent amalgamation.

MR. SLAGHT : And that Morine threatened to bring an action to stop
30 the amalgamation and that you indicated that Morine was better to have as a friend than as an enemy; do you recall that conversation ?

A. I did have a second conversation with Mr. Braden; I went to his office—

HIS LORDSHIP : You are asked a question, and you must confine yourself to the question.

MR. SLAGHT : Mr. Braden in effect put it that you suggested you should call his Board together and endeavour to adjust the matter with Morine; do you recall something to that effect ?

A. I do not remember anything about calling his Board together.

Q. Braden suggested you said that if this was not done, Morine intended
40 to bring an action; do you recall that ? A. No.

Q. To prevent the amalgamation ? A. No, I do not.

Q. Do you recall whether you said Morine would be a better friend than an enemy or could be ? A. I cannot recall saying that.

Q. How far does your recollection go, you don't recall whether you said it or not ?

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A. I did not say Mr. Morine was going to prevent the amalgamation; I think Mr. Braden is mistaken.

HIS LORDSHIP: It is not a case of mistake at all.

MR. SLAGHT: He does not say you said Morine was going to prevent the amalgamation; what Braden said was you said to him that if an adjustment was not made that Morine intended to bring an action to prevent the amalgamation; that is the way Braden put it?

A. I do not remember saying any such thing.

Q. That takes us through the Durno transaction and the earlier loans; have you made indirectly with Mr. Morine or Mr. McCormick any arrange- 10
ment of any kind arising out of any of these transactions where you were to do anything not in accordance with your legal instructions or whereby you would personally or privately profit in any shape or form? A. Absolutely not.

Q. There was a matter I might ask a question or two about: I do not see the importance of this Rutherford deal, but did you have something to do later on with a transaction known as the Rutherford deal which did not go through? A. Yes, I did.

Q. Did you go to Toronto in connection with it?

A. I went to Toronto with Mr. McMillan as the result of a telegram from Mr. T. H. Wilson; that is not the lawyer who handled the mortgage 20
sale proceedings.

Q. A telegram? A. Yes.

Q. What cash, if any, was to be paid on that transaction as you recall?

A. It was to be \$40,000.; \$275,000. was the purchase price, we were to take back a mortgage for \$235,000.

Q. That fell through? A. Yes.

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CROSS-EXAMINED by Mr. Singer:

Q. Just while we are on the Rutherford deal, what solicitors did you see in Toronto in connection with the closing of the transaction?

A. I think we first went to Mr. T. H. Wilson's office and then over to 30
Mr. McPherson, and in his office I think Mr. Heyd was there.

Q. W. D. McPherson? A. The former Provincial Secretary.

Q. And Mr. Heyd Senior? A. I do not know the Heyds very well.

Q. Some Mr. Heyd? A. It was Mr. Heyd anyway.

Q. Will you tell me why the transaction was not closed?

A. Some one asked us to permit—

HIS LORDSHIP: It is said here that Mr. McPherson insisted on the company not collecting any rents for a certain time in order that they might get the money from the bank to pay the deposit or something of that nature; was that as you recall it? 40

A. They were going to put a mortgage on behind our mortgage, I believe the bank was going to put it on, and they wanted the rents applied on that bank mortgage, and we would not stand for it.

MR. SINGER: He wanted to allow the rents to be collected in priority to the mortgage to your clients? A. I think that is correct.

Q. And the deal was not closed? A. No.

Q. Do you remember what documents you had with you when you attempted to close the transaction?

A. We had a deed from the Consolidated Trusts and a mortgage from the London Loan and Savings Company.

Q. Not from?

A. To the London Loan and Savings Co., unsigned, that would be for \$235,000.

Q. That mortgage was being given back by the purchaser?

A. We had approved of one.

10 HIS LORDSHIP: An unsigned mortgage?

A. We had approved of a mortgage for \$235,000. for unpaid purchase money.

MR. SINGER: I am referring particularly to the documents you took down with you when you intended to close the transaction?

A. The deed from the Consolidated Trusts and statements, I think we had discharges of mortgage.

Q. Do you recall what mortgages were being discharged at that time?

A. The \$77,000. mortgage.

Q. The mortgage of Durno, the \$77,000. mortgage? A. Yes.

20 Q. What other mortgage?

A. We had at that time an assignment of the Huron and Erie mortgage, which was originally \$150,000.

Q. You had a discharge of that mortgage? A. Yes.

Q. Do you remember what other documents you had with you?

A. We had an unregistered quit claim or a release.

Q. From whom? A. From Durno to the Consolidated Trusts.

Q. That is item No. 20 in Exhibit 285?

A. That was in our receipt, yes.

30 Q. Had you present these documents ready for closing if the cash was paid over?

A. We had them there; I don't think we presented them because we did not close the deal.

Q. You have known Mr. Morine for some considerable time? A. Yes.

Q. In connection with any transactions with reference to the Buckingham Apartments with Mr. Morine at any time, was it suggested to you that he be given any special consideration in connection with any liability that he might have under any covenants signed by him? A. Never.

Q. Has he ever made that suggestion to you or to anyone that you know of? A. None that I know of.

40 HIS LORDSHIP: It is for himself.

MR. SINGER: Did he at any time make any suggestion that you assist or do anything in connection with the two loans, the one for \$35,000. and the one for \$20,000., which were put on the Buckingham Apartments?

A. What do you mean by assist?

Q. Assist in persuading the company to pass or grant the loans?

A. I had nothing to do with that.

Q. I want your answer, did Mr. Morine ask you to do anything like that?

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A. No.

Q. In connection with the sale under power of sale, did Mr. Morine ask you or suggest to you that you should not take proceedings against him under the covenants in those two mortgages but instead to offer the property for sale under power of sale?

MR. WALSH: On those two questions I will have an opportunity to examine?

HIS LORDSHIP: Yes; they are leading questions.

MR. SINGER: He is not my witness.

HIS LORDSHIP: He is a witness called by the defence; he cannot be cross- 10
examined by you.

MR. SINGER: I have no objection to my friend cross-examining.

HIS LORDSHIP: Perhaps it will shorten proceedings by asking the questions direct, but yours is in the nature of cross-examination.

MR. SINGER: If your Lordship prefers I would be——

HIS LORDSHIP: Go on.

MR. SINGER: In connection with the sale to Durno, did Mr. Morine at any time ask you to take part with him or do anything with him in putting through a fictitious or fraudulent sale? A. Absolutely no.

Q. Did he at any time offer or pay or promise you any reward or payment 20
of any kind in connection with any matters concerning the Buckingham Apartments outside of the fees which you received from him for investigating the title in connection with the two mortgages? A. No, he did not.

HIS LORDSHIP: Has it anywhere been suggested that there was such an arrangement? I have not heard of any yet.

MR. SINGER: It has not been suggested since this case started.

MR. SLAGHT: The pleadings are so serious on fraudulent conspiracy that it prompted me not to have Mr. Brickenden leave the box with those pleadings.

HIS LORDSHIP: You are quite right; I think so far as meeting any case. 30

MR. SLAGHT: There has been no evidence, I apprehend that, but it was with those pleadings standing there in that view I asked my questions.

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CROSS-EXAMINED by Mr. Walsh:

Q. You were very friendly with Mr. Morine, were you not?

A. Yes, I am friendly with Mr. Morine.

Q. Since the time you graduated as a lawyer you have been very friendly with Mr. Morine? A. Yes.

Q. And he was practically a general agent of the London Loan in connection with mortgages, was not he?

A. Morine had been there about twenty years before I became a lawyer; 40
he had brought mortgages for, I understood, twenty or twenty-five years before I came into the picture.

Q. And after you came into the picture you had considerable dealings with him in connection with mortgages?

A. Yes, he sold the company a great many mortgages.

Q. As a matter of fact, 95 to 100 per cent of the mortgages that were

taken in the City of Toronto since the time you came originated with Mr. Morine; is not that right?

A. I cannot say the percentage, he did sell them a lot of mortgages, unquestionably.

Q. What do you mean, sell them a lot of mortgages?

A. They bought them from him.

Q. He was an agent of the company, was not he?

HIS LORDSHIP: Was it a case of buying mortgages or taking mortgages upon applications made by him?

10 A. They took applications, and buying mortgages.

Q. That is different from buying mortgages? A. I don't know.

MR. WALSH: As a matter of fact, he was general agent and you sent applicants to him and the applications went through him?

A. There were cases of that kind.

Q. A man named Oldfield for \$35,000., that came to your office and you sent him to Mr. Morine, is that right? A. That is right.

Q. And Mr. Oldfield got a mortgage for \$35,000., didn't he?

A. I believe that was the amount.

20 Q. And that application, after you had sent it to Mr. Morine, it came through Mr. Morine, didn't it? A. I believe so.

Q. And the cheque that was issued by the London Loan and Savings Co. is made to the joint order of Mr. Oldfield and H. A. Morine for \$34,999., is not that right? A. Yes, that is right.

Q. And that was deposited in the same account with the Buckingham, the same account that the Buckingham went into? A. I could not tell you.

Q. Look at the back——

HIS LORDSHIP: This witness has no personal knowledge.

MR. WALSH: "For deposit only, Canadian Bank of Commerce, H. A. Morine"——? A. I presume that is correct.

30 Q. Mr. Morine got the proceeds in the first instance of that mortgage, didn't he? A. I don't know who got it.

Q. And you got, on October 10th, 1925, your share, \$700., made up of fifteen twenty dollar bills and four one hundred dollar bills, didn't you—look at that? A. That is a deposit made on the 10th October.

Q. Look, that is Oldfield, is it not?

A. I could not tell you, I can assure you.

Q. Look at it please?

A. Yes, here is an item up here in the corner but I do not recognize that writing.

40 Q. G. A. P. Brickenden, October 10th, 1925, and then this small writing "re Oldfield"—do you recognize that there?

A. I see the name Oldfield, but I do not recognize the writing.

Q. Very small, put in the Savings Department of the London Loan and Savings Co. in your own private account there?

A. No, that is not my savings account; that was my business account.

Q. Re Oldfield is on it; is that right? A. Yes.

Q. Had you no other account besides that?

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A. I had another account in the London Loan and Savings Co., my private account.

Q. What account did this one go in, B-84?

A. That went in my business account.

Q. And that account *re* Oldfield, \$700., whom did you get that cash from, please? A. I presume that came from Mr. Morine; I cannot tell you.

Q. The Defendant Morine? A. I think so.

Q. You notice there are fifteen twenties and four one hundred dollar bills; will you tell us why that was not a cheque?

A. I have not the vaguest idea.

Q. The fees in connection with the London Loan mortgage of Mr. Morine, they are in cash too, are not they? A. I think so.

Q. I have a few slips here now; there is February 20th, 1923, sixty-four twenty dollar bills; do you know where that came from? A. No.

Q. March 2nd, 1925, another twenty twenty dollar bills; these are just at the time of your London Loan and Morine—

MR. SLAGHT: That last statement is not true.

MR. WALSH: February 12th it has appeared in evidence that Mr. Morine went home with a cheque for \$15,000. from the London Loan, on the \$35,000., and on the 23rd February he got \$10,000.; on March 9th, \$5,000., and March 23rd, \$5,000.—do you see the two deposit slips with twenty dollar bills?

MR. SLAGHT: My friend puts in deposit slips—

HIS LORDSHIP: They are not in yet; they are used to draw the matter to the witness' attention. Give Mr. Brickenden time.

MR. WALSH: Do you know what they are for?

A. I could not tell you.

Q. Whose writing are those slips? A. They are in my writing.

HIS LORDSHIP: That one that has "*re* Oldfield", is that in your writing too? A. No, my Lord, it is not.

Q. Whose writing is it? A. I think that is one of the stenographers. 30

MR. WALSH: Did you ever have a girl by the name of H.M.P.?

A. Yes, that is one of the stenographers.

Q. And it is the only deposit slip of those three that identifies the source of the money, is it not? A. Apparently, yes.

Q. Where you deposited there is nothing on to identify the source from which it came, is there? A. That is correct.

Q. On the \$20,000. mortgage on May 22nd, \$20,000. was handed out and there are two deposit slips, one on May 22nd, 1923, a total of \$318.75, made up of fifteen twenties, one ten dollar bill, one five, one two and one one; whose handwriting is that? A. That is my handwriting. 40

Q. I show you another deposit slip on May 29th, 1923; whose handwriting is that? A. This part is mine but the body is not.

Q. Whose is "G. A. P. Brickenden" and "B-84"? A. That is mine.

Q. The teller who put the denomination of the bills, that is his handwriting? A. Yes.

Q. There are forty-four ten dollar bills and three twenties; do you see that? A. Yes.

Q. Was any of that money Mr. Morine's? A. I don't think so.

Q. Was it? A. I don't know; I don't think so.

Q. Can not you make it stronger than that after what we heard this morning? A. Eight years ago; I cannot tell you.

Q. He had a fund wherewith to pay you, had not he? There was an agreement that I referred to on Friday afternoon, dated the same day as this second mortgage was put through on February 13th, 1923, whereby Mr. Morine was to get one-twenty-fifth of the proceeds of that \$35,000. mortgage, there was a fund—

10 HIS LORDSHIP: Wait; don't complicate your question.

MR. WALSH: Did you ever hear of that agreement?

A. Not until this action started.

Q. Hearing that agreement now, there would be a fund to provide money? —continued.

A. I cannot tell you; I don't know anything about a fund.

Q. Would not you say there would be, when twenty-five per cent of the amount was to go to a man who was agent, would you say there would not be a fund there to provide money?

A. I don't know anything about his arrangements.

Q. You won't say how much you got from Mr. Morine?

20 A. In connection with Buckingham Apartments?

Q. Yes. A. Yes, I will tell you. On the \$35,000. I got \$362.50.

HIS LORDSHIP: You got that as your fees?

A. That is all I know about; and on the \$20,000. I got \$250.

MR. WALSH: Why did not you come out to his Lordship and say to his Lordship that no part of these slips came from Morine?

A. I did not connect them up particularly.

HIS LORDSHIP: There is one marked "re Oldfield"?

A. That has nothing to do with Buckingham whatever.

Q. But it is in connection with Mr. Morine? A. Yes, perfectly right.

30 MR. WALSH: Let us look at that \$35,000. mortgage, if you recall Mr. Oldfield, you remember when you were in the Biggs case a year ago Mr. Oldfield going in that very box? A. Yes, I remember Mr. Oldfield.

Q. Mr. Oldfield paid Morine \$2,500. commission to get that loan, didn't he? A. I don't know what he paid.

HIS LORDSHIP: Confine it to this witness.

MR. WALSH: Did you ever hear that he paid?

A. I don't think I ever heard what he paid.

40 Q. There was a reason for paying; am I not right in saying, Mr. Brickenden, there was a real reason to pay a huge commission on that loan—read this letter here from Mr. Benson, the auditor, to the president and Board of Directors of the London Loan, dated October 6th, and read that paragraph—

MR. SLAGHT: I don't think the Oldfield matter has to do with this?

HIS LORDSHIP: Is this in reference to the Oldfield?

MR. WALSH: Both of them.

HIS LORDSHIP: You read it to him and ask him his knowledge of it.

MR. WALSH: Exhibit 281, dated October 6th, 1925:

"In the course of our audit it has come to my notice that the loans

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“on Beresford Apartments, which were second and third mortgages
“(the Huron and Erie Mortgage Corporation having the prior claim
“for \$150,000.) have been transferred to a party named Durno”——

HIS LORDSHIP : That should be Buckingham and not Beresford.

MR. WALSH : Yes :

“that the two former loans which amounted to \$55,000. have been
“replaced by one of \$77,000., and that the security is impaired by
“the release of the former guarantor from the covenant on the new
“mortgage.

“Another loan has just been passed by the Board for \$35,000. 10
“on a highly speculative security, a greenhouse property situated at
“Grimsby, Ont., the moral risk of which is evidently not good in
“view of the very heavy borrowings, while at the same time it is
“alleged that large profits have been derived from the operation
“of the business.

“I hereby register a formal protest against the present loaning
“policy, as it can only lead to trouble and loss for the company,
“and recommend the adoption by the Board of the following policy
“in its stead”——

Was not there a real reason for the payment of \$2,500. commission, a bonus 20
or a bribe, I don't care what you call it, to put through that \$35,000. mortgage,
was not there? A. I don't know what Mr. Morine got out of it.

Q. You never heard? A. I don't know.

Q. He must have got something to pay you \$700., the legal fees?

HIS LORDSHIP : Did he pay you \$700.?

A. The word “Oldfield” is on this slip, but I don't think I got \$700. for
the Oldfield deal; Oldfield is in here, and it is in the handwriting of one of my
stenographers and deposited to my business account; all these are my business
account.

HIS LORDSHIP : To Brickenden & Company? A. Yes. 30

MR. WALSH : I see each one of these have got on : “G. A. P. Brickenden,”
is that right, on the top of those slips?

A. B-84 is the Brickenden account, yes.

Q. G. A. P. Brickenden is written there on all except one in your hand-
writing? A. Yes.

Q. And you were the first, last and only one in G. A. P. Brickenden & Co.
on that date, were not you, the sole owner of that business?

A. I believe so, yes.

Q. Is there any doubt you got \$700. from Oldfield?

A. I don't think I got that from Oldfield; I see \$700. there, and I see the 40
name Oldfield at the top.

Q. Before when I asked you you had not any doubt about it; have you
any doubt about it? A. No doubt about it.

HIS LORDSHIP : I suppose by reference to your books you could see at
once where that \$700. came from? A. Yes, my Lord.

HIS LORDSHIP : It is a serious allegation against you; you ought to have
an opportunity to clear it up.

- MR. WALSH: Have you got your books here? A. I presume I have.
- Q. Who is that girl "H.M.P."? A. Miss Perry.
- Q. Was she a competent girl and honest? A. I think so.
- Q. She identifies it up there? A. Those are her initials.
- Q. Is there any doubt in your mind you got that \$700.?
- A. I must have had the \$700., but I cannot say whether I got it all in the Oldfield or not.
- Q. You never heard about the \$2,500. that was paid?
- A. No, I don't remember.
- 10 Q. Mr. Morine would have that in his books?
- A. I don't know that he has any books.
- Q. What reason would there be for having it payable to Mr. Morine?
- A. I did not make out the cheque; I could not tell you why.
- Q. What is the reason for that?
- A. I have nothing to do with making out cheques.
- Q. Have you any reason why it was deposited to Mr. Morine's account?
- A. No.
- HIS LORDSHIP: Are you putting these in?
- MR. WALSH: Yes, my Lord.
- 20 HIS LORDSHIP: The deposit slips can go in.
- MR. WALSH: I want the cheque too but I can reserve that.
- HIS LORDSHIP: Put in the deposit slips.
- MR. SLAGHT: As far as I am concerned I cannot object to the Oldfield slip being put in, but no other deposit slips can be put in.
- HIS LORDSHIP: They go in because this witness admits—they are not connected in any way and I cannot yet see their relevancy, but I am going to allow them to be marked for the present.
- EXHIBIT No. 287: Deposit slips in London Loan and Savings Co., dated October 10th, 1925, for \$700., to credit of G. A. P. Brickenden with the name on in small letters "Oldfield."
- 30 MR. SLAGHT: I do not see why the others should go in; my learned friend can reserve them.
- HIS LORDSHIP: He is going to ask the Court to draw the inference that as the dates correspond with the dates of the advances under these mortgages, there is an inference to be drawn from them.
- MR. SLAGHT: I submit they are not admissible.
- HIS LORDSHIP: They are admissible if they are connected up.
- MR. SLAGHT: Until they are.
- HIS LORDSHIP: I am going to allow them to be marked in the meantime.
- 40 EXHIBIT No. 288: Deposit slip, dated February 20th, 1923, for \$1,282. to the credit of G. A. P. Brickenden.
- EXHIBIT No. 289: Deposit slip, London Loan and Savings Co., dated March 2nd, 1923, \$400., to the credit of G. A. P. Brickenden.
- EXHIBIT No. 290: Deposit slip, London Loan and Savings Co. for \$318.75, dated May 22nd, 1923, to the credit of G. A. P. Brickenden.
- EXHIBIT No. 291: Deposit slip, London Loan and Savings Co., dated May 29th, 1923, for \$511.65, to the credit of G. A. P. Brickenden.

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MR. WALSH : There was a cheque that was put in to show the power of attorney given by Mr. Renton to Mr. Morine, and the cheque is dated February 19th, for \$10,000.; you had some legal work to do with Mr. Morine in connection with that Renton matter, didn't you?

A. Will you help me a bit on that; I cannot recall what you are getting at.

Q. There was a cheque we had in here that was marked showing on February 19th the London Loan made a cheque to Mr. Renton and Mr. Morine, and that Mr. Renton's name was endorsed on the back by Mr. Morine, and the proceeds deposited to Mr. Morine's account; you had legal work and services in connection with putting through this mortgage, hadn't you? A. From whom was the cheque? 10

Q. The McCormick Estate, I think Mr. Singer said it was.

A. We acted for the McCormick Estate.

Q. It was not confined to Mr. Morine, you put one on yourself called "Biggs," you were sued in connection with the second mortgage or a third mortgage to the London Loan, put on in November, 1924, for \$13,500. that you obtained on that mortgage and that you charged and got from the borrower, \$500. for getting that \$13,500., is not that right?

A. I got three loans, I think, \$18,000., one \$12,000. and one \$13,500.

Q. You did not go into the witness box before, and it struck me to bring my examination from Toronto, and I think I made it very clear— 20

HIS LORDSHIP : I don't know how this is evidence here.

MR. WALSH : I want to show that the policy that Mr. Morine had—

A. Mr. Morine had nothing to do with the Biggs transaction.

Q. In that particular instance you got \$500. from the borrower for getting that \$13,500. mortgage, didn't you?

MR. SLAGHT : Mr. Morine had nothing to do with the transactions in connection with the Biggs action, nothing whatever.

HIS LORDSHIP : If he had not, then it is not evidence. Do you suggest for a moment that this is part of a general scheme; was Mr. Morine connected with the Biggs transaction at all? 30

A. I don't know of him being connected with the Biggs transaction.

HIS LORDSHIP : Well, if it is not, then I don't think it is proper to pursue this line of cross-examination here. If you can show in a lot of other transactions these men were sharing commissions and that sort of thing it might be some indication of something that prevailed in this transaction too, but unless Mr. Morine was in the Biggs transaction I don't see how you have a right to pursue it.

MR. WALSH : It is a matter of public record now, that case anyway.

HIS LORDSHIP : Let it remain there. 40

MR. WALSH : Before I leave it, is there anything stronger you can say than you could not say whether any of that money came from Morine or not in connection with the four deposit slips that I put in?

A. I have not any particulars before me at all except the figures on the deposit slips.

HIS LORDSHIP : You will have an opportunity of producing your books and making the explanation. It is very proper you should have.

MR. WALSH: Would you mind telling me what was the idea of Mr. Morine paying in cash?

HIS LORDSHIP: He has not said that Mr. Morine paid him in cash yet.

MR. WALSH: I have it here in the examination.

Q. There is no doubt about it you got paid the fees in cash?

A. I have received some fees in cash.

Q. Did you get the fees on the Buckingham in cash or by cheque, yes or no? A. I cannot tell you.

Q. We will soon find it. I read as against Mr. Morine those questions, I read from Mr. Morine's examination—

HIS LORDSHIP: Give the witness a chance to explain or affirm or deny.

MR. WALSH: (Reads questions 279 and 280 from Mr. Brickenden's examination for discovery):

Questions 279 and 280 which were read—see opposite page—from G. A. P. Brickenden's examination:

“Q. 279: By whom was this item of three hundred and sixty-two dollars and fifty cents paid to you or your firm?”

“A. I think by Mr. Morine.”

Q. 280: Mr. Morine has said in his examination for discovery “that he paid this sum to you in cash. Is that correct?”

“A. I would think it was, yes.”

Q. Mr. Morine says he paid you this in cash; tell me why Mr. Morine paid you in cash?

A. If I got that in cash, and apparently I did, I presume it would be avoiding exchange or some tax or whatever it was.

HIS LORDSHIP: Where was it paid to you in cash?

A. Sometimes in Toronto and sometimes in London.

Q. Have you any way of fixing the dates these fees in connection with the loans were paid? A. I think so, from my books.

Q. Have you them here? A. No.

Q. Are they available?

A. Yes, I have not had an opportunity of looking at them.

MR. WALSH: When I examined Mr. Morine for discovery he said he paid you in London on the 13th February the cash for putting on the first mortgage; would that be right? A. I am not denying it—

MR. SINGER: What question?

HIS LORDSHIP: Is that Mr. Morine's examination in here? Of course it will not be evidence except as against Mr. Morine; but this witness ought to have an opportunity to produce his books to see the dates these were paid.

MR. WALSH: Would it be right if cash is paid there is no way of knowing just how much except from the person that pays it and the man that receives it; is that right?

HIS LORDSHIP: Do you think that that requires any confirmation?

MR. WALSH: All right, your Lordship.

Q. You knew that the second mortgage would need a guarantee, didn't you? A. Not necessarily.

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Q. And a third mortgage would also need a guarantee on an apartment house? A. Not necessarily.

HIS LORDSHIP: Do you mean to say you are in the habit of loaning money on third mortgages without a guarantee, a covenant?

A. We had covenants on them.

MR. WALSH: It says right on the application in the minutes, H. A. Morine to guarantee; you knew Mr. Morine, you knew he was reputed to be a wealthy man? A. I did not know anything about his financial affairs.

Q. You knew him pretty intimately?

A. I did not know about his financial affairs; I knew him.

10

Q. Knew him how?

A. I don't know what you want me to say, knew him how? I knew him.

Q. Mr. Braden has sworn that the London Loan and Savings Company, when they took over the management, had upwards of \$800,000. in real estate in Toronto and that through Mr. Morine's associations with your company, did it not? A. I could not tell you the amount.

Q. That would show the amount—you would not deny what Mr. Braden said about it? A. I don't know the figures at all.

HIS LORDSHIP: Perhaps you could put it this way: During your connection with the company there were many loans on Toronto property that originated and came through Mr. Morine? A. Yes, my Lord.

Q. Were there any other agents or persons in Toronto that brought applications to your company? A. Yes, I think there were, my Lord.

HIS LORDSHIP: Who?

A. Wrights Limited and Mr. Tom Rolph sent some in, I think.

Q. How many did he ever send? A. I could not tell you.

Q. Wrights Limited sent one, the Kingsdale Subdivision that was on your hands? A. I had nothing to do with that part of it.

Q. That is the Wright that made a valuation referred to when Mr. Morine got the valuation of Mr. Wright on the Buckingham; that is the same Wright, is it not? A. I don't know anything about it.

Q. Did you ever hear of another Wright that made a valuation other than the one Wright that was your mortgagor? A. Not that I know of.

Q. You got instructions in January of 1925, solicitor to collect, at the Board meeting January 20th, 1925; the Board met on January 27th, 1925: "Solicitors to collect"—do you recollect that?

A. I remember we got instructions.

Q. You remember the book, it has not been marked yet; are these your initials: "H. A. Morine *et al*, \$37,873.34, date January 13th, 1925; rate 7½ per cent. G. A. P. Brickenden & Co., date January 22nd, 1925."

40

The next one: "H. A. Morine *et al*, \$23,904., January 22nd, 1925; rate 7½ per cent. G. A. P. Brickenden & Co."? A. Those are my initials.

Q. And you got instructions, it shows at the top, "Collections handed to G. A. P. Brickenden for suit," is not that right? A. Yes.

Q. Mr. McCormick has sworn that Mr. Morine was reputed to be a wealthy man; can you give his Lordship one explanation why he was not sued on that covenant? A. Our instructions were to start sale proceedings.

- Q. Where are your instructions to start sale proceedings?
 A. Those slips of paper that were produced earlier.
 Q. Those were your instructions? A. Yes.
 Q. And there is not a word on them about sale proceedings?
 A. Yes, there is. Mr. Kent wrote on the bottom of one.
 Q. That was your instructions? A. Yes.
 Q. Did you get them? A. I think so.
 Q. You sued others, as I have shown to Mr. McMillan; you sued others
 at this very time of Morine on the covenant?
 10 A. I do not recall that, but I presume we did; it was our practice to start
 sale proceedings.
 Q. I have a list here where in the years 1923, 1924, 1925, 1926 and 1927
 proceedings were taken by your firm against mortgagors on the covenant?
 A. I am not denying it; I presume it is perfectly true.
 Q. Read that over—
 HIS LORDSHIP: I am only allowing this list to be used to prevent the
 necessity of bringing up the original documents here; it is not strictly evidence.
 It is to direct the witness' attention to particular transactions?
 A. No doubt they are perfectly true but I cannot remember the particu-
 20 lars of them.
 MR. WALSH: I wish to put that book in with the initials.
 HIS LORDSHIP: It can go in now; it is identified, just those two items
 though.
 EXHIBIT NO. 292: Solicitor's book, page 7.
 HIS LORDSHIP: It is from the loan company, kept in their office, I sup-
 pose, to be signed by solicitors when they got any papers or instructions.
 MR. WALSH: A certificate of the executions I would like to put in.
 HIS LORDSHIP: No, that cannot go in. He admits looking at the list—
 how many are there there?
 30 MR. WALSH: There are seven.
 MR. SLAGHT: Over how many years?
 MR. WALSH: They start in 1924; there are two in 1924, three in 1925,
 two in 1927.
 HIS LORDSHIP: Very well.
 MR. WALSH: As Mr. Morine guaranteed these mortgages, will you tell
 me one adequate explanation why proceedings were not taken against him?
 A. We took those proceedings which we were instructed to take.
 Q. That is your only explanation? A. That is the only explanation.
 Q. You say the sale proceedings to Mr. Durno were not taken on the
 40 solicitor's advice, that was on the company's instructions; is that right?
 A. Yes, on the company's instructions.
 Q. In other words it was not on the solicitor's advice that the sale pro-
 ceedings were taken to Durno; is that right?
 A. We were instructed by the London Loan to take the proceedings; I
 do not remember advising in connection with it.
 Q. This Durno transaction was a transaction under the solicitor's advice
 or under the company's instructions or how?

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A. I remember a subsequent letter in which somebody said the solicitor has advised such and such a thing but I do not recall advising anything in connection with it except that the legal work was done that we were asked to do.

Q. When Martin, Currie were after you to know and the company wrote that it was under the solicitor's advice that this was done, was that true?

A. I don't think that whole sentence is true; it may be in part.

HIS LORDSHIP: The original letter—they start at Exhibit 192.

MR. WALSH: You don't think this property was sold to Durno on the advice of the London Loan solicitors?

A. The Board of Directors would be amply capable of handling that. 10

Q. I want to know was this property—

MR. SLAGHT: Let him answer the question.

A. And when the Board of Directors instructed us to do something we tried to do it. I don't remember definitely advising in connection with it.

MR. WALSH: You cannot make it any stronger than that; take any time you want. On the examination you were quite clear: Now on page 3 of this letter this statement appears: "With reference to your remarks in connection with loan of \$39,882.68 above mentioned, this loan is entirely different to another loan which we had with the same borrower on which we hold a second mortgage for \$35,000. and a third mortgage of \$25,000. This 20 has also been sold on advice of our solicitors for an amount which will cover our claim in full after deducting the cash payment which we received from the purchaser." Was that statement correct?

A. No doubt I did advise them it had been sold.

HIS LORDSHIP: You had better show the letter to him.

MR. WALSH: EXHIBIT 265? A. Who wrote the letter?

MR. WALSH: Letter dated July 9th, 1925, there it is, I think that was one of the letters you were paid for?

A. No, I don't think I was paid for this one.

Q. Look at that statement in there.

HIS LORDSHIP: Is that one of the letters that is said to have been submitted to Mr. Brickenden and Mr. McCormick?

A. I don't think this one was, my Lord; there was another one that was; this is signed by Mr. Baker, Vice-President, I do not remember even seeing it.

MR. WALSH: You did not see it?

A. I do not remember seeing it.

Q. It was never shown to you? A. I don't remember ever seeing it.

Q. When Mr. Baker wrote that letter that that had been sold by advice of our solicitors, was he telling the truth, and was that correct?

A. Mr. Baker, I think, would tell the truth; I don't think you have taken 30 the right interpretation out of that.

Q. On your examination for discovery you were very clear on it then: "Is that statement correct? A. I think that is absolutely correct as far as I know."?

A. I still think it is correct, but I don't think you are interpreting it right.

Q. "This has been sold on advice of our solicitors"?

A. We had advised them it had been sold.

Q. That is the interpretation you want to put on that; when Martin, Currie were after them for an explanation and they said, "This has also been sold on advice of our solicitors for an amount which will cover our claim in full deducting the cash payment which we received from the purchaser"—that is what I said, it was sold.

HIS LORDSHIP: Your explanation is, you meant to say our solicitors advise us it has been sold? A. Yes, my Lord.

MR. WALSH: That is the interpretation you put upon it? A. Yes.

Q. Not that you advised them to sell it? A. No.

10 Q. You informed them the property had been sold; is that the interpretation you put on it? A. That, I think, is the correct interpretation.

Q. Mr. Brickenden, a transaction like this Durno transaction, you need a person on the outside and one on the in, is not that right, to put through a transaction of that kind it would need one on the out as well as on the in?

A. They had a whole Board of Directors on the inside, if that is what you mean.

Q. Mr. Thomas Baker you say was the one that sat with you and Mr. Morine? A. I don't know what you mean by sat; he signed the acceptance.

20 Q. On the date it was accepted there was Thomas Baker, Mr. Morine and Mr. McCormick? A. No, I don't think Mr. McCormick—

Q. Mr. Brickenden, Mr. Morine and Mr. Baker?

A. Mr. Baker, I think—

MR. SLAGHT: You said McCormick?

MR. WALSH: I did not mean him; Mr. Baker? A. I think so.

Q. That was Mr. Thomas Baker? A. Yes.

Q. Your client, a client of yours, is he not? A. I am not denying it.

Q. And the reason why I say it needs some person on the ins as well as on the outs is this, the very first case that was on the list at this sittings, the London Loan—

30 MR. SLAGHT: Just a moment.

HIS LORDSHIP: Don't answer the question till I rule on it.

MR. WALSH: The very first case that was on his Lordship's list at this sittings was London Loan *vs.* Baker, in which you were solicitor, and that was a suit against Mr. Baker to recover upwards of \$3,500. due the London Loan in connection with a transaction put through in the name of Mr. Post, a switching of securities, and Mr. Baker in his examination for discovery—

40 HIS LORDSHIP: No, no, I cannot allow that; that is wandering too far afield altogether. It is sufficient to say that Mr. Baker had been sued by the London Loan Company in connection with some transaction similar to this; ask the question that way, but you must not go any further.

MR. WALSH: May I put it this way: if Mr. Baker swore that that transaction would not have gone through except for the recommendation of the solicitor—

HIS LORDSHIP: No, no, you cannot put supposititious questions at all. When it is sworn the witness may be asked something; that evidence could not be given here.

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MR. WALSH : There was a suit here of London Loan *vs.* Baker to recover from Mr. Baker, a former director and Vice-President of the company, \$3,500. or thereabouts on two securities on which you were the solicitor on the record, and acted for him ?

A. Our firm were; I don't know anything about that particular case.

Q. In your evidence to Mr. Slaght you referred him on two occasions to Mr. Baker; you gave evidence of what Mr. Baker thought about the matter, about getting a quit claim deed, that is the same Mr. Baker, is it not ?

A. Mr. Thomas Baker.

Q. And he is alive and in London today, available to give evidence for 10 you if you want him ? A. I think so.

Q. Mr. J. J. MacLennan came here to give evidence and he said he made a trip up to London in connection with the Renton mortgage to see what he could do about these sale proceedings on your \$20,000. mortgage; he saw Mr. Kent, and Mr. Kent sent him to see you ?

A. Yes, Mr. MacLennan and I had a conference over that.

Q. Mr. MacLennan said you treated him very abruptly and he wanted to bring the matter before the Board, and you said the Board did not want to hear anything about it; is that true ?

A. There are three questions there; I did not know I had treated him 20 abruptly, I do not think I intentionally ever treated anyone that way; the second question was regarding the Board; I had no right to bring anything before the Board, there is a manager there to do that.

A. He told you that Mr. Kent had sent him to you, did not he ?

A. I remember him speaking about Mr. Kent, but whether he told me he had sent him to me or not I cannot tell you.

Q. Mr. Kent having sent him to you, he went to you to see what he could do in connection with the sale proceedings ?

A. Mr. Kent sent him to me to get rid of him.

Q. Mr. Kent said he was disturbed about the heavy arrears there were 30 owing to the Huron and Erie ?

HIS LORDSHIP : He also said he referred him to Mr. McCormick ?

A. No, I would not refer him to Mr. McCormick, my Lord.

Q. Mr. MacLennan has sworn you did ?

A. I would refer him to Mr. Kent, not to Mr. McCormick, because Mr. McCormick was the President.

Q. Would you refer him back if Mr. MacLennan told you that Mr. Kent had referred him to you ? Is it likely you would refer him back to the same man ?

A. I would tell him those were our instructions. I don't remember re- 40 ferring him back to Mr. McCormick; I am quite satisfied I did not.

Q. He is positive you did, and you are as positive you did not ?

A. There is a document there, a letter that speaks for itself in connection with it.

MR. WALSH : No, there is no letter speaks for itself in connection with this conversation. Mr. MacLennan came to you representing the fourth mortgage, and when he came to see you about that matter he said you treated

him abruptly; was that right? A. I don't know that I did.

Q. He also said he asked you to bring the matter before the Board, and you said the Board did not want to hear anything about it; is that true?

A. I am not denying it, but I would not have any right to bring it before the Board.

Q. And his Lordship said you referred him to Mr. McCormick?

A. I think he is mistaken in the person I referred him to.

Q. Mr. Maclennan has sworn that he offered to pay off the \$20,000. mortgage, but that you people wanted payment of both your second and third 10 mortgages; was that correct? A. I think that is correct.

Q. Now let us see the letter to Martin, Currie, July 5th, 1926, Exhibit 197. You have just told me that Mr. Maclennan offered to pay the \$20,000. mortgage, but you wanted both; that was right, was it not?

A. I think that is correct.

Q. Why then in this letter of July 5th, 1926, does this statement appear?

HIS LORDSHIP: Is that one of the letters that is said to have been submitted to Mr. Brickenden before it was sent?

MR. WALSH: Yes, your Lordship, the one that was.

MR. SLAGHT: Who signed that one?

20 MR. WALSH: George G. McCormick, President.

HIS LORDSHIP: I think Mr. McCormick said the letters he wrote he consulted Mr. Brickenden.

MR. WALSH: Is that your bill? A. Yes.

Q. That was paid. This account is London Loan and Savings Co., April 19th, 1927, in account with G. A. P. Brickenden & Co. "To professional charge relating to Martin, Currie & Co., July 5th, 1926. Instructions to prepare a reply to a long letter of inquiry received from Messrs. Martin, Currie & Co. as a result of investigation of your company made by their auditors"—that is your account? A. I believe so.

30 Q. You were the one that would read through this letter—the draft and original are both in here; do you identify that letter?

HIS LORDSHIP: Show it to him.

A. This is a letter that I assisted Mr. Hambly in drafting, which was read to the Board and eventually signed by Mr. McCormick.

MR. WALSH: This is not signed by Mr. Hambly?

A. No, this is signed by Mr. McCormick, but Mr. Hambly got the information from the books, and I drafted the letter with his assistance.

40 Q. Pardon me, Mr. Hambly has sworn the very opposite; he said in any matter concerning Durno he was not there, and he got his information from Mr. Brickenden and Mr. McCormick; was that right?

A. I said Mr. Hambly was there with the books, and assisted me to draft that document.

Q. Did it need any books to write that letter?

A. I think it needed what books they had.

Q. Did it need any books for this: "We asked Mr. Maclennan to pay up the arrears which would not be more than approximately \$20,000. (as he claimed to represent the Scotch Investors in the Renton mortgage). He said

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he could not do it." Is that a true statement to put in that letter; he said he could not do it?

A. When the application for postponement of the mortgage sale took place he said he would pay it up at the end of the month; he was unable to do so. I presume that is what is meant by that. In any case it was drafted and read over at length to the Board and changed by the Board; some of it was in my handwriting, I was present at the meeting; some of it was in Mr. McCormick's, I believe.

Q. You say that Mr. Maclennan made the offer, and the London Loan, they were quite agreeable to it? 10

A. He told me he could get this money; he never actually showed us any money or showed us a cheque, and it proved eventually he could not do it.

HIS LORDSHIP: His statement is he offered to pay off the \$20,000 mortgage, pay off certain arrears that were due, and if you would wait for the \$35,000 mortgage, and that your position was you would not take anything less than both mortgages? A. That is correct, my Lord.

MR. WALSH: Just to bear out what Mr. Maclennan says, Mr. Maclennan's letter of April 24th making the offer, Exhibit 64; he says he will pay off all the arrears on your third mortgage of \$20,000. if you would give him an extension of your second mortgage for \$35,000. You remember that letter? 20

A. We thought he was going to pay it all off at the sale.

Q. You wrote this letter on April 27th, 1925, G. A. P. Brickenden per James F. McMillan, Exhibit 65, to Messrs. Maclennan and Black: "We beg to acknowledge receipt of your letter of the 24th instant. We have taken the matter up with the London Loan and Savings Co., and they advise us that they cannot see their way to make any concession in connection with the payments on their mortgages. They feel that, to protect their position in connection with this property, they must insist on the terms of payment being strictly complied with"—is that right? A. That is so.

Q. Then why put that untruthful statement to Martin, Currie & Co., "We asked Mr. Maclennan to pay the arrears which could not be more than approximately \$20,000.; he said he could not do it"? 30

A. What date is that letter?

Q. July 5th, 1926?

A. That was a year after it took place, was it not?

Q. Yes; you could not dare put the contents of these truthful letters to Martin, Currie, could you?—they would ruin you, if you had told Martin, Currie that Maclennan had offered to pay off your third mortgage in full, and your arrears if you would hold your second, and you wrote back saying you could not do it, it would have killed you— 40

HIS LORDSHIP: How does he know how they would regard it?

MR. WALSH: I think your reason for putting in that statement—

HIS LORDSHIP: He put it in anyway; the statement speaks for itself, directly contrary.

MR. SLAGHT: My friend has been calling Mr. Maclennan's letter an offer to pay so and so; it is not that; it is merely an inquiry that if his clients will do so and so will they be willing to do so?

HIS LORDSHIP : Mr. Maclellan, in his evidence, said he offered to pay the money.

MR. WALSH : And they were ready and willing with the money to do it ?

A. He did not do it at the sale, though.

Q. Why was this transaction put through, this Durno transaction put through ? A. I could not tell you.

Q. There was a reason, was not there ?

A. I don't know what the reason was.

Q. Your relations with Mr. Morine, tell us what the reason was ?

10 A. I have no reason whatsoever; an offer was received and submitted to the Board and accepted.

Q. You wrote a letter; in this letter here on page 6 of Exhibit 197, the letter to Martin, Currie of July 5th, 1926 : "Mr. R. S. Durno was an independent builder in the City of Toronto who has been constructing properties, and I was quite glad to have him buy this property from us"—and he was the same man that could not pay interest on \$6,500. mortgage, and he was six months in arrear, pretty near, the same man, was not he ?

A. I don't think he was at the time this was; it was not in our hands, as far as I know at the time this sale was put through at any rate.

20 Q. Mr. Morine sent the offer, you know, for that loan, R. S. Durno on St. Ives Crescent property; you knew that, you heard it read ?

A. St. Ives has nothing to do with Buckingham Apartments.

Q. That is the one he could not carry; this transaction was put forward in Durno's name, was it not ? A. I did not say he could not carry it.

Q. Did you ever see Durno ? A. I never saw him in my life.

Q. Did you ever see May Rutherford ? A. I never saw May Rutherford.

HIS LORDSHIP : There is another transaction, I think.

MR. WALSH : Yes, that Lymberry and Canusa; you saw that one ?

A. No.

30 Q. Mr. Hambly says that offer was put forward by Mr. Brickenden ?

A. It was received by our office and we submitted that to the London Loan; we had nothing to do with the transaction.

Q. You received it from Mr. Morine ?

A. I cannot remember; I rather think it was; I cannot tell you, but we first submitted the letter to the London Loan.

Q. It nearly went through; Mr. Braden notified the directors if that went through they would be sued ?

40 A. No; Mr. Braden had an agreement with the directors they would not pass anything unless they submitted it to him; I don't think it was going through anyway, but, if it came, it would be my duty to submit it to the London Loan.

Q. Your duty to submit a deal of Lymberry's, and the only thing he was putting up was his Canusa stock ?

A. I cannot remember the details of it.

Q. Why was it necessary for Mr. Braden to notify these directors they would be sued if that deal went through ?

A. Mr. Braden had an agreement with the company, all except Mr.

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McCormick I believe, that they would submit things to him before they passed them at the Board, but I think Mr. Braden was the Board.

Q. As a matter of fact this was the time that a large body of stock had been sold, and Mr. McCormick was then practically out of control, was not he, waiting for the meeting to be held, is not that right?

A. I cannot remember.

Q. And if that Lymberry deal had gone through, it would have been another Durno deal as far as Mr. Morine was concerned?

MR. SINGER: I object to insinuations that he is constantly making throughout this action. He might present this during argument, but it is 10 improper to go on, day after day, and make insinuations of that sort.

HIS LORDSHIP: I do not think it is necessary or proper even, Mr. Walsh, at the moment, to put the question in that way. It is enough to say that the Lymberry deal came from Mr. Morine and was submitted by Mr. Brickenden to the Board.

MR. WALSH: I will leave that.

Q. Where I read the question as to Mr. Baker, and that you said was correct, the property was sold under the advice of the solicitor, and the purchaser had paid, I forget the sum that was named, had he paid \$3,500., Mr. Durno? A. The adjustments would show what he had paid. 20

Q. Did Durno pay \$3,500?

A. I cannot answer that question yes or no.

HIS LORDSHIP: There is no pretence that he paid \$3,500. in cash; apparently the company were paying all the fees and everything like that, and Durno was taking credit for it? A. I hardly think that is right, my Lord.

Q. It is right according to the statement?

A. I think the adjustment would—

MR. SLAGHT: With great respect, Durno was taking a debit, not a credit. Durno owed \$3,500. to the company, the company were under obligation to pay out certain moneys amounting to \$3,500., they did not pay them, so that 30 Durno took the property with \$3,500. against it that ought to have been paid out by the company, and therefore they were relieved from paying \$3,500 out, and Durno did not pay the \$3,500. to them; it was an adjustment, but it would not be proper to describe as Durno taking credit here; Durno took a debit for what they paid, and he received credit for the \$3,500. as against it.

MR. WALSH: Let us look right to the bottom; he never paid.

HIS LORDSHIP: He is taking credit for paying on account of interest \$3,737., or rather \$2,512.12, and for the payment of taxes, I don't think they were paid—

MR. WALSH: No, never paid a cent of taxes; Mr. Morine will explain 40 that fully. Question 1991 of Mr. Brickenden's examination for discovery: Now on page 3 of this letter this statement appears: "With reference to your remark in connection with loan of \$39,882.68 above mentioned, this loan is entirely different to another loan which we had by the same borrower, on which we hold a second mortgage for \$35,000., and a third mortgage of \$25,000. This has also been sold on advice of our solicitors, for an amount which will cover our claim in full after deducting the cash payment which we

received from the purchaser"—that statement was sent to Scotland, and as a matter of fact you never received a cash payment—cash payment from Mr. Durno? A. I think you have misconstrued it.

Q. What Mr. Braden says you told him just about fits in with the facts; Mr. Braden says you told him that this was a fictitious sale or a transfer to Durno? A. I do not think it was a fictitious sale, no.

HIS LORDSHIP: It was not put that way; what Mr. Braden said was, "I said that was not a genuine sale, and Brickenden said no, to clear up the title, it was to eliminate liens and subsequent mortgages."

10 MR. WALSH: I put it to you, this has got all the earmarks of an un-genuine sale, if I may use that word.

MR. SLAGHT: Is not that a matter for your Lordship?

HIS LORDSHIP: Yes.

MR. WALSH: Can you point out to his Lordship one earmark of a genuine sale?

A. The offer of purchase was handed to us, accepted, and we were asked to complete the transaction; that I think we did.

Q. And that is the only thing you know about it that looks *bona fide*, is it; do you know anything else that looks *bona fide* but that?

20 A. I did not know Mr. Durno, except he had been dealing with the company.

HIS LORDSHIP: Did you know about his dealings with the company?

A. No, my Lord, except that he had dealt with the company; I did not know him at all.

MR. WALSH: Q. You did not get a farthing, you say, payment for any of the work in connection with these sale proceedings?

A. Yes, I received an agency allowance of seventy-five dollars.

Q. I am talking about the sale to Durno? A. No, I don't think so.

30 Q. Can you tell me why the solicitors did not collect from Mr. Morine or his son-in-law, Mr. Dyas, the rents of this apartment to get revenue in from January it was placed in your hands, from then on?

A. I cannot tell you.

Q. Was it not a very reasonable thing to have done? The property was then occupied, and there were all these arrears of interest and all the arrears of taxes and the arrears of interest to the Huron and Erie on the first mortgage; why were these rents not taken possession of?

A. I could not tell you.

Q. You have heard me read that this sale was under the solicitor's advice; being under your advice, why did you not collect those rents?

40 A. That is not my interpretation of that.

Q. You cannot give me any explanation anyway?

A. I gave the explanation that I advised that the sale had been completed.

Q. You cannot give me any explanation why the rents were not collected?

A. No.

Q. Would it not suggest itself to you that Mr. Morine was in reality—that Durno was the nominee for Mr. Morine when Mr. Morine was allowed

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to continue in the property and collect and enjoy all the rents for that period?

—Mr. Singer objects.

HIS LORDSHIP: That is objectionable in two ways: first, there is no evidence that this witness knew about that state of facts; in the second, a more serious one, that that is a question for me to determine and not the witness.

MR. WALSH: I would not like to take it away from your Lordship.

Q. To your knowledge was Mr. Morine not collecting the rents during this period from January, 1925, when the solicitors were instructed down to 10 and including the sale?

A. I think they were collected in his office, but I think Mr. Dyas did that; I cannot say definitely on that point.

Q. You never heard of any person but Mr. Morine who got those rents?

A. I think I told you before that Mr. Dyas was collecting those rents; I mean from the time the sale to Durno, the Consolidated Trusts, that Mr. Dyas was collecting the rents; did you mean before or since the sale?

Q. I will take it both before the sale; Dyas and Morine collected them?

A. I don't know about Mr. Morine; I understood Mr. Dyas had collected the rents. 20

Q. And he was in Mr. Morine's office? A. Yes, I believe so.

Q. And after the sale the same party collected them?

A. Yes, Dyas collected the rents for the Consolidated Trusts.

Q. And it was Mr. Morine and Mr. Dyas that sent in the cheque for the first six months' interest on the Durno mortgage? A. I could not tell you that.

Q. You never heard that?

A. I could not tell you; I don't know what the London Loan records show.

Q. If he did that, how would you account for Mr. Morine sending in the cheque for the first six months' interest on the Durno mortgage? 30

A. My recollection is the Consolidated Trusts received the rents and they paid the London Loan and Savings Co.; I am not sure.

Q. Who was the one that conceived this bright idea about the property being put in the name of the Consolidated Trusts in trust, and getting some sort of a quit claim deed back from Durno? A. I could not tell you.

Q. Whose mind conceived that bright idea?

A. I could not tell you; I was not at the Board meeting, as far as I can remember.

Q. You do not suggest your client, Mr. Thomas Baker, thought that out, do you? 40

A. I am not saying that; I am saying he gave the instructions. Your question was who conceived it? I do not know who conceived it.

Q. Mr. Baker gave what instructions now?

A. It was he who accepted the Durno offer, at least his signature was on it; it was he who came into the office and asked the transaction to be put through.

Q. Mr. Kent at that time was not taking any part in this thing?

A. Mr. Kent, I think in May for about two weeks, he was laid up with a broken hip and confined to the hospital, after which he went home from the hospital and was in his house for some time.

Q. Mr. Kent was quite available to sign any offer of purchase in the hospital and in the home, was he not?

A. A great many documents, I understood, were taken up to him; his mail was taken up to him.

Q. That is about the only thing your father-in-law could remember, was the mail to Mr. Kent?

10 MR. SLAGHT: A mis-statement absolutely, and very improper.

MR. WALSH: He did remember the proxy.

HIS LORDSHIP: You should not make that comment; it may be open to all these comments and strictures, but now is not the proper time to make them.

MR. WALSH: Is it not a fact, Mr. Brickenden, that Mr. Kent was available there to sign it? A. He was not at his office.

HIS LORDSHIP: Mr. McCormick said his understanding was he was in close touch with all the business.

MR. WALSH: Give me the words Mr. Baker said?

20 A. I cannot remember the exact words; I thought I conveyed the gist of it to you.

Q. What was the gist that he said?

A. That we were to get a deed from Durno to the Consolidated Trusts in trust, and get a quit claim, which would not be registered unless Durno went into default.

Q. Who is the property in trust for?

A. I presumed the London Loan and Savings Co. and Durno.

HIS LORDSHIP: Who drew the trust deed?

A. I think that was drawn in Toronto.

Q. By whom?

30 A. By Wilson I presume; it was not drawn in our office.

Q. The same Mr. Wilson?

A. It is Mr. Mel. Wilson, the one who handled the sale proceedings.

MR. WALSH: The same man? A. Yes, that is correct.

Q. And he drew up this trust agreement; what did the trust agreement provide?

A. Let me see the trust agreement; I am giving you my best recollection of that.

Q. I have never seen the trust agreement; when did you first see it?

HIS LORDSHIP: Was there such an agreement?

40 A. Yes, my Lord, it was in our receipt to the London Loan and Savings Co.; they acknowledge the receipt of it—I mean the release, the quit claim.

Q. No, no, that is not the thing at all; the deed here from Durno to the Consolidated Trusts Co. in trust has been referred to, but there has not been a word about any agreement showing what the trusts were?

A. I think there is a letter on file somewhere.

MR. WALSH: You told us the trust was that the Consolidated Trusts was to hold it in trust for the London Loan and Savings Co. and Durno?

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A. I believe that is correct.

Q. In trust for the two of them?

A. The Consolidated Trusts were to pay the account for Mr. Durno, and, if there was any shortage, Mr. Durno was to pay it; failing that, they had an unregistered quit claim—

HIS LORDSHIP: Speak first of the trust deed; it was in order, as I understand, to enable the Consolidated Trusts to collect the rents?

A. That is correct.

Q. And to pay the rents to the London Loan and Savings Co., and I suppose if there was any surplus to go to Durno? A. Yes, my Lord. 10

Q. That is your understanding of it; how is it that you, as a solicitor here for the London Loan and Savings Co.—were not you called to advise on that at all?

A. That was very shortly after we started to practice, my Lord, as a matter of fact, 1925; we started about 1921.

MR. WALSH: Have you any explanation why you did not draw that document? A. No, I cannot give you any explanation.

Q. It was placed in the hands of the Consolidated Trusts in trust for the London Loan and Durno; is that right? A. I think so.

Q. And they were to collect the rents and pay what? 20

HIS LORDSHIP: I suppose any expenses in connection with it.

MR. WALSH: And any surplus was to go to Durno; was that right?

A. I think so.

Q. And if there was any deficiency he was to pay it?

A. Mr. Durno was to pay.

Q. And he was still the owner of the property; is that right?

A. I would think so.

HIS LORDSHIP: He was the beneficial owner anyway.

MR. WALSH: You say the first that was heard of this was at the meeting with Mr. Thomas Baker? A. First heard by me? 30

Q. Yes. A. I think it was on June the 23rd.

Q. And this trust originated with Mr. Baker, did it?

A. I don't know; I have not any idea; no doubt it originated at the Board.

Q. Mr. Baker told it to you? A. Yes.

Q. Who communicated that to Mr. Melville W. Wilson so that he could draw the deed in trust? A. I could not tell you.

Q. There were just two people there could do it, there was Mr. Morine and yourself; which of you communicated that to Mr. Melville Wilson?

HIS LORDSHIP: Did you in any way instruct Mr. Wilson in the matter?

A. I do not remember instructing him; I did telephone to him several 40 times, but just—

Q. About this matter? A. I did talk to him about this matter.

Q. About the trust deed? A. Yes.

Q. Did you ask him to draw it? A. Yes, I think we did.

Q. No, don't say "we".

A. I am assuming responsibility for my office when I say "we".

- Q. This is a personal matter; you are not giving evidence for your office; you gave Mr. Wilson those instructions to draw the trust deed; go on.
- MR. WALSH: Tell us what you told Wilson now?
- A. I cannot recall the conversation at all.
- Q. And then there was the deed; did you ever see anything in writing whatever in connection with this trust?
- A. We wrote a letter to the Consolidated Trusts at or following this some time later.
- Q. And can you explain when the documents were sent to the London Loan and Savings Co. in the fall of 1925 this so-called quit claim deed from Durno was not sent then, this release from Durno dated the 8th July, 1925—can you tell us why that was sent to the company?
- A. I cannot tell you, unless it was already in their possession.
- Q. It was not in their possession, because Wilson sent all the papers to you, didn't he?
- A. If you let me see that correspondence I will check up on that.
- HIS LORDSHIP: Is it very material, Mr. Walsh?
- MR. WALSH: All right, your Lordship; the only thing is this, it was never referred to in that correspondence.
- 20 HIS LORDSHIP: My recollection is that it is not referred to in any correspondence.
- MR. WALSH: Have you any explanation why it was not referred to in that correspondence?
- A. I don't think they exercised the use of the quit claim at that time, because there was not any default as far as I can remember.
- HIS LORDSHIP: It never was in point of fact delivered or used by the trust company?
- A. I think it was delivered, but I don't think it was used, not at that time, at the time of the sale.
- 30 MR. WALSH: As a matter of fact it was never delivered to the London Loan, was it? A. I think it was, yes.
- Q. Have you any letter from Brickenden & Co. or from Mr. Brickenden, or from Mr. Morine that you have ever seen, enclosing that quit claim deed to the company? A. Yes, in March, 1929, we sent it to the company.
- Q. That was after you ceased to be solicitor, was it not?
- A. No; it was after we had it, I presume, in our office in connection with some of these other deals.
- Q. There is nothing on any record of any kind to show the existence of that document or of it ever having been sent to the London Loan and Savings
- 40 Co. until March of 1929, is there? A. I don't remember any.
- Q. Mr. Morine has one in his possession, you knew that; it was in duplicate? A. I saw it in his productions.
- Q. You have looked it over?
- A. I don't think I have looked it over; I did see it on one occasion, but I don't think it was in Mr. Morine's office.
- Q. Mr. Morine had a duplicate original; why would he have a duplicate original of that document? A. I could not tell you, I do not know.

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Q. If Mr. Durno was not the nominee of Morine—

MR. SINGER: Might I suggest again; he has Mr. Morine's examination—

HIS LORDSHIP: He is not obliged to accept Mr. Morine's examination for this purpose. I think the question is quite proper; go on. I will allow you to ask if he knows any reason why he should have it in his possession.

MR. WALSH: Can you suggest any reason why Mr. Morine would have in his possession a duplicate original of that so-called release?

A. I don't know of any reason.

Q. Did Durno ever go into possession of this property?

HIS LORDSHIP: Does he know anything about it? 10

MR. WALSH: Did you ever hear of Durno ever taking possession of the Buckingham Apartments? A. I could tell you I don't know.

Q. You never heard of him doing it, did you? A. I don't know.

Q. That is the most you can say? A. That is all I know about it.

Q. Mr. Melville Wilson has his office in the Kent Building? A. Yes.

Q. And at the time that the London Loan took on the mortgages in 1923, and at the time of the sale in 1925, Mr. Morine had his office in the Kent Building, had not he? A. I think so, yes.

Q. And do you know if Mr. Morine ever had any legal work with Mr. Melville W. Wilson? A. I could not tell you. 20

Q. Did you ever hear of him having done any? A. I don't know.

Q. The letter I read to Mr. McMillan, there is no doubt it was Mr. Morine that brought in the sale notice in February, 1925, to Mr. Melville W. Wilson? A. That is what the letter said.

Q. When Mr. Morine got the second mortgage on the property for \$35,000., did you know that he got a cheque immediately on the acceptance of the application before the mortgage was registered? A. No, I did not.

Q. Never knew of that? A. I have heard it since the trial started, yes.

Q. The first time you ever heard it? A. I think so.

Q. Up to that time there was no search and no mortgage to secure the 30 London Loan and Savings Co.; is not that right?

A. I cannot give you the dates.

HIS LORDSHIP: That is quite clear upon the documents themselves.

MR. WALSH: Did you ever see any of Mr. Fetterley's valuations before this action started?

A. I don't think I did—before this action started or before this mortgage?

Q. Before action started? A. I saw Mr. Fetterley's valuation.

Q. Where did you see it? A. Mr. Kent showed it to me.

Q. When? A. At the time we were instructed to start our title work.

Q. When you were instructed to what? 40

A. To search the title for the \$35,000. loan.

Q. It was Mr. Morine drew the mortgage up, was it not? Mr. Morine drew the \$35,000. mortgage up himself? A. I cannot tell you that.

Q. There is a letter there that I read, asking for a third copy from Mr. Morine's office; is it not a fact that Mr. Morine drew this mortgage of \$35,000. up himself and registered it? A. I cannot tell you.

Q. If he did not draw it, who did? A. I don't know who did.

- Q. You don't know anybody else but Mr. Morine that drew it ?
 A. I don't know; it was given Miss Harrison to handle.
 Q. As a matter of fact, you did not see the valuation at that time, did you ?
 A. I saw it at or about the time of the loan.
 HIS LORDSHIP: How would it be shown to you if you were only doing the legal work; did you usually see the valuations ?
 A. Mr. Kent would occasionally show me those things, that is all.
 Q. They were no part of your work ?
 A. None whatever; I had not anything to do with it.
 10 MR. WALSH: He did it occasionally ? A. Yes.
 Q. You pick out this as one of the occasions, is that right ?
 A. Yes, this is one of the occasions.
 Q. The first that was heard of that application was the very day that Mr. Morine brought the application up; he brought it up one day and had it approved and took his cheque away with him ?
 A. I don't know when the Board heard about it; I knew when I heard about it.
 Q. When did you hear about it ?
 A. When the thing was started, whenever the Board meeting was over.
 20 Q. And that is according to the minutes ? A. I presume so.
 Q. Who drew the \$20,000. mortgage ? A. I don't know.
 Q. You got legal fees on it ?
 A. We also certified to title, that is sufficient responsibility.
 Q. The abstract was sent up to you from Toronto ? A. I believe so.
 Q. Am I fair in putting it this way, that Mr. Morine drew the mortgage, signed it, and registered, and you had an abstract from Toronto and gave a certificate of title ?
 A. I cannot tell you that; Miss Harrison handled this transaction.
 Q. The liens that were on this property, you mentioned about Mr.
 30 Morine had a large interest in the property, that he said he had paid \$20,000. for the liens; is that right ?
 A. I understood he had paid off the liens and it cost him about \$20,000.
 Q. Did he tell you that ? A. I don't know who told me.
 Q. What did Mr. Morine tell you about these liens ?
 A. I phoned him on one occasion and he said he was going to pay them off, but I had already received instructions he was going to do it.
 Q. He was responsible for them; he was the owner of the property, the mortgagor on the property ?
 A. He was one of the mortgagors, and I presume he is partly responsible.
 40 HIS LORDSHIP: And it was his business to pay them ?
 A. I would think so.
 MR. WALSH: Did he tell you he paid them on the dollar valuation—— ?
 A. I don't know anything about what——
 HIS LORDSHIP: What has this to do with it ?
 MR. WALSH: Mr. Braden has sworn that you told him that Mr. Morine had a large interest in the property and that this transaction was to recoup,

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to assist in recouping Mr. Morine for the amount that he had lost; do you remember Mr. Braden swearing to that?

A. I said Mr. Morine had a large interest in the property; I don't remember saying anything about recouping.

HIS LORDSHIP: Put the question; did you say to Mr. Braden what Mr. Walsh has repeated to you? A. Not exactly, my Lord.

MR. WALSH: What did you tell him about this deal or transaction being in the nature of helping Mr. Morine to recoup his losses?

A. I did not say it was helping Mr. Morine to recoup his losses.

Q. What did you say about that?

A. Which interview was that, are you talking about the second interview?

HIS LORDSHIP: The second interview appears to have been a different subject altogether.

MR. WALSH: It is the first one.

HIS LORDSHIP: One was on July 29th, if I recall correctly.

MR. SLAGHT: The first one was in May.

HIS LORDSHIP: In May, 1929, he says he had a talk with you, he had the abstract with him, and he says you spoke about Morine's losses, and it would help to recoup him in his losses and the company would receive all their money? A. What is your question?

MR. WALSH: You heard his Lordship read out what Mr. Braden said, that it would help Mr. Morine to recoup him for his losses; what was the conversation about that?

A. I told Mr. Braden that Mr. Morine was paying off the liens or had them paid off at that time, but I did not say anything about Mr. Morine recouping his losses.

Q. What would you be mentioning about liens for, that he had paid off, if they had not a connection with the sale?

A. Nothing to do with recouping his losses.

Q. If he had had money that was coming to him?

A. That was not coming to him, it was going from him.

Q. Would not the sale help him to get it back?

A. I don't see how.

Q. If the property were being purchased by Mr. Durno on behalf of Mr. Morine, cutting out the fourth mortgagee, and cutting out Mr. Renton as undivided half-owner in the property, would not that assist Mr. Morine to recoup his losses?

HIS LORDSHIP: That is a matter of argument; never mind about that.

MR. WALSH: In any event there was some discussion about that?

A. I am trying to repeat it as nearly as I can.

Q. The second conversation was that you came in to see him?

A. I came into Mr. Braden's office.

Q. You told him if he went after Morine that Mr. Morine would block the amalgamation? A. No, that is a mistake.

Q. What did you go into that office for?

A. I was taking some papers into Mr. Braden.

Q. What did you mention the subject for?

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- A. Mr. Braden brought the discussion up.
 Q. Did Mr. Braden not mention, did you not mention to Mr. Braden that Mr. Morine, if he were sued, would block the amalgamation?
 A. I did not mention anything about blocking the amalgamation.
 Q. Never mentioned that? A. No.
 Q. Is it not a fact that he did endeavour to block the amalgamation?
 A. I don't think he blocked the amalgamation.
 Q. Endeavoured to? A. I don't know that he endeavoured to.
 Q. You were at the meeting? A. Yes.
 10 Q. He brought W. F. O'Connor, K.C., up with him?
 A. I don't think the meeting was blocked.
 Q. They tried to, didn't they—Mr. H. A. Morine was there along with?
 A. Not along with me.
 Q. You sat on different chairs; you were both at the same meeting?
 A. Yes.
 Q. There was stock transferred to Mr. W. F. O'Connor so that he could go to that meeting, was not there?
 A. I don't know anything about the stock transfers at all.
 Q. You know that Mr. O'Connor was at that meeting?
 20 A. He was, unquestionably.
 Q. On behalf of whom?
 A. I would presume on behalf of Mr. Morine.
 Q. For what purpose?
 A. He was objecting to the way you were carrying on.
 Q. And to block it if he could, voting against it—
 A. I don't think there was a vote taken.
 Q. And they did not succeed in their purpose?
 A. I don't think there was ever a vote taken, so far as I know.
 MR. GRAY: Yes, there was? A. Was there?
 30 MR. GRAY: Yes.
 MR. WALSH: Do you say there was not a vote taken?
 A. Which meeting do you mean?
 HIS LORDSHIP: We are not concerned whether there was.
 MR. WALSH: On the Rutherford deal, do you know where the original offer was?
 A. I don't know where the original offer was; we had a copy of one which was not the one eventually used.
 Q. Where is the one that was eventually put through?
 A. I could not tell you.
 40 HIS LORDSHIP: That is very singular that the ones that were not used are available, and the ones that were are not?
 A. I don't think there was, my Lord, one that was actually completed; I think that agreement was one that was worked on.
 Q. The one that is produced?
 A. Yes, but that is not the way the deal was to go through.
 Q. Was there another one than here? A. Not as far as I know.
 MR. WALSH: Mr. Singer asked you what papers you saw when you

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wanted to close the deal; you think there was an unregistered quit claim or release from Durno; is that right? A. I think so.

Q. Where did that come from?

A. From the London Loan into our possession.

Q. When did you get it from the London Loan?

A. I would think just before the Rutherford deal.

Q. Have you any memorandum of having gotten it?

A. The London Loan office was so close to ours that they very seldom wrote letters.

Q. Got it from Mr. Kent?

A. I don't remember who gave it to us; I don't think Mr. Kent was there then.

Q. You have no letter ever showing that ever got into the possession of the London Loan? A. No, I said that before.

Q. Why then do you say it came from their possession, when you have no evidence to show it was ever there?

A. Because we got the other papers from them at the same time.

Q. Why would they only have one copy there, do you know, if they did have it? A. I cannot account for that.

Q. How long did you have this quit claim deed in your possession before it was brought to Toronto? A. I cannot tell you that.

Q. It might have been there for months or years? A. I don't think so.

Q. Do you know? A. No, not definitely.

Q. Could you give us any information on it?

A. I have given you all I could.

Q. That is very indefinite, because you cannot tell me where and when you got it, can you? A. No.

Q. Why was not that unregistered quit-claim deed from Durno registered?

A. In the first place, it was not taken with the idea of registering it, it was taken with the idea of holding it until default took place.

Q. You said right from the beginning—

HIS LORDSHIP: Well, Mr. Walsh, it is now after six o'clock, and if there is any short witness, and it is necessary to continue here this evening, I think it would be well to do so. I think Mr. Brickenden should have the opportunity of producing his books to explain these deposit slips. I think his examination should be left over till tomorrow morning, and we perhaps should sit an hour or two tonight and take some of your witnesses, Mr. Singer.

MR. SINGER: My chief witness is going to be Mr. Morine.

HIS LORDSHIP: We have to get through; I am not going to hold this case after tomorrow.

MR. SLAGHT: How would it do if we started at nine in the morning; that gives us an extra hour.

HIS LORDSHIP: I would sooner sit tonight.

MR. WALSH: I will undertake to cut down Mr. Morine's examination.

HIS LORDSHIP: No, we are not going to ask anybody to cut down an examination. We will come back at eight o'clock and sit for an hour or two tonight. If Mr. Brickenden is prepared then, we can go on with his examina-

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—continued.

tion and finish it, and if not he can go till tomorrow morning?

A. I would like to get my office staff to give me a hand with those books. I can do it first thing in the morning.

—Court adjourned at 6.15 p.m. to 8.00 p.m.

—Court resumed at 8.00 p.m., December 17th, 1931.

HIS LORDSHIP: I intended to say that Mr. Brickenden's examination might stand over until he would have the opportunity of going through his books, and so on; has he had that opportunity?

MR. SLAGHT: No, my Lord, not any proper opportunity of seeing the
10 books; but I have this suggestion so that your Lordship and my friend may work it out in whichever way seems most advantageous to make progress with the case: either that my friend proceed and conclude his examination of Mr. Brickenden on matters other than this and take such matters up in the morning, and anything that properly arises incidental to those matters, but otherwise my friend go on and conclude the rest of his ordinary examination of Mr. Brickenden.

HIS LORDSHIP: That would mean another cross-examination and all like that.

MR. SLAGHT: Sometimes it works out that way.

20 HIS LORDSHIP: Conclude everything except the books now with Mr. Brickenden.

G. A. P. BRICKENDEN, Cross-Examination continued:

MR. WALSH: There were four deposit slips I overlooked.

HIS LORDSHIP: Show them to him.

MR. WALSH: June 13th, 14th and 18th are in your own handwriting;
could you give me any light on those?

HIS LORDSHIP: I suppose those will be in the same category as the others?

MR. WALSH: Yes.

HIS LORDSHIP: We had better have them marked at present?

30 A. That is my handwriting, the top and bottom.

MR. WALSH: The three of them?

A. All are mine, the top and bottom.

MR. SINGER: What dates are they?

MR. WALSH: June 13th, 1923, twenty-three twenty-dollar bills and one ten-dollar bill; June 14th, 1923, nine twenty-dollar bills and one one-hundred-dollar bill; June 18th, 1923, twenty-one ten-dollar bills.

EXHIBIT No. 293: Deposit slip, June 13th, 1923.

EXHIBIT No. 294: Deposit slip, June 14th, 1923.

EXHIBIT No. 295: Deposit slip, June 18th, 1923.

40 Q. I do not know about your books, but I want to read these questions to you, question 1588 of your cross-examination for discovery:

“Did you as a matter of fact keep any book which would show

“the professional work done by you or your firm during 1923-24-

“25? A. I had no docket or diary of the various individual items.”

Is that correct?

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A. I had a letter file and my ledger; that is practically all I had, no docket and no diary at that time.

Q. You had your ledger up here today? A. You are speaking of 1923.

Q. During the years 1923, 1924 and 1925? A. That is right.

Q. Have you your ledger here now?

A. No, I have not got it here now; I had them here until 6.15.

Q. You had your ledger right there? A. Yes.

Q. Did you look under Oldfield? A. No.

Q. Why? A. Because I don't think Oldfield was in that ledger.

Q. What ledger would he be in?

A. I will try to have all this information for you the very first thing in the morning. 10

Q. The next are questions 1595 to 1603 :

“Q. I am asking what record you kept in your office of business transactions handled by your firm during the years 1923, 1924 and 1925?”

“A. I think our ledger showing the actual receipt would be the only record we would keep.

“Q. 1596 : Did you keep a day book ?

“A. No, we did not keep a day book. 20

“Q. 1597 : Did you keep a record of your services in your letter files? A. No, we did not.

“Q. 1598 : How would you remember from month to month what you did ?

“A. Well, usually the work was completed quite quickly and the matter would be quite fresh in the mind of the person who did it.

“Q. 1599 : Then am I correct in assuming that you kept a memorandum only in your mind of the work that was done, and did not commit any of those items to paper ? 30

“A. I don't think we committed very much, if anything, to paper.

“Q. 1600 : So I am safe in saying then that you kept a mental record of what was done? A. Practically so.

“Q. 1601 : And that is the reason why you are unable to produce books containing entries of these different transactions which have been referred to on this examination ?

“A. We never had any journal, or never had a diary.

“Q. 1602 : You never had a diary, and never had a day book ?

“A. Never had a day book. 40

“Q. 1603 : Never had a docket ?

“A. Never had a docket until the last few years.”

Are those answers correct? A. I believe so.

Q. So that, in your search for these things I gave you, you are not going to get much assistance down at your office? A. I think I am.

Q. How? A. From my ledger.

Q. What is your ledger? A. Loose-leaf ledger.

Q. Typewritten? A. No, it is not.

HIS LORDSHIP: Did you have a cash book?

A. No, we merely had a ledger, letter files and ledger—this is 1923, 1924 and 1925.

HIS LORDSHIP: Do you mean to say you did not keep a cash book, showing cash received and paid out? A. Not in those days; we do now.

MR. WALSH: Before I ask you the final thing, have you anything more to say about that Oldfield now? A. I cannot give you any information.

10 Q. From your information, because you said here it was practically memory, there was \$700.—you sent the man to Morine, Morine got the cheque, deposited to his account, endorsed by Oldfield?

A. I will tell you about these the first thing tomorrow morning.

HIS LORDSHIP: Have you any present recollection of it at all?

A. As far as I am concerned I never received a dollar that was not fees.

Q. Can you remember now anything about how you came to get that \$700.? A. I am not sure that that was all Oldfield money.

MR. WALSH: It says that? A. I am not sure.

Q. Why would the Oldfield money be in bills?

A. I cannot give you any reason.

20 Q. Why did you send the man to Morine when it was from Grimsby and not from Toronto?

A. I rather think he saw Mr. Morine before he came to me.

Q. I asked you that particularly today, and you told me he came to you first—I got this information from Oldfield?

A. You may be perfectly right.

Q. You tell me anyway you sent him to Morine?

A. I thought I did; I am not sure.

Q. Just one other thing—

30 HIS LORDSHIP: While you are there on that subject of books; I suppose you had a bank account with some regular banks, too?

A. No, we had an account with the London Loan and Savings Co., which was a banking company.

Q. They did all your banking? A. Yes.

MR. WALSH: The Bank of Montreal?

A. The Bank of Montreal; I had an account in the Bank of Montreal.

Q. You had two accounts in the London Loan and Savings? A. Yes.

Q. One of them was referred to in the Biggs' case, and the ledger sheets are down in Toronto now? A. I don't know as they are now.

40 Q. You had another one in the London Loan and Savings Co., and then you had a Bank of Montreal account?

A. I think that is perfectly correct; my business account was the London Loan and Savings Co.

Q. Do you remember this letter I read that was written by Mr. Morine to Mr. Hambly, dated January 10th, 1927?

HIS LORDSHIP: How would this witness come to have any knowledge of it?

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MR. WALSH : The Huron and Erie started to fuss in 1926 for the arrears on their mortgage, and they threatened to sue Mr. Morine, and Mr. Morine then wrote to Mr. Hambly of the London Loan, then the letter to Mr. Brickenden, and telephone conversation with Mr. Brickenden about it.

HIS LORDSHIP : Exhibits 130, 131 and 132.

MR. WALSH : Exhibits 132 and 134.

HIS LORDSHIP : They are both from Morine to Brickenden; one January 10th and one January 11th.

MR. WALSH : Did you ever see this letter, January 10th, 1927, from Mr. Morine to Mr. Hambly? 10

HIS LORDSHIP : You had better show it to him?

MR. WALSH : Did you ever see that (Exhibit 131)?

A. I don't understand this; it is dated January 10th, 1927, to Mr. Hambly, and on the second page it says: "G. A. P. Brickenden;" I don't understand this.

Q. Just read it over?

HIS LORDSHIP : That is produced from your files, is it not?

A. I think it is Mr. Morine's file.

Q. Is it referred to in the other letters?

MR. WALSH : Yes, my Lord; I won't say it is referred to, except by 20 inference, because there is a telephone conversation with Mr. Brickenden after that letter?

A. I may have seen this, but I cannot recall it; I do not understand how page number 2 is marked G. A. P. Brickenden, and the front page Mr. Hambly.

Q. Are you sure this did not get to you instead of to Mr. Hambly, because I notice this next letter to you, G. A. P. Brickenden, January 11th :

"Herewith copy of my letter of even date to Salter & Stapells, "and under separate cover Mr. Dyas is sending you a memo and "a cheque covering the funds on hand. The additional collections "for this month will be required to dispose of necessary expenditures 30 "for maintenance. You, of course, will get your next statement in "February in the usual way."

And then this letter to Messrs. Salter and Stapells, January 11th, 1927 :

"*Re* Huron and Erie *v.* Morine.

"I am advised by Mr. G. A. P. Brickenden, representing the "Consolidated Trusts Corporation at London, and am authorized "to notify you, that they will tomorrow, Wednesday, pay at "London, to the Huron and Erie Mortgage Corporation, the amount "necessary to settle your claim as per your letter of the 7th instant."

Does not that bring it to your mind? 40

A. I am quite satisfied, if that is what it says.

Q. I want your explanation on this; I want to read this paragraph to you (Exhibit 131) :

"It would appear to me as if the company's refusal to pay the "Huron and Erie Mortgage Corp. the amount due on account of "principal and interest under their mortgage has culminated in the "Huron and Erie Mortgage Corporation taking an action under the

“mortgage for the principal and interest now due and not the whole principal under the mortgage. As I am on the covenant of their mortgage, of course, they will take action against me. I will therefore have to take such steps as are necessary for the protection of myself, and have the property put up for sale to satisfy the judgment. The amount against the property is, I understand, about \$138,000., after paying amount now claimed by Huron and Erie.

10 “It would appear to me as if this action would be unexplainable from the company’s point of view, because if the property is sold it will only be sold subject to the existing mortgage and not give any chance to wipe out the whole mortgage. Further, I would think it would bring up the question as to how this mortgage is to be treated in your statement with the Government and many subjects very unwisely opened up.

“Some of the rents have already been forwarded to London to assist in the payment of this amount, and about \$2,500. or \$3,000. is now available to help wipe out the amount now overdue, so if you will forward balance cheque it will settle the Huron and Erie account.

20 “I regret very much the company’s delay in this matter and cannot see for the life of me where it will serve the London Loan any good purpose, but on the contrary do harm in many ways.”

Do you remember having a telephone conversation with Mr. Morine as to that letter?

A. I do remember a telephone conversation with Mr. Morine.

Q. Tell his Lordship what that telephone conversation was between you and Morine?

30 A. I was asked by the London Loan and Savings Co. to phone Mr. Morine and tell him that whatever was said in that letter, I presume it was would take place; that is all. I cannot remember the gist of the conversation beyond that correspondence.

Q. What was he referring to here, “bring up the question as to how this mortgage is to be treated in your statement with the Government”?

A. I could not tell you; I don’t know anything about that.

Q. “And many subjects very unwisely opened up”—what are those subjects? A. I could not tell you.

Q. Cannot throw any light upon it?

A. I don’t know anything about it.

40 Q. He writes the letter, and then there is capitulation, and the money goes to the Huron and Erie?

A. All I know is I phoned Mr. Morine according to that letter.

Q. You have your file on Oldfield now?

A. I have not anything here; I will try and have them first thing in the morning.

MR. WALSH: That is all for the present.

HIS LORDSHIP: Have you anything to ask, Mr. Slaght?

MR. SLAGHT: No, my Lord.

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MR. WALSH : I wanted to put in that account of \$75. referred to; he identified it when he was in.

HIS LORDSHIP : Yes, just show it to Mr. Brickenden.

MR. WALSH : That is your account for the Martin, Currie letter ?

A. Yes, we received \$75.

EXHIBIT NO. 296 : Account of G. A. P. Brickenden & Co. for \$75.

MR. SINGER : I will call Mr. Ralph. I am calling this witness in connection with the copy of the Fetterley valuation ?

HIS LORDSHIP : Yes.

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Ralph,
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WILLIAM W. RALPH, Sworn. Examined by Mr. Singer.

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Q. Whom are you employed by ? A. The Huron and Erie.

Q. At which office ? A. The main branch.

Q. At London ? A. Yes.

Q. I believe you have in your possession a copy of a valuation, one that was handed to you this afternoon ? A. Yes.

Q. By Mr. Fetterley, bearing date February 1st, 1923 ?

HIS LORDSHIP : Is it the original ?

MR. SINGER : No, the original has been filed, and, if you will recall, it was dealt with while Mr. Fetterley was in the box.

Q. Will you tell his Lordship where this copy of the Fetterley valuation came from ? 20

A. That was secured from the Toronto office of the Huron and Erie.

Q. When was it secured ? A. We wrote our Toronto office.

HIS LORDSHIP : You received this letter from the Toronto office ?

MR. SINGER : You received certain letters from your Toronto branch ?

A. Yes.

Q. When ? A. May 16th.

Q. What year ? A. 1931.

Q. Was this copy of the valuation enclosed in those letters ? A. Yes.

Q. What did you do with the copy of the valuation after you received it ? 30

A. We got in touch with Mr. Fetterley and he called at our office and got the copy.

Q. And received this copy of the valuation from you ? A. Yes.

Q. That is in this year, 1931 ? A. Yes.

Q. You don't know what happened to it after that ? A. No.

HIS LORDSHIP : What copy is this ?

MR. SINGER : The reason for this, my learned friend suggested during his examination of Mr. Fetterley that this copy, which was produced from our possession, was the original copy which had been filed with the London Loan and Savings Co. in 1923, and it was of some importance that the matter be brought to your Lordship's attention. 40

HIS LORDSHIP : Very well.

MR. WALSH : Where is the one handed by Mr. Morine, where is that one, if there ever was one ?

MR. SINGER : In your possession.

MR. WALSH : That is where you say it is; you have not got it here.

HIS LORDSHIP: Just a moment; the copy that came from the Toronto office you handed to Mr. Fetterley? A. Yes.

Q. How did it get back to your place?

A. It was handed to me this afternoon.

Q. By whom? A. By Mr. Slater, that copy.

Q. Who is Mr. Slater? A. The manager of the Huron and Erie.

Q. Is that the first you have seen of it?

A. Since I handed it over to Mr. Fetterley.

Q. You handed it to Mr. Fetterley?

10 A. Yes, back in May I handed it to Mr. Fetterley.

Q. Is it the same copy? A. As far as I know.

MR. SINGER: If your Lordship will accept the explanation, the copy was handed to Mr. Betts this afternoon, and I requested him to make inquiries as to how and when it was received at his office, and I believe he handed it over to Mr. McEachren, and Mr. McEachren handed it to Mr. Slater.

MR. WALSH: Perhaps your Lordship could give me permission to ask this: Have you any records in the Huron and Erie Mortgage Corporation of having given any copy of this in February or March of 1923 to Mr. Fetterley? A. I could not say.

20 Q. Have you been able to find any?

A. We did not search that far back.

MR. WALSH: There is no evidence whatever in this trial that there was ever a copy of the Fetterley report in the hands of the London Loan and Savings Co.

HIS LORDSHIP: There is no record at all that I have heard.

MR. WALSH: It has never been sworn to yet.

HIS LORDSHIP: Well.

MR. SINGER: I am going to ask your Lordship's permission to recall Mr. Fetterley for the purpose of tracing this document from the time he received
30 it from Mr. Ralph to find out what he had done.

HIS LORDSHIP: That is all right.

PHILIP FETTERLEY, Recalled.

MR. SINGER: You have already been sworn. I am producing to you now a copy of the valuation made by you, typewritten copy, dated February 1st, 1923, and I would like to ask you if, as a result of the investigation made by you since you were last in the box, have you been able to ascertain where that copy of valuation came from? A. I have.

Q. Will you please tell his Lordship?

40 A. I remembered getting one from the Huron and Erie, and I thought I got it from Clare Slater, and I went in to Clare——

Q. Whom did you receive it from?

A. From the representative of the Huron and Erie over the desk of the Huron and Erie here in London.

Q. When? A. Back in the early summer.

Q. Of which year? A. This year.

Q. What did you do with it after you received it?

A. I gave it to Mr. Morine personally.

Q. You did not have it in your possession again after that? A. I did not.

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No. 31.
William W.
Ralph,
Examination
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—continued.

Evidence for
Defence.
No. 32.
Philip
Fetterley
(Recalled).
Examination
by Mr.
Singer.
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Evidence for
Defence.
No. 32.
Philip
Fetterley
(Recalled),
Cross-
Examination
by Mr.
Walsh,
17th Decem-
ber, 1931.

CROSS-EXAMINED by Mr. Walsh :

Q. The London Loan and Savings Co. put on a second mortgage in February, 1923, February 13th, 1923, put on a second mortgage for \$35,000., and in May put on a third mortgage for \$20,000.; have you any record of any kind whatsoever in your possession, or in the London Loan and Savings Co., showing at that time there was ever any copy of your report made ?

A. I have not.

HIS LORDSHIP : Is that which the witness has an exhibit ?

MR. SINGER : If your Lordship will permit it to be filed, I wish to file it.

HIS LORDSHIP : I think it can be filed.

EXHIBIT NO. 297 : Copy of Fetterley valuation.

MR. WALSH : But at the important time you have nothing to show there was ever any copy made ?

A. I have not any copy made, only my recollection; of course it is a long time.

HIS LORDSHIP : Is that copy in your writing ? **A.** This is typewritten.

Q. Is there any of your writing on it at all ? I should think that this is pretty fresh typewriting, too, as far as your valuation is concerned—where is the original of this that is in—oh, I see this is headed Huron and Erie Mortgage Corporation, agent H. A. Morine. S. B. Green is the owner; have you 20 got the original of that ?

MR. GRAY : Exhibit 282.

HIS LORDSHIP : Yes, the original Exhibit 282, that will be all in your writing ? **A.** Yes, my Lord; that is my writing.

MR. WALSH : You tell me you have no record at the time the second and third mortgages were put on in February and May, 1923; you could not tell me definitely or accurately what time you gave a copy of that to Mr. Morine, could you ?

A. I could not give you a definite date; I only know it was asked for in the presence of Mr. Kent, and they discussed a second mortgage; I don't 30 know anything more.

Q. You don't know whether it was before or after the second mortgage was put on ?

A. They were about to put on a second mortgage at that time.

Q. Mr. Morine came up to London with that application and he went back with his cheque; I am telling you it must have been after that ?

A. After what ?

Q. After the application was submitted to the company ?

A. That I gave the—

Q. Yes ?

A. Mr. Kent asked Mr. Morine in my presence to get me to give a copy of my report, for his directors, I suppose.

HIS LORDSHIP : Was that here in London ?

A. That was in Mr. Morine's office in Toronto.

MR. WALSH : What date was that ? **A.** I could not tell you.

Q. Did you know that the loan had been made on this second mortgage on one day and the cheque taken the same—

HIS LORDSHIP : Never mind that; how would this witness know anything about that ?

10

40

HORACE A. MORINE, Sworn. Examined by Mr. Singer.

Q. What is the nature of your business ?

A. Mortgage broker and insurance agent.

Q. Where do you carry on business ? A. In Toronto.

Q. For what period have you carried on business there ?

A. About twenty-one years.

Q. With whom do you do your business ?

A. With all the loan and insurance companies who will accept the applications from time to time, trust companies, etc.

10 Q. You have been doing business, according to the evidence given in this case, with these two companies at some time, the London Loan and Savings Co. and the Huron and Erie Mortgage Co. ? A. Yes.

Q. What other companies have you done business with ?

A. The Toronto Trusts, Confederation Life, Credit Foncier, Continental Life, New York Life, National Trust, North American Life.

Q. In other words, there was a number of various life insurance companies and loan companies you have placed your mortgages with ?

A. Practically.

20 Q. Dealing particularly with the London Loan and Savings Co., will you tell me when you first started your association with them ? A. About 1911.

Q. And how long did that continue ?

A. Right up until the London Loan and Savings Co. went out of business.

Q. Until they sold their assets to the Huron and Erie Mortgage Corporation ? A. Yes.

Q. What was the nature of the mortgages you held with them ?

A. Mostly first, some second, submitting applications for their consideration.

Q. First mortgage and second mortgage ?

A. First mortgage and second mortgage.

30 Q. In the case of the Buckingham there was at least one third; were there any other cases of third mortgages ?

A. I have raised third mortgages; I cannot recollect any more to the London Loan.

Q. At all times would there be applications submitted or did the company actually become purchasers of the mortgages through you ?

A. Some few cases they became purchasers of mortgages.

Q. They would buy mortgages already in existence ? A. Yes.

40 Q. Can you tell if it was always the case in connection with mortgages either granted by them or which they purchased; did they only receive the interest which was payable under the mortgage or did they receive anything else ?

HIS LORDSHIP : Were there bonuses paid ?

A. Very frequently bonuses.

MR. SINGER : Would the bonuses be confined only to the second or third mortgages ? A. First, second and third.

Q. Received bonuses also in connection with the first mortgage ?

A. Yes.

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Q. What remuneration did you receive from the London Loan and Savings Co. in connection with your applications which they accepted?

A. One per cent commission, except in cases where it was specially named otherwise, that is, either none or more as the case might be.

Q. There might be special arrangements in certain cases?

A. Yes, but one per cent was a fixture.

Q. In addition to that did you receive any remuneration from the borrower?

A. Sometimes and sometimes not, it depended; there would always be an agreement taken with the borrower, and it would be so expressed in the agreement with the borrower what he would pay, whatever amount was agreed upon. 10

Q. What was the attitude of the London Loan and Savings Co. in such cases?

A. The London Loan and Savings Co. were always aware of that fact, that that was my business, and the charges made by me were independent of what they might be.

Q. Did they know them in cases you did receive?

A. All of them.

HIS LORDSHIP: I suppose it would appear in the application? 20

MR. SINGER: No, my Lord.

Q. I am asking, did the directors of the London Loan know or did you discuss with them the question of your receiving remuneration from the borrowers?

A. In the early association with the London Loan it was understood very clearly that they purchased from me the goods that I offered if they wished them, and paid one per cent regardless of any amount I might make from the borrower, and in all cases the borrower gave—

Q. I am not dealing with the borrower, I am dealing with the London Loan—did the London Loan or any of the directors of the company ever at any time make any objection to your receiving remuneration from the borrower? **A.** No. 30

Q. You said you were also an insurance agent?

A. Representative of a couple of insurance companies, yes.

Q. Did you place any insurance on property in which the London Loan and Savings Co. were interested?

A. Not unless it was an application upon which they had granted a loan to me in outside cases.

Q. In other words, the only insurance you placed was on property which had been introduced by you to the company? **A.** Correct. 40

Q. What arrangement did you have with the company with respect to such insurance?

A. That I was to have the insurance during the life of the loan, and, if any of the mortgages were renewed, I was to get one half of one per cent for the renewal thereof.

Q. Did you do at any time any other work for the company?

A. I, when requested, superintended a property or made a report on

a property as they might request, and collected some few rents on some few properties.

Q. Would you collect the rent on the major portion of their properties on which they were collecting rents in Toronto?

A. Sixty-six per cent of the rentals collected in Toronto on the London Loan property was collected by John Stark & Co. for the London Loan and Savings Co.

Q. You would say there were cases where you also collected rents for them? A. Some percentage of cases.

10 Q. Mr. Braden, in giving his evidence in this case, made a statement of an interview with you and said that you claimed that you had been the sole agent, you had been and were the sole agent for this company in Toronto, and that they had no right to take away from you the management of properties or the collection of rents; what have you to say to that?

A. I never made such a claim under any circumstances whatsoever; I did make claim for my insurance under the loans which had been accepted by them.

Q. Was there any discussion or dispute about your claim for insurance?

20 A. Never was any dispute until the London Loan Assets Limited came into the matter, and I immediately took up the matter with them, that I was still entitled to the insurance on such properties as still remained in the London Loan Assets Co. as part of the transfer.

Q. Was there any arrangement whereby you had at any time, where you had or were the exclusive representative for the London Loan Co. in Toronto?

A. It was never thought of by myself and never made known to me by the company in any way whatsoever.

Q. Did you at any time ever make any claim to an exclusive agency in Toronto? A. Never made such a claim.

Q. Were you the agent of the London Loan?

30 A. I never was the agent of the London Loan and Savings Co.; I was merely a broker, submitted my wares, and never an agent.

Q. I am producing to you a letter filed as Exhibit 224, dealing just for the moment on the question of agency; is that a letter written by you to M. J. Kent, London Loan and Savings Co., on April 25th, 1925?

A. Yes, that is my signature.

Q. In this letter I note you claim, "It is a well-known fact I am not an agent of the London Loan and Savings Co.; I am merely a broker and sell my wares to the London Loan and Savings Co. in the same manner as any other broker would do so——"? A. Yes.

40 Q. Did Mr. Kent or any director of the London Loan and Savings Co. take issue with the statement made in that letter?

A. No; on the contrary, the letter was so plain that even Mr. Kent stated that he had never made a statement which was referred to in that letter, and no director and further no employee ever claimed such a thing.

Q. In connection with loans made by the London Loan and Savings Co. in Toronto was there any arrangement or understanding that all applications for such loans must be submitted by or come through you?

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A. No such arrangement; and if it happened to be my good fortune to send applications it was because I had many applications, but everybody was free and London never referred applications made by others to me.

Q. Did the London Loan and Savings Co. accept all the applications for loans which you submitted to them? A. Not thirty per cent.

Q. There were a great many that were submitted that were not accepted?

A. Many.

Q. You say your associations continued in that way from 1911, I believe, down to the time of the sale of the assets; I want to take you for a moment down to the period in 1922. At that time the abstract which was filed as Exhibit 1 shows that, so far as the Buckingham Apartments are concerned, the property stood in the name of Samuel B. Green, and also shows, as has already been read to the Court, the mortgages for \$105,000., \$135,000., and then an entry of a deed registered on the 16th November, 1922, Samuel B. Green to Samuel B. Green and Horace A. Morine, followed by the \$150,000. mortgage to the Huron and Erie Mortgage Corporation; starting from that point for a moment, will you tell me just what were the first steps taken in connection with the \$35,000. mortgage which follows next on the abstract? 10

A. You mean skipping the \$150,000. and coming to the \$35,000.?

Q. Yes. Tell me first what happened in connection with the \$35,000. mortgage? 20

A. Mr. S. B. Green, who was a partner, was supposed to put in——

Q. I am not interested in your relationship with Mr. S. B. Green; I am dealing with this so far as the London Loan and Savings Co. are concerned?

A. Mr. Kent, the late manager of the London Loan and Savings Co., was very frequently in Toronto, and very many times visited the Buckingham Apartments.

Q. While it was in course of erection? A. Yes.

Q. Was that before or after this mortgage of \$35,000. was obtained?

A. Before.

Q. What happened then? 30

A. In talking to Mr. Kent I explained to him that we would require \$35,000.; Mr. Green could not at that time finance that amount; Mr. Kent expressed his willingness and desire to have it submitted to the London Loan and Savings Co., and in the course of that conversation which took place in the early part of February—Mr. Kent visited Toronto a day or so later, a few days later, I think it was in my office, and I explained to him the situation, the desire of raising that money.

Q. Tell me what took place?

A. Mr. Kent said, "Well, I have looked over the property and know the property well; I would suggest that you get Mr. Fetterley's valuation of the Huron and Erie figures, and send it to me, and I will advocate it before the Board." 40

Q. Who was there besides yourself and Mr. Kent?

A. Mr. Fetterley. I asked Mr. Fetterley if he would give me a copy of that valuation. Mr. Fetterley said he would; and I think the next day I forwarded the application to Mr. Kent, together with Mr. Fetterley's report.

Q. This loan came up for consideration in London, and according to Exhibit No. 13 it evidently came up before the meeting held the 12th February, 1923, as shown on page 517 of the minute book, Exhibit 13; were you present in London at this meeting of the Board which considered the application? A. I believe I was.

Q. Will you tell his Lordship what transpired before the Board?

A. The application for the loan—I was invited in; they sometimes did that after they were through other business, and if I or anyone else was there that had business with the Board we would be invited before the Board; 10 I was invited in.

Q. What took place at the meeting?

A. If I remember, I think they were all there; I am not sure.

Q. Where was the application?

A. Mr. Kent had the application; Mr. Kent was at the Board, he used to sit at the side table, and he had it before the Board and read to the Board my application, and I spoke to it afterwards.

Q. Did he have any other documents there with him?

A. He had Mr. Fetterley's valuation.

Q. Did you see it? A. Yes.

20 Q. Did you hear him read the application to the Board?

A. I heard him read my application, and he said he had Mr. Fetterley's valuation to support it, and he advocated it, because he was, as I say, familiar with the property.

Q. What happened to the valuation?

A. He had the valuation attached to his papers; I never saw the valuation or the documents afterwards.

Q. You saw it at the Board meeting? A. Yes.

Q. Did you ever at any time after that receive from Mr. Fetterley or any person in the London Loan and Savings Co. that valuation?

30 A. No, I never saw it afterwards.

Q. Was any objection raised by any member of the Board to the granting of the loan? A. No.

HIS LORDSHIP: It is not stated there was; on the contrary, there is a memorandum in the minutes that the application was granted.

MR. SINGER: My recollection is there was no objection.

HIS LORDSHIP: That is what I say; there is no suggestion in the minutes or elsewhere that there was objection to that first mortgage.

MR. SINGER: I notice, while your mortgage is for \$35,000., the original applications are on one copy which I have in my hand, filed as Exhibit 11, 40 it is for \$30,000., and on the other copy, filed as Exhibit 12, it has been altered to \$35,000.?

A. \$35,000. was the amount read to the Board, subject to bonus of \$4,000.

Q. So that the company received out of that advance \$35,000., a bonus of \$4,000.? A. They received \$4,000.

Q. It has been brought to the attention of the Board that on the same day that you were in London you took home with you a cheque for the first

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advance under that loan evidently before the mortgage had been executed; will you please tell me if this was or was not the first case in which that practice had been followed by the London Loan and Savings Co. ?

A. No, it was not the first; many times that was done.

Q. Why would they do that ?

A. I believe the London Loan had faith enough that until they got their mortgage the proceeds would not be used by me; I think they always had that trust and faith.

Q. You say this has happened in other cases ? A. Many, many cases.

Q. The mortgage transaction was finally completed, and, I believe, you 10 received the full advance under that mortgage ?

A. I think there was a partial advance, that advance of \$35,000. was not all in one lump, it was advanced different times.

Q. In different sums ? A. Yes.

Q. Will you tell me what the directors knew or what the company knew of your own personal interest in this property at the time this loan was granted ?

A. The directors and Mr. Kent knew that I was a registered owner of the property, and I had explained to Mr. Kent and to the others that the \$35,000. was being raised on account of the shortage of the other partner, Mr. Green, on account of Mr. Green not coming forward with his money. 20

Q. And was there any concealment or any effort at concealment on your part so far as the directors were concerned as to your personal interest ?

HIS LORDSHIP : Let me see those applications.

MR. SINGER : Was there any concealment or any effort at concealment as to your own personal interest in the property ?

A. None whatever; I said I was going on the covenant because I was the part owner; they knew it; they had known it for months.

Q. And you did go on the covenant ? A. Yes.

Q. I believe you received a commission in connection with this loan ?

A. I received one per cent. 30

HIS LORDSHIP : How was it the minutes made have the memorandum there that you were to guarantee this loan ?

A. I think the word guarantee—

Q. Was it mentioned ?

A. Not guarantee; covenant was the meaning of guarantee as we talked there.

Q. Do not ask me to believe that; was the word guarantee mentioned at the meeting ? A. No, not guarantee, not in that way.

MR. SINGER : The mortgage for \$35,000. was given and you did go on the mortgage as covenantor ? A. Yes, I did. 40

Q. Were you ever requested by any one on behalf of the company to execute any other documents in addition to the mortgage in which you gave your covenant ? A. Never heard of anything else.

Q. That position continued and followed down to some time in May, 1923, when I see there is a further mortgage registered for \$20,000., bearing date May 23rd, 1923, and registered on the first June, 1923; will you tell his Lordship how that came about ?

A. Prior to the requirement of that \$20,000. I had stated that we would require \$20,000. more.

Q. Whom did you state it to? A. There was only one member——

Q. Whom did you state it to? A. To Mr. Kent.

Q. What happened?

A. That we would require \$20,000. more, and I think there was a question as to whether the company could let \$20,000. go just then, with the result that, if I remember right, there were a couple of outstanding mortgages which they desired the amount brought in, and I tried to get that in, so that

10 I might have consideration for that, and I wrote a letter to the company. —continued.

Q. There is a letter filed dealing with, I believe, a Morris loan?

A. That was an apartment house in the east end of the town.

Q. \$20,000.? A. Something like that.

Q. Did you collect the money on the Morris loan?

A. I did not collect it; it was paid in, I understand.

Q. And what took place with reference to this second mortgage of \$20,000.? A. I think Mr. Kent wrote me a letter.

HIS LORDSHIP: Where is the letter?

MR. SINGER: It has been filed.

20 HIS LORDSHIP: The letter will speak for itself.

MR. SINGER: Exhibit 29.

Q. Did you receive this Exhibit 29 from Mr. Kent?

A. Yes, that is it.

Q. This bears no date, except on the side a memorandum in pencil, "May, 1923, *re* S. B. Green," and something torn out, so many dollars, "on apartment house. My directors did not feel disposed to increase the \$35,000. already granted on this property, without further security, as the amount of the first mortgage seemed very large to them. This is also a matter that you might take up with them personally when you come to the city. Yours truly, M. J. Kent, Manager." As a result of receiving that memorandum

30 did you have any conversation with Mr. Kent?

A. I received that letter and got Mr. Lonsdale's valuation as to the value of the property.

Q. Why did you get Mr. Lonsdale's valuation?

A. If I remember, a suggestion was made that I should get further valuation.

Q. Whom was it made by? A. By Mr. Lonsdale.

Q. Whom was the suggestion made by that you should get a further valuation?

40 A. I think it would be Mr. Kent; he would be the only man I was dealing with always.

Q. You said you instructed Mr. Lonsdale to make a valuation for you?

A. Yes.

Q. Did he make a valuation for you? A. He did.

Q. What became of the valuation after he made it?

A. I took it to London.

Q. You received it from him first? A. Yes.

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Q. And then you say you went to London? A. I went to London.

Q. What did you do with the valuation after you got it?

A. I presented the valuation and repeated the request for \$20,000.

Q. Whom did you appear before in connection with that request for the \$20,000.? A. Before the Board.

Q. Was Mr. Kent there? A. I think so.

Q. This was the 27th May, 1923? A. I think so.

Q. Was the Board advised of the Lonsdale valuation?

A. The valuation was on the table there.

HIS LORDSHIP: Do you say Mr. Kent was there? 10

A. I think Mr. Kent was there.

MR. SINGER: This is in 1923?

A. I think so; I think they were all there; there was sufficient of the Board there.

Q. At any rate the loan for \$20,000. was granted?

A. Subject to a bonus of \$1,000.

Q. That appears in the minutes at page 531, Exhibit 13, which reads:

“Lend \$20,000. on a third mortgage on their apartment house, which Mr. Morine values at \$400,000.”

MR. WALSH: Anything about Mr. Lonsdale? 20

MR. SINGER: No.

HIS LORDSHIP: Mr. Lonsdale's valuation was not mentioned so far as appears in the records.

MR. SINGER: “Subject to a first mortgage, \$150,000., to Huron and Erie, and a second mortgage of \$35,000. to London Loan and Savings. Mr. Morine to personally guarantee the loan. Terms 7½ per cent, no commission, bonus \$1,000. to be paid by Mr. Morine. Loan to be repaid on December 20th, 1923,” and the minutes are signed by “M. J. Kent,” and initialled by “George G. McC.”

Will you tell me did you ever hear anything anywhere of the valuation of \$400,000.? 30

A. I never heard anything of a valuation of \$400,000.

Q. Did you at any time make a valuation of \$400,000. with respect to this property?

A. I never made a valuation at all, but I put on one of the applications that I thought it was worth or valued it at \$325,000.

Q. That is on Exhibit 11 or 12? A. I never heard of the other figure.

Q. Did you ever make such a valuation to the Board or give them your opinion that the property was worth \$400,000.? A. No, that was too wild.

Q. Could you tell me something about this property—this \$20,000. went through and the money was paid over? A. Yes. 40

Q. Was the building completed?

A. The building was completed, and, if my recollection serves me right, the first tenant went in about the first of July.

Q. The building was completed according to the plans and specifications?

A. Absolutely.

Q. Tell me, when this building was first started, what was the nature of the building it was intended to erect?

A. Originally it was intended to erect about a two and a half story building, which did not require to be fireproof, and was reasonably in keeping with the apartment houses in the vicinity; and later Mr. Green, who was the constructor and architect, changed his plans to go to three or four, and when his plans changed to go to three or four the conditions required a very much different proposition than the original idea when they started the property, and eventually a four-story, completely-fireproof property was erected.

10 Q. You could not erect a four-story building under the by-laws at that time unless it was fireproof? A. You could only go about two and a half.

Q. A four-story building had to be fireproof under the city by-laws.

Q. This property was located where?

A. About 150 feet east of the corner of Roncesvalles and the junction of King and Queen.

Q. Was that frontage both on King St. and Queen St.?

A. Yes, frontage on both streets.

Q. Will you tell me of the first rental received in connection with this property after its erection? A. The front parts at the opening—

20 Q. When was the building completed?

A. About the middle of July, 1923; the leases there called for \$110. to \$125. for the front apartments.

Q. What do you mean by front apartments?

A. Front apartments on King St.

Q. Facing on King St.?

A. Yes; and they ran back to \$90. and \$80., according to the location, and the back ones, if I remember right, ran \$65. or \$70. in that vicinity, and the stores \$125.; some of the stores were leased at that.

Q. The stores facing on Queen St.? A. Yes.

30 Q. Were they all rented, do you recall?

A. At different times, but I cannot say exactly that that followed immediately in July, but they were eventually all rented; exactly what time that took I don't know.

Q. The rentals were \$125. a month for the stores? A. Yes.

Q. About how many apartments would have rented at \$125. per month?

A. I think the four, two on each side ran \$125., and then \$110. as you got up.

Q. Do you recall any of the apartments that were rented at \$125. per month? A. Yes.

40 HIS LORDSHIP: I am not trying this question as to whether the rents were received or what they were.

MR. SINGER: It is not intended for that purpose; it is intended in answer to the evidence introduced by the Plaintiff as to values.

HIS LORDSHIP: I don't know. I would not base a value on the rentals received; I cannot see how you could.

MR. SINGER: Except your Lordship will remember the evidence of Mr. Lancaster.

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HIS LORDSHIP: Yes, there was evidence given, but I failed to see what the object of it was; I am not preventing you giving it, but I cannot see it has any material bearing on the matter.

MR. SINGER: I don't think it has either, but if your Lordship is prepared to advise me you think it is not I am quite satisfied to waive this class of evidence.

HIS LORDSHIP: I am not going into an inquiry as to whether the rents justified the value or whether the value justified the rents at all.

MR. SINGER: I might put one question: Can you tell me at what time after that the buildings were rented to their fullest capacity, how long after 10 their erection, that is the fullest capacity as you remember?

A. I should think the last of 1924; I did not have anything to do with the rentals and the renting, and therefore I was not in touch with it.

Q. Have you any idea?

HIS LORDSHIP: Did you have to do with the collection of the rents?

A. I never collected a dollar of rent in my life on it.

Q. Who did the collecting of the rents?

A. The first two or three months after it started the rent was collected by Mr. S. B. Green, and from about September, Mr. Dyas collected the rents.

MR. SINGER: Mr. Dyas is your son-in-law? A. Yes.

20

Q. He was in your office?

A. He was in my office on his own commission basis, not paid by me.

Q. He had his office in your office? A. Yes.

Q. And he had charge of the collections? A. Yes.

Q. Do you know or do you recollect approximately, say, for the first year—

HIS LORDSHIP: He had to do with the renting, but not collections; otherwise it would be hearsay evidence.

MR. GRAY: I think he said he had nothing to do with the rents or rentals.

MR. SINGER: Do you say Mr. Dyas looked after the rentals and rents?

A. Mr. Dyas looked after the rentals, the leases and the collection of 30 the rents.

Q. Mr. Green collected the first few months, and when was Dyas collecting the rents?

A. Mr. Green for the first couple of months when it was sort of straggly; Mr. Dyas collected from that time, commenced then to collect on behalf first of Green's interest and my interest, and eventually Mr. Dyas became the registered owner for the purposes—

Q. As shown in Exhibit 1 by deed dated the 9th August, 1923, registered on the 18th September, 1923, which you gave to Mr. Dyas and followed by the Renton mortgage, which has already been spoken of?

40

A. He collected for that trust.

Q. How long did his collection continue for that trust?

HIS LORDSHIP: This is entirely hearsay evidence; this man had nothing to do with the rents or rentals.

MR. SINGER: He is dealing with the period of the collection of the rents, not the amounts; do you know of your own knowledge who was collecting for the trust created after Renton became interested in the property?

A. Mr. Dyas.

Q. How long did he continue for that trust?

A. He continued to collect for that trust until the property was sold, or at least the property was sold to Mr. Durno.

Q. That was in 1925? A. That is right.

Q. And from and after that time do you know whom he was collecting the rentals for? A. From June 1st, 1925.

HIS LORDSHIP: I cannot allow that; that is only hearsay evidence.

MR. SINGER: Do you know and tell how you know?

10 HIS LORDSHIP: How would he know?

MR. SINGER: I was going to leave that Durno matter; we will deal with that now. How do you know for whom Mr. Dyas was collecting the rents after the Durno sale, how do you know?

A. I was present when he was requested to collect.

Q. Where were you present? A. In London.

Q. Who requested it?

A. At the Board meeting of the London Loan and Savings Co.

Q. Held here in London? A. Yes.

20 Q. On what occasion?

A. On the occasion of the sale, if I remember right, of the acceptance of the offer.

Q. Of the acceptance of the Durno offer? A. Yes.

Q. Will you tell me, dealing only with the question of rentals, after the Board decided to accept the offer, what was said or done about the question of rent collection?

A. Mr. Dyas was requested to collect the rents for the Consolidated Trusts Corporation.

Q. By whom? A. By the Board, by the members of the Board.

Q. By the members of the Board who were present at that meeting?

30 A. Yes.

Q. Do you know whether or not he was to receive any remuneration?

A. Yes.

Q. Where was that arranged? A. \$100. a month.

Q. Where was it arranged? A. At the Board meeting.

HIS LORDSHIP: Is there any memorandum in the minutes?

MR. SINGER: No, my Lord.

MR. WALSH: Not a word, my Lord.

MR. SINGER: Do you know if he did after that continue to collect the rents? A. Always.

40 Q. We will deal with that afterwards; the rents were collected and afterwards were conveyed through a cheque signed by you? A. Yes.

Q. How long did that continue?

A. I think that continued down to 1929.

Q. That is, right until the change in the control of the company?

A. It may have been a month or so before that, when Mr. Dyas went into some other business, and then the rents were carried on.

Q. For some years after that at any rate? A. Yes.

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Q. Will you tell me why you signed cheques for the rentals which were forwarded on to the Consolidated Trusts Corporation or afterwards to the London Loan and Savings Co. ?

A. The vouchers and disbursements——

Q. First the rents were collected; what became of them ? A. Vouchers——

MR. WALSH : Rents, please.

HIS LORDSHIP : Don't interrupt; but the witness should answer the question.

MR. SINGER : Where were the rents put ?

A. The rents were put into the bank in the Buckingham Trust account, 10
H. A. Morine Buckingham Trust.

Q. Into what bank ? A. The Royal Bank.

Q. H. A. Morine Buckingham Trust account ? A. Yes.

Q. How were they taken out ?

A. Each month Mr. Dyas would make his balance and vouchers and prepare his statement, and a cheque would be sent to the Consolidated Trusts, less disbursements which were momentarily necessary.

Q. That was a cheque you would send each month ?

A. I would send that cheque each month and he would square his account.

Q. And it would be sent out to the Consolidated Trusts; were any monies 20
collected for rent used by you, because this was in a bank account on which you signed cheques, for any purpose other than to pay the actual carrying charges or expenses in connection with the property, and the balance was to be forwarded to the Consolidated Trusts Co. or to London Loan and Savings Co. ?

A. Not a cent.

Q. All sent on as to the expenditures of the property ?

A. The bank balance and the rent balance and the vouchers were all sent to the Consolidated Trusts, and there was the balance of the statement for them to check.

Q. I notice in connection with the \$20,000. mortgage it was afterwards 30
claimed that the amount due under that mortgage was \$21,000. ? A. Yes.

Q. Will you tell me where the other thousand dollars came from ?

A. I think very much later, some months later, I don't know the exact date, a cheque for \$1,000. was issued and charged to that mortgage account, charged against that mortgage.

Q. Why ?

HIS LORDSHIP : A cheque from whom and to whom ?

A. From the London Loan and Savings Co.

Q. To whom ?

A. I think it was payable to H. A. Morine and charged to that mortgage 40
account, against that mortgage.

MR. SINGER : I believe it was about the same time you received that cheque that you sent in to the company, the \$1,000. bonus ?

A. There was a \$1,000. bonus cheque paid about the same time.

Q. That was the bonus payable in connection with that mortgage; having obtained those monies——

HIS LORDSHIP : Does the mortgage contain a clause for future advances ?

MR. SINGER : There is a clause in the mortgage giving the right to make further advances; just how effective that would be for an amount in excess of the face amount of the mortgage——

HIS LORDSHIP : That is what apparently the thousand dollars was got for, to pay the bonus ?

A. Yes, that was the object, and charged against it.

MR. SINGER : That was continued in that way, and the rents and interest appear in and after September, 1923, and I believe some time after that your mortgage fell into arrear ?

10 A. Yes, the arrears under the second and third mortgage.

Q. And those arrears continued on until the proceedings in connection with the sale and the power of sale; at or about that time you had an interview with a Mr. Maclennan ?

A. Mr. Maclennan called at my office, yes.

Q. You were in Court when he gave his evidence ? A. Yes.

Q. Mr. Maclennan says that when he came to see you you refused to give him any information ? A. That is not quite correct.

Q. Will you tell his Lordship exactly what took place at your interview with Mr. Maclennan ?

20 A. Mr. Maclennan, I think the Renton mortgage at that time had been assigned and was in the hands of somebody in trust.

Q. There is an entry in the abstract, to W. Lawson Renton and George M. Kelley, Trustees ?

A. I think that was it, and Mr. Maclennan came to me and told me he represented some other lawyer, and incidentally through them some Scotch people who were interested in this Renton mortgage, and asked me what I intended to do about the arrears. I told Mr. Maclennan that, as I had only an interest in the equity, that his mortgagees were as much interested in the property as I was, but if he would advance, I think the amount was about
30 \$4,000., it may have been \$5,000., that I would advance another four or five thousand dollars.

Q. What proportion of the arrears was that ?

A. Half. I would advance one half of the arrears if he would advance one half of the arrears and let the matter go along sweet; Mr. Maclennan rather took the ground that I should pay up the arrears, and that if I did not choose to pay up the arrears that he intended to take proceedings under his fourth mortgage and cut me out; with the result that I said, "All right, go to it."

HIS LORDSHIP : That is entirely different from Mr. Maclennan's version.

MR. SINGER : Yes, my Lord.

40 Q. And did you as a result of that interview pay any of the arrears after that date ? A. No.

Q. And subsequently the sale proceedings were taken under the power of sale contained in the third mortgage ? A. Yes.

Q. Can you explain the letter that was read to his Lordship this afternoon in which a reference is made to the sale papers being handed to you in connection with Melville Wilson's activities in the matter ?

A. I was in London—perhaps it is as well to understand, I did not

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always come up for the London Loan, I had many business relations in London, but I was in London, I was requested——

Q. By whom?

A. By Mr. Kent, to take a letter down and deliver to Mr. Wilson, and I took the letter down.

Q. To whom did you deliver it?

A. I delivered it to Mr. Wilson, told him that I had been requested to deliver him this document, and that is all.

Q. Outside of the delivery of that letter, did you have any control or in any way advise in connection with the sale proceedings? 10

A. Not a word, never saw any person.

Q. Up to the time the proceedings were taken, I want to know if you requested Mr. McCormick, Mr. Kent or any of the directors of the company to show you any special consideration with reference to your liability under the covenant in these two mortgages?

A. Never spoke to one of them in reference to anything of that description at all or asked for any consideration whatsoever.

Q. Did you ever request Mr. Kent or any of the other directors to refrain from taking proceedings against you under any of those mortgages?

A. Never in the world. 20

Q. I believe the history, as shown in the evidence given so far, was, the property was advertised for sale and that certain proceedings were then taken, I believe, on the behalf of the Prudential Trust, representing the Renton or Scottish interest, and a stay obtained in the proceedings for a period of thirty days.

HIS LORDSHIP: That is all a matter of history.

MR. SINGER: It was a result of those proceedings in which you wrote the letter in which you claimed you were not an agent, that is the letter that was read; it was in connection with those proceedings? A. Some person——

Q. I am asking was it as a result of something during those proceedings 30 you wrote that letter?

A. It was a result of my hearing Mr. MacLennan or some person had made an application to the judge and had used those words, and I wrote at once.

Q. Were you present at the auction sale which took place? A. No.

Q. Did you have anyone attend for you? A. No.

Q. Or bid on the property for you? A. No.

HIS LORDSHIP: That auction sale was some time in 1925?

MR. SINGER: In May, 1925.

Q. I believe the auction sale proved abortive? 40

A. So I was advised.

Q. I think the next step in the history of this property is the Durno deal; did you know Mr. Durno before this Durno transaction took place in connection with the Buckingham Apartments? A. I knew Mr. Durno, yes.

Q. How long had you known him before that?

A. Ten or twelve years.

Q. What was his business? A. Builder.

- Q. On what scale did he carry on business? A. Very considerable.
- Q. What was the class and nature of the property he erected?
- A. Dwellings and contracts on some large and some smaller over the city, various parts.
- Q. What business relationship did Durno have with you?
- A. Very little; I think I raised, I think he applied to me two or three times for mortgage loans, and perhaps the sale of one or two mortgages, I am not sure, but very little contact.
- Q. Outside of any application that might be made to you as a mortgage broker, were you associated in business with Durno in any way?
- A. Not in the world.
- Q. Was he interested with you in partnership in any property at all?
- A. Not in the world.
- Q. And did you have any discussion with Durno as to the Buckingham Apartments? A. I did.
- Q. Will you tell his Lordship about when that took place?
- MR. WALSH: I object to that.
- HIS LORDSHIP: It is all right so far.
- Q. When? A. About the——
- MR. SINGER: Approximately? A. 10th or 12th June, 1925.
- Q. Some time shortly before the Durno offer? A. Yes.
- Q. As a result of that conversation, what did you do with Durno?
- A. Mr. Durno, together with many others, came in to me.
- HIS LORDSHIP: No, you are asked a simple question?
- A. Mr. Durno came in to me.
- MR. SINGER: As a result of his coming to you, where did you take him?
- A. I took him down to M. W. Wilson.
- Q. At that time who was M. W. Wilson?
- A. Solicitor and the party who had acted for the sale proceedings in connection with the property and had advertised the property for sale in its usual way.
- Q. And, I believe, after some conversation took place between you, you left Mr. Durno with Mr. Wilson? A. Yes.
- Q. Did you after that time have anything to do with Mr. Durno in connection with any further transaction so far as Buckingham Apartments are concerned? A. Never in the world.
- Q. Is there a Mr. Durno? A. Yes.
- Q. Some doubt was first expressed by my learned friend; I believe he afterwards told us he located him, and he is in Texas; was Mr. Durno your agent? A. No.
- Q. Had Mr. Durno ever acted as your agent? A. No.
- Q. Did you have anything at all to do with the sale of this property by the London Loan and Savings Co. to Durno? A. Not a thing in the world.
- Q. Did you have anything to do with the making of the offer? A. No.
- Q. That was signed by Durno for the purchase of this property? A. No.
- Q. What was the next thing you heard about the Durno transaction?
- A. I received a telegram or telephone asking me to come to London.

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Q. Whom did you receive that message from, do you recall?

A. I do not know, I could not say, it was somebody——

Q. Probably? A. I don't know who.

Q. When was that you went to London; do you know when it was you went to London? A. On the 23rd June.

Q. That would be the date of the meeting of the Board of Directors when the Durno offer was considered? A. Yes.

Q. Whom did you go with? A. Mr. Dyas.

Q. Will you tell his Lordship what took place between you and the directors at London? 10

HIS LORDSHIP: First, what directors?

A. I think Mr. McCormick, Mr. Baker, Mr. Hunt, Mr. Robinson and possibly Mr. Crowley. I don't think Mr. Kent was there.

MR. SINGER: Who is Mr. Crowley?

A. Mr. Crowley was the accountant and acting manager sometimes.

Q. Where was Mr. Kent, do you know? A. I think he was at home.

HIS LORDSHIP: That is the time of his injury?

A. He was at his house.

MR. SINGER: What took place at that meeting?

A. It was said that they felt disposed to accept the offer of Mr. Durno 20 and wanted to know if certain mechanics' liens were cleared off the property; there had been something transpired prior to that——

Q. Just a moment, what happened about the mechanics' liens then?

A. Prior to the 23rd June I had been in London, and there was a conversation in regard to the property having been put up for sale at auction, and the reserve bid not having taken care of certain outstanding mechanics' liens——

Q. The sale was abortive?

A. Yes, and after some talk in regard to the mechanics' liens, I said I would go to Toronto and remove the mechanics' liens.

Q. Whom did you have that conversation with? A. The General Board. 30

Q. I believe Exhibit 1 shows there were a number of mechanics' liens on the property which had been assigned to Mr. Neville Morine?

A. Yes, that is right; there were a number of mechanics' liens held by him in trust, I think.

Q. I find on one of the sheets a certificate discharging liens and *lis pendens*, dated the 13th June, 1925, and registered on the 16th June, 1925?

A. I came back from London and saw Cassels, Brock and Kelley, I think it was, and told them to discharge the mechanics' liens.

HIS LORDSHIP: This meeting you were at, it was June 23rd you were in London? A. Before that, my Lord. 40

MR. SINGER: He said when he was describing the liens he referred to a prior incident?

A. I think it was somewhere about the 10th June I had been up there.

Q. You were there and came back to Toronto? A. Yes.

Q. The time when you promised to discharge these liens?

HIS LORDSHIP: Let me see; I have it down here that you received a phone or wire to come to London, and you went to London on June 23rd

with Mr. Dyas, and you saw Mr. McCormick, Mr. Baker, Mr. Hunt, Mr. Robinson and possibly Mr. Crowley; at that meeting they felt disposed to accept the offer of Durno, and they asked about liens; do you wish to take any of that back?

MR. SINGER: No, my Lord.

A. I think, my Lord, you are just a bit ahead of what I said.

HIS LORDSHIP: That is what you said as I recorded it?

A. You are perfectly correct; I will follow after what I say here, when I returned to Toronto on the 10th or 11th June and had these liens discharged
 10 then when I came back to London again on the 23rd as a result of that telephone request, I had told them then that I had had the mechanics' liens discharged, that will bring around the second question which came a little before the first; I had been here about the ninth or tenth or somewhere like that in June.

MR. SINGER: Has your Lordship any further questions?

HIS LORDSHIP: I asked the question and I had completed it.

MR. SINGER: This first visit that you had to London in connection with these mechanics' liens, was that before or after the meeting at which the Durno offer was considered?

20 A. Before the first time, it was much before that, it must have been ten or twelve days before.

Q. Tell me what happened on that occasion, the first attendance at London at which those mechanics' liens were discussed?

A. The question that came up there was, I was not aware on the end of May but what the sale proceedings had really cut out the property so far as I was concerned, and I learned from Mr. G. M. Kelley that he wrote me, perhaps you may have the letter, he wrote me that he was not aware that the property was sold, it was a bad expression on my part, he was not aware that the property had been sold, that could cut out certain mechanics' liens,
 30 and then I felt——

Q. What did you do?

A. Then I realized that the mechanics' liens were still on the registry and not cut out, and in my visit to London I pointed out that if the sale proceedings, or if some person had purchased the property on the day the sale was abortive it might have been somewhat difficult to have given a title, that these mechanics' liens were there, and it appeared to be realized then that there was a difficulty.

Q. Was any request made when that position was explained—what was the result of your discussion?

40 A. The result was I said that when I came I would go back and discharge these mechanics' liens, and I came back and gave Mr. Kelley instructions to discharge the liens, so that the company, if they wanted to dispose of the property, might have free course.

Q. And liens were subsequently discharged?

A. The liens were discharged.

Q. Can you tell me approximately how much it cost you to purchase these liens?

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A. The liens and outstanding claims which the liens sort of represented came to, what I disbursed was twenty thousand, nine hundred some odd dollars.

Q. Something over \$20,000.? A. Yes.

Q. You received a telephone message and went back again to London for this meeting of the 23rd June?

A. Yes; and I was asked, and I said I had completed it, and I think they verified that by telephone, at any rate I told them they were off.

Q. What was done after that you know of?

A. Then the Board decided that they would accept the Durno offer.

HIS LORDSHIP: I am not so sure that all this evidence about what the Board decided can be told by a man who was present when there is a minute of the Board. 10

MR. SINGER: Surely the best evidence is by a person who was present at the Board meeting?

HIS LORDSHIP: No; you know perfectly well a corporation acts by its directors according to minutes, and to permit an outsider to come and tell what the Board decided is the purest kind of not exactly hearsay evidence, but no evidence at all of the actions of the Board.

MR. SINGER: Speaking, if your Lordship will, of the individuals, might I say this company is now the Plaintiff. 20

HIS LORDSHIP: It does not make a particle of difference; there is one way of proving the acts of the company. As to any notice or anything of that nature to any director or any person, that is perfectly proper, but to say the Board decided thus and so, I will not accept that evidence in that way.

MR. SINGER: Shall we put it as your Lordship suggests, the discussion that took place before the Board being notice so far as the directors are concerned?

HIS LORDSHIP: Yes, you can put, did you tell certain directors certain things; what one director would say would not bind the company.

MR. SINGER: I am not suggesting that. 30

Q. Will you tell us all the conversation that took place between you and the directors of the company at that meeting of June 23rd?

A. I informed them that the liens had been discharged.

Q. What was done as to the Durno offer, what did they tell you and what was said?

HIS LORDSHIP: Who said it? You may have that. I am not going to permit him to say that the directors decided.

A. My recollection is that Mr. Baker said that, provided Mr. Durno would deed the property to the Consolidated Trusts in trust and also give a quit claim deed in the event of trouble there, that there would be no extra expense, that they would recommend the acceptance of the offer. 40

Q. It was at that same meeting you told his Lordship a few moments ago that the arrangement was made about the collection of the rents?

A. They asked Mr. Dyas, who was there.

MR. WALSH: Who asked Mr. Dyas?

MR. SINGER: Which one was it asked Mr. Dyas, do you remember?

HIS LORDSHIP: That is a conversation with someone?

A. I don't know which one.

MR. SINGER: You gave that information as to that? A. Yes.

Q. The Durno deal was subsequently completed; I want to take you back to some of the evidence given by Mr. Brickenden?

HIS LORDSHIP: If you are starting something new it might be well to adjourn.

MR. SINGER: I am going to something new. Personally, I would as soon adjourn now.

HIS LORDSHIP: Very well.

10 —Court adjourned at 10.00 p.m. to 10.00 a.m. tomorrow.

—Court resumed at 10.00 a.m., December 18th, 1931.

MR. SLAGHT: Mr. Brickenden has made an investigation, my Lord, and has the data here.

HIS LORDSHIP: Of course he will be here throughout the case, I prefer not to break in on the present witness; I don't think we would be any ahead in doing it.

H. A. MORINE, Examination continued.

MR. SINGER: We were dealing at the close of Court yesterday with the Durno sale; if you will recall in the evidence given by Mr. Brickenden and
20 by Mr. McMillan some reference was made to an interview they had at their office with Mr. Baker in which they received instructions; were you present at any interview in Mr. Brickenden's office when Mr. Thos. Baker gave instructions as to the closing of the Durno transaction? A. No.

Q. You had been present, I believe, at the Board meeting that day?

A. Yes.

Q. When did you leave?

A. Before the meeting was over; the Board continued after I left.

Q. Do you recall whether or not you were present at Mr. Brickenden's office at all that day?

30 A. I may have been in and out; Mr. Brickenden had an office in the same building; I may have been in the office.

Q. After the completion of the Durno deal I think you told us that the rents were continued to be collected under the arrangement made until quite some time after that, after the Durno deal was finished, was any demand made upon you by or on behalf of the London Loan and Savings Co. for payment of any amount due under any mortgages which had been signed on the Buckingham Apartments? A. No.

Q. Did you at any time make any request or use any persuasion with the president or any of the directors of the London Loan and Savings Co. to
40 induce them to put through or complete this Durno sale? A. No.

Q. Did you ever discuss the advisability of the Durno sale going through with Mr. McCormick? A. No.

Q. With Mr. Brickenden? A. No.

Q. With any of the members of the Board of the London Loan and Savings Co.? A. No.

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Q. Some mention was made during the course of the trial as to a \$3,000. item of principal due on the Huron and Erie mortgage; I am producing to you Exhibit 110, which is a letter from the Huron and Erie Mortgage Corporation to the Consolidated Trusts Corporation in which they asked for the payment of \$3,000., and Exhibit 112, which is a letter written by you to M. J. Kent, in which you acknowledge receipt of letter of 18th instant; you go on to say: "It was arranged to waive the principal repayments of \$3,000. until a little later date in view of the very heavy expenses met during the winter months"—how did you come to make those arrangements?

A. I was requested to ask the Huron and Erie to postpone the demand 10 for their \$3,000. to a later date.

Q. And as a result of that did you go to see the Huron and Erie Mortgage Corporation? A. I saw Mr. Baker of the Huron and Erie Mortgage.

Q. That is the manager? A. The manager of the Huron and Erie.

Q. What arrangements did you make with him?

HIS LORDSHIP: That is not Mr. Thos. Baker? A. Mr. R. P. Baker.

MR. SINGER: Did you make arrangements as to postponement?

A. Yes.

Q. Notified the company in your letter?

A. I notified the company that the Huron and Erie were willing to wait 20 till a later date.

Q. The next step in the proceedings appears to be the transfer of the original mortgage held by the Huron and Erie Mortgage Corporation to the London Loan and Savings Co., that was the original \$150,000. mortgage; were you at any time advised that the London Loan and Savings Co. were paying off this mortgage to the Huron and Erie Corporation? A. No.

Q. When did you first find out that they had taken over this mortgage?

A. When I saw the discharge of the mortgage in Toronto at a meeting to close a sale deal.

HIS LORDSHIP: When was that? 30

MR. SINGER: That would be in the same year, that would be at the time of the Rutherford transaction; and that takes us to the Rutherford transaction; were you the agent in connection with the proposed Rutherford sale? A. No.

Q. Were you to receive any commission or any other compensation in connection with that sale? A. No.

Q. Did you know May Rutherford? A. No.

Q. Do you know who her solicitor was? A. Mr. Thos. H. Wilson.

Q. Who was the agent in connection with that transaction?

A. A man by the name of Crawford, and some person, his associate. 40

Q. Some person associated with Crawford? A. Yes.

Q. Did you have any interviews with Crawford at all in reference to the Rutherford transaction—did you have any interviews or did you have anything to do in connection with the submission of the offer to the London Loan and Savings Co.?

A. Mr. Crawford brought to my office a letter, an envelope, containing

an offer addressed to the London Loan and Savings Co. from Mr. T. H. Wilson's office, and I let it go to London.

Q. You sent it on to London? A. Yes.

Q. As to the Rutherford offer itself, did you have anything further to do than that? A. No.

Q. Did you speak to the president or any of the directors of the London Loan and Savings Co. for the purpose of inducing them or suggesting to them that they accept the Rutherford offer? A. No, I did not.

Q. What interest did you have generally in the Rutherford deal?

10 A. I was purchasing a mortgage on the property known as the Shore View.

Q. Who was that mortgage owned by?

A. The property was owned by a man named King, and Mr. Lewis Heyd had a mortgage as trustee.

Q. Trustee for whom? A. For a second mortgagee.

HIS LORDSHIP: I should think all those proceedings are of record in some of the reports.

MR. SINGER: Not the dealing with the Shore View Apartments.

Q. What was the amount of that mortgage as nearly as you can remember?

20 A. That I was purchasing?

Q. Yes? A. \$75,000.

Q. How much were you purchasing it for?

HIS LORDSHIP: Why introduce this?

MR. SINGER: This comes up in connection with the attendance of Mr. Brickenden and Mr. McMillan at Mr. Macpherson's office with the papers ready to close the Rutherford deal.

HIS LORDSHIP: There is sufficient without going into the details.

MR. SINGER: What I wanted to know is, did you attend with Mr. Brickenden at Mr. T. H. Wilson's office? A. Yes.

30 Q. Will you tell me what papers if any were submitted by Mr. Brickenden and Mr. McMillan to Mr. T. H. Wilson?

A. They were ready to close the sale of the Buckingham and they had their deed—

Q. Who was the deed from, do you recall? A. The Consolidated Trusts.

Q. What else did they have?

A. They had the discharge of the mortgage, which I have already said; that was the first time I saw it and the first time I knew it had been taken over.

Q. What else did they have?

40 A. They had a quit claim deed to the Consolidated Trusts; I do not just recall.

Q. Do you recall the discharge?

A. And the discharge of the Durno mortgage.

Q. What did Mr. Wilson do?

A. We went over to W. D. Macpherson's office.

Q. Were the documents examined at all?

A. Mr. Wilson said he was satisfied.

Q. And then you went over? A. To W. D. Macpherson's office.

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Q. And the deal fell through, as we have already heard in evidence; I am asking my learned friends to produce item number 20 in Exhibit 285, release from Robert S. Durno to the Consolidated Trusts Co., dated the 8th July, 1925. I think my learned friend suggested in Court yesterday that this document was in our possession and not in theirs; there are a bundle of papers.

MR. WALSH: I am calling Mr. Braden as to where these were found.

MR. SINGER: I will file as the next Exhibit, which will be 298, it is called release from Robert S. Durno to the Consolidated Trusts Corporation, bearing date 8th July, 1925.

EXHIBIT No. 298: Release from Robert S. Durno to the Consolidated 10
Trusts Corporation, dated 8th July, 1925.

MR. SINGER: You have in your possession a similar copy of that release, and I find with it a number of other documents, including a letter from M. W. Wilson to G. A. P. Brickenden & Co., dated September 30th, 1925, three statements in connection with the Durno transaction, evidently a printed copy of the Durno notice of sale, and some typewritten copies of the notice of sale as well; will you please tell his Lordship how these documents came into your possession?

MR. WALSH: They are not fastened together at all; they are separate and distinct. 20

HIS LORDSHIP: Make your question to cover all these documents.

MR. SINGER: I am dealing with all the documents which I have referred to; I understand that they were discovered by you at one time, is that correct?

MR. GRAY: Is the letter in to which you refer?

MR. SINGER: I don't know whether you filed a copy, I think it is, it is a letter from Wilson to Brickenden & Co.: "I now enclose statement of monies received in this matter and disbursements of the same."

MR. GRAY: Can you say what Exhibit number it is?

MR. SINGER: No.

HIS LORDSHIP: These documents now produced, what about them? 30

MR. SINGER: Were they all discovered by you at one time?

A. All at one time.

Q. Where did you get them and explain how you came to have them in your possession?

A. Certain questions came up in regard to this property, and my stenographer, in looking over the papers to locate anything in reference to the same, discovered this bundle, and the bundle was complete as you see as when I gave it to you, and I have no knowledge—

HIS LORDSHIP: When were they discovered?

MR. SINGER: How long after the Durno sale were they discovered? 40

A. It was quite a long time, it must have been, I would imagine, on the 27th or 28th, somewhere around there; a year or two years.

Q. Can you account for this bundle being in your files?

HIS LORDSHIP: We had better have that bundle marked as an Exhibit now; it can go all in as one Exhibit.

EXHIBIT No. 299: Bundle of documents, being notice of sale under power of sale in mortgage, printed bill of mortgage sale, statement

of disbursements and release Robert S. Durno and the Consolidated Trusts Corporation, etc.

MR. SINGER: Can you account for the bundle being in your file?

A. I cannot account for it, except that some official of the company may have been in my office and I never saw them; it may have been filed away in the papers and I never saw them till these circumstances arose.

Q. Did you at any time request the company to submit or hand over these documents to you? A. Never.

Q. There were a number of assignments filed, and included amongst
10 them was one, Exhibit 207, which is called an assignment of rights of action from the Huron and Erie Mortgage Corporation to the London Loan Assets Limited; did you ever have before this action commenced any knowledge at all of that assignment?

A. No, I do not even recognize the document if it was in the bundle.

Q. I am not referring to the bundle at all; did you ever receive any notification from anyone that these rights of action referred to in Exhibit 207 had been assigned by the Huron and Erie Mortgage Corporation to the London Loan Assets Limited? A. No, I never heard of that.

Q. There is a letter filed to which, my Lord, you will remember objection
20 was taken, Exhibit 267, from M. J. Kent to the Registrar of Loan Corporations, Toronto, dated the first October, 1925, in which he says, in referring to the Durno transaction, "it only came to my knowledge yesterday afternoon that company released good personal security for the amount of the former mortgages we held in this case of \$21,000. and \$35,000. respectively and interest (namely Mr. and Mrs. Morine) to which releasing I strongly object. I presume this notification will cover any requirements of The Loan and Trust Corporations Act of 1925 to save me from any personal liability in this matter." Did you see Mr. Kent at any time after the close of the Durno transaction?

A. Many times.

Q. Did you have occasion on any of those interviews with him to discuss
30 the sale to Durno? A. Yes.

Q. Let me put it this way, did Mr. Kent on any occasion state to you that he had any objection whatever to the Durno transaction going through?

A. Mr. Kent never stated any objection to the Durno transaction beyond stating that he thought that six hundred and some odd dollars more should have been paid to cover some amount that he was claiming.

Q. I am referring in connection with that first to Exhibit 225, which is a letter bearing date October 5th, 1925, written by Mr. Kent to you, the last paragraph of which reads:

40 "According to the statement there is a balance of \$629.48 still
"owing to complete the sale to Durno of property covered by Green
"et al mortgages. Kindly send cheques out of rent so we may get
"our books entered."

As a result of that, what investigation did you make, if any?

A. Some time later I was in London, and Mr. Kent referred to the same matter you have just spoken about, and I went down to the accountant, I think it was Mr. Crowley at that time.

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Q. You made investigations ?

A. I made investigation to see how he located his six hundred odd dollars.

Q. Exhibit 96 is a letter you wrote to the London Loan and Savings Co. under date of October 16th, 1925, in which you state that you see no reason why they have a further claim for \$600.? A. Yes.

Q. We have filed as Exhibit 56 a letter from G. A. P. Brickenden & Co. to you, bearing date February 27th, 1925, which reads :

“We are today in receipt of a letter from Mr. M. W. Wilson, requesting that we forward the original mortgage to Toronto. As this mortgage was drawn in your office, you no doubt have a third copy of it there, and we would ask that you let Mr Wilson have that copy——” 10

Did you draw either of the two mortgages given to the London Loan and Savings Co., that is the \$35,000. and the \$20,000., in your office ?

A. No, I never drew them.

Q. Did you ever personally draw a mortgage yourself ? A. No.

Q. Did you ever dictate a mortgage to a stenographer to be drawn ?

A. No, except possibly my own personal matter, perhaps a personal one of my own.

Q. A mortgage you yourself took ? A. A personal one I might take. 20

Q. So far as these \$35,000. and \$20,000. mortgages——?

A. They were not drawn in my office.

Q. I want to take you over for a few minutes the evidence of Mr. Braden, and in the course of his evidence he states that he saw you when in Toronto and told you about a conversation that he had with Mr. Brickenden, and that Brickenden advised him that the sale was not a genuine sale; is that a correct statement ?

A. Mr. Braden never made such a statement to me in his life.

Q. I will take you over the individual statements first : He goes on to say that Mr. Morine said this was not right, the purpose of the sale was to eliminate mechanics' liens and subsequent mortgages, and the question as to whether liens took priority; did you ever make such a statement to Mr. Braden ? 30

A. What date would that be ?

Q. This is all the same interview, the first interview ?

A. The mechanics' liens——

HIS LORDSHIP : Answer the question.

A. No, I had no conversation with Mr. Braden on those lines at all.

MR. SINGER : As a matter of fact, when were the mechanics' liens discharged in relation to the Durno sale ?

A. I think about the 11th June, prior to the Durno sale. 40

Q. And at the time of the discharge of the mechanics' liens was the Durno sale in contemplation so far as you knew at all ?

A. Not as far as I know.

Q. Then he goes on to say that one of the other things you told him that it was a question as to whether the liens took priority, that you had paid off the liens, and this was one of the reasons why you were allowed off the covenant; did you ever make such a statement as that ?

A. He never made such a statement to me like that in his life.

Q. Did you make it to him? A. No, certainly not.

Q. Mr. Braden deals with a subsequent interview with you; he says that he was telephoned to come to your office, he was at Mr. Walsh's office, and when he attended at your office you brought up the Durno matter again; I will give you the whole of his statement; he says you told him on that occasion that the Durno sale was a genuine sale so far as you were concerned, everything was in order, and you said you had documents in your possession which would prove everything was satisfactory, and that you would produce
10 them at the proper time, that he asked you to show him the papers and that you refused; is that statement correct? A. I produced——

HIS LORDSHIP: No, no.

A. No, it is not correct.

MR. SINGER: Is that statement correct?

A. That statement is not correct.

Q. I take you on for the moment to a further interview; Mr. Braden says that at one time he discussed with you what he called the Stratford deal, and during the course of that conversation he told you that if there was any loss as a result of the Stratford deal going through that he would expect you
20 to bear that loss; is that statement correct? A. Not correct.

Q. Just for a moment to the next interview; he says that in the spring and summer of 1929 you told him that you were an agent for the London Loan and Savings Co., and that the company had no right to take away from your hands the collection of rents or management of the properties?

A. Absolutely untrue.

HIS LORDSHIP: You are asking me to believe a whole lot I will not; I cannot believe for a minute that Mr. Braden fabricated that.

A. I am not allowed to explain apparently; when I get that I will probably clear it up.

MR. SINGER: I am submitting with all due deference the evidence.
30

HIS LORDSHIP: You can submit the evidence but I certainly do not believe it.

MR. SINGER: I have no control over what your Lordship decides to believe either way, but I believe the evidence should be submitted.

Q. Will you please tell me your recollection of your first interview with Mr. Braden?

A. I telephoned to Mr. Braden to come to my office as the result of the receipt of a letter from him.

Q. Did he come to your office? A. He came to my office.

40 Q. Tell us what happened there?

HIS LORDSHIP: No, you cannot do that, except to contradict what Mr. Braden said; he is a witness.

MR. SINGER: That is all I am introducing it for.

HIS LORDSHIP: I know, but we don't want a whole lot—Mr. Braden gave certain evidence with reference to this witness; he is a Defendant. I suppose he is in a different position perhaps than an ordinary witness—anything that pertains to the subject matter of the conversation.

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MR. SINGER : That is all.

Q. Please tell his Lordship what took place at the first interview you had with Mr. Braden; you told us he came to your office as a result of a telephone message; what took place?

A. He said the company had no knowledge or no record of the transaction. I think prior to that I had answered his letter.

Q. Never mind the letter; give us the conversation?

A. I thereupon produced these documents.

Q. That is the documents——? A. In that bundle.

Q. Which was filed a few moments ago? A. Yes.

HIS LORDSHIP : That won't do; Mr. Braden gave no evidence about that at all.

MR. SINGER : Mr. Braden said that Mr. Morine told him he had certain documents.

HIS LORDSHIP : Which he would produce at the proper time.

MR. SINGER : He asked to see them at the proper time, and which he refused to produce——

HIS LORDSHIP : That is not the note I have.

MR. SINGER : Braden asked to see the papers and said he was refused; this is the note I have down.

HIS LORDSHIP : I am not going to pay any attention to that; we will have the reporter look up his notes.

——The reporter reads from the evidence of J. A. E. Braden, which see at page 94, lines 38 to 47, and page 95, lines 1 to 12 inclusive.

MR. SINGER : Go on, Mr. Morine, and continue with your conversation; you said you produced those documents to Mr. Braden? A. I produced——

Q. That will be bundle, Exhibit 299; you produced those documents, and then what happened?

A. Mr. Braden looked at them, with the result that he said, "This satisfies me so far as I am concerned."

HIS LORDSHIP : Wait a minute, he was not asked anything of the kind.

MR. SINGER : I am just asking you to produce the bundle, and you said Mr. Braden examined them? A. Yes.

Q. What did he say?

HIS LORDSHIP : No, Mr. Braden was not asked about that at all.

MR. SINGER : My Lord, I submit with all due deference that where a witness gives a conversation respecting one of the Defendants when in the box that that witness has the right in giving his evidence to give the conversation which took place.

HIS LORDSHIP : He gave the conversation and he was not asked if he said this; of course I suppose I can allow Mr. Braden to be called in reply to contradict this; this specific matter was not brought to his attention.

MR. SINGER : No, my Lord, because the reports of conversation are so different that it was useless to do it except by the witness who was present.

HIS LORDSHIP : Anything special that was not brought to Mr. Braden's attention I shall allow him to be recalled.

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40

MR. SINGER : Go ahead; you were telling us what Mr. Braden said after he examined the papers ?

A. He examined the papers and said he was satisfied, and we would be good friends, and shook hands with me, and that was it.

Q. Did you have any further conversation after that with Braden ?

A. I did on the telephone; I telephoned him again.

HIS LORDSHIP : Mr. Braden did not speak of it.

MR. SINGER : Mr. Braden speaks of two interviews.

HIS LORDSHIP : We have had them both, have we not ?

10 MR. SINGER : No, only one.

HIS LORDSHIP : He said he saw Morine and told him about it, and then another talk in the office, the one which you have just been dealing with.

MR. SINGER : I have only dealt with one interview; I dealt in asking the direct question, it was said to have been made at these two interviews—but I have only dealt with the first interview—

HIS LORDSHIP : Well ?

MR. SINGER : Was that the first interview you had with Mr. Braden ?

A. Yes.

Q. What was the second interview you had with Mr. Braden ?

20 A. I telephoned to Mr. Braden and he and Mr. Walsh came to my office.

Q. All I want to know, what matter was discussed at this interview; I am not particular as to detail ?

A. The second one in reference to a McGill St. property.

Q. Did that interview have anything at all to do with the Buckingham Apartments or the Durno deal ? A. No.

Q. I want to take you to the third interview which was the matter of this Stratford sale; will you tell his Lordship what took place in connection with that interview ?

30 HIS LORDSHIP : He has already denied as to what Mr. Braden said in connection with that.

MR. SINGER : I want to place before the Court what actually took place at the interview.

HIS LORDSHIP : No, it is sufficient to deny the other and anything that is connected immediately with the matter; the witness cannot give evidence that he said thus and so, it would be self-serving evidence. All he can do is to give the denial and the correct version of what he was asked, not a whole lot of other matters.

MR. SINGER : I do not intend to produce a lot of other matters.

HIS LORDSHIP : Very well.

40 MR. SINGER : Give his Lordship your version of what took place at this interview ? A. He never came to my office after the twice I told you of.

Q. How did this interview take place ?

A. Called me on the phone from London.

Q. Tell us what took place ?

A. Said that he was endeavouring to sell the property to some Stratford people; I knew nothing about it, and he asked me if I could see the valuator and endeavour to help the valuation along.

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Q. What did you tell him?

A. I told him I would not see the valuator and I never did.

Q. Again dealing for a moment with the other portion of what Mr. Braden said; he said at that time he told you if there was any loss he would expect you to bear it? A. I never heard that.

Q. Was there any discussion at all about loss during the course of that interview? A. Not a word.

Q. There was another interview that I referred to or possibly two other ones; the question of agency was discussed, and you maintained a certain attitude on your right to be agent of the company; did you have any inter- 10
views with Mr. Braden on the question of the agency at all?

A. Insurance, retaining my insurance I did, a number of letters and interviews.

HIS LORDSHIP: Generally what was the nature of that?

A. That I was entitled to the insurance.

Q. Why?

A. On any loan on any property the loan on which had been accepted from me, because the London Loan Co. had agreed that I was to have the insurance and one half per cent renewal on any such loans.

Q. Was there any discussion as to your right to be agent for collection 20
of rents and management of properties?

A. Never in the world; that was his option.

Q. Certain items have been introduced which are valuations which have been put in as Exhibits made in the latter part of 1924; the one you will recall by Mr. Lonsdale; did you give instructions to Mr. Lonsdale to make those valuations in 1924? A. I gave instructions to Mr. Lonsdale.

Q. Why?

A. Because Mr. Kent had asked to get Mr. Lonsdale to make a number of valuations, quite a number.

Q. Did he tell you why? 30

HIS LORDSHIP: No, never mind that.

MR. SINGER: Did you instruct Mr. Lonsdale to make these valuations?

A. I asked Mr. Lonsdale to make the valuations.

Q. Were they made? A. They were made.

Q. What happened to them? A. Forwarded them to London.

Q. Who paid for them? A. The London Loan and Savings Co.

Q. The London Loan and Savings Co. paid for the valuations?

A. Absolutely, yes.

Q. If you will recall that correspondence has been filed and evidence given by Mr. Maclellan, and with reference particularly to Exhibits 64, 65 40
and 67, that Mr. Maclellan said that he had made an offer to the London Loan and Savings Co.

HIS LORDSHIP: Were not you over that?

MR. SINGER: I don't think so; I am not dealing with Mr. Maclellan's conversation with Mr. Morine at all.

HIS LORDSHIP: Very well, go on.

MR. SINGER: A certain offer to the London Loan and to Brickenden, under which he said on behalf of the Scottish investors they wanted to know if they paid off the third mortgage of \$20,000. and the arrears on the first and second mortgage and arrears of taxes, what extension would be given with reference to the \$35,000. mortgage; did you know or when did you first hear anything about that offer or suggested offer of Mr. Maclellan's?

A. Not until I read the productions.

Q. Not until the productions were made in this action? A. No.

Q. Had you been advised by anyone prior to this action that any such offer had been submitted?

A. No, I never saw Mr. Maclellan except the once, and I was not aware of that till I saw it in the production.

Q. Did Mr. Maclellan discuss any such offer with you at all? A. No.

Q. I am producing to you Exhibit 86, which is a copy of a letter written by you to Messrs. Cassels, Brock and Kelley, bearing the date May 29th, 1925, and which reads:

"Now that this property has been sold under the power of sale, and as all mechanics' liens, etc., have been disposed of, is there any reason why the \$190. deposited into Court cannot be withdrawn and returned——"

Will you tell his Lordship what sale if any you are referring to in your letter?

A. I take it when I wrote that letter——

HIS LORDSHIP: What does it say?

MR. SINGER: "Now this property has been sold."

A. I know of no property sale; I meant by that letter the abortive sale; I did not mean that the property itself had been sold; I meant the abortive sale to wipe out everything.

Q. Wipe out the liens?

A. I did not know the legal interpretation; I wrote Mr. Kelley, he was my solicitor at that time.

Q. You had some connection with the building of the Buckingham Apartments, and you will recall the evidence of Mr. Milligan, who was one of the experts called by the Plaintiff in connection with his opinion as to the cost of certain particular contracts or certain particular work so far as the Buckingham is concerned; will you tell me to the best of your recollection what company it was that installed the refrigeration system in the Buckingham Apartments? A. The Canadian Ice Co.

Q. Do you know if that company is still in existence? A. Yes.

Q. Where is it?

A. Adelaide St. or Richmond St., Toronto; they are a very large concern.

Q. As far as you can recollect, what was the cost of the installation of the refrigeration? A. In the vicinity of eight or nine thousand dollars.

Q. Did you know anything about refrigeration systems generally at that time? A. No.

Q. Do you recall the name of the firm that had charge of your electric system, wiring and supply of electric fixtures?

A. From Roxboro and Dean.

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Q. Give me your best recollection as to the amount paid Roxboro and Dean for that contract?

MR. WALSH: I think the witness had on the examination for discovery a statement that I tried very hard to get, but he refused to get it; could not he just produce it?

MR. SINGER: That statement does not cover this.

HIS LORDSHIP: I don't know anything about the examination for discovery; you can cross-examine on it.

MR. SINGER: Give me your best recollection as to the cost of that?

A. Between \$11,000. and \$12,000. 10

Q. Do you know the name of the firm that executed the contract for fire escapes and iron work generally in the building?

A. MacGregor and McIntyre.

Q. I believe that firm is still carrying on business in Toronto?

A. I think they are amalgamated with the Dominion Bridge Co.

Q. Will you give me to the best of your recollection the cost of that contract? A. About ten thousand dollars.

Q. Can you tell me the name of the firm that had charge of your heating plant and incinerator plant in the premises?

A. Schulkins and Jackson; Jackson anyway, I met him. 20

Q. To the best of your recollection will you tell me the approximate cost of that contract? A. In the vicinity of \$15,000.

Q. One more: do you know what firm had charge of your plumbing contract?

A. I won't be sure of the name, but I think it was Watkins or Walkins; I may be wrong in that, but I think that is the name.

Q. As far as you can recollect what was the cost of that contract?

A. About \$18,000.

Q. Generally, you are charged in the pleading with conspiracy and fraud; conspiracy took place between you and Mr. Brickenden and Mr. McCormick; 30 will you tell me, please, if at any time in connection with the Buckingham Apartments any conspiracy was ever entered into by you and either of the Defendants, Brickenden and McCormick, with reference to the London Loan and Savings Co.? A. I never asked—

Q. Just answer that; I will go into detail later?

A. Not knowing the full words of conspiracy I asked for nothing.

HIS LORDSHIP: Any arrangement or agreement?

A. Never arranged or agreed at any time with any person.

MR. SINGER: Was any effort made at any time by you alone or by you along with other persons for the purpose of defrauding the London Loan and 40 Savings Co.? A. No, not in the world.

Q. Did you at any time pay any money or make any promise of payment to anyone for assistance so far as the question of releasing you from any liability you had in connection with the Buckingham Apartments? A. No.

Q. There was produced and filed in Court yesterday a copy of the Fetterley valuation of February 1st, 1923? A. Yes.

- Q. That came out of your possession; please tell his Lordship where you got it?
- A. After I got out of the hospital where I had been for some months——
- Q. That is after this action started?
- A. Yes; I met Mr. Fetterley and asked him if he would procure——
- MR. WALSH: I object to any conversation.
- HIS LORDSHIP: No, just ask the simple question.
- MR. SINGER: Whom did you get it from?
- A. I got it from Mr. Fetterley.
- 10 Q. You say that was after this action had commenced?
- A. Yes, very much.
- Q. One more question; there was some reference made during the course of this action to an offer to purchase this property, made by one Lymberry, and he was to give as consideration or to cover the deposit certain shares of Canusa mining stock; did you have anything to do with that offer?
- A. Can I see that offer?
- HIS LORDSHIP: You can answer the question without seeing the offer?
- A. I did not submit the offer.
- MR. SINGER: Do you know who Lymberry is?
- 20 A. I don't know the man.
- Q. Did you send any such offer to Brickenden & Co.?
- A. I did not.

CROSS-EXAMINED by Mr. Slaght:

- Q. Mr. Fetterley testified that he was present in your office in Toronto with Mr. Kent in February, 1923——
- MR. WALSH: That has been covered.
- HIS LORDSHIP: Well, never mind.
- MR. SLAGHT: On an occasion when Mr. Kent asked you to ask Fetterley for a copy of his valuation that he had made for the Huron and Erie? A. Yes.
- 30 Q. Do you recall such an interview as that?
- A. I recall the both being in my office at the time.
- Q. Do you know whether Mr. Fetterley complied with Mr. Kent's request made through you, and did you have anything to do with Fetterley and the copy of his valuation which you asked him to get?
- A. In a day or so, possibly the same afternoon, Mr. Fetterley brought me a copy, and it was attached to an application and went to London.
- Q. What did you do with it; did you send it to Mr. Kent?
- A. I sent it to Mr. Kent with the applicaton.
- Q. Were you ever present at any directors' meetings in London when
- 40 the Fetterley valuation came before the Board?
- A. I saw it at the Board.
- Q. Was Mr. McCormick present?
- A. I think all the Board were there.

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Evidence for
Defence.
No. 33.
Horace A.
Morine,
Examination
(Continued)
18th Decem-
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—continued.

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Defence.
No. 33.
H. A.
Morine,
Cross-
Examination
by Mr.
Slaght,
18th Decem-
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CROSS-EXAMINED by Mr. Walsh :

Q. Yesterday you were telling Mr. Singer when he asked you about the different companies you acted for; do you remember you did not include the Toronto Mortgage Investments Limited, W. L. Renton, Trustee and Manager, H. A. Morine, Valuator and Adviser ?

A. I never saw that until you produced it.

Q. Look at it now ?

A. I never saw it, and never heard of such a thing.

Q. Is that the W. L. Renton we have heard of ?

A. I know W. L. Renton.

Q. There was his notepaper I got from Mr. MacLennan ?

A. I never saw it.

Q. You knew him in 1925 ? A. Yes.

Q. And he was carrying on business then, the Toronto Mortgage Investments, W. L. Renton, Trustee and Manager, office 5-11 Davenport Rd., Toronto. H. A. Morine, Valuator and Adviser ? A. The date of that ?

Q. February 5th, 1925 ?

A. I never had anything to do with Mr. Renton in real estate in 1925; I never saw that in my life; I did not know he was even doing such business. I know W. L. Renton.

Q. W. L. Renton, you were his valuator and adviser, were you not ?

A. I never was his valuator and adviser in my life.

Q. Have you any reason to suggest to his Lordship why he would advertise you on his notepaper as his valuator and adviser ?

A. No authority or word from me to do so, but I knew Mr. Renton away back in 1922 when Mr. Renton was, I think he was a director and general manager of the Welland Steel Works in Welland.

Q. You knew him better though when he was trustee for some Scotch money; you got a mortgage from him in trust, did you not, \$46,000. ?

A. I never knew Mr. Renton as a trustee for any Scotch investors.

Q. Did you know him as trustee for anybody ?

A. I know that W. L. Renton had a mortgage as trustee, but for whom I did not know.

Q. You knew he had it in trust anyway ?

A. I knew he had it in trust; that was his request.

Q. Whom did you think he had it in trust for ?

A. I did not even ask him, that was his business, it was none of my business; I did not know.

Q. Did not you think that was a large sum of money for anybody to have in trust without making inquiries about; \$46,000. to put on a fourth mortgage ?

HIS LORDSHIP : Where was this fourth mortgage ?

MR. WALSH : On the Buckingham.

A. The difficulty is you start at the finish and not at the first.

Q. Where should I have started ? A. At W. L. Renton.

Q. I am starting with the trust mortgage, a fourth mortgage for trust funds; you have dealt with mortgages for how long ? A. Twenty years.

10

20

30

40

Q. Did you ever hear of trust funds being invested in fourth mortgages before? A. I don't remember any fourth mortgages before.

Q. You remember it in this case, and you remember it was in trust, don't you? A. That is his personal trust, yes.

Q. Why would it be his personal trust; why would he put it in trust, why would he put "in trust" after it?

A. That would be his instructions.

Q. When did you first hear it was for the Scotch investors?

A. About the time Mr. MacLennan came in on the scene; it may have
10 been a month before that.

Q. You had no idea?

A. I had no idea and have no idea yet who Mr. Renton was interested in.

Q. The trust fund of \$46,000. that was invested in this fourth mortgage was completely lost? A. It was lost and so was mine.

Q. And to get his \$46,000. in trust tell us what arrangement you had to put up to entice Renton to invest these monies in trust?

MR. SINGER: Must I again take similar exception to the style of question my learned friend is putting; surely it is an unfair method of presenting
a question.

20 HIS LORDSHIP: What is there unfair about it?

MR. SINGER: The word enticed carries with it a very nasty insinuation.

HIS LORDSHIP: I think perhaps, yes, it would be better to use another word.

MR. SINGER: I want to take the further objection: any dealings with Renton occurred after the London Loan and Savings Co. had received their first and second mortgages; the London Loan and Savings Co. were not at all concerned with Renton as a subsequent mortgagee.

HIS LORDSHIP: No, but this man is here and he is going to be examined
30 as to his credit in connection with these very apartments, and I am going to permit it.

MR. SINGER: The objection I am taking——

HIS LORDSHIP: Your objection is noted.

MR. WALSH: What arrangement did you make with Renton so that he would put this \$46,000. on a fourth mortgage in trust?

A. Mr. Renton was well acquainted with the property.

HIS LORDSHIP: You are not asked that; if you answer the question it will be more satisfactory.

A. Mr. Renton got a mortgage and an agreement of partnership, I think you call it, an agreement of partnership in the equity in the building.

40 MR. WALSH: Is it not fair to say in consideration of your getting the money you gave him a half interest in the property as a partner with you?

A. A half interest in the property.

Q. Is it also fair to put this and say so, that you would not be liable on the covenant on the \$46,000. mortgage, although you were then the owner of the property, you transferred it to Mr. Dyas for the purpose of making the mortgage; is that right?

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—continued.

A. The purpose is fully set out in the agreement with Mr. Renton by the firm of Cassels, Brock and Kelley.

Q. I asked you in the examination and I also read to his Lordship, was it not right that the very day that the property was mortgaged to Renton the property was deeded by you to Dyas so that Dyas could make the covenant instead of you? A. So that Mr. Renton—

Q. Is that right?

A. Mr. Renton had priority over me to the extent of his mortgage and had a half interest in the property; he took priority over me—

Q. What was the purpose of the deed to Dyas and the mortgage from 10 Dyas to Renton?

A. For that purpose, that he would have the first security on the property over me, although I had as much interest in the property as he had, and he was given that advantage over me, and that agreement was made for the purpose of giving him a claim or advantage over me in the property set forth in the agreement drawn by Mr. Kelley of Cassels, Brock.

Q. Is there anything more you wish to add; you got his \$46,000., didn't you? A. Yes.

Q. And after you got his \$46,000. you were to be equal owners?

A. Afterwards, in the equity afterwards, yes. 20

Q. Why did not you go on the covenant instead of putting it in Dyas' name?

A. For the reason that he had that much advantage of the security of the property and not me personally.

Q. Dyas was not worth anything, was he?

A. It depends on how you put that.

Q. The covenant of Dyas was worthless, was it not?

A. Not of value, but not worthless.

Q. Yours was of value? A. Mine would be of value.

Q. You put on that mortgage to Renton in 1923, the 18th September, 30 1923, and your covenant at that time was of value?

A. I was not covenanting on the property where he had a half ownership, and I would not, could not covenant with any person to be a half owner and at the same time give him my covenant to pay him; the property was its own security.

Q. Just answer my question; was your covenant worth anything on the date of that mortgage, September, 1923?

A. My covenant was worth, I hope, something.

Q. So that I take it when you gave your covenant to the London Loan and Savings Co. in February of 1923 for \$35,000. it was worth it, was it not? 40

A. My covenant and—

Q. Tell me, yes or no, was your covenant worth it?

A. Do not shout and we will get on—

HIS LORDSHIP: Do not lecture counsel.

A. I am not lecturing, but I don't like to be shouted at.

Q. You are there as a witness? A. I am aware of that.

MR. WALSH: Was your covenant worth it in 1923?

- A. My covenant was worth \$35,000.
- Q. When you gave your third mortgage in May, 1923, was your covenant worth—were you worth that covenant?
- A. I would have made good my covenant.
- Q. You say you were not an agent for the London Loan and Savings Co.?
- A. Never was.
- Q. You were the representative of theirs?
- A. I was not the representative; I was a broker doing business and submitting applications to anyone.
- 10 Q. Did you ever represent the London Loan and Savings Co.?
- A. If requested to do so on specific things, yes, whatever they requested me, and I took up, I represented them then.
- Q. You were only their agent for Toronto, is that it?
- A. I was not their agent for Toronto.
- Q. Did you look after their loans in Toronto?
- A. I submitted my applications for Toronto, but not their business in Toronto.
- Q. I put it to you, you were a general agent of theirs, you took loans outside of Toronto, didn't you?
- 20 A. I take loans for Manitoba when they come to me.
- Q. As a matter of fact, I had one here yesterday of Oldfield; how about Oldfield, you know about that transaction? A. Yes.
- Q. And Mr. Brickenden sent him down to you, didn't he? A. No.
- Q. You heard Mr. Brickenden's evidence yesterday that he did, that he came to Mr. Brickenden, and Mr. Brickenden sent him to you?
- A. Mr. Brickenden may have said that, but he did not send him to me.
- Q. What was the purpose in sending him to you?
- A. Mr. Brickenden never sent him to me.
- Q. Mr. Brickenden's evidence is not correct?
- 30 A. It is not correct.
- Q. The cheque in that was made payable to you; I have the cheque here?
- A. Yes.
- Q. October 2nd, 1925, for the full amount of the loan less \$100.?
- A. It is a long time back, but I have a little memory.
- Q. Tell his Lordship why that cheque was made payable to you?
- A. To discharge and pay Mr. Oldfield's prior mortgages, and, if I remember right, too, some steel company had a blanket claim over him, and the money had to be paid to the steel company, and then they postponed their claim for the balance, and this money was so disbursed, less any cost of
- 40 commission and insurance.
- Q. It was to see the thing was put through properly?
- A. No, for the purpose of securing these—Mr. Oldfield, I am trying to draw on my memory a long time back, Mr. Oldfield owed some amount of money to some steel company that had erected his building.
- Q. I see a minute here in the Board of Directors, April 6th, 1926:
- “Oldfield mortgage: Letter read from solicitors stating that

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—continued.

“there are arrears of taxes, \$2,529.43, for 1923. Try to get Oldfield “to pay.”

That is that the entire mortgage monies were handed over, and the 1923 taxes of Oldfield of \$2,529. were unpaid?

A. I did not certify the title, nor did I pay the taxes.

Q. Who did certify the title? A. I have not any idea.

Q. What commission did you get?

A. I got, no doubt, a substantial commission according to an agreement or understanding with Mr. Oldfield at the time.

Q. A substantial commission? A. No doubt.

10

Q. It was \$2,500., was it not? A. No.

Q. How much was it; will you deny it was \$2,500.? A. Yes.

Q. How much more was it? A. Less.

Q. How much less? A. I think about one thousand dollars.

Q. Why do you say \$1,000.? A. If I remember that.

Q. Have you a record of it?

A. No, I have no record, but I am drawing on my memory.

Q. Have you no record on your files in your office?

A. I have not been in Toronto since I heard you yesterday, and I have no more than my memory now.

20

Q. Have you record of it?

A. I have no knowledge now, only my memory.

Q. Have you any records at all?

A. Of some things, some business.

Q. You are speaking from recollection; it was \$1,000.?

A. I am trying to remember, because I remember this peculiar condition that it was out in Grimsby, some floral establishment—

Q. No sooner had that loan been taken than—

—Mr. Singer objects; let him complete his answer.

A. If I remember that right, I have had no opportunity of discovering 30 or finding out, if I remember that right, Mr. Oldfield paid an amount to me, and the London Loan got \$1,000. or \$1,200. bonus or something and left me the balance of what would be left from that.

Q. Did you get a commission from the London Loan on that?

A. No, I don't think so; my recollection is I did not.

Q. What did you pay Mr. Brickenden out of that?

A. Mr. Brickenden would get his charges, whatever they would be.

Q. What did you pay him?

A. I heard yesterday that you made a statement here, something I have no knowledge, that that was less or more, but whatever his charges would be 40 Mr. Brickenden would get.

Q. You heard me read the deposit slip: “*Re* Oldfield,” \$700.?

A. That did not come from me.

Q. Whom did that come from? A. I don't know.

HIS LORDSHIP: How did you pay Mr. Brickenden his fees; you got the entire loan? A. I have not had any possibility of looking it up.

Q. You are asked the question now?

- A. Mr. Brickenden would get his charges.
- Q. From you? A. From me, representing Oldfield, yes.
- MR. WALSH: You were representing Oldfield; who was representing the London Loan when they had \$2,500. worth of taxes that were never paid?
- A. Whoever certified and put through the title.
- Q. Was it Mr. Brickenden? A. I don't know.
- Q. His Lordship asked if you paid Mr. Brickenden his legal fees and you said yes; was that right?
- A. Representing Oldfield I would pay Mr. Brickenden his charges out
 10 of the proceeds of that loan. Who certified the title, who looked at the title, you would have to get that from your own information here; I don't know; I did not.
- Q. How did you pay Mr. Brickenden these fees?
- A. I cannot remember definitely, but sometimes Mr. Brickenden got his money in cash, and sometimes he got his money by cheque under the circumstances.
- Q. Mr. Brickenden got it in cash in the Buckingham?
- A. My recollection is in the Buckingham he was paid by cash; I had
 opportunity to look up at that time.
- 20 Q. It is quite clear in the Oldfield he was paid in cash?
- A. If he was, I have no recollection; it may be.
- Q. What is your recollection of how much you paid him?
- A. Whatever his charges would be.
- Q. What would they be on that?
- A. I don't know what his charge would be on that.
- Q. How would you figure it?
- A. In the first case I would think—where did that take place?
- Q. In Grimsby? A. I should think four or five hundred dollars.
- Q. Four or five hundred dollars on a \$35,000. mortgage in Grimsby?
- 30 A. I would think so; I think that is about the charge, I would think so; I cannot fix the amount within a hundred dollars perhaps; he would get his charges, that is all.
- Q. Mr. Brickenden yesterday swore, I put it to him, that he got that \$700. from Morine; did you give him that \$700. or did you not?
- A. I would say that Mr. Brickenden got his charges, whatever they may be, but I cannot recollect the amount; it may be \$700.; it may be charges, he may have costs in it, I don't know; Mr. Brickenden would get only the charges which the borrower would pay, would agree to pay.
- 40 Q. The borrower would pay?
- A. The borrower would agree to pay; the borrower pays the costs.
- Q. Was the \$700. in addition to the \$1,000. you got?
- A. I got my commission and the mortgagee got his money in addition to mine, but the cost would not be in my commission.
- Q. It would be over and above? A. I got my commission.
- HIS LORDSHIP: Why pursue this any further?
- A. Whatever I charged I got; Mr. Oldfield paid me whatever he agreed to pay me, as far as my recollection goes; I have no recollection that he did not.

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—continued.

MR. WALSH: Starting off with the Buckingham Apartments with the mortgage to the Huron and Erie Corporation? A. What date is that?

Q. 1922? A. There were three mortgages, if I remember rightly.

Q. And they were finally consummated in one large mortgage with additional advances, a total of \$150,000. on the 16th February, 1923?

A. That is the mortgage that I think of; that is the one I was on the covenant.

Q. On the date that the application was put forward to the Huron and Erie Mortgage Corporation and you gave the mortgage for \$150,000., at that date you were the owner or a partner of one of the owners, a partner in that 10 apartment building? A. Absolutely.

Q. And you put forward an application to the Huron and Erie without disclosing that you were the owner of an undivided one half interest as a partner in this transaction, did you not? A. No.

Q. The only record there is here, his Lordship read it out yesterday, “applicant, S. B. Green; agent, H. A. Morine;” was that true?

A. Are you talking of the Huron and Erie application now?

Q. Yes?

A. When that \$150,000. was put on, Mr. Hume Cronyn, I explained to Mr. Hume Cronyn in his office at Toronto before the rest of the officials there, 20 that I was interested in the Buckingham Apartments, and therefore I would go on the covenant; Mr. Cronyn was satisfied with that, and the loan was confirmed in London, although Mr. Cronyn at that time said that that was satisfactory to him, it was in his office.

Q. I will test that later; you were paid a commission of \$1,500. from the Huron and Erie on that mortgage? A. I received a commission.

Q. Of \$1,500., one per cent? A. Yes.

Q. And at that very hour you were under an agreement with Mr. S. B. Green whereby you got a commission from him on that very mortgage?

A. No, not on that mortgage. 30

Q. You were not—?

A. No charge for a commission for that mortgage.

Q. You had made no agreement with Green at that time for a commission to you of one per cent on that mortgage—had you?

A. Up until that time—prior to the granting of that mortgage Mr. Green was the owner of the property; I had been advancing money under temporary arrangements with Mr. Green.

Q. You cannot take me off the track? A. No desire.

Q. I won't go down any alleyway or by-lane? A. No desire.

Q. On that very date when you had the first mortgage from the Huron 40 and Erie Mortgage Corporation you had made an agreement with Green for you to get one per cent commission for that loan, had you not?

A. My agreement—

Q. Yes or no?

HIS LORDSHIP: You can answer that in your own way, but you can give the answer to that not in a speech.

A. My agreement with Mr. Green—

HIS LORDSHIP : No, no.

A. I was to get one per cent commission for all the financing, and Mr. Green was to get his charges for the construction; those were to be charged up against the property, and in that way I would get the one per cent.

Q. Where is your agreement with Mr. Green, dated the 1st May, 1922, signed by you? A. There is no agreement.

MR. SINGER : I raise objection to going into matters preceding—

HIS LORDSHIP : It is all surrounding this one matter; I am going to permit it; your objection is noted.

10 MR. WALSH : Where is your agreement on the first May, 1922?

A. There was no agreement on the first May, 1922.

Q. You made another agreement, three in all, an agreement dated the 13th February, 1923, with Mr. Green, didn't you?

A. In February, 1923, is the first agreement with Mr. Green.

Q. You made another one on the 18th June, 1923? A. Yes.

Q. Three in all? A. Two in all.

Q. Three in all, and all signed by you?

A. Two signed by me.

20 Q. Do you recognize this question, 58, "I see on looking at these three agreements mentioned that the agreement of the 1st May, 1922, was signed and duly executed by both of you, you and the Defendant Green? A. Yes."—oath taken by you when the mechanics' lien holders were after you, in *Foley v. Green*, sworn by you?

HIS LORDSHIP : No, you have no right to put it that way; you have a right to say where you asked this question and made this answer.

MR. WALSH : Did you make that answer when you were asked the question, "I see on looking at—"? A. You are reading from a piece of paper.

Q. I will let you look at it—

30 HIS LORDSHIP : Give him the proper opportunity; ask him if he was examined in that action.

MR. WALSH : In the action of Michael Charles Foley, trading as Foley Lumber Co., against Samuel B. Green and Horace A. Morine, Defendants—

HIS LORDSHIP : Were you examined under oath?

MR. WALSH : Were you examined under oath on the 9th November, 1923?

A. I was examined in November, 1923.

Q. Were you asked this question, 58 : "I see on looking at these three agreements mentioned that the agreement of the 1st May, 1922, was signed and duly executed by both of you, you and the Defendant Green—" Were you asked that question?

40 A. I have no recollection of an agreement prior to the 1923, except a draft agreement which had been made by Cassels, Brock and Kelley, but which agreement was never exercised for reasons which were then apparent; the agreement of 1923 was exercised; if I made that answer, I won't say I did not, if I made that answer in my opinion it is a mistake in date, it was 1923; there were draft agreements prior to that, but they never were exercised; that is my impression.

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MR. WALSH: Were you asked the question: "I see on looking at these three agreements——"?

A. I may have been asked it and made that answer, but I say now that the agreement with Mr. Green——

Q. Please answer my question. Were you asked the question, "I see on looking at these three agreements mentioned that the agreement on the first May, 1922, was signed and duly executed by both of you, you and the Defendant Green"—were you asked that question?

A. If that document says I was asked that question there is no doubt I was, and if that document says I made that answer I have no doubt I made 10 that answer, but I still say I have no recollection, and I do not believe there was any document signed at that time by me; I am satisfied there was not.

HIS LORDSHIP: Why take up any more time?

MR. WALSH: There is no doubt you did sign and execute the agreement of the 13th February, 1923, and the 18th June, 1923?

A. Not the slightest doubt; as a matter of fact they are in the bag at my hotel, but I had thought I had them here in my pocket, but I will produce them.

HIS LORDSHIP: They can be produced?

A. I will produce them if your Lordship says so. 20

MR. WALSH: I have copies here?

A. I will produce the original documents.

MR. SINGER: I prefer the original documents.

MR. WALSH: May I clean this up and ask one question——

HIS LORDSHIP: When you see the original you can ask the question.

MR. WALSH: You went up to London on the 12th February, 1923, with the application? A. Is that the date?

Q. That is the date of the meeting.

A. If that is the date of the meeting, yes.

Q. And you were up here before; I think you told his Lordship that at 30 that time you were the owner of a half interest in that property; is that right?

A. Yes.

Q. And you had a very substantial interest in it as the owner of a half, is that right? A. I had a very substantial interest in it.

Q. At the date of that Board meeting you had a very substantial interest in the property? A. Yes.

Q. And you fully disclosed that to the meeting?

A. I fully disclosed to the Board and to the manager my interest in the property.

Q. And you were at that meeting of February 12th? 40

A. If that is the date the loan was passed, I was there.

Q. Minutes, February 12th, Board meeting, all present save Mr. Robinson. "S. B. Green, lend \$31,000. at 7½ per cent; commission one per cent to H. A. Moline; bonus \$4,000. H. A. Moline to guarantee"—you were at that meeting?

A. I was at that meeting; not when those minutes were written, but I was at that meeting.

Q. Having told his Lordship that you had a very substantial interest at the date of that meeting in that property, do you remember swearing this on your examination for discovery, question 50 in this action :

“Q. And at the time of this application who was the owner of those premises? A. S. B. Green.”

A. What application are you speaking of?

Q. The only one, February, 1923; I will read the questions before :

“Q. 40. Tell us how they came about?

“A. Application for a loan in the usual way made to London.

10 “Q. 41. By whom?

“A. For S. B. Green and myself; no, for S. B. Green.

“Q. 42. Well, do you know the date of the first loan?

“A. About 1923.

“Q. 43. Do you remember the month, Mr. Morine?

“A. No, not the actual month.

“Q. 44. Well, now you just—from your papers—take your time—whatever you have—all I want is the information?

“A. February, 1923, the mortgage is dated, so presumably before that some little time.

20 “Q. 45. Well, did you put in a written application for that?

“A. A written application, yes.

“Q. 46. And whose application was it, your own or Mr. Green’s?

“A. Signed by S. B. Green.

“Q. 47. Now that is on the property known as the Buckingham Apartments? A. Yes.

“Q. 48. What street number was that? A. King and Queen Sts.

“Q. 49. Corner of King and Queen?

“A. No, they run through to Queen. They are on King and run through to Queen, near the corner.

30 “Q. 50. And at the time of this application who was the owner of those premises? A. S. B. Green.

“Q. 51. Had you any interest whatever in those apartments at that time? A. Practically none.

“Q. 52. Well, what was it? When you say ‘practically none’ had you or had you not?

“A. I was guarantor; I was the mortgagor on the very first mortgage.

“Q. 53. Was that the only interest you had?

“A. That is the only interest I had then.

40 “Q. 54. In that property? A. Yes.

“Q. 55. In any shape or form? A. In any shape or form.”

Was that a true statement under oath?

A. I think when you get these agreements which are dated——

HIS LORDSHIP: You cannot evade that way.

A. I had advanced a lot of money.

Q. No, witness, you will obey my rulings or else you will find yourself in a very uncomfortable position.

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—continued.

A. I do not have any desire to do anything but what is quite proper.

Q. You were asked those questions, were they true?

MR. WALSH: Were those answers to those questions true?

A. What is the date of those again? Give me the date of the examination?

Q. The date of that examination was on the 15th June, 1931?

A. I think you are wrong.

Q. The examination of H. A. Morine for discovery, taken before Mr. John Bruce, special examiner, on the 15th July, 1931?

A. You mean this last examination?

Q. Yes, take time to think?

A. I thought you were mixing it up with the other examination.

Q. Is that true or not?

A. On that date when that examination was on I was not interested in the property beyond the agreement.

HIS LORDSHIP: No, no, you cannot get away that way; you were not being asked that, you were asked at the time of the application, not the examination at all? A. At the time of the application to London?

Q. Yes; that is what the examination was directed to?

MR. WALSH:

“Q. 50. And at the time of this application who was the owner 20
“of those premises? A. S. B. Green.

“Q. 51. Had you any interest whatever in those apartments at
“that time? A. Practically none.

“Q. 52. Well, what was it, when you say ‘practically none,’ had
“you or had you not?

“A. I was guarantor; I was the mortgagor on the very first
“mortgage.

“Q. 53. Was that the only interest you had?

“A. That is the only interest I had then.

“Q. 54. In that property? A. Yes.

“Q. 55. In any shape or form? A. In any shape or form——” 30

Was that true or false? A. That is true.

Q. You were at the meeting? A. Yes.

“Q. 63. Do you know whether you came to London with them
“or not? A. I cannot tell.

“Q. 64. I beg your pardon? A. I could not tell.

“Q. 65. You could not say one way or the other?

“A. No, I could not say whether I was in London or not.

“Q. 66. Now on the back of this it says: ‘February 12th, 1923,
“S. B. Green, \$31,000. wanted at 7½ per cent’—that is in ink. Then 40
“in pencil—‘Bonus \$4,000., H. A. M. to guarantee. Commission one
“per cent. George G. McC., president.’ Did you see that written
“on there, Mr. Morine? A. I cannot remember.

“Q. 67. You cannot remember? A. No.

“Q. 68. You were at the meeting where that came up?

“A. I cannot remember.

“Q. 69. Well, would you say you were not?

"A. I would say that I was not.

"Q. 70. You would say you were not at that meeting?

"A. Yes."

Was that true or false?

A. I have had time to find since that I was there, and that was not intended to mislead anybody; I was there.

Q. You were at the meeting? A. Yes.

Q. What you swore there was not correct?

A. That was very early and going back eight years.

10 Q. This was not very early? A. What date is that?

Q. June 15th? A. Yes.

Q. You took time to look over your case, and you went over it thoroughly by that time? A. No.

HIS LORDSHIP: Well, the answer is there?

A. I was a reasonably sick man.

MR. WALSH: Is it not the fact out of that very first mortgage of \$35,000. you had made an agreement with Mr. S. B. Green that you were to get, in addition to what you got from the London Loan and Savings Co., twenty-five per cent for yourself; is not that the fact?

20 A. The agreement will explain that.

Q. You are willing to stand by the agreement?

A. Yes, it will explain all that.

Q. Can you give to his Lordship one explanation why you paid Mr. Brickenden his legal fees in cash for putting through that \$35,000. mortgage?

A. It was not unusual prior to that and since that to give Mr. Brickenden cash, not unusual.

Q. You get your \$35,000. mortgage; who drew it?

A. I think Cassels, Brock and Kelley; I cannot say.

30 Q. I asked you on your examination for discovery and you said you did not know? A. I say now I do not know.

Q. The history of that transaction was that you sent the mortgage to the London Loan and Savings Co.; Cassels, Brock did not do it, did they?

A. I don't know that I sent the mortgage.

Q. There is a letter here which says, a letter from you to the London Loan or to Mr. Brickenden, enclosing the registered mortgage; I think it is February 16th, 1923?

A. Probably so; it was probably delivered to me by Cassels, Brock, through their office, I don't know; I have not any record of every little detail.

40 Q. Why would not Cassels, Brock send it direct instead of sending it to you?

A. I suppose that my being there, Cassels, Brock knew I was there, and they exercised their judgment on it.

Q. Cassels, Brock always knew in the Buckingham Apartments, either in your time or in Dyas' time or Mr. Durno's time, always knew where to send the papers to; it was always to Mr. H. A. Morine?

A. I don't know that that is the case; they probably sent me some papers but "always" is more than I know.

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Moline,
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18th Decem-
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—continued.

- Q. You first got your \$35,000.? A. Yes.
- Q. And you came back in May for the second \$20,000. mortgage?
A. Yes.
- Q. And Mr. Kent said he thought you had better come up to the Board
on that mortgage, did not he? A. Yes.
- Q. And you came up? A. I did.
- Q. And did you go home with the cheque on that occasion?
A. I think I did.
- Q. For the full amount? A. I think I did.
- HIS LORDSHIP: Before the mortgage was signed? 10
- MR. WALSH: Oh, yes, my Lord.
- A. I think at the same date.
- Q. You went home with the cheque and then had to pay the legal fees
in cash out of that one later, is that right?
A. Pay any charges which may be necessary out of that.
- Q. Was Mr. Kent at the meeting that the \$20,000. was up?
A. I don't think so.
- Q. Mr. Gray says yesterday you thought he was there?
A. No, I don't think he was there.
- MR. SINGER: Let us see the minutes. 20
- MR. WALSH: The minutes of May 28th, 1923:
"Present: McCormick, Baker and Hunt," so he was not there. The
minutes show he was not there anyway? A. I don't think he was there.
- MR. SINGER: May I point out to you that although it says that, M. J.
Kent signed those minutes, and not usual, I don't think, in connection with
these to mention Mr. Kent's name as being present at the meeting.
- HIS LORDSHIP: It is mentioned first, I think, all present.
- MR. SINGER: All present save Mr. Baker.
- HIS LORDSHIP: That would be all the Directors; go on.
- MR. WALSH: I notice after you got your \$20,000. mortgage on the 30
abstract the next entry is a grant dated the 8th June, 1923, registered on the
9th June, 1923, Samuel B. Green to Horace A. Moline, consideration \$10.—
you took over the Buckingham Apartments then?
A. I think that is in the agreement you are wanting to see.
- HIS LORDSHIP: It is a deed? A. Yes.
- MR. WALSH: After that you became sole owner?
A. It is in conformity with the agreement.
- Q. And then trouble starts with financing as appears from the abstract,
liens go on, liens go on in July, August and September? A. Those liens—
- HIS LORDSHIP: The abstract shows? 40
- A. I really think you ought to let me explain those.
- HIS LORDSHIP: No, it is not necessary at all; the abstract shows them.
- MR. WALSH: Then I notice a deed dated August 9th, 1923, registered
on the 18th September, 1923, Horace A. Moline to Arthur W. Dyas for \$1.00.
The next item, mortgage 10th August, 1923, registered on the 18th September,
1923, Arthur W. Dyas to W. Lawson Renton, in trust, for \$46,000.?
A. That is the agreement, I have explained that.

Q. You got the whole \$46,000.? A. I explained that.

Q. I notice there are discharges of mechanics' liens on the property, and then there is this item comes in next, a mortgage dated the 27th October, 1924, registered the 30th October, 1924, Arthur W. Dyas to Horace A. Morine for \$23,000.; that was like a fifth mortgage then to yourself, is that right?

A. Yes.

Q. So that we come, then, in October, 1924, the property then stood registered owner Arthur W. Dyas, in trust for H. A. Morine and W. L. Renton, first mortgage to the Huron and Erie for \$150,000., second mortgage to the
10 London Loan for \$35,000., third mortgage to the London Loan for \$20,000., fourth mortgage to Renton for \$46,000., and fifth mortgage to you for \$23,000.?

A. That is right.

Q. That was the state, was it not? A. Yes.

Q. And during that time you collected all the rents and put them into an account of H. A. Morine, didn't you?

A. I never collected the rents nor a dollar of them; I have already advised you that the rents were collected and put into the Buckingham Trust and disbursed, and every cent over the carrying charges from a certain date went to the Consolidated Trusts Company. Prior to that the rents looked after
20 the carrying charges of the property as far as the rents and collections would carry it.

Q. Mr. Singer has propounded to more than one witness that this was well rented from July on of 1923 and '24, that they were the banner years, and also 1925, they were the banner years——

MR. SINGER: I made no such remarks during the whole of my questions.

MR. WALSH: We will put it this way: He put that to my witness.

HIS LORDSHIP: Not in those words.

MR. WALSH: Were the best renting days of Buckingham Apartments from August of 1923 when it was completed down to and including 1925?

30 A. No, I have explained that the property was not open until, I think I said July, somewhere about that.

Q. Was 1924 the best renting year of the Buckingham Apartments?

A. That was a reasonable year, but the apartments as I recollect were not filled, but still it was the best rent payable in Toronto in, I should think, 1924 and 1925.

Q. As far as this apartment was concerned, the best years it had were from 1923 when it was opened in August, up to 1925 and '26, is that right; you had it in its best years?

40 A. I don't say that; 1923 we will say and 1924 very high expenses of a new property like that take place, but I have not got the figures of the rentals nor the expenditure; I did not keep it.

Q. You kept books?

A. I did not keep them, because I did not collect those rents; therefore I have not that knowledge of knowing exactly what it was.

Q. Who did collect the rents?

A. They were all collected by Mr. Dyas.

Q. Who was right in your office? A. Mr. Dyas.

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—continued.

Q. And used your own stationery? A. And his own.

Q. Any letter from Mr. Dyas in this case is on your stationery?

A. An independent man, although he is my son-in-law, which may not be a crime, but he is an independent man and getting his own living.

Q. On your examination for discovery, questions 2157 to 2163:

“Q. 2157: Then do I understand you to say that from August, 1923, until the first of June, 1925, Mr. Dyas collected the rents from the Buckingham Apartments? A. Always collected the rents.

“Q. 2158: And in what account did he deposit those monies?

“A. In the Buckingham Rent Account. 10

“Q. 2159: And in what bank account did he deposit those monies? A. I told you, in the Buckingham account.

“Q. 2160: In whose name was the Buckingham account kept in the bank? A. H. A. Morine, Buckingham account.

“Q. 2161: And who was entitled to draw cheques on that account?

“A. Mr. Dyas was entitled to voucher the disbursements and I certified the cheques.

“Q. 2162: Well, then, you signed the cheques on that account?

“A. I signed the cheques on voucher, yes. 20

“Q. 2163: Had Mr. Dyas any authority to sign cheques on that account? A. Mr. Dyas has never signed any cheques”——

A. That is right.

Q. That was the very same thing that happened right after the Durno sale right down after it; there was no change in it, was there?

A. The account was changed in June, 1925.

Q. Have you got the changed account?

A. Wait a minute; the account in June, 1925, I think if you will read there in June, 1925, the date of Mr. Durno's purchase, the Buckingham account went to zero and was so treated from that time out as the Buckingham account for the Consolidated Trusts and Durno, that I think you will find if you read—— 30

Q. Where is that account?

A. I tell you the account was continued as the Buckingham account from zero of June 1st.

HIS LORDSHIP: Was it in the bank in the name of Buckingham—it must have been in somebody's name?

A. Yes, it was in H. A. Morine, Buckingham account; there was a reason for that.

MR. WALSH: Was it in H. A. Morine? A. H. A. Morine, Buckingham. 40

Q. Where? A. The Royal Bank.

Q. Have you got the account?

A. I have not got it; I did not keep it.

Q. Where is the bank book?

A. I have not got it; I did not keep it. Mr. Dyas kept it, and disbursed and accounted to Consolidated Trusts by voucher each month, and showed the bank balance on his statement and vouchers and everything was attached.

- Q. I want you to produce the bank books, where are they, the H. A. Morine bank books, where are they?
 A. H. A. Morine has not got that account.
 Q. You signed the cheques on it, H. A. Morine?
 A. I certified and signed the cheques for reasons known to the London Loan and Savings Company.
 Q. When you signed the cheques on that account would you please tell me where the bank book is? A. Mr. Dyas would have the bank book.
 Q. After the Durno transaction was all registered and everything, the
 10 same thing went on, didn't it? A. Except—
 Q. You signed the cheques?
 A. Except from zero on June 1st, the Consolidated Trusts—
 HIS LORDSHIP: Did you open a new account or continue the old?
 A. No, opened a new account.
 MR. WALSH: Who signed the new account?
 A. I signed the new account in the way I have told you.
 Q. And it was called Buckingham account? A. Yes.
 Q. H. A. Morine? A. Yes, Buckingham account.
 Q. The same way in a different book, is that it?
 20 A. You can take it that way.
 Q. And you have neither book?
 A. I have not got the book, Mr. Dyas has it.
 Q. The London Loan regarded you as the man, didn't they?
 MR. SINGER: Please, Mr. Walsh, that is a question for his Lordship to decide.
 MR. WALSH: I would not take it out of his Lordship's hands.
 HIS LORDSHIP: The letters speak for themselves; why trouble?
 MR. WALSH: Might I refer to a letter here?
 A. I was asked to have it that way.
 30 Q. Letter November 30th, 1925? A. Yes.
 Q. (Exhibit 97): "H. A. Morine, Finance Broker" is the heading of the letterpaper:
 "London Loan and Savings Co., London, Ont.
 "Gentlemen: *Re* Buckingham Apartments.
 "Kindly send me statement of the interest account in connection
 "with the above property, and oblige. Yours very truly, H. A.
 "Morine"?
 A. Let me see that, please.
 HIS LORDSHIP: Is that letter in?
 40 MR. WALSH: Yes, Exhibit 97.
 Q. This was after the Durno deal? A. Yes.
 Q. You told his Lordship you never had anything to do in any shape or kind with that property after the Durno deal? A. I did not say that.
 Q. December 2nd, 1925, Mr. Kent wrote you:
 "H. A. Morine, Esq., Toronto, Ont.
 "Dear Sir: *Re* R. S. Durno mortgage D-42.
 "Outside of the balance owing on the agreements for purchase,

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“and the loan on same, the arrears on the \$77,000. mortgage are
“as follows :

“Over paid	\$ 55.72
“Interest on mortgage on over paid from June 1st “ to December 1st, 1925	2,696.96
“Principal Instalment	1,000.00
“ Due Dec. 1st, 1925	<u>\$3,752.68”</u>

Do you remember getting that letter? A. If it is there I got it.

MR. SINGER: If my learned friend will refer to Exhibits 97 to 102 they
all follow one another. 10

MR. WALSH: I will be glad to refer to any one that sheds any light.

Letter dated December 7th, 1925, A. W. Dyas to M. J. Kent :

“Herewith cheque for \$2,696.96, covering interest account in
“connection with the above property to December 1st. If satisfactory
“to you we will forward cheque to cover the instalment of principal
“a little later on. Thanking you, yours very truly, signed A. W.
“Dyas.”

(Exhibit 99.)

Then the reply to that, Mr. Kent writes to Mr. Morine December 8th,
1925 : 20

(Exhibit 100.)

“We are in receipt of your letter enclosing cheque for \$2,696.
“which we have applied on account of the instalment of interest
“which fell due on the above mortgage on the first of December.
“The extra interest on this amount from first December to date
“amounts to \$3.60. There is a balance of \$55.72 which was over
“advanced at the time this loan was put through and there was also
“an instalment of \$1,000. due on principal to first of December.
“A remittance to cover this amount at your earliest convenience
“would much oblige.” 30

Then the reply December 9th, 1925, Exhibit 101 :

“M. J. Kent, London Loan and Savings Co., London, Ont.

“Dear Sir: *Re* R. S. Durno, D-42.

“In reply to yours of the 8th instant, I enclose herewith cheque
“for \$59.32 in payment of extra interest and balance of \$55.72.
“Kindly acknowledge receipt of same.

“ Yours very truly, H. A. Morine.”

Then the reply from Mr. M. J. Kent to H. A. Morine, Exhibit 102.
Is it not quite clear from those letters that Durno had no interest, good, bad or
indifferent— 40

MR. SINGER: I object.

HIS LORDSHIP: No, no.

MR. SINGER: I think my friend should also draw to your Lordship's
attention that those letters are not signed by Mr. Morine; they are signed
with the letter “J”.

MR. WALSH: Dictated by Mr. Morine?

A. They do not bear even the construction which Mr. Walsh desires to put on them; I think the construction would be fair that any money which had accumulated for rent outside of the necessary disbursements would be applied to the payment of London, so that there would be no balance left in the rent account but go to London, and it was the desire of London as expressed that any balance of money should be paid to certain things, just as you were explaining the \$3,000. a while ago, there was a desire to pay the London interest and let the \$3,000. wait until London could fix it up later on; the money that accumulated from the rents over and above the emergent necessities was sent to London to be applied for purposes, and they desired they should be specifically applied on those things, and that is the construction of all those letters you are giving.

10 Q. What did H. A. Morine, Buckingham account, do with the rents in 1923 and 1924 and to June of 1925 whereby there accumulated \$6,000. arrears to the Huron and Erie for interest alone, all the taxes for 1923, 1924 and 1925 and over \$5,000., upwards of \$6,000. of interest to the London Loan on their second and third mortgages?

MR. SINGER: Surely that is not a fair way of putting the question?

HIS LORDSHIP: It is rather complicating matters; split up the question.

20 MR. WALSH: When you were handling the rents and depositing them in the H. A. Morine account? A. Buckingham account.

Q. The name Buckingham never appeared on the bank book?

A. Always H. A. Morine, Buckingham account, always.

Q. Have you a cheque here to show that as the Buckingham account?

A. You know I have not got my cheques; but those cheques, they would always be marked Buckingham account.

Q. Why have you not got those cheques?

A. Away back in 1923 is a different thing, I have not got them; they would come back and be audited or checked up by Mr. Dyas; I have not got 30 them; but no money could be taken out of the bank unless it was endorsed Buckingham account; you know that.

Q. No, I don't know it. What was done with the rents, H. A. Morine, Buckingham account, from August, 1923, down to June 1st, 1925?

A. Every dollar was used in the maintenance of the property and distributed to the interest on principal on mortgages which existed prior to that date from Mr. Renton and all the others, as far as they went, every dollar, every cent; if there was a shortage they were not collected.

40 Q. How is it there was over \$6,000. arrears of interest alone to the Huron and Erie Mortgage Corporation in 1925 and carried forward from 1924, interest alone?

A. Quite evident, because there was not sufficient rent to cover all of the accounts; even the Renton account never went in arrears, it was paid even to your friend, Mr. MacLennan, they were all paid, no arrears.

Q. Why was it then you never paid any interest of any kind on the second and third mortgages for \$35,000. and \$20,000. except the one payment of \$1,300. during the years 1923, 1924 and 1925; why was that?

A. I have no immediate knowledge of that account or the charges under

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—continued.

those rentals, but if they were checked up I do not believe they would verify what you state.

Q. You saw the statements that were put in?

A. I did not see those statements.

Q. They showed large arrears on these mortgages?

A. You asked for the disposal of the money and I have answered it fully.

Q. Can you give any explanation of why the taxes for 1923, 1924 and 1925 were not paid by that apartment?

A. I did not pay the disbursements in connection with the property, and I did not therefore have these things every day before me or at any time 10 before me.

Q. You signed the cheques, why were those arrears not paid?

A. I signed the cheques for the withdrawals, for the vouchers, to cover the vouchers, and later the remittance to London.

HIS LORDSHIP: As a fact, do you know that the taxes were not paid?

A. I did not know, my Lord.

Q. Although you were then interested or Mr. Dyas?

A. I only know that every dollar——

Q. You are not asked that.

MR. WALSH: Do you mean to tell his Lordship, as owner of the property 20 you did not know that the taxes for 1923, 1924 and 1925 were unpaid?

A. I really did not know, and if they were not it was probably shortage of money; I did not know.

Q. Where would the money go to, they were the best renting years, where were the big rents going to?

A. All went into the disbursements of the property, not a cent to any person else.

Q. It was a new property and required no repairs, how would it go into the disbursements of the property?

A. I don't know exactly; I am not familiar with the details of where it 30 went to; your statement that new properties require nothing is not quite correct. New properties require much, when tenants come along.

HIS LORDSHIP: Is it true that the taxes were not paid, that the interest on the first mortgage was not paid? A. No, my Lord.

Q. The interest on the second mortgage and the third mortgage was not paid?

A. No, my Lord; I think the Huron and Erie up to a certain date were fully paid.

MR. WALSH: Tell me why, on May 29th, 1925, you remember you wrote a letter to Cassels, Brock and Kelley: "Now that this property has been 40 sold"—the very day previous to the writing of that letter there was put in evidence a cheque from the London Loan and Savings Co. for \$9,000. to Huron and Erie Mortgage Corporation; what would that be for?

A. If you will show me the cheque I will try to explain it; you asked me about that letter; my letter was written under the firm belief that the abortive sale wiped off the situation, and I so wrote Mr. Kelley with that idea; the other development was by Mr. Kelley explaining it to me——

- Q. That is your explanation? A. That was my idea when I wrote that.
- Q. That cheque is for \$9,800. odd to the Huron and Erie Mortgage Corporation; will you deny that that was for the payment of overdue arrears of principal and interest?
- A. It does not state what it was for. I have no doubt it was the amount due the Huron and Erie for their claim, and probably as second and third mortgagee they protected them; there was no sale to it.
- Q. When did you first hear of the sale proceedings?
- A. When were they taken, 1925 was it?
- 10 Q. Yes; from whom did you first hear of these sale proceedings?
- A. I think it was just prior or about the time when I was asked to deliver the papers to Mr. Wilson, I think it was about that time, it may be a day or so before.
- Q. You had all this in your mind pretty well before, because there was a letter you wrote to London, a nice letter in January?
- A. I think London had stated they were going to take sale proceedings if the thing was not paid; I think it was around about the first of the year somewhere.
- Q. I see a letter here from you to London Loan and Savings Co., dated
20 January 15th, 1925; you mentioned about placing \$1,325.28 to the credit of one of the mortgages and show the balance of interest due that much less—
- “The reason I am asking for this is in connection with the third mortgagee. In the meantime I am coming to London as soon as possible, and I have a very interesting proposition to make to you which I think would be to your advantage.”
- May I point out to you that was January 15th you wrote that letter; you said you were coming up to London as soon as possible, and the next thing I see is the minutes of the Board of Directors of the company on January 20th, 1925, right on the heels of that letter the putting of the mortgages into the
30 solicitor's hands to collect? A. What is the date of the letter?
- Q. Your letter is dated January 15th, 1925 (Exhibit 52). What was your interesting proposition? A. I think the meaning of this letter is—
- HIS LORDSHIP: Confine it to the interesting proposition?
- A. I don't know that it had anything to do with this particular property; I have no recollection; it may have been other business. I have no recollection.
- MR. WALSH: You will notice written right on the very top, it is in the same paragraph concerning the mortgage, and by the way, the sale proceedings were taken under the third mortgage referred to in that paragraph?
- A. I see it.
- 40 Q. The interesting proposition was in connection with that third mortgage, was it not?
- A. I cannot remember what that interesting proposition was; it may have had various things; I cannot remember now that it had anything to do with the property; it may, but I do not remember.
- Q. The next thing was sale proceedings were started, and you were the one that brought the sale proceedings to Melville W. Wilson?
- A. I took down the documents given to me by Mr. Kent.

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Q. Mr. Wilson had done legal work for you?

A. Very, very little; he is a friend of mine of many, many years' standing, but he did very, very little work for me.

Q. He was a friend of yours anyway, was not he?

A. I hope I have a few.

Q. It was taken to him, and then there was an injunction?

A. I was instructed to deliver it to him; I knew nothing why.

Q. There was an injunction served on Cassels, Brock and Kelley to restrain the sale, and they immediately handed it to you when they were served with it; why would they be handing it to you?

10

HIS LORDSHIP: Did they?

MR. WALSH: Yes, I have that letter.

HIS LORDSHIP: Ask him.

MR. WALSH: Did Cassels, Brock and Kelley hand the notice of motion?

A. I have no recollection of it, but if Cassels, Brock & Kelley say they did I would not deny I got it, and if I got it I would deliver it to whoever was solicitor acting for the London Loan, but I have no recollection of it; it would be only me in passing; I had nothing to do with it, and no reason why they should give it to me that I know of.

Q. It is a letter dated April 23rd, 1925, Cassels, Brock to G. A. P. Brick- 20
enden & Co., I am sure I put that letter in.

HIS LORDSHIP: Well, go on.

MR. WALSH: That letter says this: "Cassels, Brock & Kelley, April 23rd, 1925.

"We have been served of notice by special leave of a motion,
"etc. . . . and we have forwarded these papers to Mr. Morine
"to hand them to the solicitor acting for the London Loan in con-
"nection with the sale."

A. That letter is not addressed to me.

Q. No, it is addressed to Mr. Brickenden and it says: "We have forwarded 30
these papers to Mr. Morine to hand them to the solicitor acting for the London
Loan"?

A. If they say they sent them to me I would naturally give them to whoever they were for, but that is an option they have; I did not ask them or know anything about them; I was not interested in the sale.

Q. When you were a fifth mortgagee for \$23,000. and half-owner of the property that you were not interested in the sale?

A. Not interested in the sale proceedings in any way whatsoever.

HIS LORDSHIP: Well, had you been served with a notice of sale as fifth mortgagee? A. I had been served as fifth mortgagee.

40

Q. And you were not interested in the sale?

A. No, go to its conclusion.

MR. WALSH: I think you told Mr. Singer you never heard of Mr. Mac-
lennan's offer to pay up the third mortgage for \$20,000.?

A. I had no knowledge.

Q. You never heard of London Loan refusal of that? A. No.

Q. The reason I ask you this is this, there is a letter amongst Mr. Brick-

enden's production, from Mr. Brickenden to Melville W. Wilson, Barrister, Kent Bldg., April 25th, 1925 :

"We are in receipt of letter from Messrs. Maclennan and Black
"with regard to the above matter, which we are enclosing herewith.
"We have had instructions from the London Loan to refuse this
"offer and are writing to that effect today. We note that the sale
"has been postponed to the 23rd May and would like to hear what
"was said on the motion, etc.—"

You had your office in the Kent Building then ?

10 A. Yes, I have been there twenty years.

Q. And you were a great friend of Mr. Wilson's, were not you ?

A. I do not say a great friend; a friend.

Q. Did Mr. Wilson ever communicate that to you ?

A. No, I never heard of that at all; Mr. Wilson never communicated his legal business to me.

Q. At the time of this sale, what was your interest in that property ?

A. I had a fifth mortgage and I had hoped an interest in the equity over and above the mortgages.

20 Q. Reading from Exhibit 197-A, a special auditor's report, Riddell, Stead, Graham and Hutchison; did you ever state to them, these auditors, you had advanced about fifty thousand for this purpose, "making his personal investment \$85,000." ?

A. At one time I had about \$85,000. cash in that building.

Q. You told the auditors that, Riddell, Stead and Company ?

A. I know of a man coming to see me, I had no hesitation in telling the man my interest; I had at one time over \$85,000. of interest in the property in cash.

HIS LORDSHIP : Is that before or after you borrowed the money from the London Loan ?

30 A. That was after; and that was right down to when the Renton interest came in, and he took his mortgage, represented about one-half of the money which I then had in the property; I had at that time about \$85,000. or \$87,000.

MR. WALSH : That is after all the proceeds of the mortgages had been received by you, over and above that you had \$85,000. in the property ?

A. Not of the mortgages; I said until Renton, before Renton came, Mr. Renton coming in took about one-half, because he shared in one-half of the equity in the property, and up until Mr. Renton's mortgage came I had about \$85,000., between \$85,000. and \$87,000. cash in that property; Mr. Renton's mortgage cut that down by just that much.

40 Q. In other words, this trust fund of the Scottish investors recouped you one-half of your loss ? A. I did not know—

MR. SINGER : That is perhaps argument before your Lordship but I don't think it should be put that way to the witness.

HIS LORDSHIP : Hardly that, the witness has said that when he got the money from Mr. Renton it reduced his interest by that much.

MR. WALSH : In other words, the whole \$46,000. you got from Mr. Renton ?

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A. \$46,000. of Mr. Renton's went to reduce the amount that I had invested in the property in cash, and I took the other half or part of the equity.

Q. After you got Mr. Renton's \$46,000. you had then \$39,000.?

A. I had about \$40,000. odd; I said \$85,000. or \$87,000. I had about an equal amount to the \$46,000.; he had the priority by his mortgage and I had the balance subject to any profits that might be made on the property.

Q. How is it your mortgage is only \$23,000.; did you advance a new \$23,000.?

A. That \$23,000. afterwards was indemnifying me for advances which I might make or did make over and above that for other conditions. 10

MR. SLAGHT: I suppose, my Lord, that long ago on this sort of *ex post facto* matter I ought to draw the Court's attention to the fact that it is no evidence or interest whatsoever as far as my two clients are concerned.

HIS LORDSHIP: No, it is only the evidence that touches your client that will be considered against them.

MR. WALSH: Then at the date of this Durno transaction you had a very very substantial interest in this property?

A. At the date of the Durno sale, the sale proceedings prior to that the only interest I realized I had in the property was any interest I might have in the mechanics' liens which were outstanding according to the instructions of Mr. Kelley; the rest of it had gone. 20

Q. Where was it gone to?

A. I presume from the sale proceedings I was out of it.

Q. I am not talking about legally, but as far as money was concerned you had a very considerable amount of money interest in this property at the time of the Durno transaction? A. The property owed me a lot, yes.

Q. You heard, in answer to his Lordship's question yesterday, the three witnesses called by yourself, they said that in 1923, 1924 and 1925 the property remained about the same value; do you remember they said yes to his Lordship's question; do you remember that? 30

A. I think the property would show very little depreciation in value until the latter part of 1925 when the situation very very rapidly——

Q. No?

A. The last part of 1925 property in that locality began very materially to be affected in value; there were physical reasons for that.

Q. But at the date of this Durno transaction the property at that time was holding its own, was it not?

MR. SINGER: The witnesses do not state that.

HIS LORDSHIP: Do not interrupt; the question is a proper one.

A. At the date of the Durno transaction in June, selling it as they were for \$227,000., it could not be considered as holding its own, there was a very very big drop and I was out. 40

MR. WALSH: And at that time in the Durno transaction you regarded that property as being worth \$310,000.; do you remember telling me that on your examination for discovery; is not that right?

A. At the time the Durno sale took place the property in my opinion

was more valuable than that; the value of property and the realization of property is another thing altogether.

Q. Did you consider that property at the time of the Durno transaction worth at least \$310,000.?

A. I thought at the Durno sale that the people were buying it cheap, sure.

Q. You will notice that the first break between you and Mr. Brickenden about this property is in January, 1927, when you wrote that letter that I interrogated Mr. Brickenden about yesterday, that letter where you said, "pay up to the Huron and Erie or there will be some nice questions arise";
10 that was January 11th, 1927.

MR. SINGER: I object.

HIS LORDSHIP: Show him the letter. The letter requires a lot of explanation.

MR. SINGER: He has no right to suggest to the witness that there was a break with Brickenden and Morine.

MR. WALSH: I will withdraw that; there was no break, there was something held up to him, that is all. It is Exhibit 131, Morine to Hambly, January 10th, you wrote that letter to Mr. Hambly on one page and as Mr. Brickenden says to him on the other.

20 Q. The two paragraphs really do not connect, but the first here is perhaps explainable. I will read this Exhibit before that?

A. I think perhaps you have got the wrong page to that.

Q. This is Exhibit 130: "I am served with the enclosed notice *re* Buckingham Apartments. I am extremely surprised that your people would allow this condition to arise. Of course, it will therefore be necessary for me to place the matter in the hands of my solicitor to take such action as may be necessary to protect my interest, which will involve a considerable amount of expense and which seems to me to be unnecessary. Would it not be wise, therefore, to send a cheque to the Huron and Erie Mortgage Corporation?" And just at
30 that time the Huron and Erie were pressing for their overdue principal and insisted upon having payment, is that correct?

A. The Huron and Erie, through one of their solicitors, had served me notice that they intended to take proceedings against me on the covenant.

Q. You wrote this letter of January 10th, 1927, Exhibit 131, to Mr. Hambly? A. Yes.

Q. "It would appear to me as if this action would be unexplainable from the company's point of view, because if the property is sold, it will only be sold subject to the existing mortgage and not give any chance to wipe out the whole mortgage. Further, I would think it would bring up the question as
40 to how this mortgage is to be treated in your statement with the government and many subjects very unwisely opened up."

And then, Mr. Morine, you had a telephone conversation with Mr. Brickenden, did you not? A. Did I? Does that letter say so?

Q. The next in order is a letter to Salter & Stapells the same day or the next day? A. Yes.

Q. January 11th, 1927, Exhibit 133:

"I am advised by Mr. G. A. P. Brickenden, representing the

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“Consolidated Trusts Corporation at London and am authorized
“to notify you that they will tomorrow, Wednesday, pay at London
“to the Huron and Erie Mortgage Corporation, the amount necessary
“to settle your claim as per your letter of the 7th instant.”

You had a telephone conversation with Mr. Brickenden, didn't you?

A. I was advised by telephone, yes.

Q. At that time, January, 1927, you then wanted to put this property
over on the London Loan for the first time, realizing then that the property
had gone down in value, didn't you?

MR. SINGER: Is that a conclusion to be drawn in that way? 10

HIS LORDSHIP: It is a question as to the witness' understanding at the
time. I cannot see it is very helpful here. The question is quite proper but I
think it is unnecessary.

MR. WALSH: May I put it this way: you were asked at question 1113
on your examination for discovery, talking about the apartment:

“Q. When did it cease to be worth it, after that?

“A. In 1926 and 1927 there was a depreciation of property
“generally in Toronto; this was depreciated too.”

That was right? A. The answer to that letter—

HIS LORDSHIP: That was the answer on the examination for discovery. 20

MR. WALSH: Is that a correct answer?

A. Property had depreciated from about the latter part of 1925 and
continued.

Q. Is that a correct answer where you told me in 1926 and 1927 property
had depreciated and this property depreciated too? A. Yes, depreciated too.

Q. What were you bringing up in this letter, “further, I would think it
would bring up the question as to how this mortgage is to be treated in your
statement with the government and many subjects very unwisely opened up”?
What did you put that in that letter for?

A. I think it is plain there; in 1926, early in 1926, May or June, London 30
had—

HIS LORDSHIP: What is the date of that letter?

MR. WALSH: January 10th, 1927, after he had paid six months' interest.

A. In 1926, in some part of it, I think it may have been July or August,
somewhere like that, London had notified me in conversation that they had
exercised the ownership by the right of their quit claim and they owned
the property.

Q. Who told you that; tell me the man who told you that?

A. Probably different ones.

Q. Who was it told you that, a telephone conversation? 40

A. I did not say it was a telephone conversation.

Q. Who was it? A. When I was in London.

Q. Whom did you see there? A. I saw them all.

Q. Who was it, then?

A. I saw Mr. Hambly and Mr. Baker and Mr. McCormick and all of
them in London; it was general knowledge to them that they had exercised
the ownership of the property in 1926.

Q. Tell me first who told you that they had exercised ownership of the property and that they owned it? A. I would say them all.

Q. If they told you that, is there any explanation why they kept writing after you for the interest?

A. I have already explained that the writing to me for the interest was the result of accounting for their rents, not in the line of ownership to me but accounting for their rents, and they wrote those letters.

Q. Have you any letters from them that say they were the owners of the property? A. No.

10 Q. Have you any letters from them stating that they had exercised the rights of ownership of the property? A. I have no letters, no.

Q. All we get is your word? A. That they told me what I am telling you.

Q. You cannot name me one man?

A. I would say Mr. Hambly, Mr. Baker, Mr. McCormick, I would not say Mr. Robinson and Mr. Hunt because very seldom they entered into matters of that kind. They exercised the ownership of the property from that time on.

Q. When did they exercise ownership of the property; this was the middle of 1926? A. I say it was about the middle of 1926 they told me.

Q. When did they exercise ownership?

20 A. When they exercised ownership they did not tell me; they did not tell me what date they had exercised it from, but on account of the quit claim which they had.

Q. How could they tell you that—you say this quit claim was in trust for the London Loan and Durno, don't you?

A. The quit claim that London had was to the Consolidated Trusts Co. in trust; that is right.

Q. In trust for whom? A. I take it for Mr. Durno and the London Loan.

Q. Did you ever hear of any termination of Mr. Durno's interest in this property? A. The quit claim.

30 MR. SINGER: I think my learned friend is confusing; there are two documents, trust deed and quit claim.

HIS LORDSHIP: I think the questions are all directed to the trust deed.

MR. SINGER: I think so, too, and my learned friend is referring to a quit claim.

HIS LORDSHIP: There is no relation at present between them.

MR. WALSH: Perhaps I have used the wrong word as to the document, but as I understood it the Consolidated Trusts had a deed of trust, and then they had a quit claim and when they exercised the quit claim they became the owners.

40 Q. Did you see all the Directors of the Consolidated Trusts?

A. I never saw any of the Directors of the Consolidated Trusts except those of London Loan, and they were all of the Consolidated Trusts.

Q. No?

A. I never called on them as a body of the Consolidated Trusts; I never attended a meeting of Consolidated Trusts.

MR. WALSH: In your statement of defence you set forth what the trusts were; do you remember that? A. I do not remember it.

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Q. They hold it in trust for Durno and the London Loan—in paragraph 16 of your statement of defence you say : “the deed given to the Consolidated Trusts Corporation in trust by the said R. S. Durno, registered as number 11079 W. F., was given in pursuance of an arrangement whereby said Consolidated Trusts Corporation was to hold the said lands in trust for the said London Loan and Savings Co. of Canada and the said Robert S. Durno”?

A. I think that is right.

Q. You never heard of any conveyance of any kind whatsoever from the Consolidated Trusts to the London Loan and Savings Company, did you?

A. No, I never heard of any conveyance from the Consolidated Trusts 10
to the London Loan and Savings Co.

Q. You never heard of any notice of any kind or any papers of any kind ever having been signed by the London Loan and Savings Company or Consolidated Trusts Co. to Durno, did you?

A. I never had any communication with Durno until—

Q. As a matter of fact, all communications after the Durno sale continued to H. A. Morine, didn't they? A. I don't know.

Q. We have the ones on record from the files and they are all H. A. Morine? A. I know the ones that came to me, I don't know anybody else.

—Court adjourned at 12.50 p.m. to 2.00 p.m. 20

—Court resumed at 2.00 p.m., December 18th, 1931.

H. A. MORINE, Cross-Examination continued.

MR. WALSH: Have you the three agreements you said you would get for me? A. Two agreements.

Q. You have not got the copy? A. I have not got the copy.

Q. You now produce two agreements, one dated February 13th, 1923, and the other the 8th June, 1923; these agreements were executed?

A. Yes, they are executed.

EXHIBIT No. 300: Agreement dated February 13th, 1923, between Horace A. Morine and Samuel B. Green. 30

EXHIBIT No. 301: Agreement dated the 8th June, 1923, between Samuel B. Green and H. A. Morine.

MR. SINGER: My objection as to the relevancy of these agreements will be noted.

HIS LORDSHIP: I will receive them subject to objection. Go on.

MR. WALSH: The agreement between Horace A. Morine of the first part and Samuel B. Green of the second part recites by agreement dated 1st May, 1922, the parties did hereto agree each with the other to become partners in the purchase, improvement and management of certain lands, and describes them; and whereas pursuant to the terms of the said agreement the party hereto of the second part has proceeded with the erection of an apartment house; and whereas in pursuance of the said agreement the party hereto of the second part agreed to contribute certain sums of money for capital expenditures to be used in the construction of said apartment house upon mutual agreement between the said parties hereto; and whereas the said party hereto of the second part has failed to contribute his portion of the capital expenditure towards 40

the construction and erection of the said building and has requested the party hereto of the first part to procure additional capital to be used in construction of the said apartment house upon the security of a second mortgage, etc., etc. (Reads.) "And whereas the party hereto of the first part has succeeded in negotiating a loan of \$35,000. from the London Loan and Savings Co. of Canada, etc. (Reads.)

10 "Now therefore this indenture witnesseth that in consideration of the premises and of the execution of the said mortgage by the party hereto of the first part, the party hereto of the second part doth hereby agree to pay to the party hereto of the first part an amount equal to 25 per cent of the amount of the said mortgage loan of \$35,000. as a bonus for the arranging and negotiating of the said loan, the same to be charged against the property at the absolute discretion of the party hereto of the first part from the proceeds of the said mortgage loan of \$35,000., and doth hereby agree that the legal costs in connection with the negotiating of the said mortgage shall be charged against the proceeds, etc." (Reads.)

Q. We put the cheque in and you received the proceeds of that \$35,000. loan and it went to your bank account.

HIS LORDSHIP: The cheque is in.

20 MR. WALSH: The next agreement is dated the 8th June, 1923. It recites the first agreement made the 1st of May, 1922, and it has a great number of recitals in it and it says, "the said party of the second part has consented to release the party of the first part from such obligation upon and subject to the conditions hereinafter set forth; and whereas under the provisions of the said agreement the party hereto of the first part was to receive for his services in connection with the erection of the said building ten per cent of the cost of the same in addition to his share in the profits of the business and was to be entitled to manage and lease the said property and collect the rents accruing therefrom and was to receive therefor a commission of five per cent of the

30 gross amount of the rents collected in addition to his share of the said profits" ?

A. That is not me; you mean Mr. Green was to get that.

Q. Mr. Green waives that under this agreement? A. Yes.

Q. And then the party of the first part forever waives, releases and quit claims "to any claim he may now or hereafter have for his services in connection with the erection of the said apartment building and any claim to the said ten per cent of the cost of the erection of the same, and doth also waive, release and quit claim any interest which he may now or hereafter have in the profits of the said apartment house or in the management of the same, and doth

40 also waive any right obtained by him under the said agreement to manage the said apartment house property or to lease the same or to collect the rents thereon, and to any claim for commission he might have obtained under the said agreement for collecting the rents upon the said property."

That agreement was made? A. Yes.

Q. And he executed the deed to you of the property?

A. There was a deed, yes.

Q. And that ended the interest of Mr. Green? A. Yes.

Q. The first agreement that is referred to in all those recitals, right down

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to the last agreement, the first May, 1922, where is that document?

A. They never were executed, and that is the first agreement; I have not got the copy; they never were executed and any draft that the solicitors had I suppose they would probably have.

Q. The agreement of the 1st May, 1922, provides for the partnership; I have a copy of it, that last agreement you got provides for the cancellation of it; I want to know about it?

A. There never was any agreement entered into, because it speaks for itself; Mr. Green never came over with any money, and therefore it never existed.

Q. It was signed? A. It never was signed.

Q. I showed you that oath you made?

A. That is probably there, but it is an error; I have no recollection of any agreement ever having been signed except those two you have.

HIS LORDSHIP: It is rather singular, the agreement of 1923 should recite it and never signed.

MR. WALSH: I have served a notice to produce that document; have I laid sufficient basis to put in a copy?

HIS LORDSHIP: How are you going to prove it is a copy?

MR. WALSH: By showing it to Mr. Morine.

HIS LORDSHIP: Oh—

A. I have no recollection of it.

MR. WALSH: You told me in your examination which I read to his Lordship before I closed our case that you never heard of Durno going up to see the property?

A. I don't think I never heard; I said I did not know whether he did or not; I did not take Mr. Durno there.

Q. You never heard of any interest notices or any documents of any kind ever being sent to Durno after the date of the sale?

A. I had nothing to do with him after the sale or before the sale.

Q. You never heard of any? A. No.

Q. You mentioned about some quit claim deed, and I was kind of interested when you gave your testimony in that, when you said that bundle of productions that you got, the bundle of papers you got that from your stenographer, did you not, and they were a surprise to you, I think you said?

A. Yes.

Q. You don't know where they came from?

A. I don't know how they got to my office.

Q. You don't know who you got them from?

A. I don't know how they got to my office.

Q. It is a great surprise to you?

A. It was a surprise when I found them.

Q. You don't know how they ever got to your office? A. No.

Q. Did you ever see any copy other than the one you ever had; was it ever in duplicate?

A. I saw the quit claim, what was said to be a quit claim, when they met in Mr. Wilson's office.

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- Q. Is that the first time you ever saw it?
 A. That is the first time I ever saw that document; if that was a correct copy of the other one I don't know.
- Q. Did you produce your own at that time? A. What own?
 Q. The one you had.
 A. I did not have one; I told you I did not discover it.
- Q. Look at this (Exhibit 299)? A. No, I did not produce that document.
 Q. You don't know how many years this was in your possession?
 A. It was not a matter of years, I say it may be the last of 1927. What
 10 was the date of it? It may have been 1928, maybe 1927, I cannot say when that came.
- Q. Your recollection was that that bundle of papers——
 A. That was in my office at the time, I don't know when.
 Q. It was a long time after the Durno sale in 1927 or 1928, no account of it? A. That is right.
 Q. Some official of the company might have been in your office and left them there; that is your explanation? A. Might have.
 Q. That is the only explanation you have?
 A. That is all I can make; I don't know how they got there; I did not
 20 bring them there.
 Q. We will go back a little; you will remember when you were examined for discovery on the 15th June, 1931? A. Yes.
 Q. You remember I was very inquisitive on that occasion? A. Yes.
 Q. Do you remember you produced a quit claim deed on that occasion?
 A. It was at your discovery.
 Q. You produced it for me then? A. Yes.
 Q. Do you remember these words, question 680 :
 "Q. Well, could you tell me how you got this quit claim deed
 from "Mr. Kent? A. Beg pardon?
 30 "Q. 681. How did you get this quit claim deed from Mr.
 "Kent"——
 I had better read the questions before that; I will go back to question 655 :
 "Q. 655. Now your solicitor produces to me, Mr. Morine, a
 "quit claim deed which says it is in duplicate dated the 8th July,
 "1925, between Robert S. Durno, builder, of the first part, and
 "Consolidated Trusts Corporation of the second part—whose
 "signature is that? A. Robert S. Durno's.
 "Q. 656. Do you know his signature? A. Yes, I do; that is it.
 "Q. 657. And was that executed on the 8th day of July, 1925?
 40 "A. I don't know the date of the execution; I did not see it
 "executed.
 "Q. 658. Well, when was it executed, what date?
 "A. I do not know.
 "Q. 659. Well, was it in the month of July? A. So it says here.
 "Q. 660. Who is Margaret M. Green?
 "A. M. W. Wilson's stenographer."

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Then you were asked question 663 :

“Well, now, from whom did you get this ?

“A. From whom did I get that ?

“Q. 664. Yes. A. London Loan and Savings Co.

“Q. 665. Gave you this ?

“A. It was included in other papers—included in the London
“Loan and Savings Co. papers.

“Q. 666. Do you want to make any explanation to the question
“I have asked, if there is any explanation you want to make—? 10

“A. In the London Loan and Savings papers.

“Q. 667. Who did you get this from—that is the point I am
“asking—and where ?

“A. M. J. Kent had it in his possession.

“Q. 668. When ?

“A. Back in September or August of 1925—around that vicinity
“—what is the date of that ?

“Q. 669. The 8th of July, 1925 ?

“A. Well, about September or August—somewhere around
“about that—1925.

“Q. 670. Of 1925 ? A. Yes.” 20

Then you were asked at question 713 :

“Q. And you say the first you heard of that quit claim deed
“was in August or September or thereabouts, 1925 ?

“A. Well, around about that. It might be the end of July,
“but some time, speaking generally, some time about July, August
“or September.”

Having read those questions to you, Mr. Morine, which is correct, what you
said to his Lordship that some official put them in your office and you don't
know the source whence they came ?

A. You are confusing two statements; the first time that I saw those 30
papers I have already stated that I was in London, and Mr. Kent asked me
to check over with his accountant the \$627., and the first time I saw those
papers, not when they came to my possession, the first time I saw those papers
was in London about that time.

Q. I put it to you, we have the letter of Mr. Kent, dated October 1st,
your counsel read to his Lordship, to the Registrar of the Department, he says :
“I have just yesterday returned to the office and I find that the Durno deal
has gone through”; it has been sworn that he was away for three months
from that office; I put it to you that you never at any time got those documents
from Mr. Kent in July, August or September, or any time about then ? 40

A. I beg your pardon—

MR. SINGER : First, the witness never said in his examination for discovery
or otherwise that he received those documents from Mr. Kent in July or August.
Might I also go on to say—

HIS LORDSHIP : What document is referred to in the questions and
answers which were read ?

MR. SINGER: This bundle, including the quit claim that has been filed as an exhibit. My learned friend has deliberately left out questions 683 to 703 which cover this whole point which he went into very fully and explained how these papers came into his possession.

HIS LORDSHIP: You can bring that out in your re-examination, but Mr. Walsh is perfectly in order in reading these; they are complete apparently and if there is any explanation you can bring it out.

MR. SINGER: Except the chief objection was that Mr. Walsh said that the witness said he had received those papers from Mr. Kent in July and the 10 witness does not say so and the examination does not say so.

HIS LORDSHIP: Counsel should not make any mis-statements. Read any questions that justify that statement that he said June or July.

MR. SINGER: That he received it from Mr. Kent; it is question 667 he is referring to evidently.

MR. WALSH: I will read any question Mr. Singer wants.

"Q. 667. Who did you get this from—that is the point I am "making—and where? A. M. J. Kent had it in his possession."

That was the quit claim deed which he then produced—

"Q. 668. When?

20 "A. Back in September or August of 1925—around that "vicinity. What is the date of that?

"Q. 669. The 8th of July, 1925?

"A. Well, about September or August—somewhere around "that—1925.

"Q. 670. Of 1925? A. Yes."

MR. SINGER: I am still trying to find the question my learned friend referred to where the witness said he received those papers from Mr. Kent.

MR. WALSH: Question 680.

MR. SINGER: You did not read that before.

30 MR. WALSH:

"Q. 680. Well, could you tell me how you got this quit claim "deed from Mr. Kent? A. Beg pardon?

"Q. 681. How did you get this quit claim deed from Mr. Kent?

"A. When—that was in the papers—when I first saw that it "was in the papers in London, with the other papers, the statement "of accounts, the accepted offer to purchase; they were all together "there in Mr. Kent's folder, going through the folder with me.

"Q. 682. Did he have the two copies or one copy?

"A. That is all I saw, one copy.

40 "Q. 683. It says it is in duplicate, Mr. Morine. Did you see "two copies in his file or just one?

"A. I saw that one copy with the other papers; the other papers "were there too; they were all together.

"Q. 684. And you could not say whether there were two copies "or one there?

"A. All I saw was the papers that were rolled up together; "they were all there.

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“Q. 685. Well, are they all rolled up just as you got them from
“Mr. Kent now?”

“A. Well, all the papers that were with Mr. Kent that I saw
“are there (indicating bundle of papers). There were some other
“documents there too; they were all together.”

HIS LORDSHIP: Well, go on.

MR. WALSH: How many did you see there?

MR. SINGER: He goes on.

HIS LORDSHIP: Go on and ask the question.

MR. WALSH: How many did you see of those papers up there? 10

A. When I saw those——

HIS LORDSHIP: You are asked a simple short question?

A. That bundle as it was——

HIS LORDSHIP: You are asked was it one or two of these copies of the
quit claim deed? A. Just that bundle which included one copy.

MR. WALSH: Do you remember telling me on your examination for
discovery that Mr. Kent knew the Buckingham Apartments very well?

A. Very well.

Q. I think, to use your own language, he knew practically every brick
in it? A. I think so. 20

Q. And Mr. Kent's valuation as noted by the auditors on that mortgage
statement as an Exhibit here, M. J. Kent's valuation \$200,000.——

MR. SINGER: I think your Lordship ruled that that entry was not admis-
sible, was not in Mr. Kent's handwriting, and my learned friend has not
proved any valuation by Mr. Kent, and has no right to refer to it as a valuation
by Mr. Kent.

HIS LORDSHIP: I think you are perfectly right.

MR. SLAGHT: Nor has it been proved at all that my learned friend has
included in his statement, “as noted by the auditors”——

HIS LORDSHIP: I rule it is not admissible anyway. 30

Mr Walsh: I won't ask that.

Q. Mr. Slaght asked you about the Fetterley valuation, and I think
you told him, “I sent it to London along with the application”; was that
right? A. Yes.

Q. You sent it there to them along with the application? A. Yes.

Q. Did you send any letter with it?

A. I have no recollection of sending a letter; the applications, they were
in the hands of the London Loan and Savings Co. two or three days before.

HIS LORDSHIP: Where is the application?

MR. WALSH: It is in as an Exhibit. 40

Q. Did not you bring that application up to London with you? A. No.

Q. What did you bring up to London with you?

A. That application and the valuation were in London when I went up
to London.

Q. How long had they been in London before you were up?

A. I should say a couple of days, two or three days; the date of the
application will show the date of the loan also.

- Q. You say they were up there a couple of days? A. Yes.
- Q. Would you be surprised to hear your application is dated the 10th, and the Board meeting was on the 12th; is it not a fact you brought that application up with you?
- A. No, not a fact; the application was in London.
- Q. If it was in London it practically got there the train ahead of you?
- A. I don't know when the train arrived.
- Q. Mr. Fetterley's valuation you say went along with the application?
- A. Yes.
- 10 Q. Both together? A. Yes.
- Q. You were invited into the Board meeting, you told us that; you remember paying Mr. Brickenden his fees in London when you were up there—
- Questions 537 to 544, I will read them :
- “Q. 537. Have you the exact date that that money was paid to “Brickenden & Co.? A. About Feb. 13th.
- “Q. 538. Who paid it? A. I did.
- “Q. 539. Yourself personally? A. Yes.
- “Q. 540. Where?
- “A. My opinion is in London. I cannot recall definitely; I
- 20 “would say in London.
- “Q. 541. That is your recollection? A. Yes.
- “Q. 542. Paid to whom? A. Mr. Brickenden.
- “Q. 543. Personally? A. Yes.
- “Q. 544. Was anybody present but just the two of you?
- “A. I have no recollection.”
- A. I think that is right.
- Q. I think you told me you brought your cheque back from London for the \$20,000. mortgage too? A. I said that.
- Q. Before any papers were registered? A. I said that, yes.
- 30 Q. There are a couple of questions I want to ask about Mr. Maclennan; you denied Mr. Maclennan's testimony; could you tell his Lordship what was the explanation for the draft letter you sent to the London Loan and Savings Co. to prevent Mr. Maclennan from getting any information; you asked him to get the consent of either Mr. Dyas or Mr. Renton before any information would be given? A. Will you show me the letter?
- Q. Can you give his Lordship an explanation of why you tried to block Mr. Maclennan?
- A. I never tried to block Mr. Maclennan from any information he wanted at any time.
- 40 Q. In 1923 your second mortgage or third mortgage for \$20,000. to the London Loan became due; do you remember that?
- A. If that is the duration of the mortgage, I am not sure.
- Q. Were you ever asked to pay it? A. No, I was never asked to pay it.
- Q. Any demand ever made on you? A. No.
- Q. Were you at that time financially able to pay that mortgage?
- A. It would have been arranged.
- Q. I suppose that answer would cover when the sale proceedings were

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taken in 1925 against you, if you had been pressed then by a suit on the covenant for the payment of the principal and interest due, you could have paid it?

A. It would have been arranged in some manner.

HIS LORDSHIP: Has not he already said that? However, go on.

A. I have already said that.

MR. WALSH: You were telling his Lordship yesterday you knew Mr. Durno to be a very considerable builder? A. Yes.

Q. Of houses, large and small? A. Reasonably large and small.

Q. Would I be right in saying on April 9th, 1924, at that time he got that he was practically a man of straw? A. I don't think so. 10

Q. Will you tell his Lordship why you wrote this letter, Exhibit 181, April 9th, 1925:

"M. J. Kent. *Re* R. S. Durno—St. Ives Crescent.

"In reply to your letter of the 8th, I have your instructions.

"I took up the matter and I am assured that a new cheque has been

"sent to cover this. I have not much faith that the new cheque will

"even be taken up on presentation. If you have received the cheque

"and have put it through your bank and you fail to have it honored,

"return it to me together with the one which has been protested, and

"the mortgage which you hold, and I will take proceedings to collect." 20

Is that a fair estimation by H. A. Morine of R. S. Durno?

A. That was not an estimation of Durno, it was an estimation on the cheque, and there may have been reason, but that is my letter.

Q. If a man could not pay a cheque for overdue interest on April 9th, 1924, he would be a man of straw in taking over an apartment at \$225,000., would not he? A. He did pay the cheque, and the cheque was not delayed.

Q. You were sincere when you wrote that to Mr. Kent, that you had not much faith in him?

A. I did not say I had not much faith in him; I said I had not much faith in that cheque, and there were reasons perhaps why I expressed that then, 30 but I don't know them now; the cheque as a matter of fact—

Q. By the way, Mr. Deeth that gave evidence yesterday, he was a friend of yours?

A. A business man that I had done business with for a number of years.

Q. Much, Mr. Morine? A. Yes, very considerable.

Q. Is it not a fact that when they went bankrupt you, H. A. Morine, held a fourth mortgage for \$25,000. on the Ernescliffe, a third mortgage of \$10,000. on 47 Marion St.; a second mortgage for \$7,000. on 68 Baby Point Rd.; a second mortgage of \$5,000. on 233 Riverside; a second mortgage for \$5,000.; and a third mortgage for \$3,000. on No. 9 Le Strange Place? 40

A. Let me see those.

Q. When your friend Deeth and Sons went into the receivers, that was the condition of affairs, was it not?

A. Mr. Deeth who was here is not in the receiver's hands, the firm. I hold no mortgage on Sorauren Ave., I hold no mortgage on 233 Riverside that you have here; I hold no mortgage on Thurloe Ave.; I hold no mortgage on Sachel Villa; I hold no mortgage on Marion St.; I hold no mortgage on 595

St. Clair Ave., nor on 873-877 St. Clair Ave.; I did have a \$25,000. collateral security on the Ernescliffe to cover building advances made from time to time; out of your list I did have mortgages on a house on Baby Point, second mortgage advance, building advance, and I have been making building advances to many hundreds for years and years, and that was part of a building advance; the rest of them I do not hold; they were discharged.

Q. So Moffatt, Hudson & Company, the trustees, got that information from somebody?

MR. SINGER: Is this a second-hand way of getting evidence?

10 MR. WALSH: In any event you did have those mortgages at some time or other?

A. During the years of building business I have held many mortgages, of which there have been discharges.

HIS LORDSHIP: These mortgages Mr. Walsh asked you about; at some time or other you held those mortgages?

A. Some of them I had and some of them I never had.

MR. WALSH: You came to London June 23rd, a telephone conversation was sent for you to come to London?

A. I was asked to come to London probably the day before the 23rd.

20 Q. Who sent for you? A. I could not say who telephoned.

Q. Whom did you talk to when you got to London?

A. I went before the Board.

Q. Whom did you talk to there before the Board on June 23rd, 1925?

A. Mr. McCormick, Mr. Baker and Mr. Robinson and—

Q. Give us somebody specifically you spoke to?

A. There was no specific talk, it would be in the Board room, they would be all more or less talking.

Q. Put your finger on somebody?

30 A. I could not put my finger on any one individual that carried it on before the Board in the usual way in the Board room.

Q. Did you have any discussion of the liens? A. What date was that?

Q. On June 23rd, 1925—did you have any discussion then about the liens?

A. The discussion was that I had removed the liens, that I had said I would remove prior, earlier in the month.

Q. When was the first time you ever heard of this Durno offer?

40 A. About the 17th or the 16th June when Mr. Durno came in and said that he was disposed to make an offer for the property, and I took him down to Mr. Wilson; that is the first time I heard of Mr. Durno's desire; I should imagine the 17th probably of June.

Q. Before that you had the liens all discharged, didn't you, before you had heard of the Durno offer, according to you you had discharged all the liens? A. Discharged all the liens about the 11th of the month.

Q. Why were you discharging them then?

A. Because I said I would discharge them.

Q. You were getting things preparatory to the deal going through?

A. Nothing preparatory known or thought of as far as I was concerned.

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Q. You were the owner of the building according to this agreement; you had the money to finance the building with; will you tell his Lordship why you took an assignment of these liens to A. Neville Morine?

A. Those liens were unknown qualities to me.

Q. Unknown what?

A. Unknown qualities to me; when I took that agreement from Mr. Green, they came in as a result of Mr. Green's contracts or otherwise.

Q. You were a partner with him, don't forget?

A. I had no checking of the accounts of construction in any way whatsoever. 10

Q. You took a deed to yourself as partner and you make a mortgage, Mr. Green was your partner, you said you told Mr. Kent when you got the \$35,000. mortgage, I wrote it down here, Mr. Kent knew I was the registered owner and I explained to Kent then that the \$35,000. was being arranged on account of the shortage of my other partner? A. That is right.

Q. And these liens were contracted by the partnership of Green and Morine?

A. Not to my knowledge; Mr. Green was the constructor of the property; I knew nothing about the construction, never paid a dollar out in connection with the construction of the property until it got down to June, and that is probably why the agreement was made, he had failed to keep these up, and I had never financed nor negotiated with any builder, contractor or supplier— 20

Q. What did you pay for these liens, 50 cents on the dollar or less?

A. Some more; I think 50 cents would be the least, and they went from that up.

Q. Will you say approximately 50 cents?

A. No; they went up from that to a dollar.

Q. You paid them long before June, 1925, didn't you?

A. I do not really know the date they were taken over, but the assignment will show. 30

Q. When did you take them over?

A. If you will take the assignment, I don't know.

Q. I would say you took them over in 1924, would not you?

A. I would say to that, I don't know.

Q. You were being examined for discovery in the mechanics' liens in 9th November, 1923, would not I be fair in saying that you had straightened up in the liens in the year 1924 when you had your investment of \$85,000. in the property?

A. There are some of the liens that were taken over, was that November?

Q. Yes. A. It was considerably after, probably in 1924. 40

Q. And that was included in your investment of \$85,000., was it not?

A. Well, possibly so; I had \$85,000. in it.

MR. SLAGHT: Some did not go on till 1925?

A. And other things followed on as a result of those claims; I don't know.

MR. WALSH: The London Loan knew, of course, you had taken an assignment of all the liens? A. I don't know what the London Loan knew.

Q. Did you tell them that?

A. I don't remember of having any conversation with them.

Q. Did not you tell the London Loan you had taken over those liens?

A. In November?

Q. Yes.

A. I don't remember having a conversation with London; I got nothing with London after this, I don't remember having any conversation with them regarding those.

Q. Do you remember May 20th, 1924, writing, Exhibit 41: "Re Green G-41; these are dead"? A. Yes.

10 Q. What did that refer to?

A. Referred to liens prior to advance of the \$20,000., and they were all dead, there was nothing on when the London \$20,000. mortgage was taken over.

Q. That was a year and six months after that \$20,000. mortgage of the London Loan?

A. That referred to the liens which were before the London Loan \$20,000. mortgage, when the London \$20,000. mortgage was on there were no liens alive.

Q. When did you hear about the London Loan taking over the \$150,000. mortgage?

20 A. I never heard that until the May Rutherford matter; I never heard of it prior to that.

Q. Notwithstanding all your dealings with the Buckingham Apartments and notwithstanding the collection of the rents and everything else, you say you never heard that?

A. I have said I never heard of it until that date.

Q. In this Rutherford deal, was the draft deed and mortgages ever sent to you?

A. No—hold on, wait, a draft was sent to be delivered to Tom Wilson and I delivered it to Mr. Wilson, a package for Mr. Wilson, that is right.

Q. I got these from Mr. Wilson, there is the letter?

30 A. I delivered the package to Mr. Wilson, sent to me to deliver to Mr. Wilson, and I delivered it to Mr. Wilson.

Q. It has been sworn by Mr. Brickenden that this deal of Rutherford's came through H. A. Morine, is that right or wrong? A. Certainly wrong.

Q. They knew where to send the draft deed to?

A. I think you are making a mistake.

MR. SINGER: I don't think Mr. Brickenden said yesterday the Rutherford deal came through H. A. Morine?

40 HIS LORDSHIP: We will see about that. He said the Lymberry deal came from Morine. I cannot find, Mr. Walsh, anything about the Rutherford; it is repeated in two places that the Lymberry deal came from Morine.

MR. SINGER: Yes, my Lord, that is the statement; I feel quite certain the other statement was not made.

MR. WALSH: We will put it this way: Mr. Brickenden's office evidently knew where to send it to, anyway?

A. That is Mr. Brickenden's office; I did not ask him to send it to me.

Q. He knew where to send it to?

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A. That is Mr. Brickenden, not me; I delivered the message the same as I would for you.

Q. There is no message at all about it? A. The draft deed.

Q. No, there is a letter April 17th, 1928, Brickenden to H. A. Morine, Esq., Kent Building, *re* Consolidated Trusts Corporation :

“We are enclosing herewith draft deed from the Consolidated Trusts Corporation to May Rutherford, also mortgage in duplicate from May Rutherford to the London Loan and Savings Co. of Canada, to be executed by her”——

nothing about Wilson or anybody else? 10

A. Mr. T. H. Wilson was the man that was handling.

HIS LORDSHIP : Did you see that letter?

A. I have no doubt that letter came with the documents and was delivered.

Q. That is not the question; did you see that letter?

A. I have no doubt I saw it.

EXHIBIT 302 : Letter dated 17th April, 1928, from G. A. P. Brickenden & Co. to H. A. Morine.

MR. WALSH : The very deed that was in that is dated the 19th April?

A. I have no doubt if that was in the letter that was there too. 20

Q. I want to just show you this form? A. Yes, no doubt about it.

Q. That draft that was enclosed was from the Consolidated Trusts Corporation, Trustee, Grantor of the first part, to May Rutherford, to have and to hold to the Grantee, subject to all municipal taxes and subject also to two mortgages to the London Loan and Savings Co. of Canada, upon which there is now owing the sum of \$235,000.—right in the draft deed; is not that right?

MR. SINGER : My learned friend has not shown this was the deed enclosed in the letter.

HIS LORDSHIP : Ask the witness. 30

MR. WALSH : Is that the deed enclosed in it?

A. I cannot recognize that deed, but whatever was enclosed you will have to get from T. H. Wilson.

Q. You see that letter is addressed to you, enclosing the draft deed; have you that draft deed with you? A. I have no draft deed.

Q. I produce to you this draft deed? A. I cannot recognize that deed.

Q. You do not recollect the draft deed subject to two mortgages to the London Loan and Savings Company?

A. I am positive I never read the draft deeds if they came.

Q. You were not interested in the transaction? 40

A. Not in that particular one, but I am positive I never read any draft deed.

Q. You had a very great interest in this?

A. No, my interest was in the new mortgage.

Q. You had such an interest in it that what killed the deal was an agreement dated the 20th April, 1928, between May Rutherford and one Solomon King; look at that agreement? A. I never saw it.

Q. Look at it? A. I never saw that before in my life.

Q. Did you ever hear of it?

A. As between May Rutherford and Solomon King?

Q. Yes.

A. I never heard of a deal between May Rutherford and Solomon King.

Q. Did not you hear of that? A. No.

Q. Did you ever hear that Solomon King was to collect the rents of the apartment?

HIS LORDSHIP: That has been given here by some person that for a certain length of time, so as to enable the money to be raised, the rents were to be not touched by the London Loan Company so as to enable them to raise the initial payment I suppose on the place.

MR. WALSH: That is the reason why I refer to this agreement. Do you recall that the arrangement with Solomon King was that, after satisfying or making due provision for all claims whatsoever in connection with the first mortgage—

MR. SINGER: Surely my friend cannot read from this agreement.

HIS LORDSHIP: He is asking a question; he is asking does he recall that.

MR. WALSH: Do you recall that Solomon King was to be the manager of the property? A. I did not hear and I did not know.

Q. Did you not hear that Solomon King, after satisfying or making due provision for all claims whatsoever in connection with the first mortgage and with the maintenance and operation of the apartment that he should during the term of the engagement once in every month apply and pay to the second mortgagee all remaining monies on hand in reduction of the principal and interest of the second mortgage, did you ever hear that?

A. I did not know, and I did not hear that.

Q. Is it the fact that you wanted to still run the Buckingham Apartments as manager instead of Solomon King that the Rutherford deal did not go through? A. I never heard of such a thing.

Q. You never wanted to continue to manage it?

A. I never heard that suggestion till you made it.

Q. Did you ever hear the suggestion that May Rutherford had not the money? A. I never heard of May Rutherford not having the money.

Q. Did you ever hear of May Rutherford having the money? A. No.

Q. Never saw her money? A. No.

Q. I think the thing is summed up in your letter of June 25th, 1928, put in as Exhibit in this action, Exhibit 164, where you talk about this deal, and these are your concluding words: "This therefore makes a glorious mess and prevents the sale of the second mortgage."

A. What is the first part of the letter?

Q. Exhibit 164, H. A. Morine to G. A. P. Brickenden:

"The prospects of getting the sale of the Buckingham Apartments through by taking over a mortgage as originally proposed, appears to be farther away than ever."

and you go on to say: "This therefore makes a glorious mess"—does that size up the situation?

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 33.

H. A.
Morine,
Cross-
Examination
by Mr.
Walsh,
18th Decem-
ber, 1931.

—continued.

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 33.
H. A.
Moline,
Cross-
Examination
by Mr.
Walsh,
18th Decem-
ber, 1931.

—continued.

A. No, that does not size the situation; it refers to a particular mortgage. You are reading in a lot.

Q. I got the tax certificate from the City Hall in connection with taxes, 1923 taxes, 1924 taxes and 1925 taxes, and it shows the payments made in connection with those, when they were eventually paid, look at that?

A. I have no doubt if the City Hall gave you that that they would be right; I know nothing about it.

Q. Do you dispute it? A. I do not dispute the City Hall.

HIS LORDSHIP: That does not prove it.

MR. WALSH: It says the taxes for 1923 were \$431.94, and it shows their 10 payment on the 8th June—

MR. SINGER: Is my learned friend trying to get this document in?

HIS LORDSHIP: It cannot go in as an Exhibit.

MR. WALSH: They were paid on the 8th June, 1925, \$431.94?

A. Not paid by me.

Q. They were paid by Mr. Wilson with London Loan money?

A. I don't know who paid them.

Q. I notice for 1924 taxes there were no payments made whatever in connection with them until the 7th February, 1926; what do you say as to that?

A. I did not pay them. 20

Q. Mr. Gray tells me it was your cheque that went to pay these taxes, your cheques went to pay the 1924 taxes that were paid in 1926?

A. Mr. Gray makes a mis-statement.

HIS LORDSHIP: Do you say that is not correct?

A. Not my personal cheque.

MR. WALSH: Was it H. A. Moline, Buckingham account?

A. It may have been Buckingham account but not H. A. Moline.

HIS LORDSHIP: You would sign the cheque?

A. Yes, issued out of Buckingham rents.

MR. WALSH: Taxes for 1924 were \$2,517.26 and were paid as follows: 30

HIS LORDSHIP: How can you put that in?

MR. WALSH: They were paid out of the rents by H. A. Moline cheques.

HIS LORDSHIP: That document does not prove itself.

MR. WALSH: You have not got the cheques, H. A. Moline, Buckingham account? A. No, I never kept them; I did not keep the accounts.

Q. You never kept any cheques?

A. I never kept any cheques in connection with the Buckingham account.

Q. You have no books, no bank books or any other books or documents showing money transactions of the Buckingham Apartments?

A. From what time are you talking? 40

Q. From 1922, 1923, 1924 and 1925.

A. I have a Buckingham statement, I have no cheques as rendered; I have a Buckingham statement of disbursement of the monies.

Q. Where is your ledger account? A. I kept no ledger account.

Q. Where was your cash book? A. I kept no cash book.

Q. Kept no day book nor journal?

A. I kept no day book and kept no journal; each individual transaction took care of itself in the regular way.

Q. You have no bank book for that period? A. In 1923?

Q. 1924 or 1925?

A. I have nothing connected with Buckingham Apartments.

Q. You have no cheques for that period? A. For the Buckingham, no.

Q. The only thing you have is that memorandum?

A. Of disbursements on Buckingham.

Q. Which memorandum you refused to produce to me on your examination for discovery; is that right? A. On my solicitor's advice.

Q. Have you any explanation to give his Lordship why Mr. Kent would write a letter October 1st, 1925, to the Department—

HIS LORDSHIP: It is not for him to give explanations.

MR. WALSH: You say you had three conversations with Mr. Braden, or two, didn't you?

A. Two in Toronto and one in London and possibly two in London.

Q. You produced that bundle which has been marked as an exhibit, you produced bundle 229, and you showed that to Mr. Braden? A. Yes.

Q. Did Mr. Braden go through it? A. Mr. Braden examined it.

Q. Did he look over all the documents in it?

A. He looked at the signature of the offer to purchase; I don't know about looking at everything; it was all left for him to look at.

Q. Did he discuss it with you after he looked through it?

A. He said he was satisfied.

Q. Satisfied what?

A. At what he had thought, I presume, before was removed by those facts which he saw there.

Q. He was satisfied with what? A. I presume that is what he meant.

Q. Did not say what he was satisfied about but just said he was satisfied?

A. Satisfied and it is past.

Q. He said he would be good friends and he shook hands?

A. Yes, and it is a past.

Q. Can you give me the date of the conversation that he said he wanted you to see a valuator and help the valuation along? A. I cannot say.

Q. When would it be?

A. I don't know; it would be around about 1929 or 1930 after he was controlling the properties anyway.

Q. His Lordship read a note about Lymberry, that Mr. Brickenden said that the Lymberry deal came through you?

A. Have you the offer there? Mr. Brickenden is mistaken; it did not come from me; I think the offer will show it did not come from me.

Q. I think there is no doubt you had no cash book nor no ledger for 1923?

HIS LORDSHIP: He has told you that, nothing except this statement.

MR. WALSH: And all the monies you got went into your construction account? A. Absolutely every cent.

Q. Whose name was the construction account in, H. A. Morine?

A. Construction account.

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 33.

H. A.
Moline,
Cross-
Examination
by Mr.
Walsh,
18th Decem-
ber, 1931.

—continued.

*In the
Supreme
Court of
Ontario.*

Evidence for
Defence.
No. 33.
H. A.
Morine,
Cross-
Examination
by Mr.
Walsh,
18th Decem-
ber, 1931.

—continued.

Q. "Q. 2126. Did you keep a separate bank account of monies received "on the Buckingham Apartments? A. No."

A. That is right.

"Q. 2127. Did those monies go into your general account?

"A. They went to my credit. The Buckingham was always "in debt in construction.

"Q. 2128. They went into your general bank account; is that "right? A. Always in my construction account."

A. I was always farther advanced than the monies received, and the monies received went to credit of the advances and still left a balance against the 10 property.

Q. They went into H. A. Morine's private account?

A. Yes, to reimburse.

Q. There also went into that private account where the Buckingham monies went to a cheque that Mr. Singer referred to as the McCormick monies, the cheque of February 19th, 1923?

MR. SINGER: I think your Lordship made a ruling that that cheque was introduced only for one purpose, simply for the purpose of the power of attorney; if my learned friend wishes to use it for any other purpose—

HIS LORDSHIP: That is all. 20

MR. WALSH: May I now show your Lordship that the cheque endorsed by Mr. Renton per power of attorney got into this same account as the Buckingham monies, so did thousands of other cheques?

HIS LORDSHIP: You can put the general question; it is practically admitted that all these monies went into one general account.

MR. SINGER: There is no question about that.

MR. WALSH: And including that cheque, Exhibit 183.

Q. About the Lonsdale valuation, you paid Mr. Lonsdale, didn't you?

A. For which valuation?

Q. Did you pay? 30

A. I paid Mr. Lonsdale for the \$20,000. valuation, but the other valuations were all paid by the London Loan and Savings Co.

Q. What was that, the one to satisfy the Department?

A. There was a bunch of them; they were paid by the London Loan and Savings Company.

HIS LORDSHIP: There are only two valuations from Mr. Lonsdale, one December, 1924, and he said there was an earlier one he thought in the early part of 1923; which of those did you pay? A. The 1923.

MR. WALSH: That was the one for the \$20,000. mortgage? A. Yes.

Q. Have you the cheque you paid him? A. No. 40

Q. Would that be by cash by any chance? A. I don't know just now.

MR. SLAGHT: Now, Mr. Brickenden.
G. A. P. BRICKENDEN, Continued.

HIS LORDSHIP: All that is to be cleared up is an explanation about the deposits.

MR. SLAGHT: I will be glad to take it up.

HIS LORDSHIP: I think you had better perhaps.

MR. SLAGHT: Before doing so I think I took the position yesterday and I take it again now that the matters that my friend cross-examined about, and that we are now here to clear up, because your Lordship suggested it, 10 are collateral matters irrelevant to the issue. It will transpire, as was stated yesterday, that none of them have anything whatever to do with the Buckingham Apartments, but notwithstanding that——

HIS LORDSHIP: There was a rather significant correspondence in the dates that requires explanation.

MR. SLAGHT: I am explaining them in view of your Lordship's suggestion.

HIS LORDSHIP: It was open to drawing inferences.

MR. SLAGHT: I do not want it to be taken by going into that.

HIS LORDSHIP: If the result does not connect it you have cleared your skirts.

20 MR. SLAGHT: Let me have those deposit slips, Exhibits 288, 289 and 290, etc.

MR. WALSH: I take it, if there is any question I have a right to ask him.

HIS LORDSHIP: I am going to allow you to cross-examine on it.

MR. SLAGHT: With regard to Exhibit 288, Mr. Walsh showed you yesterday a deposit slip for \$1,282.; it is dated the 20th February, 1923, have you made an effort to ascertain where the monies came from that you included in that deposit slip? A. Yes, I have.

Q. When were you able to do it? A. About three o'clock this morning.

30 Q. Court sat last evening till after ten o'clock, and then you went at the matter and went back to your old records as far as you could find them; will you tell about that \$1,282.?

A. That was a deposit slip 20th February, 1923, that includes S. B. Green and London Loan \$35,000. mortgage, \$362.58.

Q. That is one of the mortgages referred to in this action on which you had previously testified you received the sum of \$362.50? A. Yes.

Q. Will you show us your ledger where that is entered, the sheet of your ledger; have you found that? A. (Shows.)

Q. You produce ledger sheet of London Loan and Savings Co.; is this the original sheet from your old ledger of that year, 1923? A. Yes.

40 Q. On February 20th we find an entry, fees S. B. Green \$35,000. mortgage, \$362.50——

Q. That is entered in the usual course in your book there?

A. That is correct.

MR. WALSH: Is it a cheque?

MR. SLAGHT: It does not indicate from the entry whether it is cash or cheque, "fees S. B. Green \$35,000. mortgage, \$362.50"—is that correct?

A. Yes.

*In the
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Ontario.*

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No. 34.
G. A. P.
Brickenden
(Recalled),
Examination
18th Decem-
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—
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No. 34.
G. A. P.
Brickenden
(Recalled),
Examination
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ber, 1931.

—continued.

Q. You have another source you have dug up where there is a record of this deposit that was made up by you at the time, and what is that source?

A. My cheque stubs.

Q. That is a cheque book which has cheque stubs; I see it was your custom to write on the stub of the cheque the details of various items of deposit; is that so? A. That is correct.

Q. And referring to that under date of February 20th, 1923, you produce this stub; we will have this marked, this particular page.

MR. WALSH: The cash book would show.

MR. SLAGHT: We have no such thing.

MR. WALSH: No book in a lawyer's office showing the cash?

HIS LORDSHIP: He says he has no book except the ledger.

MR. SLAGHT: Was this memorandum made at the time? A. Yes.

MR. SLAGHT: I will put this in as Exhibit No. 303.

EXHIBIT NO. 303: Stub of cheque book of Mr. Brickenden.

Q. Were those entries made at the time? A. Yes.

Q. Will you read down the five entries that constitute this deposit?

A. \$362.50 S. B. Green and London Loan \$35,000.

Q. What is the next—\$19,000. A. N. Garrett fees L.L. \$237.50—was that a fee received on a loan made to A. N. Garrett of \$19,000.?

A. That is correct.

Q. Is that at the regular rate? A. One and one quarter per cent, I think.

Q. What is the next? \$36,000. loan, P. A. Lambert and L.L. fees \$370.; and then \$15,000. George W. Lucas and McC. Estate \$187.50? A. Yes.

Q. Is that a loan made to Lucas by the McCormick Estate in which you searched a title, \$187.50? A. Yes.

Q. S. B. Green and McCormick Estate \$10,000., \$125.?

A. That is correct.

Q. Is that similar to the other loan? A. Yes.

Q. And those several amounts add up to? A. \$1,282.

Q. Let us trace these through your book as far as we can; you have already shown—I will put in this sheet as an Exhibit.

EXHIBIT NO. 304: Ledger sheet of G. A. P. Brickenden.

Q. You have shown an entry of S. B. Green \$362.50, that is the one your Lordship may remember we testified to yesterday. Then the next one is A. N. Garrett, entered on the sheet, the next item, fees *re* A. N. Garrett \$19,000. mortgage, \$237.50. The next one is Lambert \$370., \$36,000. mortgage; then Lucas \$187.50— that would be in the McCormick Estate ledger; the Lucas and the Green are entered in the McCormick Estate ledger. February 20th, fees *re* George W. Lucas \$15,000. mortgage, \$187.50; and fees S. B. Green \$10,000. mortgage, \$125.; those entries appear there in the regular course? A. Yes.

Q. These entries here are not made by you on the ledger sheets? A. No.

Q. The entries in the stub of this cheque book are made by you? A. Yes.

MR. SLAGHT: I will put in the McCormick Estate ledger sheet.

A. May I file copies of that?

10

20

30

40

HIS LORDSHIP: You can get them back, but for the purpose of this trial they will have to be marked.

MR. SLAGHT: I think it better to leave the originals. That was No. 288. The next is 289 and I see that was a \$400. deposit on March 2nd, 1923; have you found a record of that in the stub cheque book, which is Exhibit No. 303?

A. That will be on the ledger sheet that is in there.

Q. Do you find you entered on the back of the stub, Harry Lucas and L.L. \$40,000. loan, \$400.—was this entry made at the time, I am reading you now? A. Yes.

10 Q. And that is the London Loan matter; so if I may have the ledger sheet of London Loan for that date. I now show you Exhibit No. 304, fees *re* Harry Lucas \$40,000. mortgage \$400.—that is entered on Exhibit 304.

HIS LORDSHIP: How is it that there are no credits on that ledger sheet; there is nothing there showing payments; they are all charges?

MR. SLAGHT: It is really a cash book.

HIS LORDSHIP: It is not even a cash book because it does not show the payments.

MR. SLAGHT: How is this, his Lordship indicates that while we are calling this the ledger sheet that on the opposite side it does not show payments—
20 these are monies that came in? A. That is correct.

opposite side, the proper entry?

ERRATA

The reference to Exhibit 303 on page 466, line 15, is an error. The entry under date of February 20th, 1923, referred to in line 7, page 466, is contained in Exhibit 310. (See Record, page 529.)

The reference to Exhibit 303 on page 467, line 5, is an error. The entry of March 2nd, 1923, referred to in line 4 of page 467 is contained in Exhibit 310. (See page 530 of Record.)

the system of bookkeeping that was
ime?

apher.

since then? A. I think so.

payments but the charges in this
r as charged up opposite this, and
pes the other. What we are doing as
nies came from. Then take Exhibit
he date of that is May 22nd, 1923;

can you turn me to that conveniently in Exhibit 303 first, the stub? Here
is another stub of a cheque book which I put in as Exhibit 306.

EXHIBIT No. 306: Another stub of cheque book of Mr. Brickenden's.

Q. This is May 22nd, 1923, and was this entry made in your handwriting
at the time? A. Yes.

Q. It shows something, Morine and Green and London Loan additional
\$20,000. loan, \$250.? A. Yes.

40 Q. Is that the \$250. that you told us of yesterday having received as
your fee on that loan? A. That is correct.

Q. There is \$68.75 here which is a Morine and Green and McCormick
Estate, Heath? A. Heath St. in Toronto.

Q. \$68.75; was that a part of a loan to Morine and Green on a Heath St.
property? A. Yes.

Q. What was the amount of that Heath St. loan——

HIS LORDSHIP: It does not matter.

A. I think that is the regular fee.

*In the
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—continued.

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ber, 1931.

—continued.

MR. SLAGHT: That accounts for Exhibit 290. Now turn up in your ledger, please, the \$250., looking at another sheet which will be Exhibit 307.

EXHIBIT No. 307: Ledger sheet.

Q. On this Exhibit 307, ledger sheet, an entry May 22nd *re* Green additional advance \$20,000. King St. Apartments \$250. Give me the McCormick Estate sheet. It is on the back of Exhibit 305.

EXHIBIT No. 305: McCormick Estate ledger sheet.

Q. The first item on the back, May 22nd, fees *re* Green \$5,500. mortgage, Heath St., \$68.75; do you find that entry appearing there? A. Yes.

Q. The next is Exhibit 291, \$511.65; whom did your office receive that \$511.65 from? 10

A. Receipt 108, May 28th, from Mrs. Scott, *re* deed from A. Chapman, \$511.65; there is the cheque out to Messrs. Fraser and Moore.

Q. Who was Mrs. Mary Scott? A. She is a client of ours.

Q. And she paid it in cash, \$511.65? A. That is correct.

Q. And you find an old receipt your office gave to Mrs. Mary Scott, No. 108, on the 28th May *re* deed from A. Chapman, \$511.65. I put in this receipt, my Lord. So far as you know was that made at the time? A. Yes.

Q. And does it appear in the regular order? A. Yes, it is No. 108.

EXHIBIT No. 308: Stub of receipt given to Mary Scott. 20

Q. Have you anything further?

A. We checked it out on Mrs. Scott's behalf.

Q. You produce a cheque of yours to Fraser and Moore for \$511.65 payable May 31st, 1923, marked closing sale Chapman to Scott; is this the exact amount received which two days later you checked out on her behalf to Fraser and Moore of this city? A. Yes, to the solicitors acting.

EXHIBIT No. 309: Cheque to Fraser and Moore.

Q. The next is Exhibit 293 for \$470., deposited on the 13th June, 1923; what is that—is that received in one sum or two? 30

A. It is put in here at \$468.70.

Q. You have a stub book here? A. My figures, \$470.

Q. In your deposit slip? A. Yes.

Q. I am reading again from another stub book which will be Exhibit 310, and was this entry made at the time, this \$470.? A. Yes.

Q. By you? A. Yes.

EXHIBIT No. 310: Stub book.

Q. Deposit on the 13.6.23, Morine and Suydam Realty, five mortgages, \$470.; have you looked up your old files to see about those five mortgages and what they were? A. Yes, I have them here.

Q. What do those files show? 40

A. This is all McCormick Estate; it has nothing whatever to do with this.

HIS LORDSHIP: Never mind then.

MR. SLAGHT: Those files show loans with the McCormick Estate for which those were the fees received? A. That is correct.

Q. Where is the McCormick Estate sheet with those in?

A. It is already in.

Q. And entered on the McCormick Estate sheet, Exhibit 305? A. Yes.

Q. The next one is Exhibit 294 and is a deposit of \$280. June 14th, 1923? A. That will be in the ledger sheet that is in there.

Q. Is that McCormick? A. No, this is London Loan.

Q. I show you Exhibit 307; do you find entered in the London Loan and Savings Co. ledger sheet June 15th, 1923, fees *re* S. B. Green \$24,000. loan, \$280.? A. That is correct.

Q. I read that entry from Exhibit 307. Then we have the last one, Exhibit 295, which is a deposit slip of June 18th, 1923, for \$228.14; what is that transaction?

10 A. \$212.50, a loan to Harry Lucas, \$17,000. mortgage London Loan.

Q. I find on Exhibit 306, under date of marked deposit 18.6.23, Harry Lucas and L.L., \$17,000. mortgage, \$212.50, and then what?

A. There is \$15.64.

Q. A cheque, so that the cash on this deposit slip 295, the only cash was \$212.50; what do you say as to whether that is the cash on that fee in the Lucas mortgage? A. Yes.

Q. The other item making up deposit is a cheque of \$15.64? A. Yes.
er with that?

ERRATA

The reference to Exhibit 310 at page 468, line 36, is an error. The entry referred to on page 468, line 28, of June 13th, 1923, is contained in Exhibit 306. (See Record, page 547.)

e London Loan ledger account also?

account for all those.

307, entry on the 15th June, fees *re* : on Danforth Ave., \$212.50?

Q. There was another matter, there was one about Oldfield, my same objection applies to this; you were asked whether in the Oldfield matter the young lady's marking on this Oldfield applies to the Oldfield loan of \$35,000.; what do you say as to whether it does? A. I say it does.

30 Q. And that amount you received in 1925 and deposited. Then where was the Oldfield property? A. In Grimsby, Lincoln County.

Q. You apparently received there a fee for \$700. for what, who was indebted to you for the \$700.? A. Oldfield, Grimsby.

Q. In that case that appears to be charged at two per cent instead of the one and one quarter? A. Yes.

Q. Did you receive any portion of that Oldfield or any other of these matters, the monies may have come through Mr. Morine, but as any commissions from him or payments from him to you in any way?

A. No, those were fees chargeable to the mortgagor.

40 CROSS-EXAMINED by Mr. Walsh :

Q. Except the Scott one of \$511., in all the other cases they are twenty dollar or ten dollar bills, in some cases one hundred dollars, you got them from Morine——

HIS LORDSHIP : Give him a chance.

MR. WALSH : Did you get them from Morine? A. I think so.

Q. Is there any doubt about that? A. I said that is quite true.

In the Supreme Court of Ontario.

Evidence for Defence. No. 34. G. A. P. Brickenden (Recalled), Examination 18th December, 1931.

—continued.

Evidence for Defence. No. 34. G. A. P. Brickenden, Cross-Examination by Mr. Walsh, 18th December, 1931.

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Q. The only one, that was the \$500. from Mary Scott——

HIS LORDSHIP: That has nothing to do with this; that was a client's transaction.

MR. WALSH: The Oldfield matter the tariff would be, the London tariff would be very small, would it not, on \$35,000. in Grimsby?

A. Yes; I think the London tariff is small.

Q. And even with the Toronto tariff it figures out, I think, at \$362.50, the same amount that Mr. Morine says he paid you for his \$35,000. mortgage?

A. I do not care what Mr. Morine said he paid me; it does not concern me. 10

Q. On Mr. Morine's \$35,000. mortgage he says he paid you \$362.50, which was the regular Toronto tariff?

MR. SLAGHT: I beg your pardon, there is no such statement made by Mr. Morine as I recall it.

MR. WALSH: You were so busy checking up these matters you were not there when I read it. I will give you the question where I read how much he paid Brickenden and he said Toronto tariff \$362.50?

A. One is in connection with Buckingham and the other you are talking about another matter.

Q. Did he pay you \$362.50? 20

MR. SLAGHT: Oh, if you are speaking of Buckingham; I thought you were rather endeavouring to show the witness that he had sworn all he paid him in this matter was \$362.50.

MR. WALSH: No. On the \$35,000. Buckingham mortgage you got \$362.50, the legal tariff in Toronto? A. That is correct.

Q. And on the Oldfield, at Grimsby, you got \$700.? A. That is correct.

Q. And you sent him to Morine, as you told me yesterday——

HIS LORDSHIP: Do not repeat.

MR. WALSH: Another thing I forgot yesterday, question 757 on your examination for discovery: 30

“Q. You were very familiar with the transactions from the “time it was placed in your hands, were you not? A. I think so.” Is that true? A. Was that my statement?

Q. Yes, you can look at it. A. I presume so.

——The question quoted above is not 757 of Mr. Brickenden's examination which the reporter has.

MR. WALSH: Mr. Braden has now produced to my attention those cheques relating to the Lambert, Garrett and Lucas loans, and in each case they appear to be endorsed by the parties and deposited to the credit of H. A. Morine. 40

HIS LORDSHIP: This witness admits that these fees were paid him by Morine; what more do you want?

MR. WALSH: I think that ought to be enough for me.

HIS LORDSHIP: That is all that is important.

RE-EXAMINED by Mr. Slaght :

Q. My friend referred to statement by Mr. Morine—you put it last evening, your recollection was you had sent Oldfield to him, Mr. Walsh put the question you sent Oldfield to Morine and I believe you assented to it; is there anything further you want to say with regard to that; have you considered it further? A. After I left—

HIS LORDSHIP : I won't allow a man to change his evidence that way.

MR. SLAGHT : Re-examination on a question asked here—

HIS LORDSHIP : You can put it in another way.

10 MR. SLAGHT : Any way the Court thinks fair.

HIS LORDSHIP : Has he any explanation to give in connection with it? A man cannot come one day and say so and so and the next day come back after Mr. Morine has given his evidence—

MR. SLAGHT : All right.

HIS LORDSHIP : I will not tolerate that sort of thing. Any more witnesses?

MR. SINGER : No, I wish to file some documents. I asked my learned friend to produce items 3 and 5 as shown in Exhibit 285, two discharges of mortgage—

MR. WALSH : I may say I am putting Mr. Braden back in the box and
20 he can put them in then.

HIS LORDSHIP : Are those the only two?

MR. SINGER : There are two or three letters; I can get those from Mr. Braden as well.

HIS LORDSHIP : Any more witnesses for the defence?

—No more witnesses for the defence.

REPLY

J. A. E. BRADEN, Recalled :

MR. WALSH : There was a receipt that was produced on the first day of the trial when I read the letter—I asked for the receipt and it was not produced
30 and it was produced yesterday; did you make any further search after that receipt which was signed by Miss Fletcher?

A. Yes; I had Mrs. Young, who was formerly Miss Fletcher, make a further search, and she discovered the documents which I have handed to you.

Q. Are those the ones?

A. Yes, along with the release which has been put in.

Q. Was that included with that? A. Yes.

Q. Was that the first time you had ever seen that?

A. Yes, the first time I ever saw it; in fact, I had ordered registrar's copies of some of these documents.

40 Q. I see some documents, I had to put in certified copies to his Lordship?

A. Yes; I did not know of the existence of those papers until yesterday afternoon.

MR. WALSH : Are there any of these papers you wish put in?

MR. SINGER : Yes, the discharges. Discharge of the Huron and Erie

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mortgage, which was assigned to the London Loan, dated blank day of April, 1928? A. I don't think they are among those papers.

MR. SINGER: Yes, discharges; discharge of Huron and Erie mortgage, which was assigned to London Loan, dated blank day of April, 1928?

A. I don't think they are among those papers.

MR. SINGER: They are mentioned in the receipt?

A. I also had Mrs. Young make another search today, to see if she could find the rest of those papers.

MR. WALSH: I do not see any discharge amongst these papers.

MR. SINGER: Will your Lordship allow me to put on record in that way, 10 I am requesting from the Defendants the production of instruments No. 3 and 5, referred to in Exhibit No. 285, the first number 3 is a discharge of mortgage, London Loan and Savings Co. to Samuel B. Green and Horace A. Morine dated blank day of April, 1928, for the \$150,000. mortgage. Also instrument No. 5 which is a discharge of the mortgage from R. S. Durno to the London Loan and Savings Co., registered No. 11078 W. F.; the discharge is dated April, 1928, that is the \$77,000. mortgage.

MR. WALSH: Neither of these discharges are here. There are a number of declarations amongst those papers.

HIS LORDSHIP: Never mind. Mr. Singer calls for the production of those 20 two and Mr. Braden says he has been unable to find them in the search?

A. I know nothing about those records myself; Mrs. Young was with the London Loan for a good many years and she had charge of those.

MR. WALSH: Did you make any searches yourself apart from this?

A. Yes.

Q. Were you able to find them? A. No.

Q. I notice amongst these papers statement London Loan Co. of Canada, December 9th, 1927, *re* R. S. Durno—

HIS LORDSHIP: Is not that statement already in?

MR. WALSH: It shows the mortgage and all the payments and everything 30 on it; I don't think that is in.

MR. SLAGHT: It has not been shown to us.

HIS LORDSHIP: Who is it prepared by?

MR. SINGER: There is nothing on it to indicate whom it was prepared by.

HIS LORDSHIP: It has no meaning.

MR. WALSH: Was there anything else you wanted, any other papers you found of any kind? A. I think I gave you all that I found.

Q. Are there any more you want to put in of these?

MR. SINGER: Not out of that receipt; there are one or two others I would like, your production No. 57, letter January 14th, 1925, from London 40 Loan to Cassels and Company.

MR. GRAY: It is already in as 51-A.

HIS LORDSHIP: Let Mr. Gray be looking them up.

MR. SINGER: I will give you two or three numbers and you can look them up.

MR. WALSH: I have here in this bundle "*re* S. B. Green mortgage G-41: I value property covered by the above mortgage, being part lots 2 and 3,

plan 457, Toronto, a four-story apartment house and stores running from King to Queen St., facing on both streets, 75 feet by 199, upwards of \$200,000. This is an apartment house, good location, etc. M. J. Kent, September 11th, 1923." Where did you find that?

A. That was handed to me with the bundle of papers.

MR. SINGER: When did this arrive on the scene?

HIS LORDSHIP: No, I don't think.

MR. WALSH: If there is anything more in this bundle they are quite welcome to put it in if they want.

10 Q. Have you been able to find anything more? A. No.

MR. SLAGHT: You are offering to us a number of documents that I understand were just discovered yesterday by somebody? A. Yes.

Q. Is there amongst those you offer us a copy of the Fetterley valuation at \$305,000.? A. No.

Q. Is it not a fact that from time to time during the course of this litigation you have been unable to find many documents which subsequently have turned up in your custody? A. Yes, there were some.

20 Q. In the first place an affidavit on production was made and then later on a supplementary affidavit on production was made and in the supplementary affidavit, if I recall aright, there were about seventy-five further documents produced that were not originally produced?

A. Yes, there were quite a few more produced as the case developed, there were documents that were probably not considered as having any connection with the case at the time which we afterwards did consider had a connection and we produced them for that reason.

Q. Was there more than one supplementary affidavit?

A. No, just the one.

Q. After the supplementary affidavit on production I think you were good enough to indicate prior to this trial you found some more?

30 A. I think those were government returns.

Q. Some more documents you had not been able to find before?

A. Of no account.

Q. Where is the young lady that did the delving that produced these yesterday? A. Mrs. Young, the secretary of the company.

Q. Is she in the city? A. Yes.

Q. You did not look yourself this time? A. Yes, I went in and looked.

MR. WALSH: With Mr. Morine and Mr. Brickenden they kept finding them too?

40 A. Yes, I suggested they should make a further and better affidavit on production because they discovered so many fresh documents.

Q. But right down to this trial they handed in some for the first time?

A. Yes.

Q. I am anxious to see this Fetterley one; have you ever seen it? A. No.

Q. Have you tried to find it? A. I have.

MR. WALSH: I would not want to quarrel with your ruling for anything, but I don't know why my friend wants to shy at that valuation of Mr. Kent.

HIS LORDSHIP: No, he was not the valuator of the company, and if he

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had been a valuator and made that in the course of his duty it would be evidence, but he was not the valuator.

HIS LORDSHIP: Any questions, Mr. Singer?

MR. SINGER: No, there are just two letters Mr. Braden is going to produce.

HIS LORDSHIP: Are they available now?

MR. SINGER: I think so.

MR. GRAY: Will you get these two letters for Mr. Singer?

A. There is one point I would like to make an explanation, and that is that Mr. Morine said about my interview with him in Toronto we shook hands and good friends. 10

HIS LORDSHIP: And you saw this file of documents?

A. No, I did not. He said when the proper time arose he would produce the documents. As far as my interview in his office was concerned, there was nothing friendly about it, and he put his foot up against the door to prevent me leaving. I had to wait till he finished his talk.

HIS LORDSHIP: I think you mentioned that before? A. Yes.

MR. WALSH: Did you ask him about producing that bundle?

A. He did not produce it. Another thing, Mr. Morine said I tried to induce him to value the Buckingham Apartments at a high price. 20

HIS LORDSHIP: I did not recall that at all.

MR. WALSH: He said Mr. Braden asked him to see the valuator.

HIS LORDSHIP: Mr. Braden has already given his version of it. I don't think it is necessary to repeat.

HIS LORDSHIP: Now as to the argument.

MR. WALSH: Pardon me, your Lordship, I have a witness that will take about five minutes, two witnesses rather. They measured up that building.

HIS LORDSHIP: You need not call them in my opinion, it is not material at all. You had your opportunity to put them in. Your witnesses gave evidence as to measurements; I am not going to hear them. I don't think it is material at all. 30

MR. WALSH: I don't know what may happen, your Lordship.

HIS LORDSHIP: I am not going to permit you to give them now, that is all. You have given your measurements and values; I do not think that either are very material. I have to decide between these valutors what a reasonable value was. I don't think I will have much difficulty in doing it.

MR. SINGER: If your Lordship will leave a place for those papers to be put in later.

MR. GRAY: I will take copies out of the brief if that is satisfactory.

MR. SINGER: Yes. 40

HIS LORDSHIP: With reference to the argument, I still think it would be very desirable if counsel would file written arguments but of course if they prefer to give oral arguments I will have to listen to them, but I would suggest that, owing to the limited time, counsel just in their oral argument deal generally with the situation and then if they have any special references to make they can send in a memorandum of those in support of the general or the main points that they seek to make on behalf of their respective clients.

I think we could save quite a bit of time, because if you have to refer to a whole lot of details now it might prolong the argument. We will have to be through by half-past six. Are counsel agreeable to that suggestion?

MR. SLAGHT: Yes, my Lord. I am.

HIS LORDSHIP: What about you, Mr. Singer?

MR. SINGER: Well, my Lord, I would not begin to attempt on behalf of myself and my colleagues to present the argument within an hour and a half.

HIS LORDSHIP: I cannot sit after half-past six.

MR. WALSH: I am quite willing to make mine one half hour.

10 HIS LORDSHIP: I am suggesting to you you indicate the main points in a general way and if you have any special references to make you can supply that in writing.

MR. SINGER: Could not your Lordship adjourn it and hear argument in Toronto?

HIS LORDSHIP: No; I understand Mr. Slaght is going away, and I am going to dispose of this case within the next few days.

MR. SINGER: An argument to be presented by myself cannot be put in in an hour and a half.

20 HIS LORDSHIP: I don't see why it could not be supplemented. Well, we will hear the others, and you can take a chance.

MR. SINGER: These two documents, the first is a letter, a copy of letter bearing date November 5th, 1927, from the London Loan and Savings Co. to the Huron and Erie Mortgage Corporation, and the other is a letter bearing date November 11th, 1927, from the Huron and Erie Mortgage Corporation to J. H. Hambly, manager, London Loan and Savings Co. Limited.

HIS LORDSHIP: I thought they were filed.

EXHIBIT No. 311: Copy of letter November 5th, 1927, from London Loan and Savings Company to the Huron and Erie Mortgage Corporation.

30 EXHIBIT No. 312: Letter Nov. 11th, 1927, from Huron and Erie Mortgage Corporation to J. H. Hambly.

SIR ALFRED MORINE: If we can make an outline just today of the points of law, will your Lordship limit the time within which we should give the memorandum?

HIS LORDSHIP: Yes, I want to dispose of it early next week. I will receive them up to Tuesday.

SIR ALFRED MORINE: I ask for a little more time than that.

HIS LORDSHIP: I will give you to Thursday then.

40 MR. WALSH: Perhaps your Lordship can tell me whether anybody suggested that the back of that offer of June 23rd—to accept offer for \$227,500., somebody said they thought that was Mr. Kent's writing; I wanted to call Mr. Hambly to show that that was Mr. Crowley's handwriting.

HIS LORDSHIP: Nobody said it was Mr. Kent; if somebody said it looked like it, that is the extent it went. Mr. Braden said he did not think it was, as I recall it.

MR. WALSH: Yes; Mr. Hambly is coming up in a taxi and if you will interrupt my argument when he comes—

HIS LORDSHIP: What is your recollection of that, Mr. Singer?

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MR. SINGER: I don't think, my Lord, there was any definite evidence; somebody said he thought it was Mr. Kent's handwriting and somebody thought it was not.

HIS LORDSHIP: I think that is the position.

—Oral argument.

EXHIBIT No. 313: Charter of London Loan Assets Limited put in by Mr. Walsh at the conclusion of his argument.

—At the conclusion of the oral argument his Lordship said:

I want to hear Mr. Rowell's position whether he is prepared to make one now. 10

MR. ROWELL: I am prepared to say this, that so far as the Canada Trust position is concerned under that agreement we are quite prepared to carry out any orders the Court may make as are applicable to the Consolidated Trusts, if any question arises as to that.

SIR ALFRED MORINE: We certainly object.

HIS LORDSHIP: Sometimes judgment is made conditional on certain other parties who are not parties to it consenting.

—Supplementary written arguments to be filed with his Lordship by Thursday of next week.

Certified a correct copy.

E. NIELD,

Official Reporter, S.C.O.

20

No. 36

Reasons for Judgment of Wright, J.

No. 36.
Reasons for
Judgment of
Wright, J.,
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This action involves the consideration of many complicated transactions arising out of or in respect of certain mortgages on lands in the City of Toronto upon which the Buckingham Apartments are erected.

I shall first outline in chronological order, so far as possible, the several transactions under review in this action.

One Samuel B. Green became the owner of the Buckingham Apartments, 30 or rather the lands upon which these apartments were afterwards erected, in the year 1922. By deed dated April 21st, 1922, Samuel B. Green conveyed the said lands to Samuel B. Green and the Defendant, Horace A. Morine in partnership. Afterwards, on November 14th, 1922, Green and the Defendant Morine reconveyed the property to Samuel B. Green. By deed dated November 16th, 1922, Green reconveyed the property to himself and the Defendant Morine in partnership.

On February 7th, 1923, Green and the Defendant Morine individually and as co-partners mortgaged the property in question to the Huron and Erie Mortgage Corporation for the sum of \$150,000. This is one of the mortgages 40 involved in this action.

By a mortgage dated February 13th, 1923, the Defendant Morine and the said S. B. Green individually and as co-partners executed a mortgage to the London Loan and Savings Co. for the sum of \$35,000.

The Defendant Morine and his co-owner Green also executed a mortgage dated May 23rd, 1923, to The London Loan and Savings Company for \$20,000.

The three mortgages last mentioned form one of the chief subjects of controversy in this action.

On June 8th, 1923, S. B. Green granted and quit claimed to the Defendant Morine his interest in the said lands.

10 By deed dated August 9th, 1923, and registered September 18th, 1923, as No. 9084, W. F., the Defendant Morine executed a deed to Arthur W. Dyas, his son-in-law, for the expressed consideration of \$1.00.

On August 10th, 1923, Arthur W. Dyas and his wife executed a mortgage to one W. Lawson Renton (in trust) for the sum of \$46,000. and it is to be noted that this mortgage was registered on the same day as the last mentioned deed, namely, September 18th, 1923.

By a mortgage dated October 27th, 1924, Arthur W. Dyas purported to mortgage the said premises to the Defendant Morine for the alleged consideration of \$23,000.

20 The abstract of title next shows the registration of a discharge of the mortgage from Green and Morine to the London Loan and Savings Co. for \$35,000., purporting to be dated July 3rd, 1925, and registered on July 8th, 1925. The validity of this discharge is one of the serious issues in this action and will be dealt with later in this judgment.

The abstract of title further discloses that on 8th July, 1925, there was registered a deed purporting to be under the power of sale under the mortgage of \$20,000. being the third mortgage above mentioned, from the London Loan and Savings Co. to one Robert S. Durno for the expressed consideration of \$227,500. subject to the mortgage to the Huron and Erie upon which there
30 was said to be due the sum of \$147,000.

On the last mentioned date there was registered a mortgage from the said Robert S. Durno to the London Loan and Savings Co. for the sum of \$77,000.

The next entry on the abstract is a deed dated June 26th, 1925, and registered July 8th, 1925, from the said Robert S. Durno to the Defendant the Consolidated Trusts Corporation purporting to be in trust but there is nothing in the deed which discloses the trusts.

The Huron and Erie Mortgage Corporation, by assignment dated February 7th, 1928, and registered February 17th, 1928, assigned the mortgage
40 held by them on the said lands to the London Loan and Savings Co.

In connection with the position of the Plaintiff companies, it is in order now to state the exact position occupied by them respectively.

By a tri-partite agreement dated July 3rd, 1929, the London Loan and Savings Co. sold all its assets to the Huron and Erie Mortgage Corporation and the latter corporation sold certain assets listed in the schedule to the London Loan Assets Limited and the three mortgages in question on the Buckingham Apartments are included in the schedule of assets sold by the

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Huron and Erie Mortgage Corporation to London Loan Assets Limited.

This agreement was duly approved by Order-in-Council pursuant to the Loan and Trusts Corporations Act.

The rights of the parties arising out of this agreement form some of the subjects of controversy in this action and will be dealt with later.

The Plaintiffs sue the Defendant Morine upon his covenants contained in the three mortgages already recited and they also claim against the Defendants Brickenden and McCormick and Morine damages for conspiracy and fraud and also claim damages against the two first named Defendants for negligence in the discharge of their respective duties as officials of the London Loan and Savings Company. 10

As the part played by the Defendant Morine in the various transactions forms one of the most important features in this action, and as his conduct as well as his evidence touches almost every phase of the various transactions dealt with, it is the proper stage to deal with his relations with the London Loan and Savings Co. and also with the value or reliability of his evidence.

Morine held himself out as a mortgage broker and insurance agent and it appears from the records of the company as detailed in evidence of Mr. Braden, the Vice-President of the London Loan Assets Limited, he did an extensive loaning business for the London Loan Company in the City of Toronto and in fact practically all the mortgages held by that company on property in the City of Toronto were negotiated through the medium of the Defendant Morine. He was on the most intimate relations with the Defendants Brickenden and McCormick and attended many of the Board Meetings of the London Loan and Savings Co., and in the present case he purported to value the property included in the application for the loan. He also claimed to have some arrangement with the company whereby all the fire insurance policies on the different properties in Toronto upon which the London Loan and Savings Company held mortgages was to be placed through his agency. The evidence disclosed that in connection with the two mortgages to that company under review, as well as in other instances, when a loan was passed by the Board of Directors of the London Loan and Savings Co. Ltd. the cheque for the full amount of the loan would be made payable, not to the borrower, but to the Defendant Morine, who would deposit the cheque representing such loan to his own account and pay to the Defendant Brickenden his legal fees in connection with the transaction and would also pay the registration fees in connection with the mortgages and other incidental expenses. 20 30

He collected the rents on the Buckingham Apartments and deposited the same in his own name in a bank account at a time when the London Loan and Savings Company were mortgagees in possession. 40

The evidence further disclosed that throughout the entire series of transactions he had a general supervision over the different properties upon which the London Loan and Savings Company held mortgages. He stated on more than one occasion to Mr. Braden that he was the agent of the company and insisted upon being so retained even after the change of management of the company, which took place in February of 1929. In the negotiations with Mr. J. J. Maclellan he also professed to be the agent of the company.

At the trial he disclaimed that he was an agent or occupied any fiduciary capacity whatever towards the London Loan and Savings Company, but from his demeanour in the witness box, his unsatisfactory answers and his fraudulent conduct throughout, I am unable to place any reliance whatever upon his evidence even when it is uncontradicted by other witnesses.

A fair inference to be drawn from all the evidence is that he did occupy a fiduciary relationship towards the London Loan and Savings Company and acted as their trusted agent and adviser in respect of a large part, if not all, of their business in the City of Toronto.

10 The Defendant McCormick was the President and one of the Directors of the London Loan and Savings Company during the period under review, and for his services as President and Director he was paid a salary of \$2,500. per annum.

The Defendant Brickenden was the solicitor for the London Loan and Savings Company during the period mentioned, and as such had to do with several, if not all, of the transactions under review.

There is no controversy over the origin of the mortgage to the Huron and Erie Mortgage Corporation for \$150,000. although there is serious controversy over the right of the Plaintiffs to recover in respect of same.

20 The first application made to the London Loan and Savings Company for a loan on the Buckingham Apartments is dated February 10th, 1923, and was filed as Exhibit No. 11 at the trial. This application purports to come through the Defendant Morine and to be signed by S. B. Green. It requests a loan of \$30,000. but it was apparently superseded by another application of the same date for the sum of \$35,000.

This application was filed as Exhibit No. 12 and it is significant that it purports to come from the Defendant Morine and has appended to it in his handwriting the following note: "I value the property at \$325,000." This is some indication of the relationship between the Defendant Morine and the
30 company.

This Defendant testified at the trial that he disclosed to the Loan Company his connection with the property and also that he was getting a commission from the applicant Green, but I discredit his evidence in this as on other matters.

It is particularly significant that on the very day this application was dealt with by the directors of the Loan Company and before the title was searched that a cheque for \$15,000., payable to S. B. Green and the Defendant Morine, was handed to Morine and by him deposited in his bank account. This was followed by a cheque dated February 22nd, 1923, for \$10,000. Another cheque dated March 9th, 1923, for \$4,996. and another cheque dated
40 March 23rd, 1923, for \$4,996. all payable in the same manner and deposited by Morine in his account.

He testified that he paid the legal fees amounting to \$362.50 in cash to the Defendant Brickenden who was the solicitor for the Loan Company, and it also appears that he paid the registration fees of the mortgage to the Registrar in Toronto.

The dates of these transactions are particularly significant when it will be observed the evidence discloses that the certificate of title from the De-

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fendant Brickenden to the London Loan Co. was not sent to that company until May 5th, 1923, some time after all the moneys had been paid out to the Defendant Morine. This is also an indication of the relationship in which Morine stood to the company.

The mortgage was not registered until February 16th, 1923, and purports to be dated on February 13th, 1923.

The minutes of the meeting of the Board of Directors of the Loan Company held on February 12th, 1923, indicate that the application was treated as one from S. B. Green for \$31,000., and provide for the payment of a commission of one per cent to Morine and also contain a memo stating that the Defendant Morine is to guarantee the loan. From these minutes it would appear that the ownership of Morine in the property was not disclosed otherwise it is most unlikely he would be paid a commission for a loan to himself. 10

The evidence discloses that in addition to the commission received by Morine from the company, he had an agreement with his co-owner Green whereby he, Morine, was to be paid \$2,000. for obtaining the loan and also to receive another very large sum for financing the undertaking. This agreement as to commission with Green was certainly not disclosed to the Loan Company but it is a striking illustration of the dealings of the Defendant Morine throughout the whole series of transactions. 20

Next in order is the third mortgage for \$20,000. The application for this appears to have been dealt with at a meeting of the Directors of the Loan Company on May 28th, 1923, at which the Board of Directors approved of the loan and the minutes contain the statement that the property is valued by the Defendant Morine at \$400,000. There was to be no commission paid in respect of this loan, but a bonus of \$1,000. was to be paid to the company by the Defendant Morine and the loan was to be repaid on December 20th, 1923, which term was embodied in the mortgage.

Although the loan was not formally approved by the Board until May 28th, yet the cheque representing the loan was issued by the Loan Company on May 22nd, 1923, and was deposited in Morine's bank account on May 23rd and the certificate of title was not given by the Defendant Brickenden as solicitor for the company until the 19th day of July, 1923, almost two months after the money was advanced. 30

This is another illustration of the careless manner in which the loans were put through by the Loan Company and also confirms the conclusion reached as to the fiduciary relationship existing between the company and the Defendant Morine at that time.

At this juncture it may be well to deal with the question of value of the Buckingham Apartments. It appears that when the Huron and Erie Mortgage Corporation advanced the sum of \$150,000. on the mortgage to that company, its valuator, one Fetterley, who was called as a witness at the trial, made three valuations, obviously at different stages during the course of the construction of the building. 40

In the last valuation made in February of 1923, he places the value at \$305,000., including the land, which he valued at \$30,000. This witness testified that he furnished a copy of this last valuation to the Defendant

Morine and he further says that one M. J. Kent, who was then the Manager of the Loan Company, asked for a copy of his valuation and this he gave to the Defendant Morine.

No record of this valuation was found among the records of the Loan Company and I am satisfied that the Defendant Morine never produced it to the Loan Company, notwithstanding his evidence and the evidence of the Defendant McCormick to the contrary.

The Defendants also called W. N. Lonsdale, Superintendent of Real Estate for the Toronto General Trusts Corporation, who testified that he
 10 valued these apartments in the early part of 1923 although the same were not completed until June or July of that year according to his recollection. He stated that he valued them at \$310,400. and that he sent a copy of his valuation to the Defendant Morine. He also made a second valuation of the same apartments in December of 1924 at the same figure.

There is no credible evidence that either of these valuations were ever placed before the Loan Company. Both of these witnesses had valued other properties for Morine and in respect of the witness Fetterley a very unsavoury transaction was disclosed between him and the Defendant Morine, at about the time this valuation was made.

20 In addition to these witnesses, one Deeth, a builder and contractor in Toronto, was called and he valued the apartments at about \$315,000., but I was not at all impressed with the evidence given by this witness.

For the Plaintiffs, two witnesses were called who testified as to value, namely, F. Milligan, who was a contractor and engineer and had an extensive knowledge of building costs and values in Toronto during the year 1922 and 1923, and he placed a value on the property in 1923 at about \$220,000. Another witness, one Mervyn Lancaster, was called, who was a builder and dealer in real estate for a number of years, and his valuation as of 1923 was \$211,250.

30 While I do not think the question of valuation is material to the real dispute between the parties, yet I am strongly of the opinion that the valuation placed on the apartments by the Defendants' witnesses was greatly in excess of the real value and I would adopt the valuations of the Plaintiffs' witnesses in preference.

After the third mortgage was given, the Defendant Morine took a deed and quit claim from S. B. Green and thereby became the owner of the property subject to the mortgages. This Defendant then conveyed the property to one Arthur W. Dyas, his son-in-law, who occupied the same office with him.

40 The Defendant Morine states in his examination for discovery read at the trial, that the deed to Dyas was merely in trust for him and Renton, but it is significant that on the day following the date of the deed, Dyas mortgaged the property to one W. Lawson Renton (in trust) for the sum of \$46,000. and in connection with this transaction a flood of light is thrown upon the dealings of the Defendant Morine throughout.

Renton was a trustee of funds placed in his hands by certain persons resident in Scotland and, at the instance of Morine, he advanced the amount named upon a fourth mortgage upon the Buckingham Apartments. Morine received one-half of the amount advanced, namely, \$23,000., for which he

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was to convey to Renton a one-half interest in the equity of redemption. This whole transaction was discreditable to all concerned.

For some reason not at all obvious the Defendant Morine took a mortgage from Dyas on October 27th, 1924, to secure the sum of \$23,000.

From the inception of this series of transactions the Defendant Morine was in receipt of the rents for the apartments and although he testified he paid out the charges in connection with the upkeep and management of same, yet he did not produce any books or give any satisfactory account of how he disbursed same.

The mortgage to the Huron and Erie Loan Corporation as well as the two mortgages to the London Loan Company were allowed to fall into arrear and the third mortgage of \$20,000. which fell due in December, 1923, was not paid nor was any sum whatever paid on account thereof and it also appears that the taxes on the premises were allowed to remain unpaid. 10

Early in 1925 the Loan Company instructed the Defendant Brickenden to take proceedings to collect the mortgage and the latter instructed power of sale proceedings in which Mr. Wilson, a solicitor in Toronto, acted on his behalf.

The property was put up for sale but the reserve bid was not reached and the sale proved abortive. The reserve bid was in the neighbourhood of \$227,000. which was the amount due on the first three mortgages on the property, and the fact that no satisfactory bid was made on the sale throws very considerable doubt upon the valuations made by the Defendants' valuers. It was in evidence that Toronto property in 1925 had not receded in value from 1923 and it is difficult to understand how a sale could not have been effected, at a price sufficient to cover the three mortgages. 20

The next step in the maze of transactions is in connection with an alleged sale to one Robert S. Durno. The Defendant Morine states Durno applied to him and that he sent him to the solicitor in charge of the sale proceedings and had nothing further to do with the transaction. In view of the other developments in the case, this evidence is incredible. 30

Durno had, a short time before, procured a mortgage from the London Loan Co. through Morine and the interest was considerably in default at the date of the alleged sale of the Buckingham Apartments to Durno. In his examination for discovery the Defendant Morine admits that he was acquainted with Durno for some years and in view of all the circumstances, it is the proper and fair inference to draw that Durno was a mere figurehead in the transaction and that the sale to him was a fictitious one in the sense that he was merely representing the Defendant Morine and not acting on his own account. 40

Durno's offer to purchase came before a meeting of the Directors on June 23rd, 1925, when it was accepted. The amount of this offer was \$227,500., of which \$500. was to be paid in cash and a further payment of \$3,000. on the completion of the sale with adjustments to be made as of the 1st day of June, 1925.

It might be mentioned here that the power of sale was exercised only in

respect of the third mortgage and that no action was taken in respect of the second mortgage of \$35,000.

From the evidence it is manifest that the Defendant Brickenden knew all about the Durno transaction and it was the result of an arrangement between him and the Defendant Morine who appeared to have a dominating influence over him.

A mortgage for the balance of the purchase money, namely, \$77,000., was taken from Durno and that, together with the cash payments and the amount assumed in connection with the mortgage to the Huron and Eric
10 Mortgage Corporation, made up the entire consideration.

Next follows one of the most important transactions in the whole series and one upon which the issues in the action depend to a considerable extent.

A document purporting to be a discharge of the second mortgage, dated July 3rd, 1925, and registered on the 8th day of July, 1925, from the London Loan and Savings Co. to Green and Morine was duly registered and this document, if valid, would in effect release Morine from his covenant in the second mortgage.

This discharge is surrounded with mystery. It purports to have the seal of the London Loan and Savings Company on it and to be executed by one
20 Hunt who was a director but who purports to sign as acting president and by one Clewes who was not an official or even an employee of the company, according to the evidence of Hambly, the last Manager of the London Loan Company, who had been in its employ for several years.

No satisfactory explanation has been given by either the Defendant Brickenden or the Defendant Morine as to how or why this discharge was procured. There is no reference whatever in the minutes or records of the company to this document nor was there any resolution of the Directors authorizing the release of the Defendant Morine from his covenant. It appears to have been engineered by Morine in collaboration with the Defendant
30 Brickenden for the sole purpose of releasing Morine from his covenants.

In view of the fact that practically no cash was being received from the sale to Durno it was greatly to Morine's interest to be released from his covenant as at that date he was able to pay any sums due under the mortgage.

It should be mentioned here that on June 26th, 1925, a deed from Durno to the Consolidated Trusts Corporation was taken. It was stated to be in trust but the trusts were not disclosed, but Morine, in his evidence, stated it was in order to enable the Consolidated Trusts Corporation to collect the rents and pay the same over to the London Loan Company and also to hold the same in trust for Durno.

40 In his evidence the Defendant Brickenden stated this deed was taken to enable the Consolidated Trusts Corporation to collect the rents, and if this is correct its purpose was that of a power of attorney.

It was an entirely unnecessary document as the Loan Company as mortgagees could readily have exercised their rights to collect the rents or authorized an agent to do so.

A quit claim deed was also alleged to have been taken from Durno to the Consolidated Trusts so that if Durno did not keep up his payments the

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Consolidated Trusts Company would become the owner of the equity of redemption, but the circumstances surrounding this release or quit claim will be dealt with at a later stage.

Durno paid no money whatever on account of his alleged purchase although he did send a cheque for \$500., dated June 17th, 1923. The cheque is still in the possession of the Plaintiffs but has never been paid.

The cash payment of \$3,000. was not made but it was proposed to be set off against some arrears of interest which had accumulated on the prior mortgages. The whole transaction was, in my view, clearly a scheme or contrivance on the part of the Defendant Morine and assisted by the Defendant Brickenden, to relieve Morine from any further liability in connection with the transaction, and to cut out the mortgage to Renton. 10

About this time the Scottish investors began to make enquiries about their investment made by Renton, as their trustee, and Mr. J. J. Maclellan, a solicitor in Toronto, was retained to look after their interests. He sought information from Morine as representing the London Loan Company in Toronto but could get no satisfaction from him. He also interviewed the Defendants Brickenden and McCormick but could get no information from them.

On behalf of his clients he stated he was willing to pay a very considerable amount of money in order to stay proceedings under the power of sale, but his offer was rejected. There is a sharp contradiction between Defendants Morine and Brickenden on the one hand and Mr. Maclellan as to what happened at these interviews, but I unhesitatingly accept Mr. Maclellan's evidence as to what took place. He was a most reliable witness and gave his evidence in a very clear and convincing manner in marked contrast to that of the two named Defendants. 20

The manner in which the offer on the part of Mr. Maclellan was received and treated by these Defendants, support and strengthen the conclusion that their object was to block enquiry and to manipulate the transaction so that Morine should be relieved from all liability. They also had in view the object of cutting out the subsequent mortgage to the trustee for the Scotch Investors, and leave Morine, through his nominee, Durno, the owner of the property with no liability to pay the mortgages. 30

Some time in the year 1925 Messrs. Martin, Currie & Co., a firm of solicitors in Edinburgh, Scotland, acting for the debenture holders of the London Loan Company, received information about the Durno transaction and started on foot enquiries. They appreciated that the discharge of the mortgage and the sale to Durno very much affected the standing of the London Loan Company and in their several communications sought to obtain information as to how this sale came about. 40

Although they made several distinct and pointed enquiries the replies from the London Loan Co., through its officials, were evasive and unsatisfactory. Some of these replies were framed or revised by the Defendant Brickenden and signed by the Defendant McCormick.

As stated, no satisfactory explanation was given as to how the discharge of mortgage was procured and every attempt was made to evade giving the

information sought. This, in my view, strongly confirms the conclusion reached as to the complicity of the Defendant Brickenden in the transaction.

There was a change in the management of the London Loan Company early in 1929 when a new Board of Directors was elected and a new solicitor, Mr. J. A. Braden of London, was retained to act on behalf of the company.

Mr. Braden immediately set on foot enquiries concerning the series of transactions in connection with the Buckingham Apartments and in the course of these enquiries he interviewed the Defendants Morine, Brickenden and McCormick.

10 In his first interview with Brickenden he stated to the latter that the sale to Durno was not a real or genuine one and to this Brickenden assented saying that it was put through for the purpose of cutting out the subsequent encumbrances and mechanics' liens and in another interview practically the same admissions were repeated. This version of these interviews was expressly denied by the Defendant Brickenden, but, without any hesitation, I accept the evidence of Mr. Braden in preference to the denials of that Defendant.

Mr. Braden also had interviews with the Defendant Morine and while in the same the latter professed that the sale to Durno was a genuine one, he refused to produce any documents and his attitude in regard to the whole
20 transaction raises the gravest suspicion.

Mr. Braden's version of the interviews was directly contradicted by Morine, but I accept the evidence of Mr. Braden in its entirety and reject the evidence of Morine.

We have, then, in connection with this sale, the statement of two of the men who were acting in concord or in conspiracy in reference to this matter, and while, in the ordinary case, the interviews would not be evidence against any one other than the party interviewed, yet where a conspiracy exists the statement of one conspirator may be used in evidence against all concerned in the conspiracy as in criminal cases.

30 As already stated, Morine remained in charge of the receipt and collection of the rents and general management of the apartments and little, if anything, was paid to the Loan Companies in respect of same. Durno took no part in the management whatever.

The mortgage to the Huron and Erie Corporation became greatly in default and, as that company was pressing for the money and proposing to take action to collect, the London Loan Company was compelled to pay off the former company and took an assignment of its mortgage.

It might be mentioned that this mortgage contained a covenant on the part of the Defendant Morine to pay the mortgage moneys.

40 All of these mortgages fell in arrear but the former management of the London Loan Company took no serious steps to enforce payment, but when the new Board of Directors were elected, proceedings were authorized resulting in the present action.

The Plaintiffs now claim against the Defendant Morine payment of the three mortgages under his covenants contained therein and also seek to recover from him damage for fraud and conspiracy in connection with the Durno sale.

The Plaintiffs further claim from the Defendants Brickenden and Mc-

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Cormick damages for the fraud and conspiracy in connection with the transaction and also for negligence on their part as officials or officers of the company in failing to perform their respective duties.

The Defendants deny generally all the allegations made by the Plaintiffs and it is now necessary to consider several specific defences set up by the Defendant Morine and to deal with certain evidence pertaining or relevant thereto.

For Morine it is contended that in respect of the second and third mortgages to the London Loan and Savings Co. he is released from the same by virtue of the discharge of the second mortgage and the exercise of the power of sale under the third mortgage. 10

My conclusion in respect of the transactions attending the discharge is that there was no valid release of his covenants. The sale to Durno, in my view, was a fictitious one and throughout Durno acted as the nominee of the Defendant Morine who in the whole transaction practised a fraud upon the London Loan Company, possibly with the connivance of some of the officials of that Company, but not with the approval of the Board of Directors.

I am of the opinion that the discharge of the second mortgage was and is invalid and inoperative. It was never authorized by the company; it was not executed by any official of the company who had power to execute documents and, therefore, is not binding upon the company. 20

By-law No. 35 of the Company provides for the election of a Board of five Directors from whom a President and two Vice-Presidents shall be chosen.

By-law No. 39 empowers the Directors to appoint an Inspecting Director and to define his powers and duties.

It appears from the records and evidence that no such Inspecting Director was ever appointed.

By-law No. 47 provides that the seal of the Company shall be under the charge of, among others, of some officer designated by the Directors, and also that such officer shall, in conjunction with the President, Vice-President or Inspecting Director and under the direction of the Board, affix the same to such instruments as may require it. 30

If the By-laws are effective then it is obvious that the discharge does not comply with same. However, it is necessary to consider the contention made on behalf of the Defendants to the effect that the mere affixing of the corporate seal validates the document. There are dicta in some of the decisions which apparently support this view, but a closer examination will disclose that the transactions dealt with were with an outsider or one not connected with the company who was considered entitled to rely on the affixing of the corporate seal and not bound to make further enquiries as to the authority possessed by those officers who attested or affixed the seal. These cases are also limited to transactions of a nature generally within the scope of the authority of the attesting official. 40

The principle involved is also limited to cases where the parties act *bona fide* and without notice of the defective authority.

Re County Life Assurance Co. (1870) 5 Ch. App. 288; *Mahony v. East Holyford Mining Co.* (1875) L.R. H.L. 869; *Dickson Co. v. Graham* (1913)

9 D.L.R. 813; *Randle v. Miramichi Lumber Co.* (1922) 70 D.L.R. 713; *Ruben v. Great Fingall Consolidated Co.* (1906) A.C. 439.

In the present case the Defendants Brickenden and McCormick were officers of the Company and the Defendant Morine was an agent and they are, therefore, not entitled to take the attitude that they are not bound by what has been termed defects in the indoor management.

As well the discharge was procured through the conspiracy of the Defendants Brickenden and Morine and operated to their knowledge as a fraud on the London Loan Company, as it enured to the benefit of Morine and
10 therefore to the loss or damage of the company.

Applying the principles enunciated in the cases cited to the facts in this case the finding must be that the discharge of mortgage is inoperative and void and the registration thereof should be vacated.

The Defendant Morine further contends that there was a merger of the three mortgages by virtue of the acquisition of the same by the owner of the equity of redemption and, therefore, the result is to release his covenants contained in the mortgages.

I have already mentioned the deed dated June 25th, 1925, from Durno to Consolidated Trusts Corporation which is expressed to be in trust but
20 no trusts are declared in or by the instrument. There was evidence to the effect it was taken to enable the trustee to collect the rents and to hold the property in trust for Durno and the London Loan and Savings Co., but such evidence is far from satisfactory and after a review of all the circumstances I have arrived at the conclusion it was taken in furtherance of the conspiracy between the Defendants Morine and Brickenden in order to relieve the former from his covenants contained in the mortgage to the Huron and Erie Company.

At the trial a document purporting to be dated July 8th, 1925, and to be a release from the Defendant Durno to Consolidated Trusts Corporation of the Buckingham Apartments was produced.

30 This document is surrounded with mystery and suspicion both as to its origin and authenticity.

It was not registered and there is no reference to it in the records of the company nor is there any satisfactory or credible evidence as to how it was procured or by whom drawn.

It does appear one copy was recently found among the papers of the Consolidated Trusts Corporation, but there was no evidence of its acceptance by that Corporation much less any evidence that the London Loan and Savings Company acquiesced in any arrangement under which it was taken or that such company recognized it in any way.

40 If it is genuine it was undoubtedly prepared at the instance of the Defendant Morine in an attempt to convey the equity of redemption to Consolidated Trusts Corporation and thereby impose on that company the obligation to indemnify the grantor from payment of the several mortgages, with the ultimate result of relieving the Defendant Morine from his covenants.

The Defendant Brickenden in his evidence states he did not draw this document and did not see it until some time after the trust deed was drawn. It is more than probable the copy found in the custody of the Consolidated

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Trusts Corporation was placed there in a surreptitious manner. This is confirmed by the fact that no reference is made to it in any correspondence or records.

In this connection I find that this release was not authorized, accepted or recognized by Consolidated Trusts Corporation or the Plaintiffs, and is therefore inoperative.

It is contended on behalf of the Defendant Morine that the combined effect of the trust deed and release from Durno to Consolidated Trusts Corporation is to vest the equity of redemption in that Company and that as it holds the property as trustee for the London Loan Company (the holders 10 of the three mortgages) it effects a merger of the legal and equitable estates with the ultimate result of constituting the London Loan Company as owners of the lands and extinguishing its claims as mortgagee. This would, of course, have the effect of releasing the Defendant Morine from his covenants.

The doctrine of merger is based on the intention of the parties and certain well-defined rules have been established as to what constitutes evidence of an intention to merge.

These authorities establish that the intention may be presumed from consideration of benefit. It follows then that if it is for the benefit of the owner of the equity to keep the mortgages alive, the presumption will be against 20 merger on his acquiring the equity of redemption.

In the present instance the deed of the equity of redemption, assuming there was a deed executed and delivered, was in favour of Consolidated Trusts Corporation and there is no declaration as to whom that company held the property for. The mere fact that the conveyance of the equity was taken to a trustee would indicate an intention that there should be no merger of the legal and equitable estates.

See *Maclennan v. Gray*, 16 O.R. 321 sub. nom. *Gray v. Coughlin*, 18 Can. S.C.R. 553, See also cases in *Halsbury*, vol. 21, 318, *et seq.*

It follows from the holding that there never was a release or deed from 30 Durno to Consolidated Trusts Corporation, that it is superfluous to deal with the question of merger.

For the Defendants it is contended that the intention that there should be a merger is to be presumed from the manner in which the London Loan Company treated the property in its books and also from the classification made of this particular investment in the annual statement made by that company to the Registrar of Loan Corporations pursuant to the Loan and Trusts Corporation Act.

In some of the latter returns the property is scheduled as real estate, while in the return for 1925 it is classified as a mortgage. Evidence was given for 40 the Plaintiffs that once sale proceedings were taken in respect of a mortgage and the sale proved abortive, the property was thereafter treated as real estate of the company and in the returns to the Government it would be so classified.

This is a satisfactory explanation of how the property comes to be treated in some of the returns as real estate and I think this explanation disposes of the contention made by the Defendants that the Loan Company treated it

as if they were the owner of the property under and by virtue of the trust deed and the alleged release to the Consolidated Trusts Corporation on their behalf.

In 1928 an offer to purchase these apartments, purporting to come from one May Rutherford, was forwarded to the London Loan Company but nothing came of it, and it is significant that no witness called at the trial ever saw this lady and it is very questionable if it was not a fictitious offer.

The action of the London Loan Company in attempting to complete the Rutherford transaction is contended to be an affirmation of the Durno sale, and a recognition of the deed and release from Durno to the Consolidated
10 Trusts Corporation, but I cannot give effect to this contention as it does not appear to be a genuine transaction. In any event it was not known to the Directors of the London Loan Company nor had it then been disclosed to them by the Defendant Morine that Durno was a figurehead or nominee of Morine. This was known only to the Defendants Morine and Brickenden.

As regards the manner in which the property was carried in the ledgers of the company, I do not think it is at all conclusive to the effect that the company recognized or ratified or acquiesced in the conveyance of the equity to the Consolidated Trusts Corporation as being for its sole benefit.

At the most the entries are equivocal in their nature and it cannot and
20 ought not to be presumed that these entries show that the company regarded the property as its own.

Something was said in the argument as to the fact that the London Loan Company received the rents of the property and therefore it should be presumed that the rents were so received as owners.

I do not think this argument is sound. Upon the Defendants' own showing the deed from Durno to the Consolidated Trusts Corporation was taken for the express purpose of authorizing that company to collect the rents for and on behalf of the London Loan Company and in that connection no mention was made of the release which has been already dealt with.

At that time the London Loan Company was regarded as mortgagees
30 of the property and nothing occurred thereafter to change the character in which they received the rents so that it must be considered that the rents were received as mortgagees in possession or entitled to the rents and profits as the mortgages held by the London Loan Company were greatly in arrears.

In view of these findings the conclusion must be that there was no merger of the mortgages sued on, that the same are still valid and subsisting and that the Defendant Morine is liable upon his covenants contained therein.

In addition to the claim upon the covenants the Plaintiffs claim damages
40 from the Defendant Morine for conspiracy with his co-Defendants Brickenden and McCormick to defraud the company by obtaining in an improper manner a release of his covenants.

While I have indicated that in my opinion there was a fraudulent conspiracy between the Defendants Brickenden and Morine, yet I fail to find any evidence which would justify a finding that the Defendant McCormick was a party to such conspiracy. He does not appear to have taken the active and intelligent interest in the affairs of the company which his position as President called for, but that in itself, though it might be negligence, does

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not justify a finding that he was party to the conspiracy.

It is urged and with some force that his letters to Martin, Currie & Co. regarding the Durno transaction show that he was aware of the true situation, but it must be remembered that these letters were prepared largely by the Defendant Brickenden and submitted to McCormick for his signature. They are also written after the alleged Durno deal. The contention is made that from these letters it ought to be inferred that McCormick was a party to the Durno transaction when it went through.

I do not think the evidence justifies such a finding. He did not sign the deed to Durno nor the discharge of mortgage. He apparently acted upon the advice of the Defendant Brickenden and without proper information, but I cannot find upon all the evidence that he was a party to the conspiracy or fraudulent scheme, so that the charge of conspiracy must be dismissed as against him. 10

As to the Defendant Brickenden, I have already held there was a fraudulent agreement or conspiracy between the Defendant Morine and him to put through the Durno transaction in order to relieve Morine from his covenants on the mortgage.

As a result of this scheme it was necessary for the Plaintiffs to bring this action in order to set aside the documents obtained by means of this scheme. If for any reason it had been found impossible to set aside the Durno transaction or to have the liability of the Defendant Morine on his covenants in the mortgages declared as subsisting, then it would have been the duty of the Court to award damages against the Defendants Brickenden and Morine for the conspiracy, but as the effect of this judgment is to hold the Defendant Morine still liable on his covenants, no substantial damages can be awarded on the charges for conspiracy. 20

The Defendant Brickenden was a proper party to the action as the result of his conduct was to make it necessary to have the action brought and he ought therefore to be held liable for the costs of the action. 30

It may be that nominal damages ought to be awarded against the Defendants Morine and Brickenden in respect of the conspiracy but there is no authority I have been able to find which holds that the maxim "injuria sine damno" applies to cases of conspiracy.

The judgment of the House of Lords in *Quinn v. Leatham* (1901) A.C. 495, is to my mind authority for the proposition that damages must be proven in an action for conspiracy and are not to be implied.

It may be that in the present case some damages may result to the Plaintiffs by reason of their remedy upon the covenants in the mortgage being delayed by the conspiracy, but there was no evidence to that effect adduced at the trial. 40

It is contended by the Plaintiffs that action ought to have been taken by the Defendants Brickenden and McCormick to collect the two mortgages as and when they fell due and that, as they failed to take any steps to collect the same from their co-Defendant Morine when he was, on his own admission, able to pay the amount of same, they should be held liable for negligence.

It is also contended that the Defendant Brickenden should have taken

steps to secure the rents of the property and not allow them to be collected by the Defendant Morine.

As a solicitor, Brickenden was only bound to follow the instructions given him and, so far as the evidence discloses, no instructions were given by the Manager or any officer of the company to him to collect the rents so that the charge of negligence must, I think, fail.

The Defendant McCormick throughout appears to have acted without giving very close consideration or attention to his duties as President. It is charged against him that the loans represented by these two mortgages
 10 should never have been made, but apparently all the members of the Board of Directors were in favour of the granting of these loans and there was a valuation by Morine before the Board. In this as in other instances McCormick acted upon the information conveyed to him by the officers of the Board upon whom he had a right to rely. While if he had been more alert in the discharge of his duties, the losses sustained by the company might have been avoided or minimized, yet I do not think his negligence was of such a character as to render him liable for such losses.

In view of my holding that the Defendant Morine is still liable on his covenants the only possible damages attributable to any neglect on the part
 20 of McCormick would be in respect of the initial investments.

It follows, therefore, that the action will be dismissed as against the Defendant McCormick but without costs.

Upon the arguments, oral and written, strong objection was taken by the Defendants to the right of the Plaintiffs to maintain this action.

So far as the action upon the covenants contained in the mortgage is concerned, I do not think the objection is tenable. The mortgages were assigned to the Huron and Erie Mortgage Corporation under the tripartite agreement and were by that company reassigned to the London Loan Assets Company, one of the Plaintiffs, so there can be no doubt as to the status to maintain this
 30 action upon the covenants.

As to the other branch of the case, namely, the claim for damages for conspiracy or negligence, different considerations prevail, but in view of my holdings on the other branch of the case it is unnecessary to express an opinion on these objections, but in view of their importance I shall state them in general terms.

The cause of action was originally vested in the London Loan and Savings Company and was never divested from that company as a claim for tort is not assignable.

It is alleged, however, that the London Loan Company is non-existent
 40 or rather has not the capacity to maintain an action.

The charter of this company is still in existence but it is said that all the stock in this company has been transferred to three trustees who took in exchange for the stock in this company certain shares in the London Loan Assets Company, and it is claimed that the result of these arrangements is to leave the London Loan and Savings Company without any shareholders, or at least with a less number than five, and therefore the London Loan and Savings Company has practically no legal existence.

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Supreme
Court of
Ontario.*

No. 36.
Reasons for
Judgment of
Wright, J.,
8th January,
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—continued.

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Court of
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—continued.

For that company it is contended that under section 11 of the amalgamation agreement (Exhibit 209) it is provided that the new company, that is the London Loan Assets Limited shall have all the rights of action arising out of or incidental or pertinent to any assets purchased by the new company or affecting the value thereof and this, it is contended, has the effect of giving a right of action to the London Loan Assets Limited in connection with the charges of conspiracy.

For the Plaintiffs it is further contended that the provisions of the Loan & Trusts Corporations Act, R.S.O. cap. 223, sec. 83, reserves to the London Loan and Savings Company the right of action even if in other respects the company is dissolved. 10

The provision in the section cited provides for the dissolution except so far as necessary to give full effect to the agreement. It is contended that in order to give full effect to the agreement it is necessary that the London Loan and Savings Company should be treated as having its corporate powers continued for the purpose of realizing on all its assets or choses in action or claims for damages.

I do not think the intention of the Legislature was that in a case such as the present the right of action, if it once existed, should be lost or extinguished by the amalgamation and in that view it is necessary that the London Loan and Savings Company should be deemed to have sufficient corporate existence to maintain an action for damages as in the present case. 20

The action as framed does not ask for foreclosure, but at the trial when this was pointed out counsel for Plaintiffs asked to have the pleadings amended to claim that relief and as all the parties interested are before the Court I allow the suggested amendment.

In the result there will be judgment as follows, viz. :

1. Declaring that the Durno transaction was not a real or genuine transaction but that the Defendant Durno acted as the nominee or agent of the Defendant Morine throughout. 30
2. Declaring the discharge of mortgage from the London Loan and Savings Company to the Defendant Morine and S. B. Green is inoperative and void and the registration thereof ought to be vacated.
3. That the Defendant Morine is liable upon the covenants contained in the three mortgages sued upon for the arrears of principal and interest and if there is any dispute as to the amount a reference may be had to the Local Master at London to determine the amount due; and for foreclosure in the usual terms.
4. That the Defendants Morine and Brickenden be ordered to pay the Plaintiff's costs of the action, including the costs of the Defendant, Consolidated Trusts Corporation. 40
5. That the action be dismissed without costs as against the Defendant McCormick.

It will be noted that the Defendant the Consolidated Trusts Corporation has been added a party Defendant no doubt in order to make the record complete. In its pleading and at the trial it was stated on behalf of this De-

fendant that it submitted its rights and interests to the Court and made no claim for relief.

It was proper for the Plaintiffs to have this corporation added and as no relief is granted against it, it will be entitled to its costs, but these costs the Plaintiff will be entitled to recover against the Defendants Morine and Brickenden.

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE WRIGHT | Friday, the eighth day of January,
| A.D. 1932.

*In the
Supreme
Court of
Ontario.*

No. 37.
Formal
Judgment of
Wright, J.,
8th January,
1932.

10 BETWEEN :

LONDON LOAN ASSETS LIMITED and THE LONDON LOAN AND SAVINGS COMPANY OF CANADA,

Plaintiffs,

AND

H. A. MORINE, G. A. P. BRICKENDEN, and ROBERT S. DURNO, GEORGE G. MCCORMICK and CONSOLIDATED TRUSTS CORPORATION,

Defendants.

This action coming on for trial on the 8th, 9th, 10th, 11th, 17th and 18th
20 days of December, 1931, at the Sittings of this Court holden at the City of London, Ontario, for trials of actions without a Jury, in presence of Counsel for all parties other than the Defendant, Robert S. Durno; no one appearing for the said Defendant; upon hearing read the pleadings and hearing the evidence adduced, and what was alleged by Counsel aforesaid; this Court was pleased to direct this action to stand over for judgment, and the same coming on this day for judgment;

1. THIS COURT DOTH DECLARE that the Discharge of Mortgage made by the London Loan and Savings Company of Canada, dated the 3rd day of July, 1925, and registered in the Registry Office for the City of Toronto
30 as No. 11076 W. F., whereby it purported to discharge a mortgage made by H. A. Morine and S. B. Green to the said London Loan and Savings Company of Canada, dated the 13th day of February, 1923, and registered in the said Registry Office of the City of Toronto as No. 8318 W. F., is null and void and ought to be vacated and set aside and DOTH ORDER AND ADJUDGE the same accordingly.

2. AND THIS COURT DOTH FURTHER DECLARE that the sale proceedings taken in the name of the Plaintiff, the London Loan and Savings Company of Canada, under the power of sale in the mortgage dated the 23rd of May, 1923, made by the Defendant H. A. Morine and S. B. Green to the
40 London Loan and Savings Company of Canada, whereby the said Plaintiff,

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the London Loan and Savings Company of Canada purported to sell the lands and premises covered by the said mortgage to one Robert S. Durno, were fraudulent and void, that the said Robert S. Durno acted as the nominee of or agent of the Defendant, H. A. Morine, and that the conveyances thereunder, namely, a conveyance from the London Loan and Savings Company of Canada to Robert S. Durno, by deed dated June 1st, 1925, and registered on the 8th day of July, 1925, in the Registry Office of the City of Toronto, as No. 11077 W. F., and a mortgage of the said lands from the said Robert S. Durno to the London Loan and Savings Company of Canada for \$77,000, dated the 1st day of June, 1925, and registered on the 8th day of July, 1925, in the said Registry Office of the City of Toronto, as No. 11078 W. F., and a conveyance from the said Robert S. Durno to the Consolidated Trusts Corporation, in trust, by deed dated the 26th day of June, 1925, and registered on the 8th day of July, 1925, in the said Registry Office of the City of Toronto, as No. 11079 W. F., be vacated and set aside and doth order and adjudge the same accordingly. 10

3. AND THIS COURT DOTH FURTHER DECLARE that the Defendant, H. A. Morine, is liable upon the covenants for payment of principal and interest contained in the three mortgages sued on in this action, namely, mortgage dated the 7th day of February, 1923, and registered as Instrument No. 8317 W. F., made by the said Defendant, H. A. Morine, and S. B. Green to the Huron and Erie Mortgage Corporation for \$150,000., the mortgage dated the 13th day of February, 1923, and registered as Instrument No. 8318 W. F., made by the said H. A. Morine and S. B. Green to the Plaintiff, the London Loan and Savings Company for \$35,000., and mortgage dated the 23rd day of May, 1923, and registered as Instrument No. 8761 W. F., made by the said Morine and Green to the Plaintiff, the London Loan and Savings Company for \$20,000., and DOTH ORDER AND ADJUDGE the same accordingly. 20

4. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the said mortgages in question in this action and set out in paragraph 3 hereof, be foreclosed, and that for this purpose it be referred to the Local Master of this Court at London to make inquiries, take accounts, tax costs, and to take all necessary proceedings for redemption or foreclosure of the said mortgaged premises. 30

5. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Defendant, H. A. Morine, do forthwith after the making of the said Master's Report, pay to the Plaintiffs what shall be found due to them for principal, interest and costs at the date thereof, and upon payment of the amount found due to the Plaintiffs, that, subject to the provisions of Section 2 of The Mortgages Act, that the Plaintiffs do assign and convey the mortgaged premises and deliver up all documents relating thereto. 40

6. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that this action as against the Defendant, George G. McCormick, be dismissed without costs.

7. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Defendants, H. A. Morine and G. A. P. Brickenden, do pay to the

Plaintiffs their costs of this action forthwith after taxation thereof.

8. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiffs do pay to the Defendant, the Consolidated Trusts Corporation, its costs of this action forthwith after taxation thereof.

9. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiffs do recover from the Defendants, H. A. Morine and G. A. P. Brickenden, the costs which they are compelled to pay to the Defendant, Consolidated Trusts Corporation.

E. HARLEY,

Senior Registrar, S.C.O.

10

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No. 37.
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Judgment of
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—continued.

No. 38

Notice of Appeal by Defendant, H. A. Morine

No. 38.
Notice of
Appeal,
21st Janu-
ary, 1932.

TAKE NOTICE that the Defendant, Horace A. Morine, hereby appeals to a Divisional Court from the Judgment pronounced by the Honourable Mr. Justice Wright on the eighth day of January, 1932, and asks that the said Judgment may be reversed and that Judgment be entered dismissing the Plaintiffs' claim as against the said Defendant, upon the following grounds:

1. That the said Judgment is contrary to law and evidence and the weight of evidence.
- 20 2. That the Learned Trial Judge erred in finding,—
 - (a) That the Plaintiffs, or either of them, had any status or legal right to maintain this action against the said Defendant.
 - (b) That the said Defendant was guilty of being a party to a conspiracy to defraud the said Plaintiffs or either of them.
 - (c) That the Durno transaction was a fictitious transaction.
 - (d) That the Defendant Durno acted as nominee or figurehead of the said Defendant.
 - (e) That the mortgage originally made to the Huron and Erie Mortgage Corporation and subsequently assigned to the London Loan and Savings Company of Canada was a subsisting mortgage not extinguished or merged.
 - 30 (f) That the said Defendant was an agent of the Plaintiffs, London Loan and Savings Company of Canada, and occupied a fiduciary relationship towards the London Loan and Savings Company of Canada, or acted as its trustee, agent and adviser.
 - (g) That the Consolidated Trusts Corporation were proper parties to the said action, and in directing the said Defendant to pay any portion of their costs.
 - 40 (h) That any cheques for the full amount of the proceeds of any loans were made by London Loan and Savings Company of Canada direct to the said Defendant alone.

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No. 38.
Notice of
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—continued.

- (i) That the said Defendant collected any rents of the Buckingham Apartments and was in charge of the general management thereof after the Durno sale.
- (j) That the said London Loan and Savings Company of Canada were mortgagees in possession of the said Buckingham Apartments after the Durno sale and had any right to collect the rents thereof.
- (k) That the said Defendant failed to disclose to the London Loan and Savings Company of Canada his interest in the Buckingham Apartments at the time he obtained the mortgage for \$35,000. 10
from the London Loan and Savings Company of Canada.
- (l) In allowing to be used as evidence a statement contained in the minutes of a meeting of the Directors of the London Loan and Savings Company of Canada bearing date May 28th, 1923, that the Buckingham Apartments were valued by the said Defendant at four hundred thousand dollars.
- (m) That the loan on the \$20,000. mortgage was not formally approved of by the Board of Directors of the London Loan and Savings Company of Canada until May 28th, 1923.
- (n) That the valuations of the Buckingham Apartments made by 20
witnesses Fetterley and Lonsdale were not submitted to and drawn to the attention of the Board of Directors of the London Loan and Savings Company of Canada before the respective loans were approved.
- (o) That no satisfactory account was given of the rents collected and disbursements made in connection with the Buckingham Apartments.
- (p) That any arrangement had been made between the said Defendant and the Defendant Brickenden in connection with the Durno transaction. 30
- (q) That the discharge of the London Loan and Savings Company of Canada \$20,000. mortgage should be set aside and that the obtaining of the said discharge had been engineered by the said Defendant in collaboration with the Defendant Brickenden for the purpose of releasing the Defendant Morine from his covenants, and that the said discharge was invalid and inoperative.
- (r) That any arrangement had been made between the said Defendant and the Defendant Brickenden to cut out the mortgage to Renton or to release the said Defendant Morine from his liability under the covenants on the mortgages signed by him. 40
- (s) That the mortgage to the Huron and Erie Mortgage Corporation became greatly in default or that the Huron and Erie Mortgage Corporation were pressing for the money due under the loan or were proposing to take any action to collect the same, or that the London Loan and Savings Company of Canada acquired the mortgage for these reasons.

(t) That the deed to Durno should be set aside as fraudulent and fictitious.

(u) That the release from the Defendant Durno to the Consolidated Trusts Corporation, bearing date July 8th, 1925, was prepared at the instance of the said Defendant. That the said release was placed in the custody of the Consolidated Trusts Corporation in a surreptitious manner. That the release was not authorized, accepted or recognized by the Consolidated Trusts Corporation or the Plaintiffs.

10 (v) That the said Defendant is still liable on his covenants in the mortgages signed by him.

3. The Learned Trial Judge erred in making any finding as to the Renton matter in connection with which the full evidence of the transaction was not placed before the Court and which in any event was irrelevant to the matters at issue in this action.

4. That evidence was improperly admitted and rejected by the Learned Trial Judge.

5. That the finding and conclusions of the Learned Trial Judge in regard to the conduct of the said Defendant were not warranted or justified on the
20 evidence adduced at the trial.

DATED at Toronto this 21st day of January, 1932.

SINGER & KERT,
406-8 Temple Bldg., Toronto,
Solicitors for the Defendant,
Horace A. Morine.

TO
MESSRS. BRADEN & McALISTER,
London, Ontario,
Solicitors for the Plaintiffs.

30 TO
MESSRS. SLAGHT & COWAN,
Toronto, Ontario,
Solicitors for the Defendants, G. A. P. Brickenden
and George G. McCormick.

AND TO
CRONYN & BETTS,
Solicitors for the Defendant, Consolidated Trusts Corpn.

No. 39

Notice of Cross-Appeal by Plaintiffs against Defendant, H. A. Morine

40 TAKE NOTICE that pursuant to Consolidated Rule of Practice No. 497, upon the hearing of the appeal herein by the Defendant, H. A. Morine, from the judgment herein of the Honourable Mr. Justice Wright, dated the 8th day of January, 1932, the Plaintiffs will ask the Court to vary the said judgment by awarding damages against the said Defendant Morine for conspiracy for

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No. 38.
Notice of
Appeal,
21st Janu-
ary, 1932.

—continued.

No. 39.
Notice of
Cross-
Appeal,
22nd Janu-
ary, 1932.

*In the
Supreme
Court of
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No. 39.
Notice of
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Appeal,
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ary, 1932.

—continued.

the Plaintiffs' loss and declaring that the Plaintiffs are entitled to the relief claimed against the Defendant Morine, and that damages should be awarded against him as prayed, and that the Plaintiffs be given, as against him, such relief as upon the law and evidence they are entitled, upon the grounds that on the law and evidence adduced before the Court the Plaintiffs are entitled, as against the Defendant Morine to the relief claimed, and for such further and other order as to the Court may seem just.

DATED the 22nd day of January, A.D. 1932.

BRADEN & McALISTER,
London, Ontario,
Solicitors for the Plaintiffs.

10

TO

MESSRS. SINGER & KERT,
Solicitors for the Defendant, H. A. Morine.

No. 40

Notice of Appeal by Defendant, G. A. P. Brickenden

TAKE NOTICE that the above-named Defendant, G. A. P. Brickenden, intends to appeal and hereby appeals to a Divisional Court of this Court at Osgoode Hall in the City of Toronto at the next Sittings thereof from the Judgment of the Honourable Mr. Justice Wright pronounced herein on the 8th day of January, 1932, insofar as the said Judgment affects the Defendant G. A. P. Brickenden and insofar as the said Judgment entitles the Plaintiffs to any relief against the said Defendant G. A. P. Brickenden, and that the said Defendant Brickenden claims that this action should be dismissed as against him with costs upon the following amongst other grounds:—

1. That the said Judgment against the Defendant Brickenden is against the law and evidence and the preponderance of evidence.
2. That the Learned Judge erred in finding that the Defendant Brickenden entered into a fraudulent conspiracy with the Defendant Morine.
3. That the Learned Judge erred in awarding to the Plaintiffs costs of 30 the action including the costs of the Defendant, Consolidated Trusts Corporation, against the Defendant Brickenden.
4. That there is no proper evidence to support the finding of the Learned Trial Judge that the Defendant Brickenden did fraudulently conspire with the Defendant Morine. The Defendant Brickenden has a good character and it is respectfully submitted that throughout the entire record the evidence both documentary and verbal fails to afford any proper ground for a finding of fraudulent conspiracy on his part.
5. That the London Loan and Savings Company of Canada sold its entire assets and undertaking to the Huron and Erie Mortgage Corporation 40 on 3rd July, 1929, (see Exhibit 208). The language is strong and unequivocal, as appears from the following extracts from Clause 1 of that Agreement:—
Clause 1: The Loan Company agrees to sell *and sells* to the Mortgage Corporation, and the Mortgage Corporation agrees to purchase

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ary, 1932.

and purchases from the Loan Company the entire assets and undertaking of the Loan Company, including :

- (1) The good will, etc.
- (2) All the freehold properties.
- (3) All mortgages, etc.
- (5) Full benefit of all contracts and covenants.
- (6) All rights of action arising out of or incidental or appurtenant to ownership of any assets hereby assigned or conveyed or affecting the value thereof insofar as these rights of action are capable of being transferred.

10

6. That the consideration in paragraph 2, clauses (b) and (c) to London Loan, 20,000 shares in London Loan Assets and the \$720,000. cash were paid and received, and the agreement ratified by the Lieutenant-Governor-in-Council.

20

7. That under clause 6 possession of all property and assets was turned over, and under clause 7 the cash and stock was distributed amongst the shareholders who were only entitled to same upon *surrender* of the shares duly endorsed and transferred to three trustees. The evidence makes it clear, both from the entries in the share register of the Company (Exhibit 264) and the Mabel Andrews' sample, Exhibits 221, 222 and 263, as well as the admission of Mr. Braden that the shareholders surrendered their rights and transferred their shares out of their names, and their accounts in the stock register are closed off as flat.

8. That it is furthermore proven that no transfers were ever put through the transfer register or stock register so as to *register* the Trustees as existing shareholders of the Company with respect to the shares, all of which by every shareholder were duly surrendered. There is only one way in law to create a new shareholder, that is, by record on the stock register, and this was not even attempted to be done.

30

The Company, therefore, has under the Statute, been effectually and completely wound up. It has no corporate life, nor power, nor right to sue.

9. That the agreement (Exhibit 208) by clause 8, purported to reserve all corporate powers unimpaired *insofar as is necessary to give full effect to this agreement*. Full effect has been given to the agreement, and its corporate powers are therefore spent and ended. The bringing of this present action is not the exercise of a power to give effect to the agreement, but is an attempt to do something entirely different, that is, to sue an outsider for negligence, and the corporate power so to do has long since passed out of existence.

40

10. That by clause 9, Huron and Erie sold the assets they bought from London Loan to the new Company. London Loan Assets, by Exhibits 204, 205, 206 and 207, took assignments from Huron and Erie on 12th June, 1930, of the \$150,000. mortgage, the \$35,000. mortgage, and the Durno \$77,000. mortgage,—and also a general assignment of all rights of action incidental thereto from Huron and Erie.

11. That no notice in writing, before action brought, of these assignments from Huron and Erie to London Loan Assets was ever given to either McCormick or Brickenden. Huron and Erie are not Plaintiffs in this action and they

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—continued.

were the then owners, and as assignors then sold and assigned, and if there were otherwise any right of action in London Loan Assets under such assignments, the same would be absolutely unenforceable, because of failure to give written notice before action brought, and because Huron and Erie, the assignors, are not parties to this action. See Section 49 of the Conveyancing and Law of Property Act, R.S.O. Chap. 109, which is conveniently found extracted at page 452 of Holmsted's Judicature Act, where the notes which follow at pages 452, 453, 454, 455 and 456, cover the law here referred to.

12. That in the present case, there is *no notice delivered* and the Huron and Erie are not parties. It is not the London Loan, but the Huron and Erie 10 who assigned these mortgages and this alleged chose in action to London Loan Assets. And if any cause of action otherwise did exist in London Loan Assets, it is absolutely unenforceable and this action is fatally defective because Huron and Erie, to whom London Loan sold out and who are *assignors* of London Loan Assets, are *not* parties to this action.

13. That London Loan and Savings, as a corporation, has no interest whatever in the \$150,000. mortgage, or the Durno \$77,000. mortgage, or the Buckingham Apartments, because they sold all these assets long ago and were paid for them in full. It is quite true that part of the consideration was shares 20 of stock in London Loan Assets, but London Loan and Savings did not, when this action was brought on 6th November, 1930, own any shares of London Loan Assets because they had distributed every share to their own shareholders. Mr. Braden was specifically asked this question and admitted that London Loan and Savings owned no stock as a corporation in London Loan Assets. Each former shareholder of London Loan and Savings Co., (except those who have since sold same) hold shares of stock in London Loan Assets.

14. That if, therefore, the Buckingham Apartments, when they are sold, should be disappointing to London Loan Assets in the amount received therefor, the only persons who suffer from such disappointment will be the shareholders 30 of London Loan Assets at that time. The point emphasized is that London Loan and Savings, as a corporation, will not be affected one jot or particle by the price obtained for Buckingham Apartments.

15. That the present shareholders, therefore, of London Loan Assets Limited might be disappointed if a small price only be received. But such shareholders have no personal cause of action for that disappointment, and, moreover, not a single one of such shareholders is before the Court as a party Plaintiff in this action.

16. That the importance of this position is that London Loan Assets never at any time had any dealings with Brickenden. There never was any privity of contract or duty owed by Brickenden to London Loan Assets. 40

17. That the only right London Loan Assets could have acquired would be the right by assignment to recover a loss which their assignor *had actually sustained*. London Loan and Savings never had sustained any loss whatever arising out of any of these securities or the Buckingham Apartments, because they sold and transferred all these mortgages and the property to Huron and Erie before ever realizing upon them. Huron and Erie paid them in full their price, so they parted with the securities, were paid in full, and were absolutely

through with these securities long before this action, brought on 6th November, 1930.

18. That when London Loan Assets became the holders of the securities and the apartment, and assignees of any choses in action arising out of them, no previous owner had ever incurred any loss and therefore London Loan Assets never bought from anybody the right to enforce against Brickenden a loss that had never been sustained. It will make no difference whatever to London Loan and Savings nor to Huron and Erie for what sum the Buckingham Apartments may be sold. London Loan Assets, if disappointed in the
 10 price received, are not taking any loss, because they took the same for *what they were worth*. London Loan Assets got no guarantee either as to titles or values, and London Loan Assets, who never had anything to do with the origin of the securities, will, as far as they are concerned, get everything *they* are entitled to when they get just whatever amount such property brings when it is sold. In other words, they can establish no loss to which they are entitled to look to *anybody*.

19. That the cause of action put forward against Brickenden *is not assignable in law*. It is for a wrong or tort and cannot be effectually assigned or effectually collected by an assignee. But in every case for a wrong or tort
 20 the person who suffered the alleged wrong (London Loan and Savings) must have sustained damage thereby. As previously pointed out, the original Company never held these securities, but sold them and were paid, so never sustained any damage. And even if there were (which this Defendant submits there is not) any ultimate probable loss to London Loan Assets when the Buckingham Apartments are sold, certainly London Loan and Savings do not suffer thereby, either directly or indirectly, because they have no interest in the securities or the property and have no interest even in the stock or shares of London Loan Assets.

20. That there is a triple position, therefore, as an answer to any claim
 30 that London Loan Assets put forward, because they are purchasers or assignees, namely:—*first*, that the person from whom you bought such a claim had sustained no loss when you bought it; *secondly*, that the person from whom you purported to buy such a claim could not in law assign it to you because it was not assignable; *thirdly*, that if it was assignable in law, no written notice of action was given to Brickenden before suit.

21. That the Learned Trial Judge wrongfully admitted evidence on behalf of the Plaintiffs.

22. That the Learned Trial Judge wrongfully rejected evidence submitted on behalf of the Defendant Brickenden.

40 23. Such further and other grounds as counsel may advise.

AND TAKE NOTICE that in support of such appeal will be read the pleadings and proceedings in the action, the evidence adduced and exhibits filed at the

*In the
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Court of
Ontario.*

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—continued.

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trial and the Reasons for Judgment of the Learned Trial Judge, and such further and other material as counsel may advise.

DATED at Toronto this 21st day of January, 1932.

No. 40.
Notice of
Appeal,
21st January, 1932.

SLAGHT & COWAN,
320 Bay Street,
Toronto 2, Ontario,
Solicitors for the Defendant, G. A. P. Brickenden.

—continued.

TO the above-named Plaintiffs;
AND TO
MESSRS. BRADEN & McALISTER,
London, Ontario,
Their Solicitors herein.

10

No. 41.
Notice of
Cross-
Appeal,
22nd January, 1932.

No. 41

Notice of Cross-Appeal by Plaintiffs against Defendant, G. A. P. Brickenden

TAKE NOTICE that pursuant to Consolidated Rule of Practice No. 497, upon the hearing of the appeal herein by the Defendant, G. A. P. Brickenden, from the Judgment herein of the Honourable Mr. Justice Wright dated the 8th day of January, 1932, the Plaintiffs will ask the Court to vary the said Judgment by awarding damages against the Defendant Brickenden for conspiracy for the Plaintiffs' loss, and declaring that the Plaintiffs are entitled to the relief claimed against the Defendant Brickenden and that damages should be awarded against him as prayed, and that the Plaintiffs be given, as against him, such relief as upon the law and evidence they are entitled upon the grounds that on the law and evidence adduced before the Court the Plaintiffs are entitled as against the Defendant Brickenden to the relief claimed, and for such further and other relief as to the Court may seem just.

DATED the 22nd day of January, A.D. 1932.

BRADEN & McALISTER,
London, Ontario,
Solicitors for the Plaintiffs.

30

TO
MESSRS. SLAGHT & COWAN,
Solicitors for the Defendant, G. A. P. Brickenden.

No. 42.
Notice of
Appeal,
22nd January, 1932.

No. 42

Notice of Appeal by Plaintiffs against Defendant, George G. McCormick

TAKE NOTICE that the Plaintiffs appeal to a Divisional Court from such part of the Judgment pronounced herein by the Honourable Mr. Justice Wright on the 8th day of January, 1932, that dismisses this action against the

Defendant, George G. McCormick, and asks that the said Judgment may be revised and that Judgment should be entered against the said George G. McCormick upon the following, amongst other grounds :

*In the
Supreme
Court of
Ontario.*

1. THAT the said Judgment, insofar as it dismisses this action against the Defendant McCormick, is against law and evidence and the weight of evidence.

No. 42.
Notice of
Appeal,
22nd Janu-
ary, 1932.

2. THAT the evidence showed that the Plaintiffs were entitled to the relief claimed against the Defendant McCormick, and that damages should have been awarded against him as prayed.

—continued.

10 3. THAT the evidence showed that the Defendant McCormick was a party to the conspiracy referred to in the Judgment of the Learned Trial Judge.

4. THAT the evidence discloses that the Defendant McCormick is, on the evidence and in law, liable in damages to the Plaintiffs for the Plaintiffs' loss.

DATED this 22nd day of January, A.D. 1932.

BRADEN & McALISTER,
London, Ontario.
Solicitors for the Plaintiffs.

TO

20 MESSRS. BARTON & HENDERSON,
Solicitors for the Defendant, G. G. McCormick.

No. 43

Reasons for Judgment of Second Divisional Court

(Latchford, C. J. A., Magee, J. A., Riddell, J. A., Orde, J. A., and Fisher, J. A.)

No. 43.
Reasons for
Judgment of
Second
Divisional
Court
(Riddell,
J. A.),
25th Novem-
ber, 1932.

30 LONDON LOAN ASSETS
LIMITED *et al*
vs.
H. A. MORINE
et al

I. F. Hellmuth, K.C., and J. Singer for Defendant H. A. Morine, Appellant.

A. G. Slaght, K.C., and R. I. Ferguson for the Defendants, G. A. P. Brickenden and George G. McCormick, Appellants.

W. N. Tilley, K.C., George T. Walsh, K.C., and V. Evan Gray, for the Plaintiffs (Respondents).

RIDDELL, J. A.: An appeal by all parties from the judgment of the Honourable Mr. Justice Wright, who tried the case without a jury at London, in December, 1931.

40 When the case is denuded of the alluring vesture with which it has been clothed and decked by the ingenuity of counsel, the facts seem clear, and many of them as unsavoury as they are clear.

The findings of fact in respect of Morine (with the exception of a few minor ones of no importance) are fully justified by the evidence—some weight was

*In the
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—continued.

sought to be attached to what were said to be the conclusions of the Court of Appeal in the former case of *Biggs v. London Loan Co.* (1932) 41 O.W.N. 45; but the conclusions in the case were arrived at upon the evidence then before the Court, and while we are bound by the decision in matters of law, the decisions on matters of fact are *nihil ad rem*, and I do not consider them; though I was a party to these decisions, I do not pay any attention to them, being wholly governed by the evidence given at the trial of this case and in no way influenced by that given in the former trial or the conclusion arrived at upon that evidence.

These findings of fact, so far as they are material, being accepted as accurate, the result is inevitable that the appeal of Morine must fail—he was a trusted agent of the Loan Company; true it is that he tries to repudiate the status of agent, but that is mere logomachy; he does not like the name, but the position is quite beyond question; and he took part, a most active part, in the attempt to destroy his liability to the Company in another capacity, an attempt which, if this action were to fail, would be successful.

The first three findings of the Learned Trial Judge are, I think, inextinguishable, namely:—

“1. That the Durno transaction was not a real or genuine transaction but that the Defendant Durno acted as the nominee or agent of the Defendant Morine throughout. 20

“2. That the discharge of mortgage from the London Loan and Savings Company to the Defendant Morine and S. B. Green is inoperative and void and the registration thereof ought to be vacated.

“3. That the Defendant Morine is liable upon the covenants contained in the three mortgages sued upon for the arrears of principal.”

Notwithstanding the very able and exhaustive argument of the Plaintiffs' counsel, I am unable to find any reason to disagree with the finding:

“5. That the action is dismissed. . . . as against the Defendant McCormick.” 30

There are circumstances from which suspicion might be framed; but the evidence falls far short of proof of any impropriety on his part; no motive for wrongdoing can be fairly adduced; and, in any event, he is entitled to a judgment unless and until fairly conclusive evidence is brought against him; and that, as I have said, I fail to find. The disposition as to costs cannot be appealed against, no leave having been obtained from the Trial Judge under sec. 23 of The Judicature Act, R.S.O. 1927, cap. 88, and these costs being by sec. 77 in the discretion of the Trial Judge. It is too late to argue that a Defendant, on the dismissal of the action against him, has the legal right to costs. “Costs, which are in the discretion of the Court, are *prima facie* costs, which are got from the Judge according to his view of the case before him, and they are not the subject of standing legal prescriptions, vesting in a litigant a prior legal right to certain costs at all;” *Donald Campbell & Co. v. Pollak* (1927) A.C. 732, per Viscount Sumner at pp. 766, 767; per Viscount Cave, p. 809, quoting with approval the language of Lord Sterndale M.R., in *Ritter v. Godfrey* (1920) 2 K.B. 47; “This was a case tried without a jury before the Judge alone, and therefore in the absence of an order by him neither party is entitled to 40

any costs;" and at p. 811, "A successful Defendant in a non-jury case . . . has no right to costs unless and until the Court awards them to him, and the Court has an absolute and unfettered discretion to award or not to award them" and p. 767, "It is impossible to argue that a successful litigant has by law a right to costs," cf. *Morrison v. Morrison* (1928) 62 O.L.R. 138; *Stark v. Batchelor* (1928) 63 O.L.R. 135.

As to "4. That the Defendants Morine and Brickenden be ordered to pay the Plaintiffs' costs of the action, including the costs of the Defendant, Consolidated Trusts Corporation," this raises serious questions in respect of one of the Defendants—I can see no objection to the direction that Morine, the real *fons et origo mali*, should pay these costs, the direction being, I think, within the power of the Learned Trial Judge. It is to the order against Brickenden that the real objection lies.

Dealing first with the direction that he pay the costs of the Consolidated Trusts Corporation, it is plain that this is a penalty imposed upon him, though he has succeeded in his defence. The case of *Willmott v. Barber* (1881) L.R. 17 Ch. D. 772 expressly decides that such a penalty cannot be imposed upon a successful Defendant. "No doubt, a Judge has no power to order any party to pay a sum by way of penalty beyond the costs of the claim and counterclaim," *Jessel, M. R.* at p. 773. Of course, this means the costs of the claim against him and of his counterclaim, not the costs of a claim with which he had nothing to do and which was not made against him or a counterclaim of some other party with which he was not connected. In that case all the Lord Justices concurred in the opinion; it was a case in which the claim against the Defendant failed and the action against him was dismissed without costs, as in effect, the action against Brickenden was here. The Lord Justices were confident that the Trial Judge had no "wish to interfere with that rule;" but interpreted the objectionable order as a direction that the Defendant should pay half the costs of the litigation and that, they held, "was quite within his powers." This would justify the order to pay costs, even against a successful Defendant. But, while Morine cannot now successfully complain of the order that he pay the costs of the action against him, he contends that he cannot be ordered to pay what he contends is a penalty. But the Pleadings and facts of the case show conclusively that he had a part in the transactions that led the Plaintiffs to make the Consolidated Trusts Corporation a party, and he was in fact involved in the litigation *quoad* that Company. It is familiar practice that a Defendant being found liable is made to pay the costs of the Plaintiff, including costs which the Plaintiff is obliged to pay, these being in this respect considered costs of the action.

In the much-cited case of *Campbell v. Pollak* (1927) A.C. 732, a case tried without a jury—and consequently the English rules as to costs are the same as our own—Lord Atkinson at p. 776 says, "It is not a judicial exercise of his discretion (i.e., the discretion of the Trial Judge) to order a litigant who has been completely successful in a suit and against whom no misconduct is alleged to pay the costs of the proceeding, *Kierson v. Joseph L. Thompson & Sons* (1913) 1 K.B. 587." Cf. at p. 818, 819 and cases there cited, I take it that the Learned Lord means "no misconduct is proved," as it would savour

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—continued.

of absurdity that a Plaintiff by making an unfounded charge against a Defendant could make him liable for what he would not be liable for had the charge not been made.

Whether a successful Defendant can be held liable to pay the costs of the Plaintiff if charges of misconduct are proved against him I do not here consider—the cases are not wholly satisfactory; but I think that no misconduct of any kind has been established against Brickenden. There are, indeed, circumstances of suspicion, but the evidence in my view goes no further. To convict anyone—and not least, a practitioner of the law—of wrongdoing amounting in this instance to gross breach of trust and constructive fraud, 10 requires, in my mind, much stronger and more convincing evidence than has been adduced in the present case. No real motive for such alleged breach of trust, no advantage to be gained by the solicitor, pecuniary or otherwise, no plotting against the interests of his clients, including, in a sense, his father-in-law, has been proved and I am unable to agree with the Learned Trial Judge that Brickenden was proved guilty of misconduct—*injuria*—toward the Plaintiff or either of them.

Whatever might have been the power of the Trial Judge to direct Brickenden to pay the costs of the action against him, had he been proved guilty of serious misconduct as to which, as has been said, I do not decide, that power 20 did not exist where no misconduct was proved.

These, then, were not costs “which, by law, are left to the discretion of the Court,” *Campbell v. Pollak, ut supra*; and an appeal lies, do., do., without leave such as is spoken of in sec. 23 of The Judicature Act, R.S.O. 1927, cap. 88.

I would dismiss the appeal of Morine, and allow the appeal of Brickenden; dismiss the cross-appeal against Brickenden and against McCormick, all with costs.

LATCHFORD, C. J.	}	I agree.
FISHER, J. A.		

30

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE THE CHIEF JUSTICE
 IN APPEAL
 THE HONOURABLE MR. JUSTICE MAGEE
 THE HONOURABLE MR. JUSTICE RIDDELL
 THE HONOURABLE MR. JUSTICE ORDE
 THE HONOURABLE MR. JUSTICE FISHER

Friday, the 25th day
 of November, 1932.

*In the
 Supreme
 Court of
 Ontario.*
 —
 No. 44.
 Formal
 Judgment of
 Second
 Divisional
 Court,
 25th Novem-
 ber, 1932.

BETWEEN :

10 LONDON LOAN ASSETS LIMITED and THE LONDON LOAN AND
 SAVINGS COMPANY OF CANADA,

Plaintiffs.

AND

H. A. MORINE, G. A. P. BRICKENDEN, and ROBERT S. DURNO,
 GEORGE G. MCCORMICK and CONSOLIDATED TRUSTS COR-
 PORATION,

Defendants.

(SEAL)
 "E.S." 12.1.33

UPON MOTION made unto this Court on the 2nd, 3rd, 4th, 5th and 6th
 20 days of May, 1932, by counsel for H. A. Morine by way of appeal from the
 Judgment of the Honourable Mr. Justice Wright, dated the 8th day of Janu-
 ary, 1932, and upon motion made by counsel for G. A. P. Brickenden by way
 of appeal from the said Judgment, and upon motion made by counsel for the
 Plaintiff by way of appeal from the said Judgment as against the Defendant,
 George G. McCormick, and upon motion made by counsel for the Plaintiff
 by way of cross-appeal from the said Judgment as against the Defendant,
 G. A. P. Brickenden, in the presence of counsel for all parties except Robert
 S. Durno, upon hearing read the pleadings and the evidence adduced at the
 trial and the said Judgment, and upon hearing what was alleged by counsel
 30 aforesaid and Judgment having been reserved until this day, the Honourable
 Mr. Justice Orde having died since the said appeal was argued and before the
 delivery of the Judgment therein,

1. THIS COURT DOTH ORDER that the appeal of the Defendant,
 H. A. Morine, be and the same is hereby dismissed.

2. AND THIS COURT DOTH FURTHER ORDER that the cross-
 appeal by the Plaintiffs against the Defendant, G. A. P. Brickenden, be and
 the same is hereby dismissed.

3. AND THIS COURT DOTH FURTHER ORDER that the appeal
 of the Plaintiffs against the Defendant, George G. McCormick, be and the
 40 same is hereby dismissed.

4. AND THIS COURT DOTH FURTHER ORDER that the appeal
 of the Defendant, G. A. P. Brickenden, be and the same is hereby allowed,

*In the
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and that the said Judgment should be varied and as varied be as follows :

- (1) **THIS COURT DOTH DECLARE** that the Discharge of Mortgage made by the London Loan and Savings Company of Canada, dated the 3rd day of July, 1925, and registered in the Registry Office for the City of Toronto as No. 11076 W. F., whereby it purported to discharge a mortgage made by H. A. Morine and S. B. Green to the said London Loan and Savings Company of Canada, dated the 13th day of February, 1923, and registered in the said Registry Office of the City of Toronto as No. 8318 W. F. is null and void and ought to be vacated and set aside and **DOTH ORDER AND ADJUDGE** 10
the same accordingly.
- (2) **AND THIS COURT DOTH FURTHER DECLARE** that the sale proceedings taken in the name of the Plaintiff, the London Loan and Savings Company of Canada, under the Power of Sale in the mortgage dated the 23rd day of May, 1923, made by the Defendant H. A. Morine and S. B. Green to the London Loan and Savings Company of Canada, whereby the said Plaintiff the London Loan and Savings Company of Canada purported to sell the lands and premises covered by the said mortgage to one Robert S. Durno, were fraudulent and void, that the said Robert S. Durno acted as 20
the nominee of or agent of the Defendant H. A. Morine and that the Conveyances thereunder, namely, a conveyance from the London Loan and Savings Company of Canada to Robert S. Durno, by deed dated June 1st, 1925, and registered on the 8th day of July, 1925, in the Registry office of the City of Toronto, as No. 11077 W. F., and a mortgage of the said lands from the said Robert S. Durno to the London Loan and Savings Company of Canada for \$77,000. dated the 1st day of June, 1925, and registered on the 8th day of July, 1925, in the said Registry Office of the City of Toronto, as 30
No. 11078 W. F., and a conveyance from the said Robert S. Durno to the Consolidated Trusts Corporation, in trust, by deed dated the 26th day of June, 1925, and registered on the 8th day of July, 1925, in the said Registry Office of the City of Toronto, as No. 11079 W. F., be vacated and set aside and **DOTH ORDER AND ADJUDGE**
the same accordingly.
- (3) **AND THIS COURT DOTH FURTHER DECLARE** that the Defendant H. A. Morine is liable upon the covenants for payment of principal and interest contained in the three mortgages sued on in this action, namely, mortgage dated the 7th day of February, 1923, and registered as Instrument No. 8317 W. F., made by the 40
said Defendant H. A. Morine and S. B. Green to the Huron and Erie Mortgage Corporation for \$150,000., the mortgage dated the 13th day of February, 1923, and registered as Instrument No. 8318 W. F., made by the said H. A. Morine and S. B. Green to the Plaintiff, the London Loan and Savings Company, for \$35,000., and mortgage dated the 23rd day of May, 1923, and registered as Instrument No.

8761 W. F., made by the said Morine and Green to the Plaintiff, the London Loan and Savings Company, for \$20,000., and DOTH ORDER AND ADJUDGE the same accordingly.

- (4) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the said mortgages in question in this action and set out in paragraph 3 hereof, be foreclosed, and that for this purpose it is referred to the Local Master of this Court at London to make inquiries, take accounts, tax costs, and to take all necessary proceedings for redemption or foreclosure of the said mortgaged premises.
- 10 (5) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Defendant, H. A. Morine, do forthwith after the making of the said Master's Report pay to the Plaintiffs what shall be found due to them for principal, interest and costs at the date thereof and upon payment of the amount found due to the Plaintiffs, that, subject to the provisions of Section 2 of The Mortgages Act, that the Plaintiffs do assign and convey the mortgaged premises and deliver up all documents relating thereto.
- (6) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that this action as against the Defendant George G. McCormick
- 20 be dismissed without costs.
- (7) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that this action as against the Defendant, G. A. P. Brickenden, be and the same is hereby dismissed.
- (8) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Defendant, H. A. Morine, do pay to the Plaintiffs their costs of this action forthwith after taxation thereof.
- (9) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiffs do pay to the Defendant, G. A. P. Brickenden, his costs of this action forthwith after taxation thereof.
- 30 (10) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiffs do pay to the Defendant, Consolidated Trusts Corporation, its costs of this action forthwith after taxation thereof.
- (11) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiffs do recover from the Defendant, H. A. Morine, the costs which they are compelled to pay to the Defendant, Consolidated Trusts Corporation.
5. AND THIS COURT DOTH FURTHER ORDER that the Plaintiffs do pay to the Defendant, G. A. P. Brickenden, his costs of this appeal forthwith after taxation thereof.
- 40 6. AND THIS COURT DOTH FURTHER ORDER that the Plaintiffs do pay to the Defendant, G. A. P. Brickenden, his costs of the Plaintiffs' cross-appeal against him forthwith after taxation thereof.
7. AND THIS COURT DOTH FURTHER ORDER that the Plaintiffs do pay to the Defendant, George G. McCormick, his costs of the appeal against him forthwith after taxation thereof.
8. AND THIS COURT DOTH FURTHER ORDER that the De-

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—continued.

fendant, H. A. Morine, do pay to the Plaintiffs and the Consolidated Trusts Corporation their costs of this appeal forthwith after taxation thereof.

E. HARLEY,
Senior Registrar, S.C.O.

Entered O.B. 131, pages 95, 6, and 7
January 12th, 1933.
"V.C."

IN THE SUPREME COURT OF ONTARIO

*In the
Supreme
Court of
Ontario.*

THE HONOURABLE MR. JUSTICE MAGEE
IN CHAMBERS

Friday, the 20th day of
January, 1933.

10

No. 45.
Order of
Magee, J. A.,
20th January, 1933.

BETWEEN :

LONDON LOAN ASSETS LIMITED and THE LONDON LOAN AND SAVINGS COMPANY OF CANADA,

Plaintiffs,

AND

H. A. MORINE, G. A. P. BRICKENDEN, ROBERT S. DURNO, GEORGE G. McCORMICK, and CONSOLIDATED TRUSTS CORPORATION,

Defendants.

20

(SEAL)
L.C.L., 24.1.33

1. UPON THE APPLICATION OF counsel for the Defendant H. A. Morine in the presence of counsel for all parties, upon hearing read the judgment of the Court of Appeal for Ontario pronounced herein on the 25th day of November, 1932, the reasons for said judgment, the affidavit of Joseph Singer filed and the bond of the Royal Insurance Company Limited of Liverpool and of the Defendant, H. A. Morine, dated the 27th day of December, 1932, filed and it appearing that the said Defendant, H. A. Morine, has, under the provisions of the Privy Council Appeals Act, R.S.O. 1927, Chapter 86, a right to appeal to His Majesty in His Privy Council; AND UPON THE APPLICATION OF counsel for the Plaintiffs in the presence of counsel for all parties, upon hearing read the said judgment and the said reasons, the affidavit of George Theophilus Walsh filed and the exhibit therein referred to and it appearing that the Plaintiffs have, under the provisions of the said Privy Council Appeals Act, a right to appeal to His Majesty in His Privy Council as against the Defendants H. A. Morine, G. A. P. Brickenden and George G. McCormick and upon hearing what was alleged by counsel aforesaid.

2. IT IS ORDERED that the said bond be and the same is hereby approved as good and sufficient security that the said Defendant, H. A. Morine, will effectually prosecute his appeal to His Majesty in His Privy Council

from the said judgment of the Court of Appeal for Ontario and will pay such costs and damages as may be awarded in case the said judgment is confirmed.

3. AND IT IS FURTHER ORDERED that an appeal by the said Defendant, H. A. Morine, to His Majesty in His Privy Council from the said judgment be and the same is hereby admitted.

4. AND IT IS FURTHER ORDERED that the sum of Two Thousand Dollars (\$2,000.) paid into Court as appears by Exhibit "A" to the said affidavit of George Theophilus Walsh be and the same is hereby approved as good and sufficient security that the Plaintiffs herein will effectually prosecute their appeal against the Defendants, H. A. Morine, G. A. P. Brickenden and George G. McCormick, to His Majesty in His Privy Council from the said judgment of the Court of Appeal for Ontario and will pay such costs and damages as may be awarded in case the said judgment is confirmed.

5. AND IT IS FURTHER ORDERED that an appeal by the said Plaintiffs herein against the Defendants, H. A. Morine, G. A. P. Brickenden and George G. McCormick, to His Majesty in His Privy Council from the said judgment be and the same is hereby admitted.

6. AND IT IS FURTHER ORDERED that the said appeal of the Defendant, H. A. Morine, and the said appeal of the Plaintiffs be and the same are hereby consolidated and that they do proceed as one consolidated appeal on the record to be printed and filed in the Privy Council in the appeal of the said Defendant, H. A. Morine, each party to the said appeals being at liberty to file one case in the said consolidated appeal.

7. AND IT IS FURTHER ORDERED that all proceedings under the said judgment on behalf of any party to this action as against any other party to this action be and the same are hereby stayed subject to such further order as this Court may make.

8. AND IT IS FURTHER ORDERED that in the event of the Defendant, H. A. Morine, or the Plaintiffs failing to take such steps from time to time as may be necessary to expedite his or their appeal to His Majesty in His Privy Council any of the parties may apply to vary or rescind this order.

9. AND IT IS FURTHER ORDERED that the costs of the said applications shall be costs in the said consolidated appeal.

E. HARLEY,

Senior Registrar, S.C.O.

Entered A.B. 131, pages 172 & 3,

January 24th, 1933.

"V.C."

*In the
Supreme
Court of
Ontario.*

No. 45.
Order of
Magee, J. A.,
20th January,
1933.

—continued.

PART II
Exhibits
Exhibit 273

(Plaintiffs' Exhibit)

Extract from Certified Copy of Declaration re Incorporation London Loan and Savings Co.

Only the formal Declaration is copied without the appended signatures.

THE LONDON LOAN COMPANY OF CANADA

We, the undersigned, residing in the County of Middlesex, in the Province
 10 of Ontario, formerly Upper Canada, do hereby declare that we agree to constitute ourselves a Permanent Building Society by the name of "The London Loan Company of Canada" under and by virtue of the Act entitled "An Act Respecting Building Societies," Chapter fifty-three of the Consolidated Statutes of Upper Canada and the amendments thereto.

As WITNESS our hands and seals the thirtieth day of April in the year of our Lord one thousand eight hundred and seventy-seven.

Part Exhibit 221

(Defendants' Exhibit)

A

20 **Stock Certificate, London Loan and Savings Co.—No. 719 of Mrs. Mabel Andrews**

307

No. 719

Shares 6

THE LONDON LOAN COMPANY OF CANADA

STOCK CERTIFICATE (*Labore et Perseverantia*) **SHARES \$50. EACH**

LONDON, ONT. September 11th, 1912.

THIS IS TO CERTIFY THAT Mrs. Mabel Andrews.....
 of West Lorne, Ontario, is the holder of Six.....PERMANENT SHARES
 30 in the Capital Stock of THE LONDON LOAN COMPANY OF CANADA upon which the Sum of Two Hundred and Fifty.....DOLLARS has been paid. SAID SHARES being transferable on the books of the Company only by her or her Attorney duly constituted.

(SEAL)
 London Loan and Savings Company Incorporated 1877 of Canada.

As WITNESS our hands and the Corporate Seal of the Company.

M. J. KENT,

R. W. PUDDICOMBE,

Manager.

President.

In the Supreme Court of Ontario.
 Exhibits. Ex. 273.
 Extract from Certified Copy of Declaration re Incorporation, London Loan & Savings Co., filed, 2nd May, 1877.

Exhibits. Part Ex. 221. A.
 Stock Certificate, London Loan & Savings Co., No. 719 of Mrs. Mabel Andrews, 11th September, 1912.

Part Exhibit 13

(Plaintiffs' Exhibit)

A

Extracts from Minute Book of London Loan and Savings Co.

Minute Book—p. 450

Monday, May 9, 1921.

BOARD MET—Present Messrs. McCormick, Robinson, Kent and Hunt.

Minutes of last meeting read and confirmed.

Solicitor—G. A. P. Brickenden appointed general solicitor for London L. & S. Company.

M. J. KENT

GEO. G. McC.

.....
Manager.

.....
President.

Exhibit 282

(Defendants' Exhibit)

Application for Loan, S. B. Green to Huron and Erie Mortgage Corp. with Valuation of P. B. Fetterley

Sent in by H. A. Morine.....
Application No..... Name S. B. Green..... Mtge. No. P 2491.....

THE HURON AND ERIE MORTGAGE CORPORATION 20

Loan \$150,000..... Made..... Total Claim \$ to 19.....
including \$..... arrears of interest.....
Street No..... on the S side of Queen St., between..... and.....
near Roncesvalles
in the (town or city) of N " King Toronto.
Frontage of lot 96 ft. Depth 199 ft. Any lane? Runs from King to Queen.

BUILDINGS

Walls	Founda- tion	Roof	Buildings used for	Size	Stories	Occupied by	What does or would proper- ty rent for yearly?	30
Reinforced concrete with brick facing and cut stone trim	Con- crete	Con- crete	Aptmts. (33) stores (5)	68 x 160	4	not quite complete	\$50,000. gross	

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part. Ex. 13.
A.
Extracts
from Minute
Book of
London
Loan &
Savings
Company,
Page 450,
9th May,
1921.

Exhibits.
Ex. 282.
Application
for Loan,
S. B. Green
to Huron &
Erie Mort-
gage Corp.
with
Valuation
of P. B.
Fetterley,
1st Febru-
ary, 1923.

A building of highest type of construction of its kind and finish of very superior type. On King St., an open court gives access to 33 suites—30 of which are 4 rooms and bath but really 5 rooms as combination living room and dining room is 14 x 22. Bedrooms large, 12 x 14. Bathrooms tiled floor and walls—3 suites of 3 rooms and bath. On Queen St.—5 shops or stores all fitted out with tiled approaches.

Lighted by..... Heated by..... What plumbing is there?.....

LAND

10 Have you satisfied yourself that the land and buildings inspected are those described above?.....

Is the locality a desirable one? A splendid site and an equally good building.....

Is it likely to improve or deteriorate? Improve.....

Direction and distance from business centre? 3½ miles west—good bus centre here.

Age of buildings about const. years. Are they being kept in proper repair? See general remarks.

Owner's age? About 38 years. Occupation? Builder. Reputation? Good.

When did the property last change hands?..... At what price in cash? \$.....

Is there a proper street sewer? Yes. Is this property connected? Yes.

20 If not, how drained?..... Is it well supplied with water, and how? W.W.

Assessment: Land \$..... Buildings \$..... Total \$.....

If building in course of erection, how far is it on? Almost ready for finish.

Purpose of Loan Cost of building in part.....

The selling value of the property now at forced sale, cash, balance at 5% for five years, as follows:

VALUATION:

	Queen Land 76 ft. frontage, at \$250 per ft.....	\$19,000.
	King Land 76 " " \$150 per ft.....	\$11,000.
	Buildings completed.....	\$275,000.
30	"	\$.....
	"	\$.....
	Total.....	\$305,000.

Insurance, \$150,000.

State any other facts which, in your opinion, might affect the risk of the loan. The floors are all concrete covered in rooms with 7/8 oak, the approaches to aptmts., in vestibules and halls are all trimmed in marble, all partitions are asbestos—a very unique building.

I certify that I have personally examined the property specified in the foregoing report:

40 I confidently recommend a loan of \$150,000.

Date..... Feb. 1st..... 1923

P. B. Fetterley
Inspector.

CITY

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 282.
Application
for Loan,
S. B. Green
to Huron &
Erie Mort-
gage Corp.
with
Valuation
of P. B.
Fetterley,
1st Febru-
ary, 1923.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 297.
Copy of
Application
for Loan,
\$150,000.00,
to Huron &
Erie Mort-
gage Corp.
with
Valuation
of P. B.
Fetterley
Attached,
1st Febru-
ary, 1923.

Exhibit 297

(Plaintiffs' Exhibit)

Copy of Application for Loan, \$150,000., to Huron and Erie Mortgage Corp., with Valuation P. B. Fetterley attached

NOT PRINTED.

Exhibit 146

(Plaintiffs' Exhibit)

Extract from Mortgage, S. B. Green et al to Huron and Erie Mortgage Corp., No. 8317, W.F., \$150,000.

THIS INDENTURE,

10

**NOT
PRINTED.**

made in Duplicate, the seventh day of February, one thousand nine hundred and twenty-three. In Pursuance of the Short Forms of Mortgages Act

BETWEEN :

SAMUEL B. GREEN, of the City of Toronto in the County of York, Builder, and **HORACE A. MORINE**, of the said City of Toronto, Financial Broker, in their individual capacity and as co-partners in the business of improving the lands hereinafter described.....

herein called the Mortgagor of the First Part;

—AND—

THE HURON & ERIE MORTGAGE CORPORATION

20

herein called the Mortgagee of the Second Part;

AND ETHEL B. GREEN, wife of the said Samuel B. Green and **ESTELLE MAUDE MORINE**, wife of the said Horace A. Morine,

of the Third Part.

Whereas the Mortgagor is seized in fee simple in possession of the lands hereinafter described,

WHEREAS there is an existing mortgage of \$135,000. now registered against these lands which is being discharged from the proceeds hereof.

30

NOW THIS INDENTURE WITNESSETH, that in consideration of **ONE HUNDRED AND FIFTY THOUSAND**.....

Dollars of lawful money of Canada, now paid by the Mortgagee to the Mortgagor (the receipt whereof is hereby acknowledged), the Mortgagor Doth Grant And Mortgage unto the Mortgagee in Fee Simple all and singular that certain parcel or tract of land and premises, situate, lying and being lands as in Exhibit 2.

And the said wife of the said Mortgagor hereby Bars Her Dower in the said lands.

Provided this Mortgage to be void on payment at the office of the Mortgagee in London, Canada, in current gold coin at the option of the Mortgagee, of

Exhibits.
Ex. 146.
Extract from
Mortgage,
S. B. Green
et al to
Huron &
Erie Mort-
gage Corp.,
No. 8317
W.F.,
\$150,000.00,
7th Febru-
ary, 1923.

One hundred and fifty thousand Dollars of lawful money of Canada, with interest thereon at the rate of seven and one-half per cent per annum, (as well after as before maturity) as follows :

*In the
Supreme
Court of
Ontario.*

10 The sum of \$57,000. portion of the said principal sum shall become due and payable in 19 consecutive half-yearly instalments of \$3,000. each payable on the 7th day of August, 1923, and on the 7th days of February and August in each of the years 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, and 1932, and the balance of the said principal sum amounting to \$93,000. shall become due and payable on the 7th day of February, 1933, together with interest at the rate aforesaid as well after as before maturity on such portion of the principal sum
H.A.M. as from time to time remains unpaid payable half-yearly on the 7th days of February and August in each year until the said principal
S.B.G. sum is fully paid. The first of such payments of interest to be computed from the date hereof shall become due and payable on the 7th day of August, 1923.

Exhibits.
Ex. 146.
Extract from
Mortgage,
S. B. Green
et al to
Huron &
Erie Mort-
gage Corp.,
No. 8317
W.F.,
\$150,000.00,
7th February,
1923.

—continued

20 It Is Agreed that interest on the said principal money at the rate aforesaid shall be paid as well after as before the day hereinbefore fixed for repayment of the said principal money until the said principal money is fully paid, and that on default in payment of any instalment of interest or other sum payable hereunder such interest or sum shall itself forthwith bear interest at the rate aforesaid payable from day to day and shall be a charge on said lands; It Being Agreed that all interest both upon principal and upon overdue interest is to be compounded on each day mentioned for payment of interest. The Mortgagor Covenants with the Mortgagee that the Mortgagor will pay the Mortgage money and interest, and observe and perform the above proviso and all other provisos and stipulations herein contained :

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals.

30 SIGNED, SEALED and DELIVERED
IN THE PRESENCE OF
(Having first been read over
and explained)

E. B. James	Name
Toronto	Residence
Secretary	Occupation

S. B. Green
Ethel B. Green
H. A. Morine
Estelle Maude Morine

(4 seals in this corner)

No. 8317 W.F.

40 I Certify that the within Instrument is duly entered and registered in the Registry Office for the Registry Division of West Toronto, in Book W.F. 7 at 3.30 o'clock p.m. of the 16th day of Feb., A.D. 1923.

Geo. E. Dodd,
Dy. Registrar.

Exhibit 12

(Plaintiffs' Exhibit)

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 12.

Application
for \$35,000.
Loan with
Valuation of
H. A.
Morine,
10th Febru-
ary, 1923.

Application for \$35,000. Loan with Valuation of H. A. Morine

H. A. MORINE, 603 KENT BUILDING, YONGE ST., TORONTO

I HEREBY APPLY to you for a loan of \$35,000.00 for a period of five years, bearing interest at 7½%, with repayments of \$1,000.00 half-yearly on account of principal, on the following property: Option of repaying at any time without notice or bonus.

KING & QUEEN STREETS

**4-STOREY FIREPROOF
APARTMENT & STORES**

10

LAND : 76' x 199' running from King to Queen Street and facing on both streets.

BUILDING : 76' x 130'. Refrigerating system supplying all apartments, oil burning boilers, steel fire escapes and balconies, automatic telephone system to each apartment. Absolutely Fireproof, Brick, Concrete & Steel. All concrete and brick walls, tile walls and floors in all bathrooms, tile floors and marble in all halls, plumbing fixtures consist of high-grade silent closets, built-in tubs and pedestal basins, oak floors throughout over concrete floors, built-in kitchen cabinets, equipped linen drawers, flour bins and broom cupboards, best quality electric or gas ranges, electric fixtures, blinds and fully decorated throughout. Complete laundry facilities. 20

NO. OF ROOMS : 5 stores on ground floor on Queen Street, with basement to be completed in tile, made thoroughly sound-proof. Facing King Street there is an apartment of 34 suites of four and five rooms and bath, the apartment over-running the stores of three storeys. Entrance from both King & Queen Street and side entrance on Queen Street for rear of apartments and stores. 30

INCOME :

8 apartments front at \$110.....	\$ 880.00
16 " side court at \$100.....	1,600.00
6 " rear court at \$ 90.....	540.00
3 " Queen St. at \$ 80.....	240.00
1 Janitor.....	35.00
5 Stores at \$125.....	625.00
	<hr/>
	\$ 3,920.00
Income.....	\$47,040.00

EXPENDITURE :	Fuel.....	\$1,600.00	<i>In the Supreme Court of Ontario.</i> — Exhibits. Ex. 12. Application for \$35,000. Loan with Valuation of H. A. Morine, 10th Febru- ary, 1923. — <i>continued.</i>
	Water.....	250.00	
	Light.....	200.00	
	Janitor.....	1,000.00	
	Taxes for 1923-4 on Land.....	500.00	
	Insurance.....	200.00	
	Interest.....	2,250.00	
	Unforseen Incidentals.....	1,000.00	
		\$ 7,000.00	
10	HEATING :	Hot Water, Oil or coal system.	\$40,040.00
	LIGHTING :	Electric, Gas.	
	VALUE :	\$300,000.00	

LOAN REQUIRED : \$30,000.00

The above property is now about completed and on same there is a first mortgage of \$150,000.00 bearing interest at $7\frac{1}{2}\%$ with repayments of \$3,000.00 half-yearly.

20 Occupation will commence on the 1st of April, 1923.
A number of stores and apartments are already leased.
This is the most up-to-date and complete apartment in Toronto.

In consideration of your making this loan, I am prepared to allow you a bonus of \$4,000.00.

30 The location is undoubtedly the best for apartment on the revenue basis in the City of Toronto overlooking the Boulevard at Sunnyside, in view of the great expenditure by the Harbour Commission, and the popularity of the section. This proposition from both the revenue and scenic point of view, makes it desirable in every respect, and undoubted security for the loan requested above.

DATE.....Feb. 10, 1923.....

SIGNATURE.....S. B. Green.....

ADDRESS.....41 Austin Terrace.....

I value the property at \$325,000.
H. A. MORINE.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 13

(Plaintiffs' Exhibit)

B

Extracts from Minute Book of London Loan and Savings Co.

Minute Book, page 517

P. 517

Monday, Febry. 12, 1923

BOARD MET—All present save Mr. Robinson.
Minutes of last meeting read and confirmed.

- G. Wright.....Lend \$8,000. and \$5,000. at 8%; loans to be collateral for 10
each other.
- S. B. Green.....Lend \$31,000. at 7½%—Commission 1% to H. A. Morine;
Bonus \$4,000. H. A. Morine to guarantee.
- A. N. Garrett.....Lend \$19,000. at 7½%, 1% commission to H. A. Morine.
Bonus \$250.

M. J. Kent

Geo. G. McC.

.....
Manager.

.....
President.

Exhibits.
Ex. 11.
Copy of
Application
for Loan,
S. B. Green
to London
Loan &
Savings Co.,
re \$35,000.
Loan,
12th Febru-
ary, 1923.

Exhibit 11

(Plaintiffs' Exhibit)

**Copy of Application for Loan, S. B. Green to London Loan and Savings 20
Company, re \$35,000. mortgage**

H. A. MORINE, 603 KENT BUILDING, YONGE ST., TORONTO

I HEREBY APPLY to you for a loan of \$30,000.00 for a period of five years, bearing interest at 7½%, with repayments of \$1,000.00 half-yearly on account of principal, on the following property :

**KING & QUEEN STREETS
4-STOREY FIREPROOF APARTMENT & STORES**

LAND : 76' x 199' running from King to Queen Street and facing on both streets.

BUILDING : 76' x 130'. Refrigerating system supplying all apart- 30
ments, oil burning boilers, steel fire escapes and balconies, automatic telephone system to each apartment.

Absolutely
Fireproof,
Brick,
Concrete &
Steel.

All concrete and brick walls, tile walls and floors in all bathrooms, tile floors and marble in all halls, plumbing fixtures consist of high-grade silent closets, built-in tubs and pedestal basins, oak floors throughout over concrete floors, built-in kitchen cabinets, equipped linen drawers, flour bins and broom cupboards, best quality electric or gas ranges, electric fixtures, blinds and fully decorated throughout. Complete laundry facilities.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 11.
Copy of
Application
for Loan,
S. B. Green
to London
Loan &
Savings Co.,
re \$35,000.
Loan,
12th Febru-
ary, 1923.

10 NO. OF ROOMS :

5 stores on ground floor on Queen Street, with basement to be completed in tile, made thoroughly sound-proof. Facing King Street there is an apartment of 34 suites of four and five rooms and bath, the apartment over-running the stores of three storeys. Entrance from both King & Queen Street and side entrance on Queen Street for rear of apartments and stores.

—continued.

INCOME :

	8 apartments front at \$110.....	\$ 880.00
	16 " side court at \$100.....	1,600.00
	6 " rear court at \$ 90.....	540.00
20	3 " Queen St. at \$ 80.....	240.00
	1 Janitor.....	35.00
	5 Stores at \$125.....	625.00
		—————\$ 3,920.00
	Income.....	\$47,040.00

EXPENDITURE :

	Fuel.....	\$1,600.00
	Water.....	250.00
	Light.....	200.00
	Janitor.....	1,000.00
	Taxes for 1923-4 on Land.....	500.00
30	Insurance.....	200.00
	Interest.....	250.00

In consideration of your making this loan, I am prepared to allow you a bonus of \$4,000.00.

The location is undoubtedly the best for apartment on the revenue basis in the City of Toronto overlooking the Boulevard at Sunnyside, in view of the great expenditure by the Harbour Commission, and the popularity of the section. This proposition from both the revenue and scenic point of view, makes it desirable in every respect, and undoubted security for the loan requested above.

40

DATE..... Feb. 10, 1923.....
SIGNATURE..... S. B. Green.....
ADDRESS..... 41 Austin Terrace.

THE FOLLOWING SHOWN ON THE BACK OF APPLICATION

Feb. 12/23

S. B. Green
 \$31,000. wanted at 7½%
 Bonus \$4,000.
 H. A. Morine to guarantee.
 Com. 1%
 Geo. G. McC.

.....
President.

Exhibit 5

10

(Plaintiffs' Exhibit)

Cheque, London Loan and Savings Company to H. A. Morine and S. B. Green

NO. 544

**THE LONDON LOAN AND SAVINGS COMPANY
 OF CANADA**

Bank of Montreal,
 1-348 London, Ont.
 Feb. 16, 1923
 Dundas & Wellington Sts.
 ACCEPTED.

LONDON, Canada, Feb. 12, 1923

20

To THE BANK OF MONTREAL

Custom House
 Branch

Pay to the order of S. B. Green and H. A. Morine.....\$15,000.00

Fifteen thousand.....
 xx
 100 DOLLARS

.....
 E. Pearson

.....
 M. J. Kent

.....
Teller

.....
Manager.

ENDORSEMENTS ON BACK OF CHEQUE

30

**FOR DEPOSIT ONLY
 CANADIAN BANK OF COMMERCE
 QUEEN & YONGE STREETS
 H. A. MORINE**

Acc't S. B. Green's Loan
 S. B. GREEN

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Ex. 11.

Copy of
 Application
 for Loan,
 S. B. Green
 to London
 Loan &
 Savings Co.,
 re \$35,000.
 Loan,
 12th Febru-
 ary, 1923.

—continued.

Exhibits.
 Ex. 5.

Cheque,
 London
 Loan &
 Savings Co.
 to H. A.
 Morine and
 S. B. Green,
 12th Febru-
 ary, 1923.

Exhibit 2

(Plaintiffs' Exhibit)

Extract from Mortgage No. 8318, W.F., (Second Mortgage for \$35,000.)*In the
Supreme
Court of
Ontario.*—
Exhibits.
Ex. 2.
Extract from
Mortgage
No. 8318
W.F.
(Second
Mortgage
for
\$35,000.00),
13th Febru-
ary, 1923.

**THIS INDENTURE, made (in duplicate) the
Thirteenth day of February one thousand nine hundred and twenty-three
IN PURSUANCE OF THE SHORT FORMS OF MORTGAGES ACT.**

BETWEEN :

- 10 Samuel B. Green, of the City of Toronto, in the County of
York, Builder, and Horace A. Morine of the said City of Toronto,
Financial Broker, in their individual capacity and as co-partners
in the business of improving the lands hereinafter described,
hereinafter called the **MORTGAGOR**, of the **FIRST PART**; The London
Loan and Savings Company of Canada, hereinafter called the **MORTGAGEE**,
of the **SECOND PART**; and
Ethel B. Green, wife of the said Samuel B. Green, the wife of the said Mort-
gagor,
Estelle Maude Morine, wife of the said Horace A. Morine,
of the **THIRD PART**, Witnesseth, that in consideration of the sum of Thirty-
five Thousand Dollars now paid by the Mortgagee to the Mort-
20 gagor (the receipt whereof is hereby acknowledged), the Mortgagor, who
conveys as beneficial owner, Doth Grant and Mortgage unto the Mortgagee,
its successors and assigns :
- 30 **ALL AND SINGULAR** that certain parcel or tract of land and premises
situate lying and being in the City of Toronto in the County of York and
Province of Ontario being composed of parts of lots numbers 2 and 3, according
to a plan fyled as number 512, in the Registry Office for East and West York,
and now in the Registry Office for the Registry Division of West Toronto,
and of a part of lot number 16, according to a plan fyled as number 457, in
the said Registry Office for East and West York, and now in the said Registry
40 Office for the Registry Division of West Toronto; and which said parcel is
more particularly described as follows : **COMMENCING** at a point in the
northerly limit of King Street West, which point is at the intersection of the
easterly limit of a parcel of land conveyed or intended so to be by one Thomas
E. Scholes to Ann Jane Scholes, by Deed registered the 17th day of June,
1887, as number 2388; **THENCE** westerly along the said limit of King Street
West, seventy-six feet (76'); **THENCE** northerly in a straight line one hundred
and forty-one feet (141') more or less to a point in the southerly limit of Queen
Street West, which point is distant seventy-six feet (76') measured westerly
along the said limit of Queen Street West, from the said easterly limit of the
parcel conveyed by Thomas E. Scholes to Ann Jane Scholes as aforesaid;
Thence easterly along the said limit of Queen Street West, seventy-six feet
(76') to the said easterly limit of parcel conveyed by Thomas E. Scholes
to Ann Jane Scholes as aforesaid; Thence southerly along the last-mentioned
limit, one hundred and ninety-nine feet and four inches (199'4'') more or less
to the point of commencement.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 2.

Extract from
Mortgage
No. 8318
W.F.
(Second
Mortgage for
\$35,000.00),
13th Febru-
ary, 1923.

—continued.

And the said party of the third part, Wife of the said Mortgagor, hereby Bars Her Dower in the said lands and agrees that the Mortgagor and Mortgagee may deal with the said lands and this mortgage by releasing parts, extending the time for payment and otherwise as may be advised without affecting this release (of dower) and may treat her in all respects as if she were principally liable.

Provided this Mortgage to be void on observance and performance by the Mortgagor of all covenants and provisos herein and on payment at the office of the said Mortgagee in the City of London in the Province of Ontario, of

..... 10
Dollars in gold coin of lawful money of Canada with interest at 7½ per cent per annum as follows :

The sum of \$3,500.00 of the principal money to become due and payable in seven consecutive half-yearly instalments of \$500. each, on the thirteenth day of August, 1923, and on the thirteenth days of February and August, 1924, 1925, 1926, and the balance of the said principal money on the thirteenth day of February, 1927, together with interest at the said rate as well after as before maturity on such portion of the principal sum as from time to time remains unpaid, payable on the thirteenth days of February and August in each year hereafter until the principal sum is fully paid, the first payment of 20 interest computed from the date hereof to become due and payable on the thirteenth day of August, 1923.

And upon payment of all further advances or loans hereafter to be made by the Mortgagee to the Mortgagor as and when the same shall become due, together with all other amounts owing or to be owing by the said Mortgagor, with interest upon the said advances or amounts at the rate and in the manner aforesaid. And Taxes and performance of Statute Labor, and provided all moneys then payable charged by these presents on said lands be paid.

S. B. Green. 30

.....
In Witness Whereof, the said parties have hereunto set their hands and seals.
SIGNED, SEALED and DELIVERED

(Having been first explained to the
executing parties)
In the presence of
E. B. James.

} Ethel B. Green.
H. A. Morine.
Estelle Maude Morine.

NO. 8318 W.F.

I Certify that the within Instrument is duly entered and registered in the Registry Office for the Registry Division of West Toronto, in Book W.F. 7 at 3.31 o'clock p.m. of the 16 day of Feb., A.D. 1923.

Geo. E. Dodd,
Dy. Registrar.

NOT REGISTERED IN FULL

40

Exhibit 300
(Plaintiffs' Exhibit)

Agreement, H. A. Morine and S. B. Green

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 300.
Agreement,
H. A.
Morine and
S. B. Green,
13th Febru-
ary, 1923.

MEMORANDUM OF AGREEMENT made (in duplicate) this Thirteenth day of February, 1923.

BETWEEN :

HORACE A. MORINE, of the City of Toronto, in the County of York, Financial Broker,

OF THE FIRST PART,

10

—AND—

SAMUEL B. GREEN, of the said City of Toronto, Builder,
OF THE SECOND PART.

20

WITNESSETH, Whereas by agreement dated the first day of May, 1922, the parties hereto did agree, each with the other, to become partners in the purchase, improvement and management of certain lands on the north side of King Street West in the City of Toronto, being parts of Lots Numbers Two and Three according to plan filed as Number 512, and part of Lot Number Sixteen according to a plan filed as Number 457 in the Registry Office for the Registry Division of West Toronto, which said parcels of land are more particularly described in a conveyance of the said lands to the parties hereto as partnership property dated the 21st day of April, 1922, and registered as Number 7858 W.F.

AND WHEREAS pursuant to the terms of the said agreement the party hereto of the second part has commenced and proceeded with the erection of an apartment house upon the said lands.

AND WHEREAS in pursuance of the said agreement the party hereto of the second part agreed to contribute certain sums of money for capital expenditure to be used in the construction of the said apartment house upon mutual agreement between the said parties thereto.

30

AND WHEREAS the said party hereto of the second part has failed to contribute his portion of the capital expenditure towards the construction and erection of the said building, and has requested the party hereto of the first part to procure additional capital to be used in construction of the said apartment house upon the security of a second mortgage to be placed upon the said lands subject to the first mortgage against the lands now held by the Huron & Erie Mortgage Corporation, and has also requested the said party of the first part to execute a second mortgage for the purposes aforesaid, and the party hereto of the first part has agreed so to do upon the conditions hereinafter set forth.

40

AND WHEREAS the party hereto of the first part has succeeded in negotiating a loan of Thirty-five thousand dollars (\$35,000.) from the London Loan and Savings Company of Canada, to bear interest at the rate of seven and one-half per cent ($7\frac{1}{2}\%$) per annum, and to be repayable in consecutive half-yearly instalments of Five hundred dollars (\$500.) each, and the balance of the principal sum at the expiration of four years from the date of the mort-

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 300.
Agreement,
H. A.

Morine and
S. B. Green,
13th Febru-
ary, 1923.

—continued.

gage, the said mortgage to bear even date herewith and to be a second charge upon the lands hereinbefore described, subject to the first mortgage outstanding in favor of the Huron & Erie Mortgage Corporation, and to be executed by the said Samuel B. Green and Horace A. Morine as partners in the business of improving the said property and also individually.

AND WHEREAS the said party hereto of the second part has requested the party hereto of the first part to execute the said mortgage and to bind his interest in the property to secure the said sum of Thirty-five thousand dollars (\$35,000.) and the party hereto of the first part has agreed so to do.

NOW THEREFORE THIS INDENTURE WITNESSETH That in 10
consideration of the premises and of the execution of the said mortgage by the party hereto of the first part, the party hereto of the second part doth hereby agree to pay to the party hereto of the first part an amount equal to twenty-five per cent (25%) of the amount of the said mortgage loan of Thirty-five thousand dollars (\$35,000.) as a bonus for the arranging and negotiating of the said mortgage loan, the same to be charged against the property at the absolute discretion of the party hereto of the first part from the proceeds of the said mortgage loan of Thirty-five thousand dollars (\$35,000.) and doth hereby agree that the legal costs in connection with the negotiation of the said mortgage shall be charged against the proceeds of the said mortgage loan. 20

AND for the consideration aforesaid, the party hereto of the second part doth also agree with the party hereto of the first part to pay him, the said party of the first part, forthwith on demand the sum of Two thousand dollars (\$2,000.) in cash in addition to and independently of the bonus referred to in the last preceding paragraph.

AND in consideration of the premises the said party hereto of the second part doth hereby assign and set over unto the party hereto of the first part the balance of the proceeds of the said loan of Thirty-five thousand dollars (\$35,000.), the same to be applied by the party hereto of the first part in the construction of the said building at his absolute discretion. 30

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED and DELIVERED in the presence of E. B. James	}	H. A. Morine	(SEAL)
		S. B. Green	(SEAL)

Exhibit 4

(Plaintiffs' Exhibit)

Letter, H. A. Morine to London Loan and Savings Company

Toronto,
February 15th, 1923.

London Loan & Savings Co.,
London, Ont.

*In the
Supreme
Court of
Ontario.*
Exhibits.
Ex. 4.
Letter, H. A.
Mordine to
London
Loan &
Savings Co.,
15th Febru-
ary, 1923.

Gentlemen,

Re: Green—\$35,000.00

10 This Mortgage has been duly registered and a report will go to you together with insurance, etc., will go to you at a later date.

Herewith bonus cheque for \$4,000.00 less receipted voucher for \$350.00 commission due me.

Yours very truly,
H. A. MORINE.

Part Exhibit 13

(Plaintiffs' Exhibit)

C

Extracts from Minute Book of London Loan and Savings Co.

20

Minute Book, page 518

Exhibits.
Part Ex. 13.
C.
Extracts
from Minute
Book of
London
Loan &
Savings Co.,
Page 518,
19th Febru-
ary, 1923.

Page 518

Monday, Febry. 19, 1923.

BOARD MET—All present save Mr. Robinson.
Minutes of last meeting read and confirmed.

M. J. Kent

Thomas Baker

.....
Manager.

.....
Vice-President.

Exhibit 183

(Plaintiffs' Exhibit)

**Cheque, London Loan and Savings Company to W. Lawson Renton
and H. A. Morine**

NO. 559

**THE LONDON LOAN & SAVINGS COMPANY
OF CANADA**

LONDON, Canada, Feb. 19, 1923

To **THE BANK OF MONTREAL** Custom House
Branch 10

Pay to the order of W. Lawson Renton and H. A. Morine.....\$4998.00

Forty-nine hundred and ninety-eight.....^{xx}100 DOLLARS

E. Pearson

M. J. Kent

*Teller.**Manager.***FOLLOWING ENDORSEMENTS SHOWN ON BACK OF CHEQUE**

con trust
for identification
FOR DEPOSIT ONLY
CANADIAN BANK OF COMMERCE 20
Queen & Yonge Streets.
H. A. MORINE

W. Lawson Renton
per H. A. Morine
atty
No. 34139. G.R.
Pay to the order of
ANY BANK OR BANKER
(Prior Endorsements Guaranteed)
Feb. 20, 1923 30
THE CANADIAN BANK OF COMMERCE

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 183.

Cheque,
London
Loan &
Savings Co.
to W.
Lawson
Renton and
H. A.
Morine,
19th Febru-
ary, 1923.

Exhibit 288
(Plaintiffs' Exhibit)

**Deposit Slip in London Loan and Savings Company for \$1,282., credit
G. A. P. Brickenden**

LONDON LOAN AND SAVINGS CO.
OF CANADA

Savings Department

Feb. 20.....1923

Credit G. A. P. Brickenden.....

Account No. B 84.....

10

(B 84 K)	X	1	=	
	1 X	2	=	2
	X	5	=	
	X	10	=	
64	X	20	=	1280
	X	50	=	
	X	100	=	
				\$1282.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 288.
Deposit Slip
in London
Loan &
Savings Co.
for \$1282.00,
Credit
G. A. P.
Brickenden,
20th Febru-
ary, 1923.

Exhibit 303

(Defendants' Exhibit)

Stubs of Receipt Book of G. A. P. Brickenden

NOT PRINTED

20

Exhibits.
Ex. 303.
Stubs of
Receipt
Book of
G. A. P.
Brickenden,
20th Febru-
ary, 1923.

NOT
PRINTED.

Part Exhibit 310

(Defendants' Exhibit)

Extract from Stub of Cheque-book of G. A. P. Brickenden

EXTRACT FROM EXHIBIT NO. 310

Feb. 20/1923.

30

Dep. Fees	
35,000	
S. B. Green & L.L.	362.50
19,000	
A. N. Garrett & L.L. Fees	237.50
36,000	

Exhibits.
Part Ex. 310.
Extract from
Stub of
Cheque
Book of
G. A. P.
Brickenden,
20th Febru-
ary, 1923.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 310.
Extract from
Stub of
Cheque
Book of
G. A. P.
Brickenden,
20th Febru-
ary, 1923.
—continued.

Pat Lambert & L.L. Fees	370.00	
15,000		
Geo. W. Lucas & McC. Est.	187.50	
10,000		
S. B. Green & McC. Est.	125.00	
<hr/>		
		March 2nd, 1923.
Dep.		
Harry Lucas & L.L.		
40,000 loan		
2/3/23	400.00	10

Exhibits.
Ex. 6.
Cheque,
London
Loan &
Savings Co.
to H. A.
Morine and
S. B. Green,
22nd Febru-
ary, 1923.

Exhibit 6

(Plaintiffs' Exhibit)

Cheque, London Loan and Savings Company to H. A. Morine and S. B. Green

NO. 567

**THE LONDON LOAN & SAVINGS COMPANY
OF CANADA**

LONDON, Canada, Feb. 22..... 1923
To THE BANK OF MONTREAL Custom House
Branch 20
Pay to the order of H. A. Morine & S. B. Green.....\$10,000.00
Ten thousand.....^{xx}100 DOLLARS

E. Pearson

M. J. Kent

Teller.

Manager.

ENDORSEMENTS ON BACK OF CHEQUE

**FOR DEPOSIT ONLY
CANADIAN BANK OF COMMERCE
QUEEN & YONGE STREETS
H. A. MORINE**

30

Acc't S. B. Green
Loan
S. B. GREEN

Exhibit 289
(Plaintiffs' Exhibit)

**Deposit Slip in London Loan and Savings Company for \$400., Credit
G. A. P. Brickenden**

LONDON LOAN AND SAVINGS CO.
OF CANADA
Savings Department

March 2, 1923

Credit G. A. P. Brickenden.....

Account No. B 84.....

10

(B 84 C)	X	1 =	
	X	2 =	
	X	5 =	
	X	10 =	
20	X	20 =	400.
	X	50 =	
	X	100 =	
			\$400.

Depositor G.A.P.B.....

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 289.
Deposit Slip
in London
Loan &
Savings Co.
for \$400.00,
Credit
G. A. P.
Brickenden,
2nd March,
1923.

Exhibit 7

(Plaintiffs' Exhibit)

**Cheque, London Loan and Savings Company to H. A. Morine and
S. B. Green**

THE LONDON LOAN & SAVINGS COMPANY
OF CANADA

NO. 704

LONDON, Canada, March 9, 1923.....

To THE BANK OF MONTREAL Custom House
Branch

30 Pay to the order of S. B. Green & H. A. Morine \$4996.00

Forty-nine hundred and ninety-six.....^{xx} 100 DOLLARS

E. Pearson

M. J. Kent

Teller.

Manager.

ENDORSEMENTS ON BACK OF CHEQUE

Exhibits.
Ex. 7.
Cheque,
London
Loan &
Savings Co.
to H. A.
Morine and
S. B. Green.
9th March,
1923.

*In the
Supreme
Court of
Ontario.*

*Exhibits.
Ex. 7.*

*Cheque,
London
Loan &
Savings Co.
to H. A.
Morine and
S. B. Green,
9th March,
1923.*

—continued.

Exhibits.

Ex. 8.

*Cheque,
London
Loan &
Savings Co.
to H. A.
Morine and
S. B. Green,
23rd March,
1923.*

**FOR DEPOSIT ONLY
CANADIAN BANK OF COMMERCE
QUEEN & YONGE STREETS
H. A. MORINE**

**Account Green Loan
S. B. GREEN**

Exhibit 8

(Plaintiffs' Exhibit)

**Cheque, London Loan and Savings Company to H. A. Morine and
S. B. Green**

10

NO. 682

**THE LONDON LOAN & SAVINGS COMPANY
OF CANADA**

LONDON, Canada, March 23, 1923.....

To THE BANK OF MONTREAL Custom House
Branch

Pay to the order of H. A. Morine and S. B. Green.....\$4996.00

Forty-nine hundred and ninety-six.....^{xx}100 DOLLARS

E. Pearson

M. J. Kent

20

Teller.

Manager.

ENDORSEMENTS ON BACK OF CHEQUE

**FOR DEPOSIT ONLY
CANADIAN BANK OF COMMERCE
QUEEN & YONGE STREETS
H. A. MORINE**

**Bal. Green Loan
S. B. GREEN**

Exhibit 9

(Plaintiffs' Exhibit)

Letter, G. A. P. Brickenden & Company to London Loan and Savings Company

LONDON, Canada, May 5, 1923.

The London Loan & Savings Co.,
London, Ont.Dear Sirs — *Re* S. B. Green and H. A. Morine to the London Loan, King Street, Number 2.

10 We enclose herewith —

- 1.— Mortgage, S. B. Green and H. A. Morine to you, Number 8318-W.F.
- 2.— Sheriff's Certificate as to S. B. Green.
- 3.— Tax Certificate.
- 4.— Certificate of Title.
- 5.— Royal Insurance Policy, Number 185447, \$50,000; premium \$75.00; expires 14th May, 1923; loss payable to the London Loan.

Yours very truly,
G. A. P. BRICKENDEN & CO.,
By Evelyn Harrison.

20 EH/MP.
Encl.**Exhibit 10**

(Plaintiffs' Exhibit)

Certificate of Title, G. A. P. Brickenden & Company to London Loan and Savings Company**CERTIFICATE OF TITLE**

In the matter of part of Lots 2 and 3, according to Plan 512, East and West York, now West Toronto, and in the matter of a Mortgage from S. B. Green and H. A. Morine to The London Loan and Savings Company of Canada.

30

We hereby certify that we have investigated the title to the lands comprised in the above mentioned Mortgage and that the same is good and sufficient for the purposes of the said Mortgage and that the said Mortgage has been duly executed and registered and forms a first charge upon the mortgaged lands to the full amount thereby secured, subject however to a Mortgage from S. B. Green and H. A. Morine to the Huron & Erie Mortgage

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 9.

Letter,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
5th May,
1923.

Exhibits.
Ex. 10.
Certificate
of Title,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
5th May,
1923.

*In the
Supreme
Court of
Ontario.*

Corporation, which Mortgage is dated the 7th day of February, 1923, and made to secure \$150,000.00.

Dated at London this 5th day of May, 1923.

G. A. P. Brickenden & Co.

Exhibits.
Ex. 10.
Certificate
of Title.
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
5th May,
1923.

To :
The London Loan and Savings Company of Canada.

Exhibit 29

(Plaintiffs' Exhibit)

Memorandum of M. J. Kent

—continued.

Exhibits.
Ex. 29.
Memoran-
dum of
M. J. Kent,
May, 1923.

Re S. B. Green (amount not legible) on Apartment House.

10

My Directors did not feel disposed to increase the \$35,000. already granted on this property, without further security, as the amount of the first mortgage seemed very large to them. This is also a matter that you might take up with them personally when you come to the City.

Yours truly,
M. J. Kent,
Manager.

May, 1923.

Exhibit 28

(Plaintiffs' Exhibit)

Copy of Letter, H. A. Morine to M. J. Kent

Exhibits.
Ex. 28.
Copy of
Letter, H. A.
Morine to
M. J. Kent,
21st May,
1923.

20

May 21st, 1923.

Mr. M. J. Kent,
London Loan & Savings Co.,
London, Ont.

Dear Sir,

In another letter, I am asking for statements of amount due you by E. D. Morris under second mortgage, which amounts to about \$20,000.00 I think. I am doing my best to hurry this money in, but in doing so, I have in view the fact that I intend to ask your Company to allow me to have this money as an additional amount to the mortgage which you already hold on the King Street apartment, of which I am the mortgagor. 30

This property is just about completed and occupation will commence on the First of June, but I find that the costs of the final construction is way in excess of that which we anticipated and therefore it would be advisable

for me to raise the second mortgage which you now have by the additional amount which you get from Morris.

Of course, I expect to allow you a bonus over and above the interest rate of about \$1,000.00. I think it will only be necessary in connection with the legal end of it, to take an acknowledgment that the amount due under the mortgage now held by you is the sum of..... Possibly this would cover without going to additional expense of putting on additional mortgages, etc. Of course, I guaranteed the payment under the mortgage.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 28.
Copy of
Letter, H. A.
Morine to
M. J. Kent,
21st May,
1923.

Yours very truly,

—continued.

10 HAM/J.

Exhibit 290

(Plaintiffs' Exhibit)

**Deposit Slip in London Loan and Savings Company for \$318.75, Credit
G. A. P. Brickenden**

LONDON LOAN AND SAVINGS CO.
of Canada
Savings Department

May 22, 1923

Credit G. A. P. Brickenden.....

Account No. B 84.....

Exhibits.
Ex. 290.
Deposit Slip
in London
Loan &
Savings Co.
for \$318.75,
Credit
G. A. P.
Brickenden,
22nd May,
1923.

20

1 X	1 =	1.
1 X	2 =	2.
1 X	5 =	5.
1 X	10 =	10.
15 X	20 =	300.
	X 50 =	75
	X 100 =	

(250.
(68.75

30

\$318.75

Depositor G.A.P.B.....

*In the
Supreme
Court of
Ontario.*

Part Exhibit 306

(Defendants' Exhibit)

Stub of Cheque-book, G. A. P. Brickenden

EXTRACT FROM EXHIBIT NO. 306

appearing on back of stub of cheque book, under date May 22, 1923, as follows :

Exhibits.
Part Ex. 306.
Stub of
Cheque
Book,
G. A. P.
Brickenden,
22nd May,
1923.

Dep.			
22/5/23	Apt. additional 20,000		
	Morine & Green & L.L.	250.	
	McC. Est. Green (Heath No. 1)	68.75	10

The entry in deposit 306 referred to at the bottom of page 469 of the evidence as deposit 18/6/23 should read deposit 19/6/23 and appears on the stub of cheque book, Exhibit 306 opposite receipt dated June 18, 1923, reading as follows :

Dep. 19/6/23		
	Harry Lucas & L.L.	
	(17,000 Mtge.)	212.50

Exhibits.
Ex. 16.
Cheque,
London
Loan &
Savings Co.
to H. A.
Morine,
22nd May,
1923.

Exhibit 16

(Plaintiffs' Exhibit)

Cheque, London Loan and Savings Company to H. A. Morine 20

NO. 875

**THE LONDON LOAN & SAVINGS COMPANY
OF CANADA**

LONDON, Canada, May 22, 1923.....

To THE BANK OF MONTREAL Custom House
Branch

Pay to the order of H. A. Morine, Esq.....\$19,998.00

Nineteen thousand, nine hundred and ninety-eight.....^{xx}100 DOLLARS

E. Pearson

M. J. Kent

30

Teller.

Manager.

ENDORSEMENTS SHOWN ON BACK OF CHEQUE

Further advance *re* Green to
Morine Mtge.

**FOR DEPOSIT ONLY
CANADIAN BANK OF COMMERCE
QUEEN & YONGE STREETS
H. A. MORINE**

Exhibit 3

(Plaintiffs' Exhibit)

Certified Copy of Third Mortgage for \$20,000., No. 8761 W.F.

CITY REGISTRY OFFICE
 Western Division
 Toronto

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Ex. 3.
 Certified
 Copy of
 Third
 Mortgage
 for
 \$20,000.00,
 No. 8761
 W.F.,
 23rd May,
 1923.

THIS INDENTURE, made (in duplicate) the twenty-third day of May, one thousand nine hundred and twenty-three. IN PURSUANCE OF THE SHORT FORMS OF MORTGAGES ACT.

10 BETWEEN :

SAMUEL B. GREEN, of the City of Toronto, in the County of York, Builder, and HORACE A. MORINE, of the said City of Toronto, Financial Broker, in their individual capacity and as co-partners in the business of improving the lands hereinafter described, hereinafter called the MORTGAGOR, of the FIRST PART; THE LONDON LOAN AND SAVINGS COMPANY OF CANADA, hereinafter called the MORTGAGEE, of the SECOND PART; and ETHEL B. GREEN, wife of the said SAMUEL B. GREEN, the wife of the said Mortgagor, and ESTELLE MAUDE MORINE, wife of the said HORACE A. MORINE, of the THIRD PART.

20 WITNESSETH that in consideration of the sum of TWENTY THOUSAND DOLLARS now paid by the Mortgagee to the Mortgagor (the receipt whereof is hereby acknowledged) the Mortgagor who conveys as beneficial owner DOTH GRANT AND MORTGAGE unto the Mortgagee, its successors and assigns.

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Toronto, in the County of York, and Province of Ontario, being composed of (lands as in Exhibit 2.)

30 AND the said party of the third part, wife of the said Mortgagor, hereby bars her dower in the said lands and agrees that the Mortgagor and Mortgagee may deal with the said lands and this Mortgage by releasing parts, extending the time for payment and otherwise as may be advised without affecting this release (of dower) and may treat her in all respects as if she were principally liable.

PROVIDED this Mortgage to be void on observance and performance by the Mortgagor of all covenants and provisos herein and on payment at the office of the said Mortgagee in the City of London, in the Province of Ontario of TWENTY THOUSAND DOLLARS in gold coin of lawful money of Canada with interest at $7\frac{1}{2}$ per cent per annum as follows :

40 THE PRINCIPAL sum on the twenty-second day of December, 1923, and the interest at the rate aforesaid payable half-yearly on the 23rd day of May and November in each and every year both before and after default and before and after maturity and until the whole amount shall have been fully paid and satisfied THE first payment of interest to be made on the twenty-third day of November next AND upon payment of all further advances or loans

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 3.
Certified
Copy of
Third
Mortgage
for
\$20,000.00.
No. 8761
W.F.,
23rd May,
1923.

—continued.

hereafter to be made by the Mortgagee to the Mortgagor as and when the same shall become due, together with all other amounts owing or to be owing by the said Mortgagor with interest upon the said advances or amounts at the rate and in the manner aforesaid.

AND taxes and performance of Statute Labor and provided all moneys then payable charged by these presents on said lands be paid.

AND IT IS HEREBY AGREED that in case default shall be made in payment of any sum to become due for interest at any time appointed for payment thereof as aforesaid, compound interest shall be payable, and the sum in arrears for interest from time to time as well after as before maturity shall bear interest at the rate aforesaid, and in case the interest and compound interest are not paid in six months from the time of default a rest shall be made and compound interest at the rate aforesaid shall be payable on the aggregate amount then due as well after as before maturity and so on from time to time and all such interest and compound interest shall be a charge on the said lands. 10

AND IT IS FURTHER AGREED that the taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of said covenants or affect the mortgagee's right to interest at the rate and in manner aforesaid THE said Mortgagor covenants with the said Mortgagee that the Mortgagor will pay the mortgage money and interest and observe the above provisos THAT the Mortgagor has a good title in fee simple, to the said lands AND that he has the right to convey the said lands to the said Mortgagee AND that on default the Mortgagee shall have quiet possession of the said lands, free from all encumbrances AND that the said Mortgagor will execute such further assurances of the said lands as may be requisite and that too as well before as after default, THAT the Mortgagor has done no act to encumber the said lands and that he will not commit nor permit any waste on the mortgaged lands. THAT the Mortgagee may insure the Buildings on the said lands to the amount of not less than their full insurable value in an Insurance Company to be selected by the Mortgagee, with loss payable to them, and any sums paid by the Mortgagee for premiums to be a charge upon the lands and repayable forthwith with interest at the rate aforesaid, notwithstanding anything hereinbefore set out AND the Mortgagee shall have a lien for the mortgage debt on all insurance on the said buildings whether effected under any covenant herein contained or otherwise. PROVIDED that in case of damage by fire to the buildings on the said mortgaged premises the Mortgagee shall on receipt of the insurance money or any part thereof credit the same on the mortgage or renewal thereof, less a discount at the rate of interest aforesaid for six months. 20 30 40

AND THE MORTGAGOR DOTH RELEASE to the Mortgagee ALL his claims upon the said lands, subject to the said Proviso. PROVIDED that the said Mortgagee on default of payment for one month may, on giving one month's notice, enter on and lease or sell the said lands and this power may be exercised on default in payment of any sum of money hereby made payable or upon discovery that any covenant is untrue or upon breach or non-observance of any covenant stipulation or proviso herein, or upon the registration

of any Mechanics' Lien against the said premises, and the said notice may run concurrently with the said default, and the Mortgagee may in any case serve the notice by leaving it with any one residing on the premises at the time of service, or by posting the notice up in some place on the premises, or at the option of the Mortgagee by publishing the same once in some newspaper published in the County in which the said lands are situate, and that such notice shall be sufficient though not addressed to any person or persons by name or designation, and notwithstanding any person or persons to be affected thereby may be unknown, unascertained or under disability and on any sale 10 time for payment may be given, special condition may be made, and the Vendor may rescind any sale buy in or vary any contract of sale and on any sale at auction may buy in and re-sell without being responsible for any deficiency and notwithstanding any irregularity or informality in any such sale a bona fide purchaser shall take a good title, and the costs of any abortive sale shall become a charge upon the lands and the Mortgagee may tack them to their mortgage debts.

PROVIDED ALWAYS that in default of payment for one month and ten days the said Mortgagee may, without any notice whatever, enter upon the said lands and proceed under and exercise the power of sale hereinbefore 20 conferred and also without entry and whether in or out of possession exercise said power after said default.

THE MORTGAGOR agrees that neither the execution nor registration of this mortgage shall bind the Mortgagee to advance the whole or any part of the money hereby secured nor the advance of a part of the money secured hereby bind the Mortgagee to advance any unadvanced portion thereof but nevertheless the estate hereby conveyed shall take effect forthwith upon the execution of these presents by the Mortgagor, and the expense of the examination of the title and of this mortgage and valuation of the property for the purpose of this loan are to be secured hereby in any event the same to be 30 charged hereby upon the said lands, and shall be without demand thereof payable forthwith with interest at the rate provided for in this mortgage, and in default the Mortgagee's power of sale, hereby given and all other remedies hereunder shall be exercisable.

PROVIDED that in default of the payment of the interest hereby secured (or any instalment of principal) the principal hereby secured shall become payable if the Mortgagee so elects.

PROVIDED that until default of payment the Mortgagor shall have quiet possession of the said lands.

40 AND the said Mortgagor covenants with the said Mortgagee that if at any time before the expiration of three years from the date hereof the Mortgagee, by reason of any default hereinbefore mentioned, receive from a sale or otherwise howsoever, the whole amount of the said principal or any portion thereof, not herein specifically agreed to be received at a time certain, they shall be besides entitled to and shall be forthwith paid by the Mortgagor or may deduct from any moneys derived from the property, by sale or otherwise, a bonus equal to six months' interest in advance at the rate aforesaid on the said principal sum or on the portion thereof received.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 3.
Certified
Copy of
Third
Mortgage
for
\$20,000.00,
No. 8761
W.F.,
23rd May,
1923.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 3.
Certified
Copy of
Third
Mortgage
for
\$20,000.00,
No. 8761
W.F.,
23rd May,
1923.

—continued.

AND THE Mortgagor hereby attorns to and becomes tenant at will to the Mortgagee, its successors and assigns at a rent equivalent to the principal unpaid and all interest earned by this mortgage but the Mortgagee is not to be accountable in any way for more than the actual moneys received by them. AND THE SAID Mortgagor covenants with the said Mortgagee that in the event of non-payment of the said principal moneys at the time or times herein provided, or within one month thereafter, with interest for said month, then the Mortgagor shall not require the Mortgagee to accept payment of the said principal moneys without paying a bonus equal to three months' interest in advance on the said principal moneys. Such bonus to be in lieu of notice of intention to pay, the right to give or receive which is hereby waived. 10

AND THE Mortgagor further agrees that at any time he pays or remits to the Mortgagee any sum or sums, not sufficient to pay any instalments of principal or interest, due or maturing the Mortgagee may deposit the said amount in its Savings Department at the current rate of interest paid Savings Depositors and when a sufficient sum is at the credit of the Mortgagor in the said Savings Department, to pay any instalment of principal or interest, the same shall be so applied by the Mortgagee in payment first of interest and then of principal and until such sufficient sum is so applied, interest on arrears shall continue at the rate secured by this mortgage. 20

THE MORTGAGOR covenants and agrees with the said Mortgagee that upon each case of default arising under the mortgage, the Mortgagee may at any time, without the concurrence of any other person, repair, finish and put in order any building or other improvements on the mortgaged lands and may inspect, take care of, lease, collect the rents, and manage generally the mortgaged property as it may deem expedient and all lawful costs, charges and expenses, including an allowance for the care, pains and trouble of any officer of the Mortgagee or other person appointed for such purpose shall be payable forthwith to the Mortgagee and shall be a charge upon the mortgaged premises and bear interest and compound interest at the mortgage rate. 30

AND as part of the consideration for the advance of the said mortgage moneys the Mortgagor agrees not to claim the benefit of and hereby expressly waives all rights to exemption from seizures or distress under any statute of this province or otherwise howsoever in case of the exercise of any right of distress under these presents and the Mortgagor further agrees that notwithstanding the provisions contained in Section 10, Chapter 120, Revised Statutes of Canada, 1906, and Section 17, Chapter 112, also section 36, subsection 10, chapter 184 revised Statutes of Ontario, 1914, he will not pay off or redeem the principal moneys secured by this mortgage at an earlier period than hereinbefore limited. 40

PROVIDED and it is hereby agreed, that in construing these presents the words "Mortgagor" and "Mortgagee" and the personal pronoun "he" or "she" relating thereto and used therewith shall be read and construed as "Mortgagor or Mortgagors," "Mortgagee or Mortgagees" and "his," "her" or "their" respectively as the number and gender of the party or parties referred to in each case require and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted,

AND that all rights, advantages, privileges, immunities, powers and things hereby secured to the Mortgagee shall be equally secured to and exercisable by his, her or their heirs, executors, administrators and assigns or their successors and assigns as the case may be, AND that all covenants, liabilities and obligations entered into or imposed upon the Mortgagor or Mortgagors shall be equally binding upon his, her or their heirs, executors, administrators and assigns or successors and assigns.

THE MORTGAGOR covenants with the Mortgagee to produce to the Mortgagee on or before the 31st day of December in each year, tax receipts showing payment of the taxes against said lands for such year, and in default thereof that the Mortgagee may obtain same and the Mortgagor will pay \$5. as and for expenses of obtaining same, which amount shall be a charge upon the said lands, payable forthwith.

ANY BONUS charged in connection with this loan shall draw interest from date of mortgage at said rate, Mortgagee to have sole right of placing insurance on the mortgaged property IF loan is paid off before maturity preliminary expenses to be added to Company's claim. IF from any cause whatever there is any litigation in connection with this mortgage or title to the lands therein mentioned or any of securities given collaterally, all costs, charges and expenses therewith, including Solicitors' and Clients' costs, shall be paid by the Mortgagor and be a charge on the lands hereinbefore described.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

SIGNED, SEALED and DELIVERED

(having first been explained to executing parties)
In the presence of
E. B. James

SAMUEL B. GREEN (Seal)
H. A. MORINE (Seal)
ETHEL B. GREEN (Seal)
ESTELLE M. MORINE (Seal)

COUNTY OF YORK
TO WIT

(I, EDITH BERTHA JAMES, of the City of Toronto, in the County of York, Secretary, make oath and say—

- 1. THAT I was personally present and did see the within Instrument and duplicate thereof, duly signed, sealed and executed by Samuel B. Green, Ethel B. Green, Horace A. Morine, Estelle Maude Morine, the parties thereto.
- 2. THAT the said instrument and duplicate were executed by the said parties at the City of Toronto.
- 3. THAT I know the said parties.
- 4. THAT I am a subscribing witness to the said instrument and duplicate.

SWORN before me at the City of Toronto, in the County of York, this 31st day of May, A.D. 1923.

A. NEVILL MORINE,
A Commissioner, Etc.

EDITH B. JAMES.

In the Supreme Court of Ontario.
Exhibits.
Ex. 3.
Certified Copy of Third Mortgage for \$20,000.00, No. 8761 W.F., 23rd May, 1923.

—continued.

DATED MAY 23rd, 1923

NO. 8761 W.F.

I Certify that the within Instrument is duly entered and registered in the Registry Office for the Registry Division of Toronto in Book W.F. at 11.05 o'clock a.m. of the 1 day of June, A.D. 1923.

(Sgd.) James W. Curry,
Registrar.

*In the
Supreme
Court of
Ontario.*
Exhibits.
Ex. 3.
Certified
Copy of
Third
Mortgage
for
\$20,000.00.
No. 8761
W.F..
23rd May,
1923.

—continued.

Exhibits.
Part Ex. 13.
D.
Extracts
from Minute
Book of
London
Loan &
Savings Co.,
Page 531,
28th May,
1923.

P. 531

Part Exhibit 13

10

(Plaintiffs' Exhibit)

D**Extracts from Minute Book of London Loan and Savings Co.****Minute Book, page 531**

Monday, May 28, 1923

BOARD MET—Present, Messrs. McCormick, Baker and Hunt.
Minutes of last meeting read and confirmed.

H. A. Morine

and S. B. Green.....Lend \$20,000. on a third mortgage on their apartment house, which Mr. Morine values at \$400,000. Subject to a first mortgage, \$150,000. to Huron & Erie, and a second mortgage of \$35,000. to London L. & S. Company. Mr. Morine to personally guarantee loan. Terms: 7½%, no commission, bonus \$1,000. to be paid Company by Mr. Morine. Loan to be repaid on December 20th, 1923. 20

Re Lambert.....Letter H. A. Morine read.

M. J. Kent

Geo. G. McC.

*Manager.**President.* 30

Exhibit 308

(Defendants' Exhibit)

Stub of Receipt, G. A. P. Brickenden & Company to Mrs. Mary Scott

No. 108

May 28, 1923

Mrs. Scott
re Deed
from A. Chapman

\$511.65
100

10

*In the
Supreme
Court of
Ontario.*
Exhibits.
Ex. 308.
Stub of
Receipt.
G. A. P.
Brickenden
& Co. to
Mrs. Mary
Scott,
28th May,
1923.

Exhibit 291

(Plaintiffs' Exhibit)

**Deposit Slip in London Loan and Savings Company for \$511.65, Credit
G. A. P. Brickenden**

LONDON LOAN AND SAVINGS CO.
of Canada
Savings Department

May 29, 1923

Credit G. A. P. Brickenden

20

Account No. B 84

(B 84 C)	1 X	1 =	1.
	X	2 =	
	2 X	5 =	10.
	44 X	10 =	440.
	3 X	20 =	60.
	X	50 =	
	X	100 =	
Silver			.65
			<u>\$511.65</u>

30

Depositor G.A.P.B.

Exhibits.
Ex. 291.
Deposit Slip
in London
Loan &
Savings Co.
for \$511.65,
Credit
G. A. P.
Brickenden,
29th May,
1923.

Exhibit 309

(Defendants' Exhibit)

Cheque, G. A. P. Brickenden to Fraser & Moore

B 84 C

\$511.65

No. 594

The London Loan & Savings Co.
of Canada

London, Ont., May 31, 1923.

(Stamps)
(22c.)

Pay to Messrs. Fraser & Moore.....or Order 10
Five hundred & eleven.....65/100 Dollars

Account No. B 84. "G. A. P. Brickenden"

Closing sale Chapman to Scott.

ENDORSEMENTS ON BACK OF CHEQUE

"Fraser & Moore"

FOR DEPOSIT ONLY IN THE
BANK OF MONTREAL
TO THE CREDIT OF
"I. J. Moore"

Exhibit 301

20

(Plaintiffs' Exhibit)

Agreement, H. A. Morine and S. B. Green

MEMORANDUM OF AGREEMENT made this Eighth day of June,
A.D. 1923.

BETWEEN :

SAMUEL B. GREEN, of the City of Toronto, in the County
of York, Builder,

OF THE FIRST PART;

—AND

HORACE A. MORINE, of the same place, Financial Broker, 30
OF THE SECOND PART.

WHEREAS the parties hereto by memorandum of agreement made
the first day of May, 1922, agreed each with the other to become partners
in the purchase, improvement and management of certain lands on the north

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 309.

Cheque,
G. A. P.
Brickenden
to Fraser &
Moore,
31st May,
1923.

Exhibits.
Ex. 301.
Agreement,
H. A.
Morine and
S. B. Green,
8th June,
1923.

side of King Street West in the City of Toronto, more particularly described in the schedule to the said agreement upon and subject to the conditions therein set forth and proceeded with the erection of an apartment house known as the Sunnyside Apartment upon the said lands under and in pursuance of the terms of the said agreement;

AND WHEREAS under the terms of the said agreement it was provided that certain capital moneys necessary to complete the said apartment building should be provided equally by both the parties hereto over and above any moneys borrowed for that purpose on mortgage securities of the said lands;

10 AND WHEREAS the party hereto of the first part has found himself unable to contribute any such portion of such capital expenditure as is necessary to be contributed by him, the said party of the first part, and has requested the party of the second part to release him from his performance of the said agreement;

AND WHEREAS the said party of the second part has consented to release the party of the first part from such obligation upon and subject to the conditions hereinafter set forth;

20 AND WHEREAS under the provisions of the said agreement the party hereto of the first part was to receive for his services in connection with the erection of the said building ten per cent of the cost of the same in addition to his share in the profits of the business and was to be entitled to manage and lease the said property and collect the rents accruing therefrom and was to receive therefor a commission of five per cent of the gross amount of rents collected in addition to his share of the said profits.

30 NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the premises and of the release hereinbefore referred to, and of the sum of one dollar now paid to him, the said party of the first part, by the said party of the second part (the receipt whereof he doth hereby acknowledge), the said party of the first part, for himself, his heirs, executors, administrators and assigns doth hereby forever waive, release and quit claim to any claim he may now or hereafter have for his services in connection with the erection of the said apartment building and any claim to the said ten per cent of the cost of the erection of the same and doth also waive, release and quit claim any interest which he may now or hereafter have in the profits of the said apartment house or in the management of the same, and doth also waive any right obtained by him under the said agreement to manage the said apartment house property or to lease the same or to collect the rents thereon and to any claim for commission which he might have obtained under the said agreement for collecting the rents upon the said property.

40 THE object of the last preceding paragraph is that the party of the first part shall have no claim whatsoever in any respect against him, the said party of the second part, for any services rendered by the party of the first part in connection with the erection of the said apartment or the improvement of the said property or for any services which he may hereafter render in completing the same.

AND he, the said party of the first part, doth further agree with the said party of the second part that he will continue to superintend the building

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 301.
Agreement,
H. A.
Morine and
S. B. Green,
8th June,
1923.

—continued.

*In the
Supreme
Court of
Ontario.*

and completion of the said apartment until it shall have been completely finished suitable for occupation.

AND the said party of the first part doth hereby waive any claim which he might have obtained under the said agreement.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals.

Exhibits.
Ex. 301.
Agreement,
H. A.
Morine and
S. B. Green,
8th June,
1923.

SIGNED, SEALED and DELIVERED }
In the presence of } S. B. GREEN (SEAL)
M. LEONARD } (SEAL)

—continued.

Exhibits.
Ex. 293.
Deposit Slip
in London
Loan &
Savings Co.
for \$470.00,
Credit
G. A. P.
Brickenden,
13th June,
1923.

Exhibit 293

10

(Plaintiffs' Exhibit)

**Deposit Slip in London Loan and Savings Company for \$470., Credit
G. A. P. Brickenden**

LONDON LOAN AND SAVINGS CO.
of Canada
Savings Department

June 13, 1923.....

Credit G. A. P. Brickenden.....

Account No. B 84.....

	X	1	=	
	X	2	=	
	X	5	=	
1	X	10	=	10.
23	X	20	=	460.
	X	50	=	
	X	100	=	

20

\$470.

Depositor G. A. P. Brickenden.....

Part Exhibit 306

(Defendants' Exhibit)

Stub of Cheque-book, G. A. P. Brickenden & Co.

EXTRACT FROM EXHIBIT NO. 306

STUB BOOK

June 13/1923.

Dep. 13/6/23
Moline & Suydam Realty
5 Mtges.

470.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 306.
Stub of
Cheque
Book,
G. A. P.
Brickenden
& Co.,
13th June,
1923.

10

Exhibit 294

(Plaintiffs' Exhibit)

**Deposit Slip in London Loan and Savings Company for \$280., Credit
G. A. P. Brickenden**

LONDON LOAN AND SAVINGS CO.
of Canada
Savings Department

June 14, 1923.....

Credit G. A. P. Brickenden.....

Account No. B 84.....

20

	X	1	=	
	X	2	=	
(B 84 K)	X	5	=	
	X	10	=	
	9 X	20	=	180.
	X	50	=	
	1 X	100	=	100.
				<hr/>
				\$280.
				<hr/>

Depositor G.A.P.B.....

Exhibits.
Ex. 294.
Deposit Slip
in London
Loan &
Savings Co.
for \$280.00,
Credit
G. A. P.
Brickenden,
14th June,
1923.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 30.
Copy of
Letter, H. A.
Moline to
G. A. P.
Brickenden,
15th June,
1923.

Exhibit 30

(Plaintiffs' Exhibit)

Copy of Letter, H. A. Morine to G. A. P. Brickenden

Toronto,
June 15th, 1923.

Mr. G. A. P. Brickenden,
London Loan & Savings Co.,
London, Ont.

Dear Sir,

Re: Green—King St. No. 2.

10

I return herewith Abstract, also Mortgage dated May 23rd, 1923, for \$20,000.00, covering the above mentioned property.

Yours very truly,

HAM/J.
Encl.

Exhibit 31

(Plaintiffs' Exhibit)

Letter, G. A. P. Brickenden & Co. to H. A. Morine

LONDON, Canada, June 16th, 1923.

Exhibits.
Ex. 31.
Letter,
G. A. P.
Brickenden
& Co. to
H. A.
Moline,
16th June,
1923.

H. A. Morine, Esq.,
603 Kent Building,
Toronto, Ont.

20

Dear Sir :—

*Re S. B. Green & London Loan, Apartment House,
King Street, Number Two.*

We have your letter of June 15th enclosing Abstract and new Mortgage for \$20,000.00.

The Abstract appears to have been continued to date, but does not include discharges of the two Huron & Erie Mortgages, viz. : one dated April, 1922, for \$105,000.00 and one dated November 15th, 1923, for \$135,000.00. 30

We understood that our Mortgage, Number 8318, was a Second Mortgage and subject only to the Huron & Erie Mortgage for \$150,000.00.

Will you kindly let us know if the other two have been discharged?

Yours very truly,
G. A. P. BRICKENDEN & CO.
By Evelyn Harrison.

EH/HP.

Exhibit 295

(Plaintiffs' Exhibit)

**Deposit Slip in London Loan and Savings Company for \$228.14, Credit
G. A. P. Brickenden**

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 295.
Deposit Slip
in London
Loan &
Savings Co.
for \$228.14,
Credit
G. A. P.
Brickenden,
18th June,
1923.

LONDON LOAN AND SAVINGS CO.
of Canada
Savings Department

June 18, 1923.....

Credit G. A. P. Brickenden.....

Account No. B 84.....

10

	X	1	=	
	1 X	2	=	2.
(B 84 K)	X	5	=	
	21 X	10	=	210.
	X	20	=	
	X	50	=	
	X	100	=	.50

\$212.50

Cheques 15.64

\$228.14

20

Depositor G.A.P.B.....

Exhibit 304
 (Defendants' Exhibit)
Ledger Sheet of G. A. P. Brickenden

1923 Sheet No. 1 Account No. 1
 Name London Loan & Savings Co. Salesman Credit Limit \$
 Address London, Ont. Rating Draw Through

	Date 1923	Description	Folio	Debits	Date 1923	Description	Folio	Credits
	Jan. 1	Balance <i>re</i> Plected Dis.		3.—	Jan. 5	Dis. <i>re</i> Powell Assgt.		6.25
	" 1	" " Green Assgt.		2.50	" 15	" " Armstrong		10
	" 1	" " Par Cess. Everett		5.—	" 17	" " McDonald		4.15
(attached note No. 288 Feb. 20, 1923)	" 1	" " Dis. Mtge. McRae		3.—	Feb. 2	" " Hall (Stratford)		16.25
	" 1	" " " Dunn		4.—	" 5	" " Jas. Gilfillan		4.—
	" 1	" " Miss M. Avey		10.—	" 9	" " Monteith		3.90
	" 3	31.25 Com. rec'd—Dom. Sec ½ pd. to M. J. Kent		15.63				
Item 1. S. B. Green H. A. Morine Buckingham 35000 loan 362.50	" 5	Fees & dis. <i>re</i> Powell Assgt.		28.25				
	" 10	Memdm. Chges <i>re</i> Imperial Loan		125.—				
	" 10	" " Pellatt		135.—				
	" 15	Fees & dis. <i>re</i> Armstrong		181.62				
	" 17	Fees & Dis. <i>re</i> W. A. L. McDonald Mtge.		29.15				20
	" 24	" <i>re</i> dis. Synod etc. W. Toronto		4.—				
	" 27	" <i>re</i> : Dis. <i>re</i> : Peter O. Moone, Niagara Falls		4.—				
Item 2. A. N. Garrett 19000 mtge. 237.50	Feb. 2	" <i>re</i> & dis. <i>re</i> Hall (Stratford)		41.25				
	" 5	" & dis. <i>re</i> Jas. Gilfillan		39.—				
	" 6	" <i>re</i> : 2 dis's of Mtge. <i>re</i> : Rev. R. McNamara, Toronto		8.—				
	" 9	" & dis. <i>re</i> Monteith		16.90				
Item 3. Lambert 36000 mtge. 370.00	" 12	" <i>re</i> Dis. Mtge. Imperial Loan		4.—				
	" 20	" & dis. <i>re</i> S. B. Green (35,000 mtge.)		362.50				
	" 20	" " A. N. Garrett (\$19,000 mtge.)		237.50				30
	" 20	" " Lambert (\$36,000. mtge.)		370.—				
	" 21	" " Dis. Mtge. Caplan, <i>et al</i>		4.—				
	" 28	Rec. <i>re</i> Dom. Securities \$35000 Bond \$31.25 (15.62 to Mr. Kent)		15.63				
	" 28	Carried Forward		1648.93	Feb. 28	Carried Forward		34.55

550

Account No.....1.....

Sheet No.....1.....

Name London Loan & Savings Co.....Salesman.....Credit Limit \$.....

Address.....Rating.....Draw Through.....

Date 1923	Description	Folio	Debits	Date 1923	Description	Folio	Credits
Feb. 28	Bro't Forward		1648.93	Feb. 28	Bro't Forward		34.85
Mar. 1	Fees <i>re</i> Dis. Mtge. <i>re</i> : Henry S. Dunford <i>et ux</i>		4.—	Mar. 1	Dis. <i>re</i> Zachariah Scott		2.80
" 1	Fees <i>re</i> Harry Lucas \$40,000 Mtge.		400.—	" 5	" " Christison Assgt.		3.45
(attached note) No. 289	" 1 " & dis. <i>re</i> Zachariah Scott		22.80	" 7	" " Gordon Wright		44.15
Harry Lucas & 40000 loan	" 5 " " Christison Assgt.		14.45	" 8	" " Morley Calcott		3.65
Danforth Ave. & 400	" 7 " " <i>re</i> Gordon Wright		169.15	" 13	" " Robt. Irwin		14.35
	" 8 " " Morley Calcott Mtge. of Mtge.		38.65	" 13	" " F. W. Daly		2.55
	" 13 " & " " Robt. Irwin		29.35	" 20	" " Ellwood Assgt.		2.85
	" 13 " " " F. W. Daly <i>re</i> : Assignment		52.05	" 21	" " Lane		7.70
	" 16 " " E. D. G. Brouse, 4 mtges., \$2500 each		125.—	" 24	" " Hunt Mtge.		2.65
	" 20 " & dis. <i>re</i> Ellwood Assgt.		21.85	" 27	" " Robinson Assgt. Agmt.		6.65
	" 21 " " " Lane		57.70	" 29	" " Perry Assgt.		2.55
	" 23 " <i>re</i> Cess. Chge. Lehtonen		4.—	Apr. 4	" " Nichols Mtge.		2.65
	" 24 " & dis. <i>re</i> Hunt Mtge.		27.65	" 9	" " Ethel M. Young		3.75
	" 24 Bonus <i>re</i> Norah Hunt & (11.25 to Mr. Croley)		11.25	" 10			20
	" 27 Fees & Dis. <i>re</i> : Janet R. Robinson, Assgt. of Agmt.		26.65				
	" 29 " " " " E. L. Berry Assgt.		14.55				
Apr. 4	" " " " Nichols Mtge.		12.65				
" 7	" <i>re</i> : Dis. Mtge. <i>re</i> : Jos. T. May, <i>et ux</i>		4.—				
" 9	" " " <i>re</i> : Geo. E. Nerbergall <i>et al</i> —Wiarnton		4.—				
" 9	" " " " Ethel M. Young		128.75				
" 10	" <i>re</i> D. C. K. Brouse (\$5000)		62.50				
" 13	" " Dis. Mtge. <i>re</i> : Ornan G. Scheifele, <i>et ux</i>		4.—				
" 13	" " Deed—Wm. Zink		5.—				
" 17	" " Cess. Chge.—Chas. & Edla Ranta		4.—				30
" 26	Bal. Carried Forward		2892.93	" 20	Bal. Carried Forward		134.30

551

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 303.
Ledger
Sheet of
G. A. P.
Brickenden,
1923.
—continued.

Exhibit 305

(Defendant's Exhibit)

Ledger Sheet of G. A. P. Brickenden

Sheet No.....

Account No.....

Name Thomas McCormick Estate.....

Address.....

	Date 1922	Description	Folio	Debits	Date 1922	Description	Folio	Credits	
	Jan. 25	Fees <i>re</i> Charal Arrears		25.—	Feb. 2	Dis. <i>re</i> Frank McLean		6.50	
	" 30	" " John Denholm Colln.		5.—	" 9	" " McWaters		6.05	
	Feb. 2	" & Dis. <i>re</i> Frank McLean		109.50	" 20	" " Lucas \$15,000 Mtge. Trip	10		
Memorandum	" 2	" Dis. Mtges.—Isaac Thos. Fox		3.—		Toronto		25.—	
attached	" 9	" Dis. <i>re</i> McCormick & McWaters		21.05	" 21	" " Clark & Renton \$5,000.		2.50	
No. 288	" 10	" <i>re</i> S. B. Green Colln. (C. A. McC.)		10.—	Mar. 19	" " McCo. Appeal		23.85	
Item 4.	" 10	" " Geo. H. & Annie Blackwell		5.—	Apr. 14	Pd. Cassels, Brock & K. Agency			
187.50	" 19	" " Dis. Mtge.—Edward T. Dibbs		3.—		fees <i>re</i> Appeal		7.—	
Geo. W. Lucas	" 19	" " <i>re</i> Fanny and Solomon Brand		3.—	May 12	" H. A. Morine <i>re</i> Acker Furn.			
15000 Mtge.	" 20	Fees & Dis. <i>re</i> Albert Edward Sims		3.—		Co. fees		10.00	
	" 20	" <i>re</i> Geo. H. Lucas (\$15,000. Mtge.)		187.50					
Item 5.	" 20	" " S. B. Green (\$10,000. Mtge.)		125.—					
125.00	" 21	" " Clark & Renton (\$5,000. Chas. McC. Est.)		62.50				20	
S. B. Green	Mar. 6	" " Dis. Mtge.—Donald Soper, <i>et ux</i>		3.—					
10,000 Mtge.	" 19	" " " Wm. McKenzie Messer, <i>et ux</i>		3.—					
	Apr. 17	Bill of Costs <i>re</i> Appeal		253.85					
	Mar. 20	Par. Dis. <i>re</i> Croft, <i>et al</i> —G. G. McC.		5.—					
	" 24	Fees <i>re</i> Soren Bros.—Toronto		35.—					
	Apr. 20	" " Acker Furniture Co.		25.—					
	May 11	" " Morine, Green & Kay (2 loans, 11,000 each)		3.—					
	Apr. 24	" " Soren Bros.		50.—					
	May 11	" " Dis. Mtge. <i>re</i> Trustees 1st Meth. Chch.		3.—				30	
	" 12	" " Soren Bros. & McC. <i>et al</i>		100.—					
" 22 Carried Forward				1315.40	" 22 Carried Forward				80.90

552

Account No.....

Sheet No.....

Name Thomas McCormick Estate.....

Address.....

Date 1922	Description	Folio	Debits	Date 1922	Description	Folio	Credits
(attached memorandum) No. 290 S. B. Green No. 1 Heath 68.75 —& 250.xx No. 13 June, 1923 Suydam Realty 469.50	Mar. 22 Bro't Forward		1315.40	May 22 Bro't Forward			80.90
	" 22 Fees re Green (\$5500. Heath St.)		68.75	June 29 Dis. re James (Clarkson) G. A. P.			50.—
	June 2 " Dis. Mtge. re Frank Fenech		3.—		B.'s trip to Toronto		10
	" 13 " re 3 Mtges.—Suydam Realty Co. (\$94. each)		282.—				
	" 20 " re Suydam Realty—Builder's Loans 4 & 5 (\$75,000. each)		187.50				
	" 21 " re James (Clarkson) (Mtge. \$10,000.)		125.—				
			1981.65				130.90
				July 3 Net Fees rec'd			1815.75
				" 3 Fees Unpaid			35.—
			1981.65				1981.65
	July 3 Fees re S. B. Green Coll. (C. A. McC.)		10.—	July 3 Sent chq. to H. A. Morine re			
	" 3 " " Acker Furn. Co.		25.—		Acker Furn. coll.		6.25
	" 24 " " Samuel Smith Colln.		20.—	Dec. 31 Stamps on cheque re McEwen			.46
	Sept. 6 " re Dis. Mtge. re Jas. Baskerville		3.—				20
	Oct. 18 " " Rhode Dearing Mtge.		10.—				
	" 20 " re Thos. McKay—Right of Way Ag't.		10.—				
	Nov. 10 " " Beatrice Cleaverly		125.—				
	" 30 " " Samuel Smith Colln.		4.25				
	Dec. 10 " " Wrights Ltd. (Empress Ave. & Willowview)		43.75				
	" 31 " re McEwen \$22000.00 loan (265. less com. \$26.50)		238.50				
			489.50				6.71
				Dec. 31 Fees Unpaid			10.—
				" 21 Bad Debts re S. B. Green Colln.			10.—
				" 31 Net Fees Rec'd			462.79
			489.50				30
							489.50

553

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 305
Ledger
Sheet of
G. A. P.
Birkenden,
1923.
—continued

Exhibit 307
 (Defendant's Exhibit)
Ledger Sheet, G. A. P. Brickenden

Sheet No. 2

Account No. 1

Memoranda
 on slips
 attached
 to Ledger
 Sheet.

Name London Loan & Savings Co.
 Address

Date 1923	Description	Folio	Debits	Date 1923	Description	Folio	Credits	
Apr. 20	Bro't Forward		2892.93	Apr. 20	Bro't Forward		134.30	
" 20	Fees & Dis. re Daniel McDonald—Assgt. Mtge.		67.43	" 20	Dis. re Daniel McDonald		7.43	
" 23	" " " " Moses Fishbien Mtge.		176.70	" 23	" " Moses Fishbien		26.70	
" 25	" " " " Janet Robinson Assgt. Agmt.		26.40	" 25	" " Janet R. Robinson		6.40	
" 26	" " " " Geo. A. Gorringe		23.75	" 26	" " Geo. A. Gorringe		3.75	
" 26	" " " " Francis A. Barned		17.40	" 26	" " Francis A. Barned		2.40	
May 7	" " " " Dr. D. H. Arnott		50.—	May 7	" " Dr. H. D. Arnott		19.49	
" 19	" re Collection re Boyd		115.80	May 21	" " Dr. Shaw & Vulvan Co.		3.30	20
" 21	" & Dis. re Shaw & Vulcan Co.		78.30	June 6	" " Standard Reliance		50.—	
June 1	" re Dis.—Moses Fishbein, Simcoe St.		4.—	" 7	" " Jos. Allan Eadie		3.80	
" 6	" " Par. Dis. Stratford Improvement Co., Ltd.		5.—	" 7	Com. to Dr. D. H. Arnott		18.—	
" 6	" & Dis. Standard Reliance—Pellatt Div. C. of Ont.		850.—	" 11	Dis. re Grenville B. Charlton		3.75	
" 6	" re Dis. Mtge. Percy Wm. Rogers		4.—	" 19	" " Freeman Ryckman & Wm. A. Cline		5.10	
" 6	" " " " Maggie Teresa Earl		4.—					
May 22	" re Green—additional adv. \$20,000. King St. Apart.		250.—					
June 7	" & Dis. re Jas. A. Edie—Mtge. & Assgt. of Agmt.		39.30					
" 11	" re Dis. of Mtge.—Walter E. Wismer		4.—					30
" 11	" & Dis. re Grenville B. Charlton Mtge.		28.75					
" 13	" re 2 Mtges. Suydam Realty Co. Ltd. (\$94—each)		188.—					
" 14	" " Dis. Mtge. Wm. Wesley Lethbridge		4.—					
" 15	Agy. Fees Cassels, Brock & K. re Standard Reliance Appeal		50.—					
" 15	Fees re S. B. Green (\$24,000. Loan)		280.—					
" 15	" re Harry Lucas (\$17,000. sec. Mtge. Danforth Ave.		212.50					
" 19	" & dis. re Freeman Ryckman & Wm. A. Cline		10.10					40
" 21	" re Dis. Mtge. re Vanstone		4.—					
" 21	Carried Forward		5386.36	" 21	Carried Forward		284.42	

No. 290
 May 22, 1923
 S. B. Green
 & H. A. Morine
 \$20,000. Mtge.
 Buckingham
 \$250.

No.
 (June 14, 1923)
 S. B. Green
 \$24,000 loan
 Brunswick Ave.
 \$280.

(June 18, 1923)
 Harry Lucas
 \$17,000. Mtge.
 \$212.50

554

Account No. 1

Sheet No. 2

Name London Loan & Savings Co.

Address

Date 1923	Description	Folio	Debits	Date 1923	Description	Folio	Credits
June 21	Bro't Forward		5386.36	June 21	Bro't Forward		284.42
" 25	Fees <i>re</i> Suydam Realty Co. Ltd. (\$55,000. Mtge.)		512.50	" 29	Pd. Express Standard Reliance		1.10
" 28	" " Dis. Mtge. Thos. Roberts, <i>et al</i> to W. E. Robinson <i>et al</i>		4.—				
" 28	" " " " Thomas Roberts, <i>et al</i> to L. L.		4.—				10
" 29	" <i>re</i> A. W. Dyas (\$6,000.00)		75.—				
" 29	" " Joan McCrae (Mtge. \$12,500.)		166.—				
" 29	" " Dr. W. J. McCormack (\$25,000. Mtge.)		287.50				
			6435.36				285.52
				July 3	Net Fees Rec'd		6131.74
				" 3	Fees Unpaid		18.10
			6435.36				6435.36
July 3	Bal. <i>re</i> Freeman Ryckman & Wm. A. Cline		10.10	July 3	Bal. Dis. <i>re</i> Freeman Ryckman & Wm. A. Cline		5.10
" 3	" <i>re</i> Thos. Roberts <i>et al</i> to W. E. Robinson <i>et al</i>		4.—	" 9	Dis. <i>re</i> Geo. A. Nicholls		5.45
" 3	" " Thos. Roberts <i>et al</i> to London Loan		4.—	" 10	" " G. A. McKenzie		39.38
" 4	Fees <i>re</i> Dr. Pugh (\$10,000. Loan)		125.—	" 21	" " Chas. Bricklen Loan		3.95
" 6	" " Morris Collection		10.—				
" 9	" & Dis. <i>re</i> Geo. A. Nicholls Assgt. of Mtge.		50.—				
" 10	" " <i>re</i> G. A. McKenzie—Mtge.		88.88				
" 12	" <i>re</i> Green, Austin Terrace (Mtge. \$21,900., \$6,000. Purchase)		75.—				
" 21	Fees & Dis. <i>re</i> Chas. Bricklin Loan		18.95				
" 25	" <i>re</i> Dis. Mtge. <i>re</i> T. A. Harris to L. Loan		4.—				
" 25	" " " " The Dovercourt Land Bldg. & Savings Co. Ltd. to L. Loan		4.—				30
" 25	" " " " The Dovercourt Land Bldg. & Svgs. Co. Ltd. to The Standard Loan Company		4.—				
" 25	Fees <i>re</i> Par. Cess <i>re</i> Shepard & Everett		5.—				
" 25	Carried Forward		482.93	" 25	Carried Forward		53.88

555

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 307.
Ledger
Sheet of
G. A. P.
Brickenden,
1923.
—continued.

*In the
Supreme
Court of
Ontario.*

Exhibit 32

(Plaintiffs' Exhibit)

Letter, H. A. Morine to G. A. P. Brickenden

Exhibits.
Ex. 32.

Letter,
H. A.
Morine to
G. A. P.
Brickenden,
18th June,
1923.

June 18th, 1923.

Mr. G. A. P. Brickenden,
London Loan & Savings Co.,
London, Ont.

Dear Sir :—

Re: King Street Apartment

The discharges of the \$135,000. and the \$105,000. mortgage have been¹⁰
applied for at different times and they inform them that they have applied
for same at London.

Yours very truly,

Part Exhibit 33

(Plaintiffs' Exhibit)

A**Letter, H. A. Morine to G. A. P. Brickenden**

Exhibits.
Part Ex. 33.

A.
Letter,
H. A.
Morine to
G. A. P.
Brickenden,
19th June,
1923.

Toronto,
June 19th, 1923.

Mr. G. A. P. Brickenden,
London Loan & Savings Co.,
London, Ont.

20

Dear Sir,

Re: King St. No. 2.

Herewith copy of letter we received from Cassels, Brock & Kelley which
will be of interest to you.

Yours very truly,

Encl.

Part Exhibit 33

(Plaintiffs' Exhibit)

B**Copy of Letter, Cassels, Brock & Kelley to H. A. Morine**

Toronto,
June 19th, 1923.

H. A. Morine, Esq.,
603 Kent Bldg.,
Toronto.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 33.
B.

Copy of
Letter,
Cassels,
Brock &
Kelley to
H. A.
Morine,
19th June,
1923.

10 Dear Sir :—

Re : Buckingham Apts.

We beg to advise you that we have this day registered discharges from the Huron & Erie Mortgage Corp. to you of the mortgages for \$105,000. and \$135,000. registered against the above property.

Yours very truly,
C. B. & K.

Exhibit 14

(Plaintiffs' Exhibit)

Letter, G. A. P. Brickenden & Co. to London Loan and Savings Co.

LONDON, Canada, July 19th, 1923.

20

The London Loan & Savings Co.,
London, Ont.

Exhibits.
Ex. 14.
Letter,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
19th July,
1923.

Dear Sir :—

Re S. B. Green & H. A. Morine to London Loan,
Apartment House, King and Queen

We enclose herewith :—

1. Mortgage, S. B. Green and H. A. Morine to London Loan, Number 8761 W.F.
2. Certificate of Title.

30 The other papers were sent to you with the First Mortgage on May 5th, 1923.

Yours very truly,
G. A. P. BRICKENDEN & CO.
By Evelyn Harrison.

EH/HP
Encl. 2.

THE FOLLOWING ARE SHOWN ON THE BACK OF LETTER

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 14.
Letter,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
19th July,
1923.

May 28th, 1923, passed on 3rd mtge.
\$20,000. at $7\frac{1}{2}\%$, no com.—bonus \$1,000.
subject to 1st mtge. \$150,000. to H. &
Erie and \$35,000. to London Loan Co'y
G.41—See min-book No. 9, page 531.

—continued.

Exhibit 15

(Plaintiffs' Exhibit)

Exhibits.
Ex. 15.
Certificate of
Title,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
19th July,
1923.

Certificate of Title, G. A. P. Brickenden & Co. to London Loan and Savings Company

10

CERTIFICATE OF TITLE

IN THE MATTER OF Parts of Lots Numbers two and three, Plan 512, East and West York, now West Toronto, and Part of Lot Sixteen, Plan 457, East and West York, now West Toronto, and IN THE MATTER OF a Mortgage from S. B. Green and H. A. Morine to The London Loan & Savings Company of Canada.

WE HEREBY CERTIFY that we have investigated the Title to the lands comprised in the said Mortgage and that the same is good and sufficient for the purpose of the said Mortgage and that the said Mortgage has been duly executed and registered and forms a first charge upon the Mortgaged lands to the full amount thereby secured. 20

SUBJECT, however, to a Mortgage from S. B. Green and H. A. Morine to The Huron & Erie Mortgage Corporation, which Mortgage is dated the 7th day of February, 1923, and made to secure \$150,000.00.

AND SUBJECT, also, to a Mortgage from S. B. Green and H. A. Morine (Co'y's no. is G.41) to The London Loan and Savings Company which Mortgage is dated February 13th, 1923, and registered as Number 8318 W.F. for \$35,000. at $7\frac{1}{2}\%$. 30

DATED at London this 19th day of July, 1923.

G. A. P. BRICKENDEN & CO.

To
The London Loan & Savings Co. of Canada.

Exhibit 17

(Plaintiffs' Exhibit)

Letter, H. A. Morine to London Loan and Savings Company

Toronto,
August 9th, 1923.

London Loan & Savings Co.,
London, Ont.

Gentlemen,

Re Buckingham Apts.

10 I attach herewith copy of the full statement of this property which I furnished you with when the \$35,000.00 loan was arranged.

On the basis of anticipated revenue, etc., I would value this property conservatively at \$325,000.00 valuation.

There is insurance on the property to the extent of \$200,000.00, \$50,000.00 of which you hold in your possession.

Yours very truly,
H. A. Morine.

Exhibit 180

(Plaintiffs' Exhibit)

20 **Application to London Loan and Savings Company re R. S. Durno
Loan—St. Ives Crescent**

H. A. MORINE, 603 KENT BUILDING, YONGE STREET, TORONTO

I HEREBY APPLY to you for a loan of \$5,750.00 for a period of five years, bearing interest at _____, on the following property:—

**ST. IVES CRESCENT, LAWRENCE PARK
SOLID BRICK DETACHED DWELLING**

LAND : 50' x 135'.

BUILDING : 26'6" x 32'0".

30 MATERIAL : Eatonia Pressed Brick and Stucco, oak trim and oak floors throughout, soft wood trim in bedrooms.

NO. OF ROOMS : 6 rooms and bath.

LIGHTING : Electric.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 17.

Letter,
H. A.
Morine to
London
Loan &
Savings Co.,
9th August,
1923.

Exhibits.
Ex. 180.
Application
to London
Loan &
Savings Co.
re R. S.
Durno Loan,
St. Ives
Crescent,
20th August,
1923.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 180.
Application
to London
Loan &
Savings Co.
re R. S.
Durno Loan,
St. Ives
Crescent,
20th August
1923.

HEATING : Hot Water.

LOAN REQUIRED :

VALUE : \$11,000.

The above house is to be of Old English design.

I value this property as good
value for loan of \$5,750.00
repayable \$75.00 1/2 yearly a/c
principal.

DATE..... Aug. 20/23.....

SIGNATURE.....

ADDRESS.....

H. A. Morine
22/8/1923.

10

—continued.

Exhibits.
Ex. 179.
Application
to London
Loan &
Savings Co.
re R. S.
Durno Loan,
St. Ives
Crescent,
20th August,
1923.

Exhibit 179

(Plaintiffs' Exhibit)

**Application to London Loan and Savings Company re R. S. Durno
Loan—St. Ives Crescent**

225

SEP. 17 REC'D

H. A. MORINE, 603 KENT BUILDING, YONGE STREET, TORONTO

I HEREBY APPLY to you for a loan of \$5,750. for a period of five years,
bearing interest at 7 1/2%, on the following property :—

ST. IVES CRESCENT, LAWRENCE PARK
SOLID BRICK DETACHED DWELLING.

20

LAND : 50' x 135'.

BUILDING : 26'6" x 32'0".

MATERIAL : Eatonia Pressed Brick and Stucco, oak trim and oak
floors throughout, soft wood trim in bedrooms.

NO. OF ROOMS : 6 rooms and bath.

LIGHTING : Electric.

HEATING : Hot Water.

LOAN REQUIRED : \$5,750.

VALUE : \$10,000.

30

The above house is to be of Old English design.

DATE..... Aug. 20/23.....

SIGNATURE.....

ADDRESS.....

I CERTIFY the value of this property
when completed at \$10,500., and would
recommend a loan of \$5,750.—\$75.00
1/2 yearly.

H. A. Morine.

Valuation

40

Exhibit 182
(Plaintiffs' Exhibit)

Cheque, London Loan and Savings Company to R. S. Durno and H. A. Morine

THE LONDON LOAN & SAVINGS COMPANY OF CANADA

NO. 1101
LONDON, Canada, Aug. 22nd, 1923

To **THE BANK OF MONTREAL** Custom House Branch

10 Pay to the order of R. S. Durno & H. A. Morine.....\$2999.00

Twenty-nine hundred & ninety-nine.....^{xx}100 DOLLARS

.....
W. B. Croley

.....
PP Teller.

M. J. Kent

.....
Manager.

FOLLOWING ENDORSEMENTS SHOWN ON BACK OF CHEQUE

a/c loan
R. S. Durno

FOR DEPOSIT ONLY
CANADIAN BANK OF COMMERCE
QUEEN & YONGE STREETS
H. A. MORINE.

20

The Canadian Bank of Commerce
FIRST TELLER
AUG. 24, 1923
NO PROTEST
Yonge and Queen Branch
TORONTO, ONT.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 182.
Cheque,
London
Loan &
Savings Co.
to R. S.
Durno and
H. A.
Morine,
22nd August,
1923.

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 178.
Letter,
H. A.
Morine to
London
Loan &
Savings Co.,
27th August,
1923.

Exhibit 178

(Plaintiffs' Exhibit)

Letter, H. A. Morine to London Loan and Savings Company

Toronto,
August 27th, 1923.
D 27

London Loan & Savings Co.,
London, Ont.

Gentlemen,

Re Durno—St. Ives Crescent.

10

This mortgage has been duly registered and all documents together with insurance policy will go forward to Mr. Brickenden in the course of a few days.

Herewith cheque for \$86.25 and voucher for \$57.50 commission due me, being 1% of the total loan.

Yours very truly,
H. A. Morine.

J.
Encl. 1.

Exhibits.
Ex. 278.
Application
for Loan,
R. S. Durno,
St. Ives
Crescent,
20th August,
1923.

Exhibit 278

(Plaintiffs' Exhibit)

20

Application for Loan, R. S. Durno, St. Ives Crescent

H. A. MORINE, 603 KENT BUILDING, YONGE STREET, TORONTO

226

(\$5,750—written in pencil)

I HEREBY APPLY to you for a loan of \$5,500 for a period of five years, bearing interest at $7\frac{1}{2}\%$, on the following property:—

**ST. IVES CRESCENT, LAWRENCE PARK
SOLID BRICK DETACHED DWELLING**

LAND : 50' x 135'.

BUILDING : 26'6" x 32'0".

30

MATERIAL : Eatonia Pressed Brick and Stucco, oak trim and oak floors throughout, soft wood trim in bedrooms.

NO. OF ROOMS : 6 rooms and bath.
 LIGHTING : Electric.
 HEATING : Hot Water.
 LOAN REQUIRED :
 VALUE : \$11,000 (written in ink)

*In the
 Supreme
 Court of
 Ontario.*
 —
 Exhibits.
 Ex. 278.
 Application
 for Loan,
 R. S. Durno,
 St. Ives
 Crescent,
 20th August,
 1923.

The above house is to be of Old English design.

—continued.

(Repay \$75.00 each 6 mos.)	DATE.....	Aug. 20/23.....
(2½% Bonus) (for passed)	SIGNATURE	R. S. Durno.....
10 (see other side)	ADDRESS	612 Kent Bldg., Toronto.
(of this letter)	(Builder)	
(\$5750.)		
	(I recommend this loan and value the property at \$8,500 to \$9,000.—M. J. Kent.)	
\$11,000	(OK)	
2,600	TB	
-----	(2nd Check valuation)	
\$ 8,400		

FOLLOWING SHOWN ON BACK OF ABOVE

20

31
 Sept. 6/23
 R. S. Durno
 Lend \$5,750. at 7½%, security Toronto
 Comn. 1%
 Bonus 2½%.....\$143.75
 Valuation.....\$11,000

Geo. G. McC.

.....
President.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 18.

Letter,
London
Loan &
Savings Co.
to H. A.
Moline,
17th Septem-
ber, 1923.

Exhibit 18

(Plaintiffs' Exhibit)

Letter, London Loan and Savings Company to H. A. Morine

London, Can.,
Sept. 17, 1923.

Mr. H. A. Morine,
Toronto, Ont.

Dear Sir :—

Re Buckingham Apartments.

When the loan of \$20,000. was granted, one of the conditions was, we were to receive a bonus of \$1,000. We do not appear to have received cheque. Kindly forward this on. 10

M. J. K.

Exhibits.
Ex. 19.

Copy of
Letter,
H. A.
Moline to
M. J. Kent,
18th Septem-
ber, 1923.

Exhibit 19

(Plaintiffs' Exhibit)

Copy of Letter, H. A. Morine to M. J. Kent

Toronto,
September 18th, 1923.

Mr. M. J. Kent,
London Loan and Savings Co.,
London, Ont.

20

Dear Sir,—

Re Buckingham Apartments

\$20,000.00 loan.

I will be in London next week, and will fix this matter up with you.

Yours very truly,
H. A. Morine.

HAM/MMS.

Re Bonus \$1,000.

Exhibit 258

(Plaintiffs' Exhibit)

*In the
Supreme
Court of
Ontario.***Letter, V. Evan Gray to Manager London Loan and Savings Company**

Toronto, October 2nd, 1923.

M. J. Kent, Esq.,
 Manager,
 London Loan and Savings Company of Canada,
 London, Ont.

Exhibits.
 Ex. 258.
 Letter,
 Department
 of Insurance
 to M. J.
 Kent,
 2nd October,
 1923.

Dear Sir :—

10 Following the inspection of your company made by the examiners of this Department and my personal visit to your office last week when we discussed a number of items mentioned in the report of the examiners, I am writing to put on record the questions and suggestions which I desire to have considered by your Board of Directors.

There is some reason for congratulation in the fact that so large a sum was repaid to your company during 1922 on account of second mortgage investments and I sincerely hope that the opportunity this affords to your Board, to reinforce the financial position of your company and reduce the hazards due to large loans on specialized properties, will be availed of.

20 I am sorry to have to report that the condition of the accounts and records of the company has not improved in the last two years in the manner in which we expected it would. The condition of the ledgers is certainly no credit either to your accountant or auditor and I very strongly urge that some special attention should be given to this matter during the next year. The manner in which the ledger accounts have been marked up with pencil is particularly unsightly and has made it very difficult for the auditors to follow clearly the transactions which the entries are supposed to represent.

I know that your Board is already dealing with one phase of this matter and has secured the assistance and advice of Mr. F. G. Jewell of London
 30 whose wide and long experience in Loan and Trust company auditing should be extremely valuable. Although I do not know what changes he will recommend in your system or practice, I commend his advice to the careful consideration of your Board in advance of its receipt. I have no doubt that Mr. Jewell's report will deal with certain fundamental principles of accounting with reference to the bonuses and discounts taken in connection with your loans and until this report is received I make no other comment upon this subject other than to say that a revision of your present practice is absolutely necessary.

I have also to criticise the condition in which the Title Deeds, Surveys,
 40 Valuations and other documents in connection with your mortgage loans are kept. I am advised by my examiners that in many cases important documents are missing and the condition of the records is such as to make a real audit very difficult if not impossible.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 258.
Letter,
Department
of Insurance
to M. J.
Kent,
2nd October,
1923.

My examiners also found that in the case of many of your loans the borrowers' written application, the valuator's report, the Solicitor's report on title and your memorandum of approval by directors were missing. In some cases also extension agreements for the renewals of loans have not been properly completed. These omissions are very serious and, aside from the difficulty which they make for the examiners, they are certain to result in confusion, delay, and possible loss in future. I must urge you very strongly to give the necessary attention to these details to secure the proper completion of your office records.

These conditions reflect upon the work of your accountant. It may be 10 that he has not been given sufficient assistance to keep these records in good form. If this is so, it is a condition which your Board should rectify.

Another matter of general concern is the valuation of properties in Toronto upon which your company has accepted loans. In many cases I found the valuations made by Mr. H. A. Morine of Toronto, who has been interested as an agent in the negotiation of the loans for the borrower and the company. Without intending any reflection upon Mr. Morine's capabilities, I cannot think that it is a sufficient protection to your company to use any agent's valuation on important loans of this character. You informed me that in every case the directors had personally inspected the properties before the 20 moneys were advanced. If this is so, the report of those directors should appear in the papers.

My own view is that in addition to directors' inspections the report of an independent valuator or the regular valuator of the company should be on file in every case. This report should be as full and complete as is usual in the case of reports of Loan company valutors for the directors' consideration. These and the borrowers' written applications should be presented to the Board in every case before a loan is approved and the Chairman of the Directors should mark the application approved and date and initial the endorsement at the meeting. 30

Suggestions along these lines were made to your company on the occasion of former inspections and I am sorry to have to complain that due account has not been taken of those suggestions. I sincerely hope that the importance of the matter has now been sufficiently impressed upon your Board to secure the necessary action.

It was a great surprise to me to find that in the case of at least one loan a secret commission had been paid to an officer of your company by the borrower in connection with the renewal of a loan. I cannot express too strongly my disapproval of this transaction or my view of its seriousness. I shall look to your Board to take some adequate steps, not only to see that this commis- 40 sion is recovered for the company in this case, but also that a transaction of such a nature cannot be repeated.

You will remember our mention of the Gordon Loan of Stratford, and my comment on the fact that arrears of interest had in former years been accumulated in this account. I am advised that the present income from the property is paying the interest on the present loan. It is desirable, however, that some definite programme should be decided upon to reduce this amount. In this

—continued.

connection a new valuation of the property is desirable and I approve of your suggestion to have a valuation and report on the property made by Mr. D. W. Wright of Stratford.

(V Assest 135800 Value 181000)

I was informed in the case of the Schultz loan on the Isabella Mansions in Toronto, Mr. Thomas Baker had made an inspection and valuation of the property. I think Mr. Baker's report should be made in writing in the usual form and included in the papers.

I hope some steps will be taken to provide a reasonable reserve against the Pellatt loan or steps taken to write this account down to an amount approximating the value of the security you hold.

Will you please secure from Wrights Limited of Toronto a statement showing the original lands covered by your mortgage, the lands released and the lands remaining subject to your charge, together with a valuation of the remaining property. I think this could best be done on a sketch of survey of the subdivision by differentiating the colour of the lots released from those which remain.

I direct your attention to the loan account of the English Loan Company. I am advised that no interest has been paid upon this balance since August, 1921, and that the Manager, Mr. Kent, owns a four-fifths interest in the company. This is a condition which should be promptly corrected. Presumably the security given for this loan, which consists of mortgages to the English Loan Company, is held by the London Loan and Savings Company and payments of principal and interest are no doubt being made on account of these mortgages. I am at a loss to understand how these moneys could be paid out by the loan company to another person. Payments of both principal and interest on these mortgages belong to the company until such time as the London Loan Company loan is repaid.

There are two old loans under the names Tony Zakozowski and J. Valkama which still appear in the mortgage ledger although I am advised that the company is in possession of the properties and that they are properly real estate owned by the company. Will you please see that these two accounts are transferred to real estate before the next annual statement is issued.

Notwithstanding the assurances given me last year that the loans to directors would be paid off or largely reduced, I find that there is still a very large amount owing by Mr. M. J. Kent and that Mr. Baker's loan is still unpaid. I shall look for a substantial change in these accounts before the end of the year.

When I was in London I asked you to write me a letter explaining the situation with regard to the shares of Capital Stock of the London Loan Company which are held in the name of the Manager in trust. This concerns an old transaction dealing with the forfeiture of shares. Will you please send me full particulars of this situation.

I suggest also some better arrangement for the identification of shares of Capital Stock assigned to the company as security for loans to shareholders. A declaration of trust should be attached to all certificates which appear in the name of the Manager in trust in order that the nature of the trust

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 258.
Letter,
Department
of Insurance
to M. J.
Kent,
2nd October,
1923.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.

Ex. 258.

Letter,
Department
of Insurance
to M. J.
Kent,
2nd October,
1923.

—continued.

may be properly identified. Proper notations of the circumstances in connection with loans on shares should be made in the Directors' Minute Book at the time the loan is approved.

Please note the desirability of securing hypothecation agreements from the borrower in all cases in which advances are made upon the security of shares or bonds. It is only under the terms of such agreement that the rights of the company to realize upon the security are adequately defined. The practice of the company has been very lax in this connection.

I am surprised to find that in the Statement for 1922 an increase was made in the book value of the stock of the Consolidated Trusts Corporation 10 from 100 to 120 per share notwithstanding the fact that these shares pay no dividends and give no early prospect of doing so. This increase in book value of the security was particularly objectionable because of the inter-relationship of The London Loan Company and the Consolidated Trusts Corporation. I can think of no excuse whatever for including the book value of these shares on anything other than their actual cost and desire to have you provide at the end of the present year, either for returning these shares to their original cost value or providing in your accounts a proper reserve to offset the increment in book value.

I am informed that under the head of "all other assets" there is included 20 a Life Insurance policy on the life of Mr. G. G. McCormick at \$2,866.58 which apparently has no cash surrender value or paid-up value. Please examine this situation and advise me.

The bonus account now carried in the Savings Ledger as a liability is a matter which I have no doubt will be dealt with in Mr. Jewell's report and I refrain from a definite recommendation in this connection until his report has been received. It is sufficient to say that the inclusion of this amount in your accounts as a liability to the public is entirely incorrect and must not be continued.

I am also advised that a number of debit balances appear in your Savings 30 Ledgers indicating overdrafts allowed to customers of the company. I call your attention to the fact that such loans on personal or no security are beyond the competence of your company and that the directors allowing such transactions do, according to my opinion and advice, render themselves personally liable to the company for all such advances. Will you please have this matter investigated and appropriate action taken. Instructions should be issued to your accountant that no overdrafts are to be allowed.

Yours faithfully,
V. EVAN GRAY.

VEG/WJS.

Exhibit 259

(Defendants' Exhibit)

**Copy of Letter, London Loan and Savings Company to V. Evan Gray,
Registrar Loan Corporations**

Oct. 5, 1923.

Mr. V. Evan Gray,
Registrar, Loan Corporations,
Toronto, Ont.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 259.
Copy of
Letter,
London
Loan &
Savings Co.
to V. Evan
Gray,
Registrar
Loan Corps.,
5th October,
1923.

Dear Sir :—

10 Copy of your letter to M. J. Kent *re* London Loan matters duly received, and contents noted.

Accounts, records, title deeds, valuations, etc., etc., are receiving attention, and will, I think, be gradually worked out satisfactorily.

Our mutual surprise *re* "secret commission" received by an officer of the Company has already been adjusted: the amount having been paid back to the borrower in full by the officer referred to. Mr. Kent tells me this was not a commission, but an amount charged for renewal of an Imperial mortgage that was outside work and had nothing to do with London Loan Company.

Re Gordon Loan, Valuation

20 (Ass't 135,800 Conservative value Mr. Wright 181,000)

Mr. Kent wrote to Mr. Wright of Stratford yesterday.

Re English Loan

Our Manager has transferred mortgages in our ledgers sufficient to pay up all arrears of interest, following out the suggestion of your Department.

Directors' loans are being, and will be gradually reduced, according to arrangements already in force; and you may rest assured there will be no further loans to Directors so long as I am in control.

30 The increase made in book value of Consolidated Trusts Corporation (20 points) to intrinsic value, was an offset and for the purpose of making up the amount of \$48,000. to assist us in writing off the entire amount of accrued interest \$79,091. as at the end of 1922, which interest was not carried as an asset in our last statement. We hope this year to start writing down Consolidated at least 5 points, \$12,000., and to continue such procedure until our entire accrued interest will be taken care of as a hidden reserve instead of carrying it as an asset in our annual statement.

Re Life Insce. Policy on my life

40 I have always objected to carrying the premiums paid as an asset, but our former auditor, Mr. Sreaton, insisted and would not sign Government Returns otherwise, so I reluctantly gave in. The policy now has a surrender value, and I presume our new auditors will make the proper entry.

There are a very few small debit balances in savings bank ledgers indicating overdrafts, but in every case a cheque so over-drawing is initialled by myself or Mr. Kent, knowing we are liable to the Company for such overdraft. They are so few and small that it does not, to my mind, constitute a severe offense.

Exhibit 266

(Plaintiffs' Exhibit)

Copy of Letter, London Loan and Savings Company to Department of Insurance

NOT PRINTED

Exhibit 21

(Plaintiffs' Exhibit)

Copy of Letter, London Loan and Savings Company to H. A. Morine

Nov. 24th, 1923.

10 H. A. Morine, Esq.,
603 Kent Building,
Toronto, Ontario.

Dear Sir :

Re Mtge. G.41.—This is second mortgage on
Buckingham Apartments.

I beg to remind you that the payment due last August of \$1,730.82 is still unpaid, and, as the Company need the money now, we will be pleased to receive a cheque for same, with extra interest added for time overdue.

Yours truly,

Manager.

20

Exhibit 22

(Plaintiffs' Exhibit)

Copy of Letter, London Loan and Savings Company to H. A. Morine

Dec. 22, 1923.

Mr. H. A. Morine,
Toronto, Ont.

Dear Sir :—

Re Mtge. G.46.—S. B. Green.

This loan of \$20,000. fell due today. The interest is \$750. for six months.
30 Please send cheque, and advise if you wish us to renew this for a further term, or will it be convenient for you to let us have the cash. You might at the same time send on the bonus of \$1,000. or a short dated note for same, that we can get our accounts straightened to the 31st of this month.

Yours truly,

Manager.

K.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 266.
Copy of
Letter,
London
Loan &
Savings Co.
to
Department
of Insurance,
31st October,
1923.

NOT
PRINTED.

Exhibits.
Ex. 21.
Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
24th Novem-
ber, 1923.

Exhibits.
Ex. 22.
Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
22nd Decem-
ber, 1923.

Exhibit 25

(Plaintiffs' Exhibit)

Cheque, London Loan and Savings Company to H. A. Morine

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 25.
Cheque,
London
Loan &
Savings Co.
to H. A.
Morine,
28th Decem-
ber, 1923.

**THE LONDON LOAN & SAVINGS COMPANY
OF CANADA**

NO. 1410

LONDON, Canada, Dec. 28, 1923

To THE BANK OF MONTREAL Custom House
Branch

Pay to the order of H. A. Morine, Esq.....\$1000.00 10

One thousand.....^{xx}
100 DOLLARS

E. Pearson

M. J. Kent

Teller.

Manager.

FOLLOWING ENDORSEMENTS SHOWN ON BACK OF CHEQUE

Further advance on mtge.

**FOR DEPOSIT ONLY
CANADIAN BANK OF COMMERCE
Queen & Yonge Streets
H. A. MORINE**

20

Exhibit 26

(Plaintiffs' Exhibit)

Voucher, H. A. Morine to London Loan and Savings Company

Exhibits.
Ex. 26.
Voucher,
H. A.
Morine to
London
Loan &
Savings Co.,
28th Decem-
ber, 1923.

G46 C

THE LONDON LOAN AND SAVINGS COMPANY

857 C

28 DEBIT H. A. Morine Mtge. No. G 46

190

Further advance on mortgage per cheque No. 1410
on Bank of Montreal.....\$1000.
see receipt on back hereof.

30

LONDON.....Dec. 28/23.....192

M. J. Kent

.....
Manager.

*In the
Supreme
Court of
Ontario.*

London Loan & Savings Co. of Canada
PAID
Dec. 29, 1923
London, Ont.

Exhibits.
Ex. 26.
Voucher,
H. A.
Morine to
London
Loan &
Savings Co.,
28th Decem-
ber, 1923.

FOLLOWING SHOWN ON BACK OF VOUCHER

\$1000.

Dec. 28/23.

Received from London L. & S. Company the sum of one thousand dollars,
10 being paid me as a further advance on my loan No. G.46, with interest at rate
of 7½% per annum, the mortgage rate. This money paid me by Bk. of
Montreal cheque, to which tax stamps have been attached.

H. A. MORINE.

—continued.

Exhibit 23

(Plaintiffs' Exhibit)

Letter, H. A. Morine to M. J. Kent

Exhibits.
Ex. 23.
Letter, H. A.
Morine to
M. J. Kent,
29th Decem-
ber, 1923.

Toronto,
December 29th, 1923.

G46
20 Mr. M. J. Kent,
London Loan & Savings Co.,
London, Ont.

Dear Sir,

Re Bonus.

I send herewith cheque for \$1,000.00 to cover bonus due on account of
\$20,000.00 mortgage as agreed, which amount was never paid over to you.

Yours very truly,
H. A. MORINE.

Encl.
30 HAM/J.

In the
Supreme
Court of
Ontario.

Exhibits.

Ex. 24.

Cheque,
H. A.
Morine to
London
Loan &
Savings Co.,
29th Decem-
ber, 1923.

Exhibit 24

(Plaintiffs' Exhibit)

Cheque, H. A. Morine to London Loan and Savings Company

H. A. MORINE
Financial Broker

NO. 5419

TORONTO, Can., Dec. 29th, 1923.

Pay to London Loan & Savings Co.....or order \$1000.00

xx

One thousand.....100 DOLLARS

Re Bonus—\$20,000. Mtge.

10

To the

CANADIAN BANK OF COMMERCE
Yonge & Queen Street Branch
TORONTO, CANADA

H. A. MORINE

The Canadian Bank of Commerce

PAID

Jan. 4, 1924

Yonge & Queen Branch

TORONTO

CASH BOOK

20

ENDORSEMENTS ON BACK OF CHEQUE

Pay to the order of
ANY CHARTERED BANK
THE LONDON LOAN & SAVINGS CO.
OF CANADA
M. J. Kent—*Manager.*

Exhibit 27

(Plaintiffs' Exhibit)

Copy of Letter, London Loan and Savings Company to H. A. Morine

Jan'y. 10, 1924. 30

Mr. H. A. Morine,
Toronto, Ont.

Dear Sir :—

Re G 41.

On looking over our mortgages, I see the interest is in arrears on this loan, with extra interest from time same fell due.

Exhibits.
Ex. 27.

Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
10th Janu-
ary, 1924.

Company are desirous of having all arrears cleaned up on their mortgages to the end of the year, and I would like you to let us know how soon you can send cheque in this matter.

Yours truly,

Manager.

K.

*In the
Supreme
Court of
Ontario.*

*Exhibits.
Ex. 27.*

*Copy of
Letter,
London
Loan &
Savings Co.,
to H. A.
Moline,
10th Janu-
ary, 1924.*

—continued.

Exhibit 35

(Plaintiffs' Exhibit)

Letter, J. J. MacLennan to London Loan and Savings Company

10

Toronto,
Mar. 24th, 1924.

London Loan & Savings Co.,
London, Ont.

*Exhibits.
Ex. 35
Letter, J. J.
MacLennan
to London
Loan &
Savings Co.,
24th March,
1924.*

Dear Sirs :—

Re Buckingham Apartments Building,
King Street West, Toronto.

For Scotch investors who have made a mortgage loan upon the above premises, I am requested to obtain from you a statement of your two mortgage accounts, as from the records you appear as holders of a second and of a third
20 mortgage of \$35,000.00 and \$20,000.00 respectively, each made by Samuel B. Green and Horace A. Morine. The property now stands in the name of Arthur W. Dyas of Toronto and comprises parts of lots Two and Three on Plan 512 and part of Lot 16 on Plan 457.

I will appreciate an early reply.

Yours truly,
J. J. MACLENNAN.

SHOWN ON BACK OF LETTER AS FOLLOWS

30

G 41 & G 46
Green & Morine
H. A. M. says don't give statement
without consent of mtgee. or owner.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 34.
Letter, H. A.
Morine to
M. J. Kent,
29th March,
1924.

Exhibit 34

(Plaintiffs' Exhibit)

Letter, H. A. Morine to M. J. Kent

Toronto,
March 29th, 1924.

Mr. M. J. Kent,
London Loan & Savings Co.,
London, Ont.

Dear Sir,

Further to my conversation with you *re* information as to standing of mortgages, I think information in regard to mortgages should only be given when requested so to do by the mortgagor or owner of the property, and a request by a solicitor should be accompanied by an order signed by the owner. 10

I think, therefore, you would be within your rights to only furnish information on these orders. Frequently, information along these lines is asked for mere curiosity and not for business purposes.

Yours very truly,
H. A. MORINE.
J.

20

HAM/J.

Exhibit 36

(Plaintiffs' Exhibit)

Copy of Letter, M. J. Kent to J. J. MacLennan

London,
March 31, 1924.

Mr. J. J. MacLennan,
Toronto, Ont.

Dear Sir :—

Re Buckingham Apts. Nos. G 41-6. 30

I have been absent from the City, or would have answered your letter of the 24th inst. sooner.

For information as to our loans, it is a rule of the Company to require a written request from our mortgagors or owners of the property. If you will be good enough to forward this request, we will be pleased to let you have any information in our power.

Yours truly,
Manager.

K.

Exhibit 149

(Plaintiffs' Exhibit)

Letter, J. J. Macleannan to M. J. Kent

Toronto,

Apr. 1st, 1924.

M. J. Kent, Esq.,
 Mgr. London Loan & Savings Co.,
 London, Ont.

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Ex. 149.
 Letter, J. J.
 Macleannan
 to M. J.
 Kent,
 1st April,
 1924.

Dear Sir:—

10 *Re* Buckingham Apts. Nos. G 41-6.

I have your letter of 31st March in answer to my enquiry of 24th March. I regret that I cannot obtain the written request you ask for, but, under the following circumstances, I think you will feel justified in giving me the information asked in my letter of 24th ult.

I am acting for a body of 24 Scotch investors from the neighborhood of Edinburgh, who placed in the hands of one W. L. Renton, who also came from that district, upwards of \$50,000.00 for investment in and about Toronto, under a written agreement providing that such investors were to get 7% on their moneys plus 20% of all revenue over such 7%, the entire management
 20 of the moneys being left in Renton's hands and he to submit semi-annual audited statements.

So far as we can now ascertain, Renton appears to have been dealing with or through one H. A. Morine, in second mortgages and at this date we find that practically all of the moneys of the Scotch investors to the amount of \$46,000.00, are outstanding upon a mortgage given by Arthur W. Dyas—a son-in-law of Morine's—to W. L. Renton in Trust, this mortgage covering the Buckingham Apartments on King Street West, Toronto, upon which the Registry Office records show prior mortgages as follows:—

- 30 1. First mortgage from Samuel B. Green and H. A. Morine to The Huron & Erie Mortgage Corporation for \$150,000.00, payable \$3,000.00 half-yearly and balance in February, 1933.
2. Second mortgage from same parties to your Corporation for \$35,000.00, payable \$500.00 half-yearly until paid, with interest at 7½%.
3. Third mortgage from same parties to your Corporation for \$20,000.00, past due on 22nd December, 1923.
4. Fourth mortgage Arthur W. Dyas to W. L. Renton in Trust, for \$46,000.00, due 10th August, 1928, interest 7½%, being the mortgage in which my clients are concerned as above.

The registered title shows many Mechanics' Liens, though I think most of
 40 them have been discharged.

I am very desirous of obtaining authentic information as to the state of the mortgage charges preparatory to taking proceedings for the discharge of Renton as Trustee and for an accounting by him.

I trust under the above facts you can give me full particulars of your mortgage accounts.

Yours truly,
 J. J. MACLENNAN.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 151.
Letter,
Maclennan
& Black to
M. J. Kent,
9th April,
1924.

Exhibit 151

(Plaintiffs' Exhibit)

Letter, Maclennan & Black to M. J. Kent

Toronto,
Apr. 9th, 1924.

M. J. Kent, Esq.,
London Loan & Savings Co.,
London, Ont.

Dear Sir :—

Re your Mortgage G 41-6

10

We have your letter of the 8th.

As we fully set out in our letter to you of the 1st, it is quite impossible for us to obtain an order from Dyas or Renton requesting you to give us the information asked as to the standing of the present mortgages. By reason of the connection between Renton, Dyas and Morine, you can readily understand that they are antagonistic to those whom we represent and for whom ostensibly Renton is trustee.

Under the circumstances, we think in fairness to our clients, who are the real investors and not Renton, we are reasonably entitled to the information asked for. We trust you can see your way clear to give it to us.

20

Yours truly,
MACLENNAN & BLACK.
per Maclennan.

Reply is

Have you applied to either for information or consent for us to furnish same—

& have you any authority for making statement of their being antagonistic.

30

Exhibits.
Ex. 181.
Letter, H. A.
Morine to
M. J. Kent,
9th April,
1924.

Exhibit 181

(Plaintiffs' Exhibit)

Letter, H. A. Morine to M. J. Kent

Toronto,
April 9th, 1924.

Mr. M. J. Kent,
London Loan & Savings Co.,
London, Ont.

Dear Sir :—

Re R. S. Durno—St. Ives Cres.

40

In reply to your letter of the 8th, I have your instructions. I took up the matter and I am assured that a new cheque has been sent to cover this.

I have not much faith that the new cheque will even be taken up on presentation. If you have received the cheque and have put it through your Bank and you fail to have it honored, return it to me together with the one which has been protested, and the mortgage which you hold, and I will take proceedings to collect.

Yours very truly,
H. A. MORINE.

HAM/J.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 181.
Letter, H. A.
Morine to
M. J. Kent,
9th April,
1924.

—continued.

Exhibit 37

(Plaintiffs' Exhibit)

Letter, H. A. Morine to M. J. Kent

Toronto,
April 11th, 1924.

Mr. M. J. Kent,
London Loan & Savings Co.,
London, Ont.

Dear Sir :

Re Mtges. G 41-6

I attach hereto draft letter in answer to letter received by you from
20 Maclennan & Black.

Yours very truly,
H. A. MORINE.

HAM/J.
Encl.

Exhibit 38

(Plaintiffs' Exhibit)

Draft Letter, London Loan and Savings Company to Maclennan & Black

London, Ont.,
Apr., 1924.

30 Messrs. Maclennan & Black,
15 King St. W.,
Toronto.

Exhibits.
Ex. 38.
Draft
Letter,
London
Loan &
Savings Co.
to
Maclennan
& Black,
April, 1924.

Gentlemen :

Re Mtge. G. 41-6.

I acknowledge receipt of yours of the 9th inst.
Have you applied to either Dyas or Renton for information or consent for us to furnish the information you ask for, and have you any authority for making the statement that they are antagonistic?

Yours very truly,

40

*In the
Supreme
Court of
Ontario.*

Exhibit 39

(Plaintiffs' Exhibit)

Letter, London Loan and Savings Company to H. A. Morine

London, Can.,
May 2, 1924.

Exhibits.
Ex. 39.
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
2nd May,
1924.

Mr. H. A. Morine,
Toronto, Ont.

Dear Sir :—

Re Buckingham Apts. G 41-6

I see a memo in our Diary that the extension granted has lapsed, and 10 the liens were supposed to have now ceased. Kindly advise progress.

Yours truly,
M. J. KENT,
Manager.

K.

Exhibits.
Ex. 40.
Letter, H. A.
Morine to
M. J. Kent,
3rd May,
1924.

Exhibit 40

(Plaintiffs' Exhibit)

Letter, H. A. Morine to M. J. Kent

Toronto,
May 3rd, 1924. 20

Mr. M. J. Kent,
London Loan & Savings Co.,
London, Ont.

Dear Sir,

Re Liens—Buckingham

I hope that these matters will be closed out this coming week.

I will see you in London shortly, and I believe you have no cause to worry.

Yours very truly,
H. A. MORINE. 30
per E. B. James.

HAM/J.

Exhibit 41

(Plaintiffs' Exhibit)

Letter, H. A. Morine to M. J. Kent

Toronto,
May 20th, 1924.

Mr. M. J. Kent,
London Loan & Savings Co.,
London, Ont.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 41.
Letter, H. A.
Morine to
M. J. Kent,
20th May,
1924.

Dear Sir :

10

These are dead.

Re Green—G. 41.

Yours very truly,
H. A. MORINE.
J.

HAM/J.

Exhibit 42

(Plaintiffs' Exhibit)

Letter, A. W. Dyas to London Loan and Savings Company

Toronto,
July 7th, 1924.

20

London Loan & Savings Co.,
London, Ont.

Exhibits.
Ex. 42.
Letter,
A. W. Dyas
to London
Loan &
Savings Co.
7th July,
1924.

Dear Sirs :—

Enclosed herewith please find cheque for \$500.00 being part of installment of interest owing in connection with your Mortgages on the Buckingham Apartments. We hope to send you a further cheque for a like amount within a few days and will follow this up immediately with further installments from time to time until we have the interest account on both Mortgages up to date and will then start on our principal repayments.

30

We thank you for your consideration shown in this matter and can assure you that it has been appreciated. This will have our constant attention until the matter has been finally cleaned up to your satisfaction.

Yours very truly,
A. W. DYAS.

AWD/A.
Enc.

*In the
Supreme
Court of
Ontario.*

Exhibit 43

(Plaintiffs' Exhibit)

Exhibits.
Ex. 43.

Letter, H. A.
Moline to
London
Loan &
Savings Co.,
17th July,
1924.

Letter, H. A. Morine to London Loan and Savings Company

Toronto,
July 17th, 1924.

London Loan & Savings Co.,
London, Ont.

Dear Sirs :—

Re Buckingham Apartments

Herewith cheque for \$400.00 being installment of interest which kindly 10
credit to this account. We will be sending you further cheque in the matter
of a few days.

Again thanking you for your kind consideration, I remain,

Yours very truly,
H. A. MORINE.

AWD/A.
Enc.

Exhibit 279

(Plaintiffs' Exhibit)

Exhibits.
Ex. 279.

Letter,
Oscar
Hudson &
Co. to
Directors,
London
Loan &
Savings Co.,
6th October,
1924.

Letter, Oscar Hudson & Co. to Directors, London Loan and Savings Company 20

London, Ontario,
6th October, 1924.

President and Directors
Of The London Loan & Savings Corporation,
City.

Dear Sirs :—

We have just completed an examination of the Company's Mortgages
so far as entered on the books at the time of examination, and while we find
the papers and documents in much better order than at our last examination, 30
there are still a number of cases where the fyles are incomplete, and we enclose
herewith a list that require attention, in order that they may be completed
before our final examination at the end of the year.

The examination of these securities has brought up certain points which
we feel in duty bound to place before you, and while it is not the responsibility
of the Auditor to dictate the policy of the Directors with regard to loans,
there is a very definite responsibility on our part as your auditors to bring
to your notice what in our judgment we consider weaknesses in that policy.

We would therefore draw your attention to three points with regard to recent loans which in our judgment do not appear to be the best class of investment for the funds entrusted to the Company by the public.

- 1st. Loans on speculative properties such as Theatres and Garages.
- 2nd. Increasing the number of large loans.
- 3rd. Large number of loans in one district, as Danforth Avenue in Toronto.

Recent happenings in certain financial institutions make it especially important that the greatest care be exercised and that anything in the nature of questionable investments should be avoided, and we note that there is a tendency for the Mortgagors of above classes of properties to be in arrears both as regards principal and interest.

Respectfully submitted,
WM. C. BENSON,
P. H. BALL,
Auditors.

WCB :JW.

*In the
Supreme
Court of
Ontario.*

*Exhibits.
Ex. 279.*

*Letter,
Oscar
Hudson &
Co. to
Directors,
London
Loan &
Savings Co.,
6th October,
1924.*

—continued.

Exhibit 44

(Plaintiffs' Exhibit)

Letter, M. J. Kent to H. A. Morine

London, Canada,
Oct. 10, 1924.

Mr. H. A. Morine,
Toronto, Ont.

Dear Sir :—

Re Buckingham Apartments—Green Mtge.

On looking over the arrears I find these loans are largely behind in payments and Company would appreciate very much a substantial remittance on account.

Yours truly,
M. J. KENT,
Manager.

K/A.

FOLLOWING SHOWN ON BACK OF LETTER

Kindly see that this amount, as well as amounts already forwarded, are credited to Mortgage account direct and not kept in Savings Account.

*Exhibits.
Ex. 44.*

*Letter,
M. J. Kent
to H. A.
Morine,
10th Octob-
er, 1924.*

20

30

Part Exhibit 274

(Plaintiffs' Exhibit)

D**Affidavit of George Campbell Duncan****IN THE SUPREME COURT OF ONTARIO**

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 274.
D.
Affidavit of
George
Campbell
Duncan,
10th October,
1924.

BETWEEN :

GEORGE HIGGINS, THOMAS A. STERLING, JOHN B. WOOD, AGNES CHRISTIE GRANT, JANIE DUNCAN, JOHN HARDY, SYBIL K. HARDY, WILLIAM NEWLANDS, ANDREW ROBERTS, THOMAS RUSSELL, JOHN GREENLEES, MARY STERLING,

10

Plaintiffs,

—AND—

W. LAWSON RENTON,*Defendant.*

I, GEORGE CAMPBELL DUNCAN, of the City of Toronto, in the County of York, Esquire, make oath and say as follows :—

1. I am the husband of Janie Duncan, one of the plaintiffs herein, and have a knowledge of the matters herein deposed to.
2. In the latter part of the year 1921, the defendant being then in Scotland, set about the organization of a syndicate comprising largely his friends and acquaintances, for the purpose of raising moneys for investment in and about the City of Toronto, Canada, and by reason of the representations made to me, I was induced to join him in his venture and it was agreed that I should be Secretary and Treasurer of the syndicate, of which he was to be the Manager. 20
3. The defendant prepared a printed prospectus setting forth the objects of the syndicate and the terms and conditions binding on the members thereof and a copy of the same was delivered to each subscribing member upon payment by him of his subscription moneys into the hands of the said defendant, and Exhibit A hereto is the copy of the prospectus received by my wife upon her subscription. 30
4. I am advised and believe that to many if not all of those persons solicited by the defendant to become members of the syndicate it was represented by him that their moneys would be invested upon short term loans and upon first mortgages covering production property of at least double the value of the investment thereupon.
5. The aggregate amount of the subscriptions of the several plaintiffs is the sum of \$28,893.33 and is a majority in value of the subscriptions of the members of the said syndicate outstanding and not repaid. 40

6. The defendant personally received the said subscription moneys from the plaintiffs and as the plaintiffs believe invested the same and parts thereof upon mortgages or other securities, but the defendant did not, pursuant to the terms of the said prospectus furnish to the plaintiffs half-yearly statements of the investments held by him for the syndicate and the plaintiffs had and have no means of knowing upon what securities their moneys have been or are now invested, save as hereinafter set forth.

7. The plaintiffs being dissatisfied with the management of their funds, caused enquiries to be made as to the security or securities upon which their funds are invested and it is now ascertained that their moneys or part thereof in the amount of \$46,000.00, are invested upon the security of a fourth, registered mortgage dated 10th August, 1923, and registered on 18th September, 1923, as Number 9085, made by one Arthur W. Dyas to the said defendant as "Trustee" upon premises on King Street West, Toronto, known as the Buckingham Apartments, and that the amounts shown as payable under the prior three registered mortgages are respectively \$150,000.00, \$35,000.00 and \$20,000.00, a total of \$205,000.00, "and the said third mortgage became due on 22nd December, 1923" and from the best information I can obtain, the mortgaged premises are actually worth but little if any more than the mortgage encumbrances against them and the said premises are assessed for \$

8. Pursuant to the provisions of the said prospectus, the plaintiffs being members holding a majority in value of the syndicate shares, having given notice to the remaining members of the syndicate of their intention, have served the defendant with notice terminating his position as manager of the syndicate and demanding that the said defendant do transfer to myself, as the nominee of the said plaintiffs, all investments held by him for the syndicate and to pay over to me all moneys in his hands belonging to the syndicate, but the defendant has refused to comply with such direction and demand.

9. The plaintiffs having no further confidence in the defendant, believe that their investments as now controlled and managed by the defendant, are imperilled and unsafe and that if he is not at once removed from all management of the syndicate funds and investments, there may be a complete loss of the funds, and have entered action against him for a declaration that his engagement as Manager of the syndicate has been determined and for an order that he transfer to me for and on behalf of the plaintiffs and other members of the syndicate, all securities held by him for them.

10. The defendant is still in receipt of the income and interest arising from the said mortgage so held by him for the plaintiffs and other members of the syndicate and the plaintiffs believe that unless some other person or corporation is appointed receiver of all moneys arising and paid on said mortgage by way of interest or otherwise, until the final determination of the said action, they will not be able to recover the proper amounts of their said investments.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 274.
D.
Affidavit of
George
Campbell
Duncan,
10th October,
1924.

—continued

*In the
Supreme
Court of
Ontario.*

11. Marked Exhibit B hereto is a copy of the notice served upon the defendant on 27th May, 1924, determining his engagement as Manager of the said syndicate.

Exhibits.
Part Ex. 274.
D.
Affidavit of
George
Campbell
Duncan,
10th Octob-
er, 1924.

SWORN before me at the City
of Toronto in the County of
York this 10th day of October,
A.D. 1924.

“George Campbell Duncan”

“D. M. Rutger” (?)

A Commissioner, &c.

—continued.

Exhibits.
Ex. 45.
Letter,
A. W. Dyas
to London
Loan &
Savings Co.,
13th Octob-
er, 1924.

Exhibit 45

10

(Plaintiffs' Exhibit)

Letter, A. W. Dyas to London Loan and Savings Company

Toronto,
October 13th, 1924.

London Loan and Savings Co.,
London, Ont.

Gentlemen :

Re Buckingham Apartments—G 41 Green

Herewith cheque for \$750.00 being payment on account of interest owing under the above mortgage. 20

I wish to thank you for your consideration in this matter heretofore, and in future will arrange to send cheque for \$500.00 during the first week of each month, which amount is to go to the credit of the principal and interest due or becoming due. I also request that you see that the amount enclosed as well as the amounts forwarded in past and future, are credited to the mortgage account direct and not kept in a Savings Account.

Again thanking you,

Yours very truly,
A. W. DYAS.

AWD/J.
Encl.

30

Exhibit 46

(Plaintiffs' Exhibit)

Letter, London Loan and Savings Company to H. A. MorineLondon, Canada,
Oct. 14, 1924.Mr. H. A. Morine,
Toronto, Ont.*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 46.Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
14th Octob-
er, 1924.

Dear Sir :—

Re Green G 41—Buckingham Apts.

10 I have your favor of the 13th inst., with undertaking for \$750.00. This amount we have placed to credit of savings bank account L. 301½ as collateral. We have to conform to this manner of application of odd amounts to avoid making errors, but in order that you may not be a loser in interest, we have marked this account to bear 7½% the same as the mortgage rate.

From the amount at credit, \$1650., we have applied as far as we can, and drawn therefrom \$1341.70 which has been applied on said mortgage to pay the interest for six months to the 13th day of August, 1923. I enclose you a memo of the savings bank account, showing the transfer.

20 I submitted your letter to my Directors at meeting today, and they are obliged for the remittance, but think, owing to their special desire of having a good showing of cash on hand at end of the year in the report, that you should make an endeavor to pay \$1000. a month until the arrears are caught up, which I trust will be acceptable.

Yours truly,
M. J. KENT,
Manager.

COPY OF COLLATERAL ACCOUNT NO. L. 301½

In Trust for H. A. Morine

Mtge. G 41—rate of Int. 7½%

30	1924				D.B.
	July 8	Dep.	K	500.	500.—
	18	"	K	400.	900.—
	Oct. 14	"	K	750.	1650.—
	Oct. 14	Interest to Aug. 13/23	}		
		Credit Mtge. G 41 transferred 1341.70			308.30

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 47.
Receipt and
Undertaking,
London
Loan &
Savings Co.
to H. A.
Morine,
14th Octob-
er, 1924.

Exhibit 47

(Plaintiffs' Exhibit)

**Receipt and Undertaking, London Loan and Savings Company to
H. A. Morine**

THE LONDON LOAN & SAVINGS COMPANY OF CANADA.

\$750.00 LONDON, ONT. Oct. 14th, 1924.....

RECEIVED FROM H. A. Morine, Esq.....

undertaking to pay Seven hundred.....

& fifty dollars on account of arrears *re* M. G 41 Buckingham Apts.....

cr'd S.B.K. No. L.301½
collateral—

M. J. Kent 10

.....
Manager.
C.

Exhibits.
Part Ex. 274.
E.
Notice of
Motion,
27th Octob-
er, 1924.

Part Exhibit 274

(Plaintiffs' Exhibit)

E

Notice of Motion

IN THE SUPREME COURT OF ONTARIO

BETWEEN :

**GEORGE HIGGINS, THOMAS A. STERLING, JOHN B. 20
WOOD, AGNES CHRISTIE GRANT, JANIE DUNCAN,
JOHN HARDY, SYBIL K. HARDY, WILLIAM NEW-
LANDS, ANDREW ROBERTS, THOMAS RUSSELL, JOHN
GREENLEES, MARY STERLING,**

Plaintiffs,

—AND—

W. LAWSON RENTON

Defendant.

TAKE NOTICE that the Court will be moved on behalf of the Plaintiffs at Osgoode Hall, Toronto, on Thursday, the 30th day of October, 1924, at 30 the hour of eleven o'clock in the forenoon or so soon thereafter as counsel can be heard, for an order restraining the defendant and his agents from further receiving any moneys payable by way of principal or interest in respect of

the mortgage made by Arthur W. Dyas to the defendant in trust, covering the lands and premises in the Statement of Claim particularly set forth, until the final disposition of this action, and for an order appointing George Campbell Duncan or such other person or corporation as to the Court may seem proper, to receive all moneys payable by the said Arthur W. Dyas in respect of the said mortgage, or for such other order in the premises as to the Court may seem proper.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 274.
E.
Notice of
Motion,
27th October,
1924.

—continued.

AND TAKE NOTICE that upon and in support of this motion will be read the pleadings and proceedings in the action and the affidavit of George
10 Campbell Duncan filed and such other material as Counsel may advise.
Toronto, October 27th, 1924.

J. A. CATTANACH,
371 Bay St., Toronto,
Plaintiffs' Solicitor.

To
Messrs. Cassels, Brock & Kelley,
Defendant's Solicitors.

Part Exhibit 13

(Plaintiffs' Exhibit)

E

**Extracts from Minute Book of London Loan and Savings Co.
Minute Book, page 587**

Exhibits.
Part Ex. 13.
E.
Extracts
from Minute
Book of
London
Loan &
Savings Co.,
Page 587,
28th October,
1924.

20

P. 587

Tuesday, Oct. 28, 1924.

BOARD MET—All present.

Minutes of last meeting read and confirmed.

Re large loans

in Toronto.....The President, having inspected them, reports they are quite satisfactory and good for Company's claim.

30

M. J. Kent

Geo. G. McC.

.....
Manager.

.....
President.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 274

(Plaintiffs' Exhibit)

C

Affidavit of William Lawson Renton

IN THE SUPREME COURT OF ONTARIO

Exhibits.
Part Ex. 274.
C.
Affidavit of
William
Lawson
Renton,
30th Octob-
er, 1924.

BETWEEN :

GEORGE HIGGINS, THOMAS A. STERLING, JOHN B. WOOD, AGNES CHRISTIE GRANT, JANIE DUNCAN, JOHN HARDY, SYBIL K. HARDY, WILLIAM NEWLANDS, ANDREW ROBERTS, THOMAS RUSSELL, JOHN GREENLEES, and MARY STERLING,

10

Plaintiffs,

—AND—

W. LAWSON RENTON,

Defendant.

I, WILLIAM LAWSON RENTON, of the City of Toronto, in the County of York, Broker, make oath and say as follows:—

1. I am the above named defendant.
2. The Syndicate referred to in the plaintiffs' statement of claim herein has twenty-eight members, and at least sixteen of the said members are satisfied with my management of the Syndicate affairs and are desirous that I should retain the management. 20
3. I believe that not all of the plaintiffs in this action authorized the institution of the action in their name, and I further believe that some of the plaintiffs were opposed to the institution of the said action.
4. Now shown to me and marked as Exhibit "A" to this affidavit is a letter dated the 30th of May, 1924, which I received from Thomas Russell, one of the above named plaintiffs, and I believe that the said Thomas Russell is desirous that I should continue to act as the manager of the said Syndicate as stated in the said letter. 30
5. I have read the affidavit of George Campbell Duncan filed on the pending motion for the appointment of a receiver and I say that it contains the following misstatements, namely, that I represented to members of the Syndicate that the Syndicate funds would be invested upon first mortgages; that I have not furnished the Syndicate members with full information as to the securities upon which their moneys have been or are now invested; that the Syndicate funds are invested upon insufficient security; and that notice has been given to the members of the Syndicate other than the plaintiffs of the plaintiffs' intention to terminate my managership.
6. I believe this action has been stirred up by the said George Campbell Duncan with the hope of obtaining the position of manager of the said Syndicate and the share of profits to be derived by the manager from the investment of the Syndicate funds made by me which promises a considerable profit. 40
7. I believe that the remaining members of the Syndicate are proper and necessary parties to this action.

8. I have personally a larger financial interest in the Syndicate assets than any other member thereof.

9. The funds of the Syndicate have always been invested by me in conformity with the powers conferred upon me and they are now invested in a security having a margin of value over and above all mortgages of upwards of \$100,000.

10. All interest payments and other payments have been made by me in accordance with the provisions of the Syndicate agreement.

10 SWORN before me at the City of }
Toronto in the County of York } "W. L. Renton"
this 30th day of October, 1924. }
"S. E. Wedd"
A Commissioner, &c.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Part Ex. 274.
C.
Affidavit of
William
Lawson
Renton,
30th Octob-
er, 1924.

—continued.

Exhibit 213

(Defendant's Exhibit)

Valuation of Wrights Limited

PROPERTY REQUIRING CHECK VALUATION

Mtges., G.41-46, H. A. Morine, Present Owner.

20 Parts Lots 2 and 3, Plan 512, and part of lot 16, Plan 457, in the City of Toronto, with building thereon known as Buckingham Apartments, Nos. 1622 to 1631 King Street West, running through from Queen Street to King Street.

Land has frontage of 76' x 199'.

This apartment has five stores on ground floor, fronting on Queen Street.

VALUATION

Nov. 5th, 1924.

The land here is assessed as being 76' x 175'.

Our valuation is :

30	Land, \$300.00 per foot, Queen St.....	\$ 22,800.00
	King St.....	22,800.00
	Building.....	225,000.00
		<hr/>
		\$270,600.00

Exhibits.
Ex. 213.
Valuation of
Wrights,
Ltd.,
5th Novem-
ber, 1924.

WRIGHTS LIMITED.
C. F. Wright.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 211.
Valuation of
W. N.
Lonsdale,
1st Decem-
ber, 1924.

Exhibit 211

(Defendant's Exhibit)

Valuation of W. N. Lonsdale

KING & QUEEN STREETS

4-STOREY FIREPROOF APARTMENT & STORES

- LAND :** 76' x 199' running from King to Queen Street and facing on both streets.
- BUILDING :** 76' x 130'. Refrigerating system supplying all apartments, oil burning boilers, steel fire escapes and balconies, steel beams throughout, automatic telephone system to each apartment, exclusive Bell telephone system. All concrete and brick walls, tile walls and floors in all bathrooms, tile floors in all halls, plumbing fixtures consist of high-grade silent closets, built-in tubs and pedestal basins, oak floors throughout over concrete floors, built-in kitchen cabinets, equipped linen drawers, flour bins and broom cupboards, best quality electric ranges in each suite, electric fixtures, blinds and fully decorated throughout. Complete laundry and drying facilities. 10
- Absolutely fireproof,
Brick,
Concrete &
Steel.**
- NO. OF ROOMS :** 5 stores on ground floor on Queen Street, with basement completed in tile, made thoroughly sound-proof and entirely separate from apartment. 20
- Facing King Street there is an apartment of 31 suites of four and five rooms and bath, and 3 suites of three rooms and bath, the apartment over-running the stores of three storeys. Entrance from both King & Queen Street and side entrance on Queen Street for rear of apartments and stores.
- 8 suites front. 30
16 suites side court.
6 suites rear court.
3 Queen Street.
1 Janitor's suite.
5 stores on Queen Street.
- HEATING :** Hot Water, oil or coal system.
Garbage incinerator.

LIGHTING : Electric and gas.
 VALUE : \$350,000.00.

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Ex. 211.
 Valuation of
 W. N.
 Lonsdale,
 1st Decem-
 ber, 1924.

The location is undoubtedly one of the best for apart-
 ment on the revenue basis in the City of Toronto over-
 looking the Boulevard at Sunnyside, in view of the
 great expenditure by the Harbor Commission, and the
 popularity of the section. This proposition from both
 the revenue and scenic point of view, makes it desirable
 in every respect, and undoubted security for the loan
 requested.

—continued.

10

A. W. Dyas,
 Toronto, Dec. 1st, 1924.

I inspected the property described on the attached sheets known as
 the Buckingham Apartment House and situate near the corner of King &
 Queen and Roncesvalles Avenue running through from King to Queen Street.
 This is a particularly well constructed modern up-to-date apartment house
 with refrigerating plant and all modern equipment complete. I value this
 property as follows :

20	Land—76' (double frontage) x 199' at \$400.00 per foot.....	\$ 30,400.00
	Building—a four-storey apartment house as described on the enclosed sheets.....	280,000.00
		\$310,400.00

Yours truly,
 W. N. LONSDALE.

Exhibit 48

(Plaintiffs' Exhibit)

Letter, A. W. Dyas to M. J. Kent

Toronto,
 December 6th, 1924.

Exhibits.
 Ex. 48.
 Letter,
 A. W. Dyas
 to M. J.
 Kent,
 6th Decem-
 ber, 1924.

30 Mr. M. J. Kent,
 London Loan & Savings Co.,
 London, Ont.

Dear Sir,

Re Buckingham Apartments

I enclose herewith cheque for \$1000.00 being payment on account of
 interest owing under your mortgage on the above property, and as per agree-

*In the
Supreme
Court of
Ontario.*

ment this should be placed to the credit of the mortgage account, but if carried in your Savings Account, it should bear the same rate of interest as the mortgage account, so that there will be no loss to me.

Exhibits.
Ex. 48.
Letter,
A. W. Dyas
to M. J.
Kent,
6th Decem-
ber, 1924.

7½% allowed
on S.B. a/c L. 301½
coll. for M. G 41
the same as mtge. rate
for H. A. Morine.

Yours very truly,
A. W. DYAS.

—continued.

AWD/J.
Encl.

10

Exhibits.
Ex. 50.
Undertaking,
H. A.
Morine to
London
Loan &
Savings Co.,
8th Decem-
ber, 1924.

Exhibit 50

(Plaintiffs' Exhibit)

Undertaking, H. A. Morine to London Loan and Savings Company

THE LONDON LOAN & SAVINGS COMPANY OF CANADA

\$1000. LONDON, ONT. Dec. 8, 1924.....

RECEIVED FROM H. A. Morine, Esq.....

undertaking to pay One thousand Dollars.....
on account of arrears *re* Buckingham Apts. M. G 41 cr'd S.B. L. 301½.....

M. J. Kent

.....
Manager. 20

Exhibits.
Ex. 49.
Letter, H. A.
Morine to
London
Loan &
Savings Co.,
18th Decem-
ber, 1924.

Exhibit 49

(Plaintiffs' Exhibit)

Letter, H. A. Morine to London Loan and Savings Company

NOT PRINTED BY CONSENT

NOT
PRINTED.

Part Exhibit 51

(Plaintiffs' Exhibit)

A**Copy of Letter, London Loan and Savings Company to H. A. Morine**London,
Jany. 14, 1925.Mr. H. A. Morine,
Toronto, Ont.

Dear Sir:-

Re Mtges. G 41-6

We have received a letter from Cassels & Company asking for particulars of your loans.

I enclose our letter to them, and if it is agreeable to you, that we give them the information, please have our letter delivered to them.

Yours truly,
Manager.

Letter enclosed.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part Ex. 51.
A.
Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
14th Janu-
ary, 1925.

Part Exhibit 51

(Plaintiffs' Exhibit)

B**Copy of Letter, London Loan and Savings Company to Cassels, Brock & Kelley**Toronto,
Jany. 14, 1925.Messrs. Cassels & Co.,
Barristers, Toronto, Ont.

Gentlemen:-

Re H. A. Morine G 41-6

In reply to your favor of the 10th inst., statement is as follows:

30 Mtge. G 41

The amount of principal unpaid on this loan is \$35,000. Interest rate is 7½% half yearly. Interest has been paid to the 13th of August, 1923. The mortgage dates the 13th of February, 1923, and principal is payable \$500. half yearly for 3½ years from the date, and the balance of principal \$31,500 on the 13 February, 1927. The arrears of interest on this loan are as follows -

Febry. 13/24	To 6 mos. interest.....	\$1312.50
	“ extra int. 6 months.....	49.21
Aug. 13/24	To 6 mos. interest.....	1312.50

\$2674.21

Exhibits.
Part Ex. 51.
B.
Copy of
Letter,
London
Loan &
Savings Co.
to Cassels,
Brock &
Kelley,
14th Janu-
ary, 1925.

*In the
Supreme
Court of
Ontario.*

with extra interest thereon from the 13th of August last until paid; and the principal in arrears on this loan is \$1500. being 3 payments of \$500. each.
Re Mtge. G 46

Exhibits.
Part Ex. 51.

B.
Copy of
Letter,
London
Loan &
Savings Co.
to Cassels,
Brock &
Kelley,
14th Janu-
ary, 1925.

The date of this mortgage is the 23rd of May, 1923, and the amount unpaid thereon is \$20,000. and a further advance of \$1000. in all \$21,000. The interest rate is $7\frac{1}{2}\%$ payable half yearly from the mortgage date, and nothing has been paid thereon. The arrears of interest are as follows:-

Dec.	22/23	To 7 months interest.....	\$ 875.	
		Extra interest 6 mos.....	32.81	
June	22/24	To 6 mos. interest.....	786.10	10
		Extra interest 6 months.....	63.62	
Dec.	22/24	To 6 mos. interest.....	787.50	
			<hr/>	
			\$2545.03	

—continued.

with extra interest thereon from the 22nd of December, 1924, to date of payment.

The principal is all overdue since the 22nd of December, 1923, and will draw interest at $7\frac{1}{2}\%$ from the 22nd of December, 1924, to date of payment.

The insurance is held by the first mortgage the Huron & Erie Company; particulars of the policies are as follows:-

No. 160865 in Royal for \$62,500 in name of assured H.A.M. loss payable 1st 20
to Huron & Erie, 2nd to London L & S Company and 3rd to W. L. Renton
as their interests may appear.

No. 160866 in the same Company for \$75,000. loss if any, payable as above.
No. 160867 in the same Company for \$62,500 loss if any payable as above.
Expiry date of the three policies is the 1st of January, 1926. Mortgage
clauses are attached.

Yours truly,

Manager.

E & O. E.
K/A.
Coll 1335.28
in S.B.K.

Exhibit 52

(Plaintiffs' Exhibit)

Letter, H. A. Morine to M. J. Kent

January 15th, 1925.

Mr. M. J. Kent,
London Loan & Savings Co.,
London, Ont.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 52.
Letter, H. A.
Mordine to
M. J. Kent,
15th Janu-
ary, 1925.

Dear Sir,

Re: G.—41-6

10 The only thing I don't understand in regard to your letter is the \$1,335.28
as I find that I forwarded you the following -

July 7th, 1924.....	\$ 500.00
“ 17th, 1924.....	400.00
Oct. 17th, 1924.....	750.00
Dec. 17th, 1924.....	1000.00

\$2650.00

Kindly advise me where you have placed the above amount, as it does
not appear in your statement.

20 Why not place the \$1,325.28 to the credit of one of the mortgages and
show the balance of interest due that much less?

The reason I am asking for this is in connection with the third mortgagee.
In the meantime, I am coming to London as soon as possible and I have a
very interesting proposition to make to you which I think would be to your
advantage.

Yours very truly,
H. A. MORINE.

HAM/J.
Copy of Sgs. Bank.

Exhibit 53

(Plaintiffs' Exhibit)

Copy of Letter, M. J. Kent to H. A. Morine

London,
Jany. 16, 1925.

Mr. H. A. Morine,
Toronto, Ont.

Dear Sir:-

Re G 41 Buckingham Apts.

40 In reply to your letter of the 12th inst., I enclose you copy of collateral
savings bank account, which shows credits of the amounts you mention in
your letter, of which \$1341.70 was used to pay the interest on your mortgage

Exhibits.
Ex. 53.
Copy of
Letter,
M. J. Kent
to H. A.
Mordine,
16th Janu-
ary, 1925.

*In the
Supreme
Court of
Ontario.*

Exhibits.

Ex. 53.

Copy of
Letter,
M. J. Kent
to H. A.
Morine,
16th Janu-
ary, 1925.

—continued.

G 41 to the 13th of August, 1923, and with credit of interest to the 31st of December last \$25.98 makes the amount at credit \$1335.28. As soon as we have enough at credit to make an even payment we will at once apply it, and you will note the interest allowed on this deposit is the same as the rate on mortgage, so you lose nothing.

Re Hartman R 31

We have notice today of another lien being filed for \$2099.25 and costs by the Don Valley Brick Company. This makes the third lien we have received notice of.

Yours truly,

10

Manager.

K
E & O E.

Part Exhibit 13

(Plaintiffs' Exhibit)

F

Extracts from Minute Book of London Loan and Savings Company

Minute Book, page 608

Exhibits.
Part Ex. 13.
F.
Extracts
from Minute
Book of
London
Loan &
Savings Co.,
Page 608,
20th Janu-
ary, 1925.

P. 608

Tuesday, Jan. 20, 1925. 20

BOARD MET—All present.

Minutes of last meeting read and confirmed.

Re Palmer P11.....Letter read from Wrights Limited with valuation.

Buckingham

Apts.....Mtges. G 41—6. Manager reported loans in arrears for both interest and principal. Solicitors to collect.

M. J. Kent

Geo. G. McC.

.....
Manager.

.....
President.

Exhibit 292

(Plaintiffs' Exhibit)

**Extract from Solicitors' Book, London Loan and Savings Company
Page 7****COLLECTIONS HANDED TO G. A. P. BRICKENDEN FOR SUIT**

Two items contained on Page No. 7 of Exhibit 292, Solicitors' Book, referred to in Evidence at Pages 364, 365 and 366.

NO.	NAME	AMOUNT	INTEREST	DATE	RATE	INITIALS	DATE
10 G41	H. A. Morine et al	37873.34	& int. since	Jan. 13 25	7½%	G.A.P.B. & Co.	Jan. 22/25
G46	H. A. Morine et al	23904.70	& int. since	Jan. 22 25	7½%	G.A.P.B. & Co.	Jan. 22/25

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 292.
Extract from
Solicitors'
Book,
London
Loan &
Savings Co.,
Page 7,
22nd Janu-
ary, 1925.

Exhibit 57

(Plaintiffs' Exhibit)

Statement, re Mortgage G.41—\$35,000.

Jan. 22nd, 1925.

Re Mortgage G 41
Buckingham Apartments.

Exhibits.
Ex. 57.
Statement re
Mortgage
G.41,
\$35,000.00,
22nd Janu-
ary, 1925.

H. A. Morine Esq., et al
Toronto, Ont.

G. A. P. Brickenden & Co. collect taxes, if any, and —		
20	6 months int. due Feb. 13/24.....	\$ 1312.50
	Extra interest.....	49.22
	6 months int. due Aug. 13/24.....	1312.50
	Principal.....	35000.00
	August 13th, 1924.....	\$37674.22
	Jan. 13/25, 153 days int. 7½%.....	1184.40
		\$38858.62
	Less at credit in S.B.L.301½.....	1335.28
	January 13th, 1925.....	\$37523.34
	Preliminary Expenses..... Paid.....	350.00
30	Interest to Feb. 13th, 1925.....	\$37873.34
	31 days.....	241.25
		\$38114.59
	And interest since February 13th, 1925, at 7½% on same.	

K

Exhibit 58

(Plaintiffs' Exhibit)

Statement, re Mortgage G.46—\$20,000.

Jan. 22nd, 1925.

Re Mortgage No. G 46
Buckingham Apartments.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 58.
Statement re
Mortgage
G.46,
\$20,000.00,
22nd Janu-
ary, 1925.

H. A. Morine, Esq., et al
Toronto, Ont.

G. A. P. Brickenden & Co. collect taxes, if any, and —		
Interest due December 22/23..... 7 mos.....	\$	875.00 10
Extra Interest.....		32.81
Interest due June 22nd, 1924.....		786.10
June 22nd, 1924.....	\$	1,693.91
Extra Interest.....		63.52
Interest due December 22nd, 1924.....		787.50
Principal.....		21,000.00
December 22nd, 1924.....	\$23,544.93	
January 22nd, 1925, 31 days Int.....		149.97
January 22nd, 1925.....	\$23,694.90	
Preliminary Expenses..... Paid.....		200.00 20
	\$23,894.90	\$23,894.90
Interest to February 13th, 1925.....		108.05
	22 days	
		\$24,002.95
And interest since February 13th at 7½% on same.		
Taxes are 1923.....	\$	425.04
“ “ 1924.....		2,368.80
		\$ 2,793.84
Added in notices of sale—making in all.....		\$26,796.79

Exhibit 54

(Plaintiffs' Exhibit)

Letter, A. W. Dyas to London Loan and Savings Company

Toronto,
January 26th, 1925.

London Loan & Savings Co. of Canada,
London, Ont.

G 41 & G 46

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 54.
Letter,
A. W. Dyas
to London
Loan &
Savings Co.,
26th Janu-
ary, 1925.

Gentlemen:

Re: Buckingham Apartments.

10 Confirming my conversation with you wherein you notified me that one of the mortgages due the London Loan & Savings Company covering the above property was overdue, and that there were some arrears of interest on the other mortgage, kindly advise me if it is possible for you to extend the time of repayment of the principal and interest due under these mortgages.

Under the present circumstances and the condition of rents etc., this would appear to be advisable and necessary, and I assure you that if you consider this, you will enable me to better handle the property.

Yours very truly,
A. W. DYAS.

20 AWD/J.

FOLLOWING SHOWN ON BACK OF LETTER

G 41 & G 46
Jany. 27/25—must have the money
Geo. G. McC.
Prest.

Part Exhibit 13

(Plaintiffs' Exhibit)

G

Extracts from Minute Book of London Loan and Savings Company

Minute Book, page 611

Tuesday, Jan. 27, 1925.

30

BOARD MET—All present.
Minutes of last regular meeting read and confirmed.

Re Buckingham

Apts..... Letter from A. W. Dyas asking extension of time. Company must have arrears paid; solicitors collecting.

M. J. Kent

Geo. G. McC.

.....
Manager.

.....
President.

Exhibits.
Part Ex. 13.
G.
Extracts
from Minute
Book of
London
Loan &
Savings Co.,
Page 611,
27th Janu-
ary, 1925.

*In the
Supreme
Court of
Ontario.*

Exhibit 55

(Plaintiffs' Exhibit)

Copy of Letter, London Loan and Savings Company to A. W. Dyas

Jany. 27, 1925.

Exhibits.
Ex. 55.
Copy of
Letter,
London
Loan &
Savings Co.
to A. W.
Dyas,
27th Janu-
ary, 1925.

Mr. A. W. Dyas,
Toronto,
Ont.

Dear Sir:—

Re Buckingham G 41-6

Your letter of the 26th inst. was laid before my Directors at meeting 10 today, and I am directed to state, that the arrears must be paid in the case of these two mortgages, and no further time can be granted. Company has already been very lenient and have granted several extensions but they need the money now and cannot extend any further leniency.

Yours truly,

Manager.

K/A.

Exhibit 216

(Defendant's Exhibit)

**Notice of Sale, London Loan and Savings Company to S. B. Green 20
et al—re \$20,000. Mortgage****NOTICE OF SALE UNDER POWER OF SALE IN MORTGAGE**

SAMUEL B. GREEN.
ETHEL B. GREEN.
HORACE A. MORINE.
ESTELLE M. MORINE.
ARTHUR W. DYAS, EVELYN W. DYAS.
WM. LAWSON RENTON, Trustee, GEORGE M. KELLEY, Trustee.
EDWARD G. CLARKSON, Trustee in Bankruptcy for the Estate of the
above named Samuel B. Green. 30
MORRIS FRANKFORT, JOSEPH BARTLETT ROGERS, and W. F.
MOORE & CO., Execution creditors of the above named Ethel B. Green.

Exhibits.
Ex. 216.
Notice of
Sale,
London
Loan &
Savings Co.
to S. B.
Green *et al*,
re Mortgage,
\$20,000.00.
13th Febru-
ary, 1925.

JOHN HILLOCK CO. LTD., NATIONAL ELECTRIC HEATING CO. LTD., McDONALD & WILLSON LIGHTING STUDIOS LTD., McDONALD & WILLSON LIGHTING STUDIOS, THE INTER-LOCKING TILE CO. LTD., MILTON PRESSED BRICK CO. LTD., PANNILL DOOR CO. LTD., EBSARY GYPSUM CO. LTD., MORRIS FRANKFORT, JOSEPH BARTLETT ROGERS, Execution Creditors of the above named Samuel B. Green.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 216.
Notice of
Sale,
London
Loan &
Savings Co.
to S. B.
Green *et al*,
re Mortgage,
\$20,000.00,
13th Febru-
ary, 1925.

You and everyone of you are required to take notice that default has been made in payment of the principal secured by a certain Mortgage dated 10 the 23rd day of May, 1923, made between Samuel B. Green, of the City of Toronto, in the County of York, Builder, and Horace A. Morine, of the said City of Toronto, Financial Broker, in their individual capacity and as co-partners in the business of improving the lands therein described, the Mortgagors, and The London Loan & Savings Company of Canada, the Mortgagee, and registered in the Registry Office for the Registry Division of Toronto on the 1st day of June, 1923, as No. 8761 W.F., for securing the payment of the sum of \$20,000.00 and interest thereon as therein mentioned in the following lands, namely:—

“All and Singular that certain parcel or tract of land and premises situate, 20 lying and being in the City of Toronto, in the County of York and Province of Ontario, being composed of parts of lots numbers 2 and 3, according to a plan fyled as number 512, in the Registry Office for East and West York, and now in the Registry Office for The Registry Division of West Toronto and of a part of lot number 16, according to a plan fyled as number 457, in the said Registry Office for East and West York, and now in the said Registry Office for the Registry Division of West Toronto; and which said parcel is more particularly described as follows:—COMMENCING at a point in the Northerly limit of King Street West, which point is at the intersection of the Easterly limit of a parcel of land conveyed or intended so to be by one Thomas 30 E. Scholes to Ann Jane Scholes, by Deed registered the 17th day of June, 1887, as number 2388; THENCE Westerly along the said limit of King Street West, seventy-six feet (76’); THENCE Northerly in a straight line one hundred and forty-one feet (141’) more or less to a point in the Southerly limit of Queen Street West, which point is distant seventy-six feet (76’) measured westerly along the said limit of Queen Street West, from the said Easterly limit of the parcel conveyed by Thomas E. Scholes to Ann Jane Scholes as aforesaid; THENCE Easterly along the said limit of Queen Street West, seventy-six feet (76’) to the said Easterly limit of parcel conveyed by Thomas E. Scholes to Ann Jane Scholes as aforesaid; THENCE Southerly 40 along the last mentioned limit, one hundred and ninety-nine feet and four inches (199’ 4’’) more or less to the point of commencement.”

AND TAKE NOTICE that by virtue of the provisions in that behalf in the said Mortgage contained, the principal sum of \$21,000.00 has now become due and payable and there is now overdue and payable upon the said Mortgage for principal, interest, taxes, insurance, costs and expenses, the sum of \$26,796.79 made up as follows:—

—continued.

<i>In the Supreme Court of Ontario.</i> — Exhibits. Ex. 216. Notice of Sale, London Loan & Savings Co., to S. B. Green <i>et al.</i> <i>re</i> Mortgage \$20,000.00, 13th Febru- ary, 1925.	Principal Interest due December 22nd, 1923 Extra Interest Interest due January 22nd, 1924 Extra Interest Interest due December 22nd, 1924 Interest due February 13th, 1925, 53 days Preliminary Expenses Unpaid taxes and penalties for the year 1923 Unpaid taxes and penalties for the year 1924	\$21,000.00 875.00 32.81 786.10 63.52 787.50 258.02 200.00 425.04 2,368.80	10
		\$26,796.79	

—continued.

AND TAKE NOTICE that unless payment of the said sum of \$26,796.79 with interest on the said principal and arrears of interest, taxes, insurance, and all other costs and expenses as provided in the said Mortgage be made within one month from the date of the service of this Notice, The London Loan & Savings Company of Canada will proceed forthwith to exercise the power of entering upon, leasing or selling the mortgaged lands contained in the said Mortgage.

DATED at London this 13th day of February, 1925.

The London Loan & Savings Co. of 20
Canada
Mortgagees.
(Sgd.) M. J. Kent, *Manager*.
London Loan & Savings Company
Incorporated
1877
of Canada.

Exhibit 215

(Defendants' Exhibit)

Notice of Sale, London Loan and Savings Company to S. B. Green 30 et al—re \$35,000. Mortgage

NOTICE OF SALE UNDER POWER OF SALE IN MORTGAGE

TO—S. B. Green
Horace A. Morine
The Huron & Erie Mortgage Corporation

You and everyone of you are required to take notice that default has been made in payment of the principal secured by a certain Mortgage dated February 13th, 1923, made between Samuel B. Green, of the City of Toronto, in the County of York, Builder, and Horace A. Morine, of the said City of Toronto, Financial Broker, in their individual capacity and as co-partners in 40 the business of improving the lands therein described, the Mortgagors, and

Exhibits.
Ex. 215.
Notice of
Sale,
London
Loan &
Savings Co.
to S. B.
Green *et al.*
re \$35,000.00
Mortgage,
13th Febru-
ary, 1925.

The London Loan & Savings Company of Canada, the Mortgagee, and registered in the Registry Office for the Registry Division of West Toronto, on the 16th day of February, 1923, as Number 8318 W.F., for securing the payment of the sum of \$35,000.00 and interest thereon as therein mentioned, in the following lands, namely —

“All and Singular that certain parcel or tract of land and premises situate, lying and being in the City of Toronto, in the County of York, and Province of Ontario, being composed of parts of lots numbers 2 and 3 according to a plan fyled as number 512, in the Registry Office for East and West York, and now in the Registry Office for the Registry Division of West Toronto, and of a part of lot number 16, according to a plan fyled as number 457, in the said Registry Office for East and West York, and now in the said Registry Office for the Registry Division of West Toronto; and which said parcel is more particularly described as follows: COMMENCING at a point in the Northerly limit of King Street West, which point is at the intersection of the Easterly limit of a parcel of land conveyed or intended so to be by one Thomas E. Scholes to Ann Jane Scholes, by Deed registered the 17th day of June, 1887, as number 2388; THENCE Westerly along the said limit of King Street West seventy-six feet (76’); THENCE Northerly in a straight line one hundred and forty-one feet (141’) more or less to a point in the Southerly limit of Queen Street West, which point is distant seventy-six feet (76’) measured Westerly along the said limit of Queen Street West, from the said Easterly limit of the parcel conveyed by Thomas E. Scholes to Ann Jane Scholes as aforesaid; THENCE Easterly along the said limit of Queen Street West seventy-six feet (76’) to the said Easterly limit of parcel conveyed by Thomas E. Scholes to Ann Jane Scholes as aforesaid; THENCE Southerly along the last mentioned limit one hundred and ninety-nine feet and four inches (199’ 4’’) more or less to the point of commencement.”

AND TAKE NOTICE that by virtue of the provisions in that behalf in the said Mortgage contained, the principal sum of \$35,000.00 has now become due and payable and there is now overdue and payable upon the said Mortgage for principal, interest, insurance, taxes, costs and expenses the sum of \$ _____, made up as follows —

Principal.....	\$35,000.00
6 months' Interest due February 13th, 1924.....	1,312.50
Extra Interest.....	49.22
6 months' Interest due August 13th, 1924.....	1,312.50
August 13th, 1924.....	\$37,674.22
6 months' Interest due February 13th, 1925.....	1,425.65
Preliminary Expenses.....	350.00
Taxes.....	_____
Less Credit in Savings Bank, L301½.....	1,335.28
	\$ _____

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 215.

Notice of
Sale,
London
Loan &
Savings Co.
to S. B.
Green *et al.*,
re \$35,000.00
Mortgage,
13th Febru-
ary, 1925.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 215.
Notice of
Sale,
London
Loan &
Savings Co.
to S. B.
Green *et al.*,
re \$30,000.00
Mortgage,
13th Febru-
ary, 1925.

—continued

AND TAKE NOTICE that unless payment of the said sum of \$ with interest on the said principal and arrears of interest, taxes, insurance and all other costs and expenses as provided in the said Mortgage be made within one month from the date of the service of this Notice, The London Loan & Savings Company of Canada will proceed forthwith to exercise the power of entering upon leasing or selling the mortgaged lands contained in the said Mortgage.

DATED at London this 13th day of February, 1925.

The London Loan & Savings Co. of
Canada 10
Mortgagees.
(Sgd.) M. J. Kent, *Manager*.
London Loan & Savings Company
Incorporated
1877
of Canada.

Exhibits.
Part Ex. 299.
G.
Copy of
Notice of
Exercising
Powers of
Sale under
\$20,000.00
Mortgage,
13th Febru-
ary, 1925.

NOT
PRINTED.

Part Exhibit 299

(Plaintiffs' Exhibit)

G

Copy of Notice of Exercising Powers of Sale under \$20,000. Mortgage 20

NOT PRINTED.

Same as Exhibit 216

Exhibits.
Part Ex. 299.
H.
Copy of
Notice of
Exercising
Powers of
Sale under
\$20,000.00
Mortgage,
13th Febru-
ary, 1925.

NOT
PRINTED.

Part Exhibit 299

(Plaintiffs' Exhibit)

H

Copy of Notice of Exercising Powers of Sale under \$20,000. Mortgage

NOT PRINTED.

Same as Exhibit 216

Exhibits.
Part Ex. 299.
I.
Copy of
Notice of
Exercising
Powers of
Sale under
\$20,000.00
Mortgage,
13th Febru-
ary, 1925.

NOT
PRINTED.

Part Exhibit 299

(Plaintiffs' Exhibit)

I

Copy of Notice of Exercising Powers of Sale under \$20,000. Mortgage

NOT PRINTED.

Same as Exhibit 216

30

Part Exhibit 299

(Plaintiffs' Exhibit)

J**Copy of Notice of Exercising Powers of Sale under \$20,000. Mortgage****NOT PRINTED.**

Same as Exhibit 216

Part Exhibit 299

(Plaintiffs' Exhibit)

K10 **Copy of Notice of Exercising Powers of Sale under \$20,000. Mortgage****NOT PRINTED.**

Same as Exhibit 216

Exhibit 59

(Plaintiffs' Exhibit)

Letter, M. W. Wilson to G. A. P. Brickenden & Co.Toronto,
Feb. 26th, 1925.20 Messrs. G. A. P. Brickenden & Co.,
Barristers, Etc.,
London Loan Building,
London, Ont.

Dear Sirs:

Re: London Loan vs. Green et al

30 On instructions from Mr. Morine, I completed the notice of sale on the \$21,000.00 mortgage. I had an abstract made of the title to date and searched in the Sheriff's office for execution creditors as shown by the enclosed Notice of Sale. I have personally served every one mentioned in the notice, except Samuel B. Green and Ethel B. Green. I served S. B. Green by serving the Trustee in Bankruptcy and serving the lands, and served Mrs. Green by serving the lands.

I should be obliged if you would return this notice to me, and also perhaps send me the mortgage so that I may draw the advertisement for sale and proceed to advertise the property. I shall, however, await your further instructions.

Yours truly,
M. W. WILSON.*In the
Supreme
Court of
Ontario.*Exhibits.
Part Ex. 299.
J.Copy of
Notice of
Exercising
Powers of
Sale under
\$20,000.00
Mortgage,
13th Febru-
ary, 1925.**NOT
PRINTED.**Exhibits.
Part Ex. 299.
K.Copy of
Notice of
Exercising
Powers of
Sale under
\$20,000.00
Mortgage,
13th Febru-
ary, 1925.**NOT
PRINTED.**Exhibits.
Ex. 59.
Letter,
M. W.
Wilson to
G. A. P.
Brickenden
& Co.,
26th Febru-
ary, 1925.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 56.

Letter,
G. A. P.
Brickenden
& Co. to
H. A.
Mordine,
27th Febru-
ary, 1925.

Exhibit 56

(Plaintiffs' Exhibit)

Letter, G. A. P. Brickenden & Co. to H. A. Morine

London, Canada,
February 27th, 1925.

H. A. Morine, Esq.
603 Kent Bldg.
Toronto, Ont.

Dear Sir:—

Re London Loan vs. Green, et al.

We are today in receipt of a letter from Mr. M. W. Wilson requesting that we forward the original Mortgage to Toronto. 10

As this Mortgage was drawn in your office you, no doubt, have a third copy of it there and we would ask that you let Mr. Wilson have that copy.

Yours very truly,
G. A. P. BRICKENDEN & Co.
Per James F. McMillan.

JFM/IS.

Exhibits.
Ex. 60.

Letter,
Maclennan
& Black to
London
Loan &
Savings Co.,
27th Febru-
ary, 1925.

Exhibit 60

(Plaintiffs' Exhibit)

Letter, Maclennan & Black to London Loan and Savings Company

Toronto,
Feb. 27th, 1925.

London Loan Co.,
London,
Ont.

G 41
G 46

Dear Sirs:—

Re Mortgage on Buckingham Apts., Toronto
Green & Morine to your Company.

We are acting for the members of the syndicate for whom Mr. Renton 30
and Mr. Kelley of Cassels, Brock & Kelley, are now trustees.

Mr. Kelley advises that notice of sale under your Company's mortgage,
dated 23rd May, 1923, registered as No. 8761F, has been served upon him
and that your claim therein is for \$26,796.79.

Will you be good enough to let us know by return how this amount is
made up, as the registered abstract indicates that this mortgage is for
\$20,000.00 and we were advised a short time ago by Mr. Kelley that the interest
arrears on it to December 22nd, 1924, were \$2,545.03.

An early reply will oblige.

Yours truly,
MACLENNAN & BLACK
per M

40

Exhibit 61

(Plaintiffs' Exhibit)

Letter, London Loan and Savings Company to MacLennan & BlackLondon,
Febry. 28, 1925.Messrs. MacLennan & Black,
Barristers,
Toronto, Ont.

Gentlemen:—

10

Re Green G 46 Buckingham Apts.

I have your letter of the 27th inst., and have looked up the Notice of Sale in this case, and find the items are given in detail, with the exception that the word "January" in the 4th line of statement, should read "June." I can make the statement no plainer.

As to the principal amount referred to, our registered mortgage you will find, gives us the right to make further advances thereon which in this case, we did to the extent of \$1000. making the total principal \$21,000.

The first item of interest charged \$875. was for seven months a broken period, hence it is larger than the subsequent half yearly amounts.

20

Yours truly,
M. J. KENT
*Manager.***Exhibit 62**

(Plaintiffs' Exhibit)

Letter, MacLennan & Black to London Loan and Savings CompanyToronto,
Mar. 23rd, 1925.London Loan & Savings Co.,
London,
Ont.

30

G 41 & G 46

Dear Sirs:—

Re Buckingham Apartments, Toronto.

As you are aware, we are acting for the fourth mortgagees, a syndicate of Scotch gentlemen, who were unfortunate enough to put funds in the hands of an agent here who placed it in a fourth mortgage on the above property.

Notice of Sale under your third mortgage has been served and on looking over the mortgage as registered here, it appears to us to be a mortgage for \$20,000.00, not for \$21,000 as the amount claimed for principal in the Notice

40

*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 61.
Letter,
London
Loan &
Savings Co.
to
MacLennan
& Black,
28th Febru-
ary, 1925.Exhibits.
Ex. 62.
Letter,
MacLennan
& Black to
London
Loan &
Savings Co.,
23rd March,
1925.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 62.

Letter,
Maclennan
& Black to
London
Loan &
Savings Co.,
23rd March,
1925.

7½% ½
G 41
\$35,000
As Aug. 13/23
G 46
23
May 22
—20,000
Dec. 29/23
\$1000.
Total \$21,000

—continued.

of Sale. We find also that the second mortgage held by your company has outstanding upon it \$2000.00 for principal and about \$4100.00 interest to 13th February last.

We would be obliged if you would advise us with regard to the second mortgage as to what concessions you will give our people if they arrange to take care of the third mortgage. If our clients are prepared to advance further moneys, they will also have to take care of apparently some \$6400.00 of interest outstanding and unpaid on the first mortgage, as well as an instalment of principal of \$3000.00 past due. 10

We will be obliged also if you will advise us whether the full amounts of \$35,000.00 and \$20,000.00, the 21,000 principal named in the second and third mortgages respectively to your Corporation, were actually advanced in cash or whether a portion of these sums represent bonuses for the advance of a portion of the capital.

An early reply will be appreciated as we desire to lay the fullest information possible before our clients in Scotland and no time must be lost in this regard to enable them to get funds together to take care of the heavy obligation which is necessary to protect the investments already made by them and as the Scotch investors number 28, there may be some unavoidable delay in getting in touch with each of them. 20

Yours truly,
MACLENNAN & BLACK,
per Maclennan.

Exhibit 63

(Plaintiffs' Exhibit)

30

Letter, M. J. Kent to Maclennan & Black

London, Canada,
March 26, 1925.

Messrs. Maclennan & Black,
Barristers,
Toronto, Ont.

Gentlemen:—

Re Mtges. G 41-6 Buckingham Apts.

In reply to your favor of the 23rd inst., as these mortgages fell in arrears, we were obliged to place the same in our solicitors' hands for collection, and they immediately served notices of sale under one of the mortgages. We should prefer that you would communicate with our solicitors in this matter, 40

Exhibits.
Ex. 63.
Letter,
M. J. Kent
to
Maclennan
& Black,
26th March,
1925.

as Loan Companies do not usually give statements unless requested by mortgagors in writing. In any case, if you have an offer to make, would you be good enough to make it to our solicitors, Messrs. Brickenden & Company.

Yours truly,
M. J. KENT,
Manager.

K

Part Exhibit 299

(Plaintiffs' Exhibit)

F

10

Copy of Mortgage Sale Poster, M. W. Wilson

MORTGAGE SALE

Under and by virtue of the Powers of Sale contained in a Certain Indenture of Mortgage, which will be produced at the time of sale, there will be offered for sale by

PUBLIC AUCTION

on

SATURDAY, APRIL 25, 1925

At the hour of 12 o'clock noon, by

WARD PRICE LIMITED, AUCTIONEERS

20

At their Auction Rooms, 111 King Street West, Toronto

The Following Property, Namely

30 **ALL AND SINGULAR** that certain parcel or tract of land and premises situate, lying and being in the City of Toronto, in the County of York, and Province of Ontario, being composed of parts of lots numbers 2 and 3, according to a plan fyled as number 512, in the Registry Office for East and West York, and now in the Registry Office for the Registry Division of West Toronto, and of a part of Lot number 16, according to a plan fyled as number 457, in the said Registry Office for East and West York, and now in the said Registry Office for the Registry Division of West Toronto, and which said parcel is more particularly described as follows: **COMMENCING** at a point in the northerly limit of King Street West, which point is at the intersection of the easterly limit of a parcel of land conveyed or intended so to be by one Thomas E. Scholes to Ann Jane Scholes, by Deed registered the 17th day

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 63.
Letter,
M. J. Kent
to
MacLennan
& Black,
26th March,
1925.

—continued.

Exhibits.
Part Ex. 299
F.
Copy of
Mortgage
Sale Poster,
M. W.
Wilson,
3rd April,
1925.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 299.
F.
Copy of
Mortgage
Sale Poster,
M. W.
Wilson,
3rd April,
1925.

—continued.

of June, 1887, as number 2388; THENCE WESTERLY along the said limit of King Street West, seventy-six feet (76'); THENCE NORTHERLY in a straight line one hundred and forty-one feet (141 ft.) more or less to a point in the southerly limit of Queen Street West, which point is distance seventy-six feet (76') measured westerly along the said limit of Queen Street West, from the said Easterly limit of the parcel conveyed by Thomas E. Scholes to Ann Jane Scholes as aforesaid; THENCE EASTERLY along the said limit of Queen Street West, seventy-six feet (76 ft.) to the said easterly limit of parcel conveyed by Thomas E. Scholes to Ann Jane Scholes as aforesaid; THENCE SOUTHERLY along the last mentioned limit one hundred and ninety-nine feet and four inches (199 ft. 4 in.) more or less to the point of commencement. 10

Upon the said lands is said to be erected the Buckingham Apartments, 1594 King Street West, Toronto, composed of 30 suites of four rooms and bath, and four suites of three rooms and bath, and five stores on the Queen Street frontage. The building is a modern apartment house of fire-proof construction.

The property will be offered subject to a reserve bid.

TERMS: The purchaser will assume a first mortgage on the said lands upon which there is owing about \$150,000.00, and a second mortgage upon which there is owing about \$35,000.00. Ten per cent. (10%) of the balance of the purchase money is to be paid down at the time of sale, and the balance within fifteen days from the date of sale. 20

For further particulars and conditions of sale apply to

MELVILLE W. WILSON,
407 Kent Building, Toronto,
Solicitor for Vendor.

Dated at Toronto, April 3rd, 1925.

Exhibit 283

(Defendants' Exhibit)

30

Letter, Cassels, Brock & Kelley to G. A. P. Brickenden & Co.

Toronto,
April 23rd, 1925.

Messrs. G. A. P. Brickenden & Company,
Barristers,
London Loan Building,
London, Canada.

Dear Sirs:—

We have been served with notice by special leave, of a motion on behalf of the Prudential Trust Company before a Judge in Chambers tomorrow at ten A.M. for an order postponing until the 23rd of May next the sale of the 40

Exhibits.
Ex. 283.
Letter,
Cassels,
Brock &
Kelley to
G. A. P.
Brickenden
& Co.,
23rd April,
1925.

Buckingham Apartments, and we have forwarded these papers to Mr. Morine to hand them to the solicitor acting for the London Loan & Savings Company in connection with the sale.

The Prudential Trust Company has been appointed by Judge Middleton to represent the Syndicate members whose moneys were invested in a fourth mortgage of the property by Mr. W. L. Renton.

Yours truly,

CASSELS, BROCK & KELLEY.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 283.
Letter,
Cassels,
Brock &
Kelley to
G. A. P.
Brickenden
& Co.,
23rd April,
1925.

—continued.

Part Exhibit 274

(Plaintiffs' Exhibit)

A

Affidavit of James John MacLennan

IN THE SUPREME COURT OF ONTARIO

IN THE MATTER OF a certain Mortgage made by Samuel B. Green and Horace M. Morine, to the London Loan & Savings Company of Canada, dated 23rd May, 1923, and registered on 1st June, 1923, as No. 8761 W.F., covering part of Lot 16 on Plan 457 in the Registry Office for the City of Toronto.

AND IN THE MATTER of The Mortgages Act.

20 BETWEEN

George Higgins and others,

Plaintiff,

and

W. Lawson Renton,

Defendant.

I, James John MacLennan, of the City of Toronto in the County of York, Solicitor, make oath and say as follows:—

1. I have read over the affidavit of Mr. J. A. Cattanach sworn herein and in my opinion the statements therein set out are true in substance and in fact.
- 30 2. At the request of Mr. Cattanach, I attended at London Tuesday, 21st instant, and interviewed the officers of the Huron & Erie Mortgage Corporation, holders of the first mortgage on the mortgaged premises and was advised by them that there is still outstanding and unpaid on their mortgage an instalment of principal of \$3000.00, and for interest about \$6400.00.
3. I subsequently interviewed the Solicitor for the London Loan & Savings

Exhibits.
Part Ex. 274.
A.
Affidavit of
James John
MacLennan,
23rd April,
1925.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 274.
A.

Affidavit of
James John
Maclennan,
23rd April,
1925.

—continued.

Company, holders of the second and third mortgages, requesting that the proposed auction sale of the mortgaged premises under their third mortgage be postponed, in view of the fact that the Scotch investors who advanced the moneys for the fourth mortgage were arranging to take care of all arrears in respect of the prior charges. The said Solicitor, however, declined to agree to such postponement or to request his Company so to do.

4. I subsequently by telephone asked the President of the Company for an interview, that I might present my request to him for a postponement of the sale, but this he declined to grant. Upon interviewing the General Manager of the London Loan & Savings Company, I was advised by him that the said Morine had notified his Company that all arrears in respect of the first mortgage had been duly paid and satisfied and also that the taxes upon the premises had been paid and he expressed surprise when I advised him that the arrears of the Huron & Erie Mortgage Corporation were still outstanding and unpaid and that the 1923 and 1924 taxes on the premises were as yet unpaid.

5. Having regard to the whole matter and the manner in which the moneys of the Scotch investors reached the hands of the said Morine or Dyas, his nominee, and the refusal of the third mortgagees to postpone their sale of the mortgaged premises, which refusal I believe was largely upon the advice of the said Morine, I am of opinion that it is the desire and intention of the said Morine to force the sale at once, that the interests of those who advanced the money upon the fourth mortgage should be cut out and that Morine should acquire the property free from that mortgage.

6. At the instance of the Scotch investors, an action was instituted against the said Renton to remove him as trustee and for an accounting of his dealings with the moneys that were placed in his hands for investment. By an Order of Mr. Justice Middleton made in said action, the said Renton was directed to transfer the said mortgage to Mr. George M. Kelley (of the Firm of Cassels, Brock & Kelley) and to the said Renton as co-trustees of said mortgage. With the consent of the said George M. Kelley and the said Renton, an Order has since been made in the said action, appointing the Prudential Trust Company as trustee of said mortgage.

7. The action is now pending against the said Renton for an accounting in respect of the moneys come to his hands.

8. I believe the rights and interests of the third mortgagees will not be prejudiced if the pending sale is postponed for such reasonable time as will enable the Solicitor in Canada, Mr. Cattnach, to fully complete his arrangements with his Scotch clients for their protection by payment by them of the arrears upon the respective mortgages.

SWORN before me at the City of Toronto
in the County of York this 23rd day of
April, A.D. 1925.

“J. H. Lundy,”

A Commissioner &c.

“J. J. Maclennan.”

40

Part Exhibit 274

(Plaintiffs' Exhibit)

B**Affidavit of John A. Cattanach****IN THE SUPREME COURT OF ONTARIO**

IN THE MATTER of a certain Mortgage made by Samuel B. Green and Horace A. Morine, to the London Loan & Savings Company of Canada, dated 23rd May, 1923, and registered on 1st June, 1923, as No. 8761 W.F. covering part of Lot 16 on Plan 457 in the Registry Office for the City of Toronto.

10 AND IN THE MATTER of The Mortgages Act.

BETWEEN

George Higgins and others,

Plaintiffs,

and

W. Lawson Renton,

Defendant.

I, John A. Cattanach, of the City of Toronto, in the County of York, Solicitor, make oath and say as follows:—

20 1. In or about the year 1921, one W. Lawson Renton being then in Scotland, arranged with a large number of persons having money to invest, to advance to him moneys for the purpose of investing the same on improved properties in or about the City of Toronto or upon securities other than Mortgages upon which trustees are empowered to lend and the said Renton did procure to be advanced to him as representing such investors, approximately \$50,000.00 and the said body of investors under a written prospectus, which as I am advised and believe was delivered to each of the investors, were to be known as "Toronto Investment Syndicate." Marked Exhibit "A" is a copy of the said prospectus as delivered to one of such investors.

30 2. The aggregate amount of such moneys so received by him were brought out to Canada for investment by the said Renton and were said to have been from time to time invested by the said Renton upon securities, of which, however, this deponent has no particulars except as hereinafter stated.

3. Some of such investors being dissatisfied with the actions of the said Renton in respect of their investments and being unable to get satisfactory information from him, instructed me to investigate and report as to the securities upon which their moneys had been invested by the said Renton. After prolonged investigation, I ascertained that the moneys of the Syndicate were now vested upon the security of a fourth registered mortgage covering
40 an apartment building on King Street West, Toronto, known as The Bucking-

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 274.
B.
Affidavit of
John A.
Cattanach,
23rd April,
1925.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 274.
B.
Affidavit of
John A.
Cattanach,
23rd April,
1925.
—continued.

ham Apartments and that the prior registered mortgages thereon were as follows:—

1st Mortgage made by Samuel B. Green and Horace A. Morine to Huron & Erie Mortgage Corporation, dated 7th February, 1923, securing repayment of \$150,000.00, interest at $7\frac{1}{2}\%$.

2nd Mortgage made by Messrs. Green & Morine to London Loan & Savings Co. of Canada, dated 13th February, 1923, securing repayment of \$35,000.00, with interest at $7\frac{1}{2}\%$.

3rd Mortgage made by Messrs. Green & Morine to London Loan & Savings Co. of Canada, dated 23rd May, 1923, securing repayment of 10
\$20,000.00, with interest at $7\frac{1}{2}\%$.

4. Subsequent to the making of said third mortgage above referred to, the said Samuel B. Green granted and quitted claim all his interest in the said mortgaged premises to the said Horace A. Morine and on 9th August, 1923, the said Morine conveyed the said mortgaged premises to his son-in-law Arthur W. Dyas, for the nominal consideration of One dollar.

5. On 10th August, 1923, the said Dyas and his wife mortgaged the said premises to the said W. Lawson Renton for \$46,000.00, with interest at $7\frac{1}{2}\%$, the principal to become due on 10th August, 1928.

6. On further investigation I ascertained that there is outstanding and 20
unpaid upon the first mortgage, instalment of principal of \$3000.00 and interest to 7th February, 1925, \$6380.00; that there is outstanding and unpaid upon the second mortgage, instalments of principal past due \$2000.00 and interest to 13th February, 1925, \$4087.00. The London Loan & Savings Company claim that there is outstanding and unpaid upon their third mortgage for principal the sum of \$21,000.00 (although the mortgage as registered is security for \$20,000.00 only) and for interest to 13th February, 1925, \$2802.95 and that the taxes for 1923 and 1924 are outstanding and unpaid in the amount of \$2793.84.

7. The said London Loan & Savings Company has served Notice of Sale 30
of the said mortgaged premises under the power of sale contained in their said third mortgage and the said Notice of Sale was served upon the said W. Lawson Renton, as holder of the fourth mortgage above referred to and the sale of said premises is advertised to be held on Saturday, 25th April, 1925, at 12 o'clock noon by public auction.

8. By correspondence and by cable I have been communicating with my clients in Scotland, through their Solicitor Mr. John B. Wood of Bathgate, Scotland, and have advised them fully of the situation with regard to their investment, of the prior charges and the arrears in respect thereof and of the action of the London Loan & Savings Company with regard to their sale 40
proceedings under the third mortgage and I am instructed by reason of the individual members of the syndicate residing at different places, delay has been unavoidable in getting express instructions from the Syndicate members to protect their interests and finally on Saturday, 18th inst., I received a cable advising that arrangements were being made and asking to endeavour to have the sale postponed and I am satisfied that from the tenor of the correspondence had by me with my principal in Scotland, extending over several

weeks, that the funds have been or are now arranged for to take care of the arrears due and properly payable in respect of the mortgages upon the said premises.

9. Neither my clients nor myself have been able to get any satisfactory statement of account from the said Renton with respect to his dealing with their funds.

10. I have been advised through its Manager, that the said Morine is the agent in Toronto for the said London Loan & Savings Company and I am satisfied that the said Dyas, the present holder of the equity of redemption in the mortgaged premises, is in fact the nominee of the said Morine and holds the said premises for and on his account and not for himself.

11. The said mortgaged premises, as I am advised by the said Morine, comprise some 32 residential apartments and 5 stores, all of which are rented except one apartment and one store and that the present rentals aggregate \$2435.00 per month. The said Morine is in receipt of said rentals, but has not applied them in reduction of the interest past due upon the mortgages.

12. I am satisfied that the said Morine procured the said Renton to advance the said moneys, \$46,000.00, upon the security of said fourth mortgage, without the said Renton having a full knowledge of the fact that the security was subject to three prior charges as above set out.

13. I am confident that my clients are desirous of protecting their said investment by paying the arrears upon the prior registered mortgages and that if the proposed sale of the mortgaged premises by the third mortgagees is deferred for some reasonable time, that the necessary funds will be forwarded from Scotland without delay for such purpose. If the sale is not deferred and a sale of the premises is made, my clients will lose their whole investment of \$46,000.00 and accrued interest thereon, as I am informed and believe that nothing can be recovered from the said Dyas under his covenant for payment in the mortgage contained.

30 SWORN before me at the City of Toronto
in the County of York this 23rd day of
April, A.D. 1925.

"J. N. Black,"
A Commissioner &c.

"John A. Cattanach."

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 274.

B.
Affidavit of
John A.
Cattanach,
23rd April,
1925.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibit 66

(Plaintiffs' Exhibit)

Copy of Letter, G. A. P. Brickenden & Co. to M. W. Wilson

Exhibits.
Ex. 66.
Copy of
Letter,
G. A. P.
Brickenden
& Co. to
M. W.
Wilson,
24th April,
1925.

London,
April 24th, 1925.

M. W. Wilson, Esq.,
Barrister, &c.,
Kent Bldg.,
Toronto, Ont.

Dear Sir:—

10

Re Buckingham

We are today in receipt of a letter from Messrs. Cassels, Brock & Kelley advising us that a Motion has been brought by The Prudential Trust Company acting for the Scotch Investors to postpone the sale of the Buckingham property for a month.

They stated that they had been served on our behalf and were forwarding the papers to Mr. Morine to be placed. We are in your hands.

Kindly keep us advised on any new developments in this matter.

Yours very truly,
G. A. P. BRICKENDEN & Co., 20
per M

JFM/EM.

Exhibit 64

(Plaintiffs' Exhibit)

Letter, Maclellan & Black to G. A. P. Brickenden

Exhibits.
Ex. 64.
Letter,
Maclellan
& Black to
G. A. P.
Brickenden,
24th April,
1925.

Toronto,
Apr. 24th, 1925.

G. A. Brickenden, Esq.,
Barrister &c.,
220 Dundas Street,
London, Ont.

30

Dear Sir:—

Re Buckingham Apartments, Toronto.
Re London Loan & Savings Co. Mortgages.

As I advised you when in London on Tuesday, the Scotch investors, holders of the fourth mortgage on the Buckingham Apartments, are instructing us with regard to the payment of the arrears on the several mortgages.

Will you be good enough to advise us definitely whether upon payment by our clients of all arrears to the Huron & Erie on its first mortgage—upon payment of all interest in arrears upon your second mortgage, and upon payment of principal, interest and costs upon your third mortgage, the London Loan & Savings Co. Ltd., will be willing to allow the future instalment payments upon its second mortgage of \$35,000.00 to stand until the maturity of the mortgage on 13th February, 1927, conditional upon all interest upon the mortgage being promptly paid. The very substantial payment which our people will have to make in satisfaction of your third mortgage and of the

10 substantial arrears for interest upon the first and second mortgages and the taxes, and thus putting your second mortgage security in so much better shape, we feel is reasonable grounds to justify us in making the above request. We will be obliged if you will let us know by return.

The Court today postponed the sale under your third mortgage until 23rd May.

Yours truly,
 MACLENNAN & BLACK,
 M

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Ex. 64.
 Letter,
 MacleNNan
 & Black to
 G. A. P.
 Brickenden,
 24th April,
 1925.

—continued.

Exhibit 284

(Defendants' Exhibit)

Letter, M. W. Wilson to G. A. P. Brickenden & Co.

Toronto,
 April 25th, 1925.

Messrs. G. A. P. Brickenden & Co.,
 Barristers, Etc.,
 London, Ont.

Exhibits.
 Ex. 284.
 Letter,
 M. W.
 Wilson to
 G. A. P.
 Brickenden
 & Co.,
 25th April,
 1925.

Dear Sirs:

Re: Green and London Loan

I have your favour of the 24th inst.

30 I was served on Thursday at 5 P.M. with a motion to postpone the sale of these premises until May 23rd, 1925. I appeared for the Company before Mr. Justice Kelly in Chambers and the matter was thoroughly discussed, and I strenuously opposed the motion. The Judge was of the opinion that the Company has ample security and as Mr. MacleNNan gave full assurances that the money will be forthcoming on or before that date, the sale was postponed until May 23rd, 1925. I am therefore appearing this morning and having the sale adjourned.

I shall keep you advised in the matter.

Yours truly,
 M. W. WILSON.

40 W/G.

*In the
Supreme
Court of
Ontario.*

Exhibit 67

(Plaintiffs' Exhibit)

Copy of Letter, G. A. P. Brickenden & Co. to M. W. Wilson

Exhibits.
Ex. 67.
Copy of
Letter,
G. A. P.
Brickenden
& Co. to
M. W.
Wilson,
25th April,
1925.

London,
April 25th, 1925.

M. W. Wilson, Esq.,
Barrister, &c.,
Kent Bldg.,
Toronto, Ont.

Dear Sir:—

10

Re Buckingham Apts. and London Loan

We are today in receipt of a letter from Messrs. Maclennan & Black with regard to the above matter which we are enclosing herewith.

We have had instructions from the London Loan to refuse this offer and are writing to that effect to-day. We note that the sale has been postponed until the 23rd of May and would like to hear what was said on the Motion held yesterday in this matter.

Yours very truly,
G. A. P. BRICKENDEN & Co.,
per

20

JFM/EM.

Exhibits.
Ex. 224.
Letter, H. A.
Moline to
M. J. Kent,
25th April,
1925.

Exhibit 224

(Defendants' Exhibit)

Letter, H. A. Moline to M. J. Kent

Toronto,
April 25th, 1925.

Mr. M. J. Kent,
London Loan & Savings Co. of Canada,
London, Ont.

Dear Mr. Kent,

Re: Buckingham.

30

Mr. Maclennan made a motion for securing a postponement of the Sale of the Buckingham Apartments under the mortgage proceedings taken by the London Loan & Savings Company for about one month and same was granted.

Mr. Maclennan put in a Declaration that he had been notified by you while in London that I was the Toronto Agent of the London Loan & Savings Company. I can hardly believe that such a statement was made in the sense in which he made his Declaration because it is a well-known fact that I am

not an Agent of the London Loan & Savings Company. I am merely a Broker and sell my wares to the London Loan & Savings Company in the same manner as any other Broker would do. I have however, a pleasant feeling that on occasions when your Company thought it desirable, they have asked for my opinion on various matters and have been guided to some extent by same, but it has been made quite clear at various times that I do not claim to be an Agent of your Company. I think therefore, that you should not refer to me as your Agent as it might in many ways be interpreted wrongfully in the interest of your Company and myself.

10 I am very pleased as you know to do anything I can for your Company and I feel you are giving me the same good offices, but as yet, I have not accepted and you have not made me an Agent of your Company but regard me as a friendly broker only.

HAM/J.

Yours very truly,
H. A. MORINE.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 224.
Letter, H. A.
Morine to
M. J. Kent,
25th April,
1925.

—continued.

Exhibit 65

(Plaintiffs' Exhibit)

Letter, G. A. P. Brickenden & Co. to MacLennan & Black

London, Canada,
April 27th, 1925.

20

Messrs. MacLennan & Black,
Barristers &c.,
15 King St., West,
Toronto, Ont.

Exhibits.
Ex. 65.
Letter,
G. A. P.
Brickenden
& Co. to
MacLennan
& Black,
27th April,
1925.

Dear Sirs:—

Re Buckingham Apartments, London Loan &
Savings Company, Mortgages

We beg to acknowledge receipt of your letter of the 24th inst.

30 We have taken the matter up with The London Loan & Savings Company and they advise us that they cannot see their way clear to make any concession in connection with the payments on their Mortgages. They feel that to protect their position in connection with this property, they must insist on the terms of payment being strictly complied with.

JFM/EM.

Yours very truly,
G. A. P. BRICKENDEN & Co.,
per James F. McMillan.

Exhibit 192

(Plaintiffs' Exhibit)

Letter, Martin, Currie & Co. to M. J. KentEdinburgh,
29th April, 1925.M. J. Kent, Esq.,
Manager,
London Loan & Savings Company of Canada,
220 Dundas Street,
London, Ontario.

10

Dear Sir,

We duly received your letter of 3rd. inst. and thank you for the information it contains regarding your accounts for the year 1924. Another Company in which we are interested has adopted the plan of sending us a copy of the Annual Statement made by them to the Register of Loan Corporations. Might we suggest that you should in future send us a similar copy. The information contained in this return is, of course, what appears in the published Report that you kindly send from time to time but the information is fully a year old before the print reaches us.

Interest Accrued. We are glad to note that your Directors are adhering to the plan of not taking credit for interest accrued. Do we understand that this means that only interest actually received during the year is taken credit for in your Profit and Loss Account. Is this quite consistent with the fact that during the year interest to the amount of \$13,020.35 was capitalised. Was the interest so capitalised arrears of interest which could not be collected?

Valuations. It is a step in the right direction also to reduce your limit/limit to 50% of your valuation of properties.

Stock Loans. We are glad to know that the Government are taking steps to have Stock Loans abolished. Such Loans are not regarded as sound finance on this side.

Cash Reserves. We note your position in regard to Cash Reserves. Even with the Dominion Government Bonds and the line of credit with the Bank the cash reserves appear to be somewhat on the small side.

Large Loans. We are glad to know that so many of your large Loans have been paid up, and we gather that the others mentioned, with the exception of Sir Henry Pellatt, are in good standing.

Real Estate. It is, we suppose inevitable that there should be some Real Estate on hand but we profess difficulty in regard to this not being shown in your Balance Sheet. The Real Estate in the list you sent is shown by the dates to have been acquired before the end of 1924, and we should have thought it the duty not only of the Directors but of the Auditors to have shown this separately in the Balance Sheet; in fact it is inaccurate to include Real Estate under a heading of "Mortgages—Principal only."

The Loan under the name of S. B. Green is, we take it, the loan referred

to in the enclosed copy of a letter we have just received from a valued correspondent, and there appears to be something requiring investigation on your part in this matter. In your statement the book value of the Loan is entered at \$39,882.68 and the letter states that/that you have two Loans, a Second Mortgage for \$35,000 and a Third Mortgage for \$20,000 both Loans made in 1923. You will observe that it is suggested in our correspondent's letter that the actual owner of this property is your own valuer, and the fact that you lent these sums in 1923 and had to take foreclosure proceedings in 1924 lends colour to the suggestion that there is something far from right in the
10 transaction.

You will observe that our friend is interested on behalf of the Fourth Mortgage and is anxious that you should not pursue the proceedings to sell the property on terms that will cause total loss of the Fourth Bond, his plea being that if the rental of the property is properly dealt with there is sufficient to meet all the charges. We shall be glad to hear from you fully in regard to this whole matter. We need scarcely point out that it is very unfortunate that there should be any such ground for the Company's name being associated here with such a transaction.

Yours faithfully,
MARTIN, CURRIE CO.

20

P.S. Debenture No. 814 for £400—Mrs. Watson. We note your authority to repay this Debenture at 15th May less the charges incurred in connection with it.

Exhibit 77

(Plaintiffs' Exhibit)

Statement of Disbursements re London Loan and Savings Company and S. B. Green

N.B.—Letters and figures in italics are written on the statement in pencil.

DISBURSEMENTS.

30	Paid for searches as to all lien holders, mortgagees and <i>W</i> those interested		\$5.00
	Paid <i>W. S. Johnston & Co.</i> <i>W</i> for printing	<i>W</i>	10.50
	Evening Telegram acct. \$108.00 <i>W</i> if paid before May 30th		72.00
	Paid <i>E. L. Ruddy Ltd.</i>	<i>W.</i>	8.00

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 192.
Letter,
Martin,
Currie & Co.
to M. J.
Kent,
29th April,
1925.

—continued.

Exhibits.
Ex. 77.
Statement of
Disburse-
ments re
London
Loan &
Savings Co.
and
S. B. Green
28th May,
1925.

<i>In the Supreme Court of Ontario.</i>	1923 taxes to date	95.50		
		300.00		433.29
<i>Exhibits. Ex. 77.</i>	1924 taxes to date	395.50	<i>not</i>	<i>hold</i> 2384.45
<i>Statement of Disburse- ments re London Loan & Savings Co. and S. B. Green. 28th May, 1925.</i>	x Huron & Erie Mortgage Corp. over and above \$147,000.00 principal as of May 23rd, 1925		<i>H.E.</i>	9539.95
	W Legal costs of M. W. Wilson for sale proceedings only		<i>X</i>	300.00
<i>—continued.</i>	W Auctioneer		<i>W</i>	25.00 10
	Registration of documents, etc. <i>ch. to</i> <i>M. W. Wilson</i>		<i>\$</i>	5.— 10.50 72.— 8.— 300.— 25.— <hr/> \$ 420.50
<i>ch. to</i>	x Huron & Erie statement is as follows:			
	Arrears of Principal	\$3706.25		
	Arrears of interest	5625.00		20
	Interest on arrears	208.70		
	This is as of Feb. 7th, 1925	9539.95		<i>May 28/25</i>
	<i>per Mr. Brickenden's request</i>			

Exhibit 75

(Plaintiffs' Exhibit)

Copy of Letter, G. A. P. Brickenden & Co. to M. W. WilsonLondon,
May 28th, 1925.M. W. Wilson, Esq.,
Barrister, &c.,
Kent Building,
Toronto, Ont.

30

Dear Sir:

Re Buckingham Apartments, London Loan
and S. B. GreenWe are enclosing to you herewith London Loan cheque for \$420.50,
payable to the order of yourself, to cover your costs and disbursements in

connection with the mortgage sale recently had of the above property; also the London Loan & Savings Company's cheque for \$9539.95, payable to the order of the Huron & Erie Mortgage Corporation; this last cheque being the amount required to pay the Huron & Erie's Mortgage on the above property down to the Principal sum of \$147,000.00 as of May 23rd, 1925.

Will you kindly hand over the Huron & Erie cheque at the proper time?

Yours very truly,
G. A. P. BRICKENDEN & Co.,
per

JFM/HP.
10 Encls. 2.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 75.
Copy of
Letter,
G. A. P.
Brickenden
& Co. to
M. W.
Wilson,
28th May,
1925.

—continued.

Exhibit 72

(Plaintiffs' Exhibit)

**Cheque, London Loan and Savings Company to Huron & Erie
Mortgage Corporation**

**THE LONDON LOAN & SAVINGS COMPANY
OF CANADA**

NO. 2553

Exhibits.
Ex. 72.
Cheque,
London
Loan &
Savings Co.
to Huron &
Erie Mort-
gage Corp.,
28th May,
1925.

LONDON, Canada, May 28, 1925.

20 To THE BANK OF MONTREAL City Hall
Branch
Pay to the order of Huron & Erie Mtge. Corp'n..... \$9539.95M
95
Ninety-five hundred and thirty-nine..... 100 DOLLARS

.....
E. Pearson Geo. G. McCormick
.....
Teller. Manager.

FOLLOWING ENDORSEMENTS SHOWN ON BACK OF CHEQUE

30 Arrears Prin. & Int.
re Buckingham Apts.
Pay to the order of
ANY BANK OR BANKER
1 MAY 30, 1925 1
The Huron & Erie Mortgage Corp.
TORONTO, ONT.

In the
Supreme
Court of
Ontario.

Exhibit 74

(Plaintiffs' Exhibit)

Cheque, London Loan and Savings Company to M. W. Wilson

NO. 2552

**THE LONDON LOAN & SAVINGS COMPANY
OF CANADA**

LONDON, Canada, May 28, 1925.

To THE BANK OF MONTREAL

City Hall
Branch

Pay to the order of M. W. Wilson, Esq..... \$420.50 10

Four hundred and twenty..... $\frac{50}{100}$ DOLLARS

E. Pearson

Geo. G. McCormick

Teller.

Manager.

FOLLOWING ENDORSEMENTS SHOWN ON BACK OF CHEQUE

Costs and expenses *re* Buckingham Apts.
M. W. Wilson.

Exhibit 68

(Plaintiffs' Exhibit)

Copy of Letter, H. A. Morine to Cassels, Brock & Company

20

May 29th, 1925.

Messrs. Cassels, Brock & Kelley,
Bay St., Toronto, Ontario.

Dear Sirs:—

Re Buckingham Apts.

Now that this property has been sold under Power of Sale, and as all Mechanics' liens, etc., have been disposed of, is there any reason why the \$190 deposited into Court cannot be withdrawn and returned?

Yours truly,

HAM.

30

Exhibits.
Ex. 74.
Cheque,
London
Loan &
Savings Co.
to M. W.
Wilson,
28th May,
1925.

Exhibits.
Ex. 68.
Copy of
Letter, H. A.
Morine to
Cassels,
Brock & Co.,
29th May,
1925.

Exhibit 78

(Plaintiffs' Exhibit)

Statement of Mortgages of London Loan and Savings Company**STATEMENT OF MORTGAGES OF LONDON LOAN**

as of June 1st, 1925.

72

2nd Mortgage held by London Loan & Savings Co.— principal as of June 1st, 1925		\$38,332.67
Interest thereon to June 1st, 1925		267.70
10 3rd mortgage held by London Loan & Savings Co.— principal as of June 1st, 1925		23,802.95
Interest thereon to June 1st, 1925		496.77
Offset by 2nd mortgage from R. S. Durno to London Loan & Savings Co. of Canada, dated June 1st, 1925	\$77,000.00	
Received by me from London Loan		9,539.95
Received by me from sale to Durno		4,193.20
Received by me for fee and disbursements <i>re</i> sale proceedings		420.68
20 Paid by me for London Loan & Savings Co. for registration of quit claim deed <i>re</i> Palmer, 617- 619 Danforth Ave., Toronto	102.30	
Balance due to be advance by London Loan to com- plete advances on 2nd mortgage of \$77,000.00		48.38
	<u>\$77,102.30</u>	<u>\$77,102.30</u>

147,000

77,000

224,000

30 You will note that you now hold only a second mortgage of \$77,000.00
as of June 1st, 1925, plus the \$13.42 over-advanced as shown by the
attached account.

227,500

224,000

3,500

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 78.
Statement of
Mortgages of
London
Loan &
Savings Co.,
1st June,
1925.

*In the
Supreme
Court of
Ontario.*

Exhibit 117

(Plaintiffs' Exhibit)

Exhibits.
Ex. 117.

Deed, London Loan and Savings Company to R. S. Durno

Deed,
London
Loan &
Savings Co.
to R. S.
Durno,
1st June,
1925.

THIS INDENTURE made in duplicate this first day of June, one thousand nine hundred and twenty-five **IN PURSUANCE OF THE SHORT FORMS OF CONVEYANCES ACT.**

BETWEEN:

**THE LONDON LOAN & SAVINGS COMPANY OF
CANADA, hereinafter called the Grantor,
OF THE FIRST PART, 10**

and

**ROBERT S. DURNO, of the City of Toronto, in the
County of York, Esquire, hereinafter called the Grantee,
OF THE SECOND PART.**

WHEREAS by an Indenture made in pursuance of The Short Forms of Mortgages Act bearing date the twenty-third day of May, A.D. 1923, and registered in the Registry Office for the Registry Division of Toronto as Number 8761 W.F., SAMUEL B. GREEN, of the City of Toronto, in the County of York, Builder, and HORACE A. MORINE, of the said City of Toronto, Financial Broker, in their individual capacity and as co-partners in 20 the business of improving the lands hereinafter described, DID GRANT AND MORTGAGE the lands and premises therein and hereinafter particularly described unto THE LONDON LOAN & SAVINGS COMPANY OF CANADA, its successors and assigns, for securing payment of the sum of TWENTY THOUSAND Dollars and interest as therein mentioned.

AND WHEREAS the said Indenture of Mortgage contained the following proviso:

“PROVIDED that the said Mortgagee on default of payment for one month may on giving one month’s notice enter on and lease or sell the said lands.” 30

AND WHEREAS default has been made in payment pursuant to the said proviso and notice of intention to sell the said lands has been duly given to the said Samuel B. Green and Horace A. Morine and to all persons appearing to have any interest in or claim upon the said lands.

AND WHEREAS such default still continues to the date hereof.

AND WHEREAS the said lands, after being duly advertised for sale were offered for sale at public auction on the twenty-third day of May, A.D. 1925, at the hour of twelve o’clock noon (daylight saving time) at the office of Ward Price, Limited, Licensed Auctioneers, at their auction rooms, 111 King Street West, in the City of Toronto. 40

AND WHEREAS there was no bid whatsoever for the said lands and premises when the same were offered for sale by public auction aforesaid.

AND WHEREAS the Grantor has agreed to sell the said lands and premises to the Grantee by private sale, for the sum of Two Hundred and Twenty-Seven Thousand and Five Hundred Dollars (\$227,500.00).

NOW THIS INDENTURE WITNESSETH that in consideration of the premises and of the sum of Two Hundred and Twenty-Seven Thousand Five Hundred Dollars now paid by the Grantee to the Grantor (the receipt whereof is hereby acknowledged) the Grantor (by virtue and exercise of the
 10 aforesaid Power of sale, and of all other powers it thereunto enabling) DOTH GRANT unto the Grantee in fee simple, that certain parcel or tract of land and premises situate, lying and being in the City of Toronto, in the County of York and Province of Ontario being composed of parts of lots numbers 2 and 3 according to a plan fyled as number 512, in the Registry Office for East and West York, and now in the Registry Office for the Registry Division of West Toronto, and of a part of Lot number 16, according to a plan fyled as number 457, in the said Registry Office for East and West York, and now in the said Registry Office for the Registry Division of West Toronto, and which said parcel is more particularly described as follows: COMMENCING
 20 at a point in the northerly limit of King Street West, which point is at the intersection of the easterly limit of a parcel of land conveyed or intended so to be by one Thomas E. Scholes to Ann Jane Scholes by deed registered the 17th day of June, 1887, as number 2388; THENCE WESTERLY along the said limit of King Street West seventy-six feet (76'); THENCE NORTHERLY in a straight line one hundred and forty-one feet (141') more or less to a point in the southerly limit of Queen Street West, which point is distant seventy-six feet (76') measured westerly along the said limit of Queen Street West from the said easterly limit of the parcel conveyed by Thomas E. Scholes to Ann Jane Scholes as aforesaid; THENCE EASTERLY along the
 30 said limit of Queen Street West seventy-six feet (76') to the said easterly limit of parcel conveyed by Thomas E. Scholes to Ann Jane Scholes as aforesaid; THENCE SOUTHERLY along the last mentioned limit one hundred and ninety-nine feet and four inches (199' 4'') more or less to the point of commencement.

SUBJECT to a certain registered first mortgage in favour of the Huron & Erie Mortgage Corp., upon which there is now owing the sum of \$147,000.00, the assumption and payment of which by the Grantee forms part of the consideration herein.

TO HOLD unto and to the use of the Grantee, his heirs, and assigns
 40 forever.

And the Grantor covenants with the Grantee that it has done no act to encumber the said lands.

And the Grantor releases to the Grantee all its claims upon the said lands.

AND it is declared and agreed that the words "Grantor" and "Grantee" wherever used in this Indenture shall, when the context allows, extend to, be binding on and enure to the benefit of not only the parties hereto, but also to their respective heirs, executors, administrators, successors and assigns.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 117.

Deed,
London
Loan &
Savings Co.
to R. S.
Durno,
1st June,
1925.

—continued.

*In the
Supreme
Court of
Ontario.*

IN WITNESS WHEREOF the said Company has hereunto affixed its Corporate Seal, attested by the hands of its proper officers.

Witness: THE LONDON LOAN & SAVINGS COMPANY OF CANADA

E. P. Fletcher.

Geo. G. McCormick

Pres.

H. R. Clewes

Asst. Manager

Exhibits.
Ex. 117.
Deed,
London
Loan &
Savings Co.
to R. S.
Durno,
1st June,
1925.

—continued.

THE LONDON LOAN & SAVINGS COMPANY
Incorporated 1877 10
OF CANADA

G 46

117

191

June the first 1925

No. 11077 W.F.

LONDON LOAN & SAVINGS
CO. OF CANADA

I Certify that the within instrument is duly Entered and Registered in the Registry Office for the Registry Division of Toronto, in Book W.F. at 4.00 o'clock P.M. of the 8 day of JUL., A.D. 1925.

to

1153

ROBERT S. DURNO 20

CONVEYANCE

W. J. C. McCrea

Box 88

Deputy Registrar.

M. W. WILSON
407 Kent Bldg.,
TORONTO.

Exhibits.
Part Ex. 118.

Part Exhibit 118

(Plaintiffs' Exhibit)

30

A.
Mortgage,
R. S. Durno
to London
Loan &
Savings Co.,
No. 11078
W.F.,
\$77,000.00,
1st June,
1925.

A

Mortgage, R. S. Durno to London Loan and Savings Company.
No. 11078 W.F.—\$77,000.

THIS INDENTURE made (in duplicate) the first day of June one thousand and nine hundred and twenty-five IN PURSUANCE OF THE SHORT FORMS OF MORTGAGES ACT.

BETWEEN:

ROBERT S. DURNO, of the City of Toronto, in the County of York, Esquire, hereinafter called the **MORTGAGOR**, of the **FIRST PART**, **THE LONDON LOAN AND SAVINGS COMPANY OF CANADA**, hereinafter called the **MORTGAGEE**, of the **SECOND PART**, and **MARY E. DURNO**, the wife of the said Mortgagor of the **THIRD PART**, **WITNESSETH**, that in consideration of the sum of **SEVENTY-SEVEN THOUSAND** Dollars now paid by the Mortgagee to the Mortgagor (the receipt whereof is hereby acknowledged), the Mortgagor who conveys as
10 beneficial owner **DOTH GRANT and MORTGAGE** unto

W.E.H. }
the Mortgagee, its successors and assigns } whereas \$55,000.00 of the proceeds
are being used to pay off registered
mtges. nos. 8318W.F. and 8761W.F.

ALL AND SINGULAR that certain parcel or tract of land (as described in Ex. 117).

And the said party of the third part Wife of the said Mortgagor hereby **BARS HER DOWER** in the said lands and agrees that the Mortgagor and Mortgagee may deal with the said lands and this mortgage by releasing parts, extending the time for payment and otherwise as may be advised without
20 affecting this release (of dower) and may treat her in all respects as if she were principally liable.

Provided this Mortgage to be void on observance and performance by the Mortgagor of all covenants and provisos herein and on payment at the office of the said Mortgagee in the City of London, in the Province of Ontario, of **SEVENTY-SEVEN THOUSAND** Dollars in gold coin of lawful money of Canada with interest at seven per cent. per annum as follows:

The sum of \$1000.00 (One Thousand Dollars) shall become due and payable on account of the said principal sum on the 1st day of December,
30 1925, and on each of the first days of June and December in each of the years 1926, 1927, 1928, 1929, and the balance of the said principal sum of \$77,000.00 shall become due and payable on the first day of June, 1930, and the interest at the rate aforesaid payable half-yearly on the first days of June and December in each and every year both before and after default and before and after maturity and until the whole amount shall have been fully paid and satisfied. The first payment of interest to be made on the first day of December next. And upon payment of all further advances or loans hereafter to be made by the Mortgagee to the Mortgagor as and when the same shall become due, together with all other amounts owing or to be owing by the said Mortgagor,
40 with interest upon the said advances or amounts at the rate and in the manner aforesaid.

And Taxes and performance of Statute Labor, and provided all moneys then payable charged by these presents on said lands be paid.

.
Balance of mortgage on regular London Loan form as in Exhibit 3.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 118.
A.
Mortgage,
R. S. Durno
to London
Loan &
Savings Co.,
No. 11078
W.F.,
\$77,000.00,
1st June,
1925.

—continued.

In the
Supreme
Court of
Ontario.

IN WITNESS WHEREOF, the said parties hereto have hereunto set
their hands and seals.

Exhibits.
Part Ex. 118.

A.
Mortgage,
R. S. Durno
to London
Loan &
Savings Co.,
No. 11078
W.F.,
\$77,000.00,
1st June,
1925.

—continued.

SIGNED, SEALED AND DELIVERED, }
Having been first explained to the executing }
parties in the presence of }
M. W. Wilson. }

ROBERT S. DURNO

MARY E. DURNO

(two seals in
this corner)

COUNTY OF York

I, Melville William Wilson,
of the City of Toronto,
in the County of York,
Solicitor

10

To Wit:

State occupation.

..... make oath and say:

1. THAT I was personally present and did see the within Instrument and duplicate thereof duly signed, sealed and executed by Robert S. Durno and Mary E. Durno, two of the parties hereto.
2. THAT the said Instrument and Duplicate were executed by the said parties at the City of Toronto.
3. THAT I know the said parties.
4. THAT I am a subscribing Witness to the said Instrument and Duplicate.

20

SWORN before me at the City of
Toronto, in the County of York,
this 26th day of June, A.D. 1925.

W. E. Houghton,
A Commissioner, etc.

"M. W. WILSON."

No. 11078 W.F.

D 42
188

Dated June 1st, 1925

30

ROBERT S. DURNO

et ux

to

I Certify that the within instrument is duly Entered and Registered in the Registry Office for the Registry Division of Toronto, in Book W.F. at 4.00 o'clock P.M. of the 8 day of JUL., A.D. 1925.

THE LONDON LOAN & SAVINGS
COMPANY OF CANADA

1154

W. J. C. McCrea

.....
Deputy Registrar.

MORTGAGE

NOT RECORDED IN FULL

Not to be recorded in full.

Solicitor for the Mortgagee.
Box 88

40

Exhibit 193

(Plaintiffs' Exhibit)

Letter, Martin, Currie & Co. to Manager, London Loan and Savings CompanyEdinburgh,
15th June, 1925.

The Manager,
London Loan & Savings Company of Canada,
220 Dundas Street,
London,
Ontario.

10

Dear Sir,

On 4th instant we received a letter from your office dated 22nd May acknowledging our letter of 29th April and informing us that our letter had been handed to your solicitors to deal with as Mr. Kent had met with an accident which would confine him to the house for some time. We need scarcely say that we are very sorry to hear of Mr. Kent's accident and trust he has by now quite recovered.

We have waited in daily expectation for a letter from your solicitors but
20 although we have received a further letter from your office dated 2nd June, we have not yet heard from them. We must rather protest against a letter so important as ours of 29th April being deferred as of no importance, when as a matter of fact it raises questions of the greatest urgency. Had we not thought it best to wait for your reply to our letter, which as we have stated, we looked for immediately, we should have written you some weeks ago on further questions that have been raised here in relation to your business. As it happens, we have met within the last month or so two business men from your side well acquainted with the Loan and Mortgage Companies, and were
30 rather startled that both of them should have spoken unfavourably regarding at least some of your business with which they seemed to be acquainted. In fact we think it is the case that it has been stated here that in recent years your Company has been making a number of loans on inadequate valuations and this to such an extent as to affect the soundness of your position. This, taken with the particular case about which we had occasion to write on 29th April, has created such a position here that until the matter is satisfactorily dealt with you must not look for more debenture money from Scotland.

We ourselves do not credit the suggestion as to unsoundness of your position, but we cannot invite people to lend you money until we are in a position to refute all such suggestions. How this can best be done we have
40 a little difficulty in suggesting. In the first place, will you please send us the most recent Statements submitted by you to the Registrar and his Reports thereon, with such further details as you consider desirable to elucidate the facts. It is possible that in your own interests in relation to borrowing on debenture here, it would be well that you agree to an independent investigation by a firm of accountants such as Messrs. Riddell, Stead, Graham &

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 193.
Letter,
Martin,
Currie & Co.
to Manager,
London
Loan &
Savings Co.
15th June,
1925.

*In the
Supreme
Court of
Ontario.*

Hutchison. We mention this firm as several of the partners are well known in Edinburgh and a report by them would carry full weight here.

Please let us hear from you by return on these matters.

Exhibits.
Ex. 193.
Letter,
Martin,
Currie & Co.
to Manager,
London
Loan &
Savings Co.,
15th June,
1925.

Yours faithfully,

MARTIN, CURRIE Co.

5

June 30/25

Letter—Martin, Currie.
Refer to Manager to reply.

Geo. G. McC. 10

.....
President.

—continued.

Exhibit 69

(Plaintiffs' Exhibit)

Offer to Purchase, R. S. Durno to London Loan and Savings Company

OFFER TO PURCHASE

I, ROBERT S. DURNO.....
..... (as purchaser), hereby agree to and with
..... London Loan & Savings Co. of Canada.....
(as vendor), through..... Agent
to purchase all and singular the premises situated on the north side of King St. 20
West, in the..... City..... of..... Toronto..... known as Apartment House
..... num Buckingham Apts..... having frontage of about..... 76.....
feet more or less, by a depth of about..... 141..... feet, more or less.....
being..... parts..... Lot No..... 2 & 3..... according to Plan No..... 512.....
Registered in the Registry Office..... for Toronto..... at the price or sum of
..... TWO HUNDRED & TWENTY-SEVEN THOUSAND and FIVE
HUNDRED DOLLARS (\$227,500.) as follows..... Five Hundred..... DOL-
LARS (\$500.00) cash to the said Vendor on this date as a deposit, and covenant,
promise and agree to pay a further sum of \$3000.00 in cash on completion of
sale, and assume a first mortgage now registered against the said lands for 30
\$147,000.00 bearing interest at 7½% per annum, payable half-yearly, and for
the balance of the purchase price to give back to the vendor a second mortgage
on the said lands payable \$1000.00 on account of principal together with
interest at 7% payable half-yearly, having five years to run.

All outstanding liabilities up to June 1st, 1925, to be paid by the vendor to that date. Adjustments as of June 1st, 1925.

Exhibits.
Ex. 69.
Offer to
Purchase,
R. S. Durno
to London
Loan &
Savings Co.,
17th June,
1925.

PROVIDED the title is good and free from encumbrance, except local rates, and except as aforesaid; said title to be examined by me at my own expense, and I am not to call for the production of any Title Deeds or Abstract of Title, Proof or Evidence of Title, or to have furnished any copies thereof, other than those in Vendor's possession or under its control. The purchaser accepts the property subject to the restrictions and covenants that run with the land. The purchaser to be allowed _____ days from the date of acceptance hereof to investigate the title at his own expense, and if within that time he shall furnish the Vendor in writing with any valid objection to the title which
 10 the Vendor shall be unable or unwilling to remove and which purchaser will not waive, this agreement shall be null and void and the deposit money returned to the purchaser without interest. This offer to be accepted by 20th June, 1925, otherwise void; and sale to be completed on or before the first day of July, 1925, on which date possession of the said premises is to be given me, or I am to accept the present tenancies and to be entitled to the receipt of the rents and profits thereafter.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 69.
Offer to
Purchase,
R. S. Durno
to London
Loan &
Savings Co.,
17th June,
1925.

—continued.

UNEARNED Fire Insurance Premiums, Taxes, Interest, Rentals and all Local Improvements and Water Rates to be proportioned and allowed to date of completion of sale; Deed or Transfer to contain covenant on part of
 20 Purchaser to pay off said assumed Mortgage, to be executed by Purchaser and prepared at the expense of the Vendor and Mortgage at my expense.

THIS offer, if accepted, shall with such acceptance constitute a binding contract of purchase and sale.

TIME shall be the essence of this agreement.

DATED at Toronto
WITNESS
M. W. WILSON

17th June

A.D. 1925

R. S. DURNO

I hereby accept the above offer and its terms, and covenant, promise and agree to and with the said above-named purchaser to duly carry out the
 30 same on the terms and conditions above mentioned.

DATED at Toronto.
WITNESS
M. W. WILSON

A.D. 1925.

The London Loan & Savings Co. of Canada

THOMAS BAKER

Vice-President

R. S. DURNO

THE LONDON LOAN & SAVINGS COMPANY
Incorporated 1877
OF CANADA.

*In the
Supreme
Court of
Ontario.*

Dated D 42
June 17 1925

LONDON LOAN & S. CO.

To

R. S. DURNO

OFFER TO PURCHASE

United Typewriter Co. Ltd.

June 23/25
accept offer
for \$227,500.

10

Geo. G. McC.,
President.

Exhibits.
Ex. 69.
Offer to
Purchase,
R. S. Durno
to London
Loan &
Savings Co.,
17th June,
1925.

—continued.

Exhibit 70

(Plaintiffs' Exhibit)

Cheque, R. S. Durno to London Loan and Savings Company

Toronto, Ont., June 17th, 1925.

Exhibits.
Ex. 70.
Cheque,
R. S. Durno
to London
Loan &
Savings Co.,
17th June,
1925.

Imperial Bank of Canada.....

..... Davisville Ave. Branch.....

Pay to London Loan & Savings Co..... Order
or Bearer 20

Five hundred..... $\frac{xx}{100}$ DOLLARS

Deposit *re* Buckingham.....

\$500.00..... R. S. DURNO.....

Part Exhibit 13

(Plaintiffs' Exhibit)

H

**Extracts from Minute Book of London Loan and Savings Company
Minute Book, page 631**

N.B.—Parts printed in italics are written in the Minute Book in ink. Part through which line is drawn was included in original copy of minutes and then struck out.

Tuesday, June 23, 1925.

10

BOARD MEETING — Present Messrs. McCormick, Baker, Robinson and Hunt.
Minutes of last meeting read and confirmed.

R. S. Durno.....Accept offer to purchase Buckingham Apartments for ~~\$227,500. Refer to solicitors.~~ *for Company's claim as of June 1st & take mortgage back for \$77,000 as part of purchase money subject to Huron & Erie 1st mortgage \$147,000.*

W. B. Croley

Geo. G. McC.

.....
Acting Manager.

.....
President.

Part Exhibit 13

(Plaintiffs' Exhibit)

I

**Extracts from Minute Book of London Loan and Savings Company
Minute Book, page 631**

Tuesday, June 23, 1925.

20

BOARD MEETING — Present Messrs. McCormick, Baker, Robinson and Hunt.
Minutes of last meeting read and confirmed.

R. S. Durno.....Accept offer to purchase Buckingham Apartments for Company's claim as of June 1st and take mortgage back for \$77,000. as part of purchase money subject to Huron & Erie 1st mortgage \$147,000.

W. E. Robinson

Geo. G. McC.

.....
Acting Manager.

.....
President.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 13.
H.
Extracts
from Minute
Book of
London
Loan &
Savings Co.,
Page 631,
23rd June,
1925.

Exhibits.
Part Ex. 13.
I.
Extracts
from Minute
Book of
London
Loan &
Savings Co.,
Page 631,
23rd June,
1925.

*In the
Supreme
Court of
Ontario.*

Exhibit 76

(Plaintiffs' Exhibit)

Memorandum of George G. McCormick re Offer to Purchase—Durno

Exhibits.
Ex. 76.
Memoran-
dum of
George G.
McCormick
re Offer to
Purchase—
Durno,
23rd June,
1925.

June 23 1925 210
Re Buckingham Apts. —
R. S. Durno
Accept offer to purchase for \$227,500.

Geo. G. McC.
President.

Exhibits.
Ex. 83.

Exhibit 83

(Plaintiffs' Exhibit)

10

Letter,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
24th June,
1925.

Letter, G. A. P. Brickenden & Co. to London Loan and Savings Co.

London, Canada,
June 24th, 1925.

The London Loan & Savings Co.,
220 Dundas Street,
City.

Dear Sirs:—

Re S. B. Green Mortgage

We enclose to you herewith receipts for advertising etc. in connection with 20
the recent sale of the Buckingham Apartments forwarded to us by Mr. M. W.
Wilson who carried on the sale on our behalf in Toronto.

We are also enclosing herewith the Huron & Erie's receipt for \$9539.95
paid by Mr. Wilson on account of the arrears of their first mortgage on this
property.

Yours very truly,
G. A. P. BRICKENDEN & Co.,
Per James F. McMillan.

JFM/IS.
Encl.

Exhibit 119

(Plaintiffs' Exhibit)

**Conveyance, Robert S. Durno to Consolidated Trusts Corp., in trust,
No. 11079 W.F.**

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 119.
Conveyance,
Robert S.
Durno to
Consolidated
Trusts Corp.
in Trust,
No. 11079
W.F.,
26th June,
1925.

THIS INDENTURE made (in Duplicate) the 26th day of June one thousand nine hundred and twenty-five, IN PURSUANCE OF THE SHORT FORMS OF CONVEYANCES ACT.

BETWEEN :

10

**ROBERT S. DURNO, of the City of Toronto, in the County of York, Esquire, hereinafter called the Grantor,
OF THE FIRST PART,**

and

**CONSOLIDATED TRUSTS CORPORATION,
In Trust, hereinafter called the Grantee,
OF THE SECOND PART,**

and

20

**MARY E. DURNO, wife of the said Robert S. Durno, hereinafter called the Party
OF THE THIRD PART.**

WITNESSETH that in consideration of other good and valuable consideration and the sum ofFive.....Dollars of lawful money of Canada now paid by the said Grantee to the said Grantor (the receipt whereof is hereby by him acknowledged), he the said Grantor DOTH GRANT unto the said Grantee in fee simple ALL AND SINGULAR that certain parcel or tract of land (as described in Ex. 117).

30

TO HAVE AND TO HOLD unto the said Grantee its successors and assigns, to and for its and their sole and only use for ever. SUBJECT NEVERTHELESS to the reservations, limitations, provisoes and conditions, expressed in the original grant thereof from the Crown.

THE said Grantor COVENANTS with the said Grantee THAT he has the right to convey the said lands to the said Grantee notwithstanding any act of the said Grantor.

AND THAT the said Grantee shall have quiet possession of the said lands free from all incumbrances save as aforesaid.

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 119.

Conveyance,
Robert S.
Durno to
Consolidated
Trusts Corp.
in Trust,
No. 11079
W.F.,
26th June,
1925.

—continued.

AND the said Grantor COVENANTS with the said Grantee that he will execute such further assurances of the said lands as may be requisite.

AND the said Grantor COVENANTS with the said Grantee that he has done no act to incumber the said lands save as aforesaid.

AND THE SAID GRANTOR RELEASES to the said Grantee ALL his claims upon the said lands.

And the said wife of the said Grantor hereby bars her dower in the said lands.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

10

SIGNED SEALED AND DELIVERED

ROBERT S. DURNO

In the presence of
M. W. Wilson.

MARY E. DURNO

(two seals in
this corner.)

of York

I, Melville William Wilson.....
of the..... City..... of Toronto..... in the
County of York, Solicitor.....
make oath and say

To Wit

1. THAT I was personally present and did see the within or annexed 20 Instrument and a duplicate thereof duly signed, sealed and executed by Robert S. Durno and Mary E. Durno.....two.....of the parties thereto.

2. THAT the said Instrument and duplicate were executed by the said parties at the City of Toronto.

3. THAT I know the said parties.

4. THAT I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at the City of Toronto in the County of York this 26th day of June, A.D. 1925.

M. W. WILSON

30

W. E. Houghton,
A Commissioner for taking Affidavits, etc.

Dated June 26th 185 1925.

ROBERT S. DURNO
et ux
To

CONSOLIDATED TRUSTS CORP.
In Trust.

DEED OF LAND
Situate

10

Dye & Durham, Law Stationers
Toronto, Can.
Box 88

No. 11079 W.F.

I certify that the within instrument is duly entered and registered in the Registry Office for the Registry Division of Toronto in Book W.F. at 4.00 P.M. of the 8 day of July, A.D. 1925.

W. J. C. McCREA,
Deputy Registrar.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 119.
Conveyance,
Robert S.
Durno to
Consolidated
Trusts Corp.
in Trust,
No. 11079
W.F.,
26th June,
1925.

—continued.

20

Exhibit 79

(Plaintiffs' Exhibit)

Statement re Mortgage G.41—\$35,000.

THE LONDON LOAN & SAVINGS COMPANY OF CANADA

Re Mortgage G 41.

June 27th, 1925.
Buckingham Apartments.

H. A. Morine, Esq., et al,
Toronto, Ontario.

G. A. P. Brickenden & Co. collect taxes, if any, and :		
	6 months int. due Feb. 13/24.....	\$ 1,312.50
	Extra interest.....	49.22
30	6 months int. due Aug. 13/24.....	1,312.50
	Principal.....	35,000.00
	August 13th, 1924.....	<u>\$37,674.22</u>

Exhibits.
Ex. 79.
Statement re
Mortgage
G.41,
\$35,000.00,
27th June,
1925.

<i>In the Supreme Court of Ontario.</i> <i>Exhibits. Ex. 79. Statement re Mortgage G. 41, \$35,000.00, 27th June, 1925. —continued.</i>	Jan. 13/25, 153 days int. 7½%..... 1,184.40 <hr/> \$38,858.62 Less at credit in S.B.L.301½..... 1,335.28 <hr/> January 13th, 1925..... \$37,523.34 Preliminary expenses..... 350.00 <hr/> January 13th, 1925..... \$37,873.34 Apl. 27/25, 104 days interest..... 809.33 <hr/> April 27th, 1925..... \$38,682.67 6 months ex. Int. Bonus..... 1,312.50 <hr/> April 27th, 1925..... \$39,995.17 10 June 1/25, Interest..... 287.60 (9540.95) Paid Huron & Erie & Int. & Costs, (\$420.68) Wilson..... 9,961.63 4 days interest..... 8.20 <hr/> June 1st, 1925..... \$50,252.60
--	--

*Exhibits.
Ex. 80.
Statement re
Mortgage
G. 46,
\$20,000.00,
27th June,
1925.*

Exhibit 80

(Plaintiffs' Exhibit)

Statement re Mortgage G.46—\$20,000.

20

THE LONDON LOAN & SAVINGS COMPANY OF CANADA

June 27th; 1925.
 Buckingham Apartments.

Re Mortgage G.46

H. A. Morine, Esq., et al,
 Toronto, Ontario.

G. A. P. Brickenden & Co. collect taxes, if any, and :

Interest due December 22/23.....	\$ 875.00
Extra interest.....	32.91
Interest due June 22nd, 1924.....	786.10
	<hr/>
June 22nd, 1924.....	\$ 1,693.91 30
Extra interest.....	63.52
Interest due December 22nd, 1924.....	787.50

Principal.....	21,000.00	<i>In the Supreme Court of Ontario. — Exhibits. Ex. 80. Statement re Mortgage G. 46, \$20,000.00, 27th June, 1925.</i>
December 22nd, 1924.....	\$23,544.93	
January 22nd, 1925..... Interest.....	149.77	
January 22nd, 1925.....	\$23,694.70	
Preliminary expenses.....	210.00	
April 27/25, 95 days interest.....	466.62	
6 months ex. int. bonus.....	787.51	
April 27th, 1925.....	\$25,158.83	
June 1/25, interest.....	179.77	
10 June 1st, 1925.....	\$25,338.60		—continued.

Exhibit 194

(Plaintiffs' Exhibit)

Letter, G. A. P. Brickenden & Co. to Martin, Currie & Co.London, Canada,
June 27th, 1925.Messrs. Martin, Currie & Company,
55 Queen Street,
Edinburgh, Scotland.Exhibits.
Ex. 194.
Letter,
G. A. P.
Brickenden
& Co. to
Martin,
Currie & Co.,
27th June,
1925.

Dear Sirs :—

20 *Re* London Loan & Savings Company

The Accountant of The London Loan & Savings Company referred your letter of the 15th of June to us, because the letter contained a statement that a previous letter had been handed to us to deal with.

Your letter of the 29th of April was handed to us upon its arrival merely to give us the information which you had given to them regarding the attitude of some of the investors in Scotland in the Buckingham Mansions transaction, which was then being sold under Power of Sale in a London Loan Mortgage. We were not asked to answer the letter, but merely to advise the London Loan and we assumed that they had attended to this matter. The letter was in
30 our possession for one hour only on the date of its arrival. As the matters contained in your letter were strictly Company matters and involved nothing of a legal nature, the London Loan should of course give you the reply you desired.

This letter is written to you merely to justify ourselves and to point out that any letters referred to us are dealt with immediately, and the Writer is confident that had Mr. Kent been physically able to answer the letter, it would have been attended to at once and, no doubt, in the London Loan's letter to you, they will justify this delay.

Yours very truly,
G. A. P. BRICKENDEN & Co.,
Per G. A. P. Brickenden.

40 GAPB/HP.

Exhibit 81

(Plaintiffs' Exhibit)

Copy of Letter, G. A. P. Brickenden & Co. to M. W. Wilson

London,
June 29th, 1925.

M. W. Wilson, Esq.,
Barrister,
Kent Bldg.,
Toronto, Ont.

Dear Sir :—

Re Buckingham Apts., R. S. Durno

We are returning to you herewith copy of Mortgage, Durno to The London Loan which we have approved; also copy of proposed Deed from Durno to The Consolidated Trusts Corporation, in Trust. With regard to this Deed, we would suggest that the clause inserted after the habendum clause, making this Deed subject to certain Mortgages which The Consolidated Trusts is to assume, be omitted entirely from the Deed. The Consolidated Trusts Corporation certainly have no intention of assuming these Mortgages and that seems to be the position under the present wording of this clause.

Otherwise the Deed seems to be in order with the exception of the word "the" inserted in the fourth line of the description. In the description which we have, this word is omitted. You might check this up with the original Mortgage.

Yours very truly,
G. A. P. BRICKENDEN & CO.,
Per

JFM/EM.
Encls.

Part Exhibit 82

(Plaintiffs' Exhibit)

A**Letter, M. W. Wilson to G. A. P. Brickenden & Co.**

Toronto,
June 29/25.

G. A. P. Brickenden & Co.,
London, Ont.

Dear Sirs :—

Re London Loan & Durno

Deed in duplicate enclosed for execution. I inserted subject to first mortgage. Please return. The taxes will of course, be paid. No mention need be made in this document.

Yours truly,
M. W. WILSON.

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 81.

Copy of
Letter,
G. A. P.
Brickenden
& Co. to
M. W.
Wilson,
29th June,
1925.

10

20

30

40

Exhibits.
Part Ex. 82.
A.

Letter,
M. W.
Wilson to
G. A. P.
Brickenden
& Co.,
29th June,
1925.

Part Exhibit 13

(Plaintiffs' Exhibit)

J**Extracts from Minute Book of London Loan and Savings Company
Minute Book, page 632**

Tuesday, June 30th, 1925.

BOARD MET—Present : Messrs. McCormick, Baker and Hunt.
Minutes of last meeting read and confirmed.10 Martin, Currie
& Co.....Letter read—Refer to Manager.

W. B. Croley

Acting Manager.

Geo. G. McC.

*President.***Part Exhibit 82**

(Plaintiffs' Exhibit)

B**Copy of Letter, G. A. P. Brickenden & Co. to M. W. Wilson**London,
June 30th, 1925.20 M. W. Wilson, Esq.,
Barrister,
Kent Bldg.,
Toronto, Ont.

Dear Sir :—

Re Durno, Buckingham Apartments

We are returning to you herewith Deed under Power of Sale in the above matter duly executed by The London Loan & Savings Company. This Deed will, of course, only be used when all documents have been properly completed and handed to you on our behalf and the balance of cash in this matter paid over to you.

30

Yours very truly,
G. A. P. BRICKENDEN & Co.,
PerJFM/EM.
Encl.*In the
Supreme
Court of
Ontario.*Exhibits.
Part Ex. 13.
J.
Extracts
from Minute
Book of
London
Loan &
Savings Co.,
Page 632,
30th June,
1925.Exhibits.
Part Ex. 82.
B.
Copy of
Letter,
G. A. P.
Brickenden
& Co. to
M. W.
Wilson,
30th June,
1925.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 82

(Plaintiffs' Exhibit)

C

Exhibits.
Part Ex. 82.
C.

Copy of Letter, G. A. P. Brickenden & Co. to London Loan and Savings Company

Copy of
Letter,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
30th June,
1925.

London,
June 30th, 1925.

The London Loan & Savings Co.,
220 Dundas Street,
City.

10

Dear Sirs :—

Re Buckingham Apartments

We are enclosing to you herewith Deed under Power of Sale to R. S. Durno the purchaser of this property which we would ask you to execute and return to this office today.

An Agreement to sell this property to Mr. Durno at the sum of \$227,500.00 has already been executed by your Company and a Mortgage for \$77,000.00 part of the purchase price repayable \$1000.00 half-yearly has been approved by us.

Yours very truly,
G. A. P. BRICKENDEN & Co.,
Per

20

JFM/IS.
Encl.

Exhibits.
Ex. 85.
Letter,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
30th June,
1925.

Exhibit 85

(Plaintiffs' Exhibit)

Letter, G. A. P. Brickenden & Co. to London Loan and Savings Co.

London, Canada,
June 30th, 1925.

The London Loan & Savings Co.,
220 Dundas Street,
City.

30

Dear Sirs :—

Re Buckingham Apartments

We are enclosing to you herewith Deed under Power of Sale to R. S. Durno the purchaser of this property which we would ask you to execute and return to this office today.

An Agreement to sell this property to Mr. Durno at the sum of \$227,500.00 has already been executed by your Company and a Mortgage for \$77,000.00 part of the purchase price repayable \$1000.00 half-yearly has been approved by us.

Yours very truly,
G. A. P. BRICKENDEN & Co.,
Per James F. McMillan.

40

JFM/IS.
Encl.

Part Exhibit 82

(Plaintiffs' Exhibit)

D**Copy of Letter, G. A. P. Brickenden & Co. to M. W. Wilson**

July 3rd, 1925.

M. W. Wilson, Esq.,
Barrister, &c.,
Kent Building,
Toronto, Ont.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 82
D.
Copy of
Letter,
G. A. P.
Brickenden
& Co. to
M. W.
Wilson,
3rd July,
1925.

10 Dear Sir :—

Re Buckingham Apartments

We are enclosing to you herewith Discharge of the London Loan & Saving Company's \$35,000.00 Mortgage on this property.

We will, of course, look to you to protect the interest of The London Loan & Savings Company in connection with the delivery of this Discharge.

Yours very truly,
G. A. P. BRICKENDEN & Co.,
Per

JFM/HP.
Encl.

20

Exhibit 120

(Plaintiffs' Exhibit)

Registrar's Certified Copy of Discharge of Mortgage, London Loan and Savings Company to S. B. Green et al, No. 11076 W.F.

PROVINCE OF ONTARIO

DOMINION OF CANADA

TO WIT.

TO THE Registrar of the Registry Division of West Toronto.

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA.

30 Do Certify that Samuel B. Green of City of Toronto in the County of York, Builder, and Horace A. Morine of the said City of Toronto, Financial Broker, have satisfied all money due on or to grow due on a certain Mortgage, made by them, to the said Company, which Mortgage bears date the thirteenth day of February, A.D. 1923, and was registered in the Registry Office for The Registry Division of West Toronto, on the sixteenth day of February, A.D. 1923, at thirty-one minutes past three o'clock in the afternoon in Liber W.F.7 as No. 8318.F. and that such Mortgage has not been assigned. And that the said Company is entitled by law, to receive the money and that such Mortgage is therefore discharged. Witness the Corporate Seal of the said

Exhibits.
Ex. 120.
Registrar's
Certified
Copy of
Discharge of
Mortgage,
London
Loan &
Savings Co.
to S. B.
Green *et al*,
No. 11076
W.F.,
3rd July,
1925.

In the
Supreme
Court of
Ontario.

Company and the hands of the president and Secretary-Treasurer thereof the third day of July, A.D. 1925.

Exhibits.
Ex. 120.
Registrar's
Certified
Copy of
Discharge of
Mortgage,
London
Loan &
Savings Co.
to S. B.
Green *et al.*,
No. 11076
W.F.,
3rd July,
1925.

Witness :

E. P. FLETCHER,
of the City of London,
Stenographer.

CHAS. R. HUNT,
Actg. president.
H. R. CLEWES,
Secretary-Treasurer.
Corporate Seal.

No. 11076 W.F.

I certify that the within instrument is duly entered and registered in the Registry Office for the Registry Division of Toronto in book W.F. at 4.00 o'clock P.M. of the 8 day of Jul., A.D. 1925.

10

—continued.

GEO. E. DODD,
Dy Registrar.

Exhibits.
Part Ex. 73.
A.
Cheque,
London
Loan &
Savings Co.
to M. W.
Wilson,
7th July,
1925.

Part Exhibit 73

(Plaintiffs' Exhibit)

A

Cheque, London Loan and Savings Company to M. W. Wilson

NO. 2631 20

**THE LONDON LOAN & SAVINGS COMPANY
OF CANADA**

LONDON, Canada, July 7, 1925.

To THE BANK OF MONTREAL

City Hall
Branch

Pay to the order of M. W. Wilson, Solicitor.....\$4193.00

Forty-one hundred and ninety-three.....^{xx}
100 DOLLARS

E. Pearson

H. R. Clewes

Teller.

Asst. Manager. 30

FOLLOWING ENDORSEMENT ON BACK

M. W. Wilson
Trust Acct.

Part Exhibit 73

(Plaintiffs' Exhibit)

B**Voucher, London Loan and Savings Company re M. W. Wilson****THE LONDON LOAN AND SAVINGS COMPANY**Oscar Hudson & Co.
G. W. F.
Chartered Accountants

DEBIT M. W. Wilson, Mtge. No. N. 22

*In the
Supreme
Court of
Ontario.*Exhibits.
Part Ex. 73.
B
Voucher,
London
Loan &
Savings Co.
re M. W.
Wilson,
7th July,
1925.

.....	per cheque on Bank of Montreal No. 2631	.....
10	to M. W. Wilson, Solicitor	.....
.....	Adjustments <i>re</i> Buckingham Apartments	\$4193.00
.....	War Stamps	1.00
		<hr/>
		\$4194.00

LONDON, July 7th

Geo. G. McCormick

*P D Manager.***Part Exhibit 82**

(Plaintiffs' Exhibit)

E**Letter, M. W. Wilson to G. A. P. Brickenden & Co.**

20

Toronto,
July 8th, 1925.Messrs. G. A. P. Brickenden & Co.,
London Loan Bldg.,
London, Ont.

Dear Sirs :—

Re: Buckingham Apts.

- I have today registered the following documents in this matter :
- Deed from London Loan to Durno.
 - Deed from Durno to Consolidated Trusts Corp. in Trust.
 - 30 Mortgage from Durno to London Loan & Savings Co. for \$77,000.00.
- A full report and statement of this matter will be sent you in due course.

Yours truly,
M. W. WILSON.
G.

W/G.

Exhibits.
Part Ex. 82.
E
Letter,
M. W.
Wilson to
G. A. P.
Brickenden
& Co.,
8th July,
1925.

Exhibit 298

(Defendants' Exhibit)

*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 298.Release,
R. S. Durno
to
Consolidated
Trusts Corp.,
8th July,
1925.**Release, R. S. Durno to Consolidated Trusts Corp.****THIS INDENTURE** made. (in duplicate) the eighth day of July, A.D. 1925.**BETWEEN :****ROBERT S. DURNO**, of the City of Toronto, in the County of York, Builder,

Of the First Part,

and

10

THE CONSOLIDATED TRUSTS CORPORATION,

Of the Second Part.

WHEREAS by deed, dated the 26th day of June, 1925, and registered in the Registry Office for the Registry Division of Toronto on the 8th day of July, 1925, as Number 11079 W.F. the Party of the First Part did grant and convey unto the Party of the Second Part in trust that certain parcel of land and premises situate lying and being in the City of Toronto in the County of York, more particularly described as follows: (Lands as in Ex. 2.)

AND WHEREAS the Party of the First Part has no further interest in or claim upon the said lands.

20

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the premises the Party of the First Part doth hereby remise release quit claim and forever discharge the Party of the Second Part from any share or interest in the said lands or from any portion of the moneys which may be realized from any sale of the said lands, and doth hereby declare that he has no claim or interest of any kind whatsoever in the said lands and that the Party of the Second Part does not hold the said lands in trust for him the said Party of the First Part or his heirs executors administrators and assigns.

AND THIS INDENTURE FURTHER WITNESSETH that in consideration of the premises the Party of the First Part doth hereby grant release and quit claim unto the Party of the Second Part all his right title or interest whether at law or in equity in to or out of the said lands and every part thereof.

30

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED

in the presence of
Margaret N. Green.R. S. DURNO
(SEAL)

Part Exhibit 299

(Plaintiffs' Exhibit)

A

Release, R. S. Durno to Consolidated Trusts Corp.

NOT PRINTED.

Same as Exhibit 298

Exhibit 265

(Plaintiffs' Exhibit)

Extract from Letter, Thomas Baker, Vice-Pres., London Loan and Savings Co., to Martin, Currie & Co.

10

London, Can.,
July 9, 1925.

Messrs. Martin, Currie & Co.,
Edinburgh, Scot.

Gentlemen :—

I regret to say that Mr. Kent is still confined to his house and unable to be at his accustomed place in the office, and your letter was really laid aside hoping that he would return each day.

20 However, with the arrival of your letter of the 15th of June, we see that it is your desire to have the matters explained immediately, we are therefore taking your letter of April 29th item by item as follows :—

REAL ESTATE

With regard to this information, we would say, that in due course the item S. B. Green \$39882.68 has disappeared from our books; the properties having been sold, and we are in receipt of the cash payment of \$20,000. being \$5000. on each property and we have taken a new mortgage in each case from the new purchaser for the balance.

S. B. Green—

30 With reference to your remarks in connection with loan of \$39882.68 above mentioned, this loan is entirely different to another loan which we had by the same borrower, on which we hold a second mortgage for \$35,000. and a third mortgage of \$25,000. This has also been sold on advice of our solicitors, for an amount which will cover our claim in full after deducting the cash payment which we received from the purchaser.

We are,

E & O. E

Yours truly,
THOMAS BAKER,
Vice-President.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 299.
A.
Release,
R. S. Durno
to
Consolidated
Trusts Corp.,
8th July,
1925.

NOT
PRINTED.

Exhibits.
Ex. 265.
Extract from
Letter,
Thomas
Baker,
Vice-Pres.,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
9th July,
1925.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 82

(Plaintiffs' Exhibit)

F

Exhibits.
Part Ex. 82. **Copy of Letter, G. A. P. Brickenden & Co. to London Loan and Savings
Company**

F.
Copy of
Letter,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
10th July,
1925.

NOT PRINTED.
Same as Exhibit 84

Part Exhibit 82

(Plaintiffs' Exhibit)

G

NOT
PRINTED

Copy of Letter, G. A. P. Brickenden & Co. to M. W. Wilson

July 10th, 1925.

10

Exhibits.
Part Ex. 82.
G.
Copy of
Letter,
G. A. P.
Brickenden
& Co. to
M. W.
Wilson,
10th July,
1925.

**M. W. Wilson, Esq.,
Kent Bldg.,
Toronto, Ont.**

Dear Sir :—

Re Buckingham Apartments

Will you kindly give us a statement of the position in this matter with regard to taxes and other adjustments and as to whether taxes have yet been paid on this property.

20

Yours very truly,
G. A. P. BRICKENDEN & Co.,
per

JFM/IS.

Exhibit 84

(Plaintiffs' Exhibit)

Exhibits.
Ex. 84.
Letter,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
10th July,
1925.

Letter, G. A. P. Brickenden & Co. to London Loan and Savings Co.

London, Canada,
July 10th, 1925.

30

**The London Loan & Savings Co.,
220 Dundas Street,
London, Ontario.**

Dear Sirs :—

Re Buckingham Apartments

Herewith Mortgage S. B. Green and H. A. Morine to yourself for \$35,000.00 registered as Number 8318 W.F. which we would ask you to file until we can give you further report in this matter.

Yours very truly,
G. A. P. BRICKENDEN & Co.,
Per James F. McMillan.

JFM/IS.
Encl.

40

Part Exhibit 82

(Plaintiffs' Exhibit)

H**Letter, M. W. Wilson to G. A. P. Brickenden & Co.**Toronto,
July 14th, 1925.Messrs. G. A. P. Brickenden & Co.,
London Loan Bldg.,
London, Ont.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part Ex. 82.
H.
Letter,
M. W.
Wilson to
G. A. P.
Brickenden
& Co.,
14th July,
1925.

10 Dear Sirs :—

Re: Durno and Consolidated Trusts Corp. and London
Loan & Savings Co. of Canada.
Buckingham Apartments.

I enclose herewith the following documents in this matter :
Conveyance—London Loan to Durno, registered as No. 11077 W.F.
Mortgage—Durno to London Loan & Savings Co. of Canada, registered as
No. 11078 W.F. for \$77,000.00 payable \$1000.00 half yearly on the 1st day
of June and December, with interest at 7%, maturing June 1st, 1930.
Deed—Durno to Consolidated Trusts Corp. in Trust registered as No. 11079
20 W.F.

I am having the abstract of title herein extended to show all registrations,
including sale proceedings, discharges of liens, etc., and this will be forwarded
to you as soon as I receive same from the Registry Office, along with a full
report of disbursements and vouchers covering the same.

W/G.

Yours truly,
M. W. WILSON.**Part Exhibit 82**

(Plaintiffs' Exhibit)

L30 **Copy of Letter, M. W. Wilson to G. A. P. Brickenden & Co.****NOT PRINTED.**

Same as Exhibit 82 H.

Exhibits.
Part Ex. 82.
L.
Copy of
Letter,
M. W.
Wilson to
G. A. P.
Brickenden
& Co.,
14th July,
1925.

**NOT
PRINTED**

*In the
Supreme
Court of
Ontario.*

Part Exhibit 82

(Plaintiffs' Exhibit)

I

Copy of Letter, G. A. P. Brickenden & Co. to M. W. Wilson

July 16th, 1925.

Exhibits.
Part Ex. 82.
I.
Copy of
Letter,
G. A. P.
Brickenden
& Co. to
M. W.
Wilson,
16th July,
1925.

M. W. Wilson, Esq.,
Barrister &c.,
Kent Bldg.,
Toronto, Ont.

Dear Sir :—

Re London Loan & Durno, Buckingham Apartments

We beg to acknowledge receipt of your letter of the 14th instant and enclosures as therein stated.

Yours very truly,
G. A. P. BRICKENDEN & Co.,
Per

JFM/IS.

10

Exhibit 280

(Plaintiffs' Exhibit)

Copy of Letter, Oscar Hudson & Co. to George G. McCormick

London, Ontario,
20th July, 1925.

20

Exhibits.
Ex. 280.
Copy of
Letter,
Oscar
Hudson &
Co. to
George G.
McCormick,
20th July,
1925.

Mr. G. G. McCormick, President,
London Loan and Savings Company,
City.

Dear Sir :—

In submitting the half yearly statement of the London Loan and Savings Company, our main purpose was to emphasize the fact that too many of the Company's recent large loans are already in arrears, both in regard to principal and interest, and we wish to further emphasize what we have pointed out on previous occasions, the weakness of the position of a small company like the London Loan and Savings Company, tying up such a large portion of its capital in loans exceeding \$20,000.00. We note with regret that a new loan of \$70,000.00 has just recently been put through, and as in more than one other instance, mechanics' liens have already been registered against this property. This fact alone should be a warning that the moral risk is not good and we fear that this will only be a further drag on the Company's earnings which under present conditions the company cannot stand.

30

In view of the fact that the Board does not appear to be inclined to change its policy with regard to these large loans and as one of your auditors I cannot concur in this policy. I should like to talk the matter over with you at an early opportunity. I will be in Port Huron for the next two or three days, but will be back in the city at the end of the week.

Yours truly,

WM. C. BENSON,

Chartered Accountant.

WCB/JW.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 280.
Copy of
Letter,
Oscar
Hudson &
Co. to
George G.
McCormick,
20th July,
1925.

—continued.

Exhibit 88

(Plaintiffs' Exhibit)

10

Copy of Letter, M. J. Kent to H. R. Clewes

London,

Sep. 1, 1925.

Mr. Clewes,

Manager, The Consolidated Trusts Corporation,
City.

Exhibits.
Ex. 88.
Copy of
Letter,
M. J. Kent
to H. R.
Clewes,
1st Septem-
ber, 1925.

Dear Sir :—

Re Buckingham Apts., Toronto

I have got back to business and would be glad to know the position of
20 this property.

As Manager of the Trust Corporation are you collecting the rents, and if so, what balance have you in hand and when will you make returns? Have you a deed of the property for the purpose of handling the revenues?

We have an inquiry from Scotland for particulars.

Yours truly,

K

Manager.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 82

(Plaintiffs' Exhibit)

J

Copy of Letter, G. A. P. Brickenden & Co. to M. W. Wilson

September 15th, 1925.

Exhibits.
Part Ex. 82.
J
Copy of
Letter,
G. A. P.
Brickenden
& Co. to
M. W.
Wilson,
15th Septem-
ber, 1925.

M. W. Wilson, Esq.,
Barrister, &c.,
Kent Bldg.,
Toronto, Ont.

Dear Sir :—

Re Buckingham Apartments

10

With reference to your letter of July 8th, 1925, we beg to advise you that the papers in connection with this deal have not yet reached this office. Our last communication in this matter was on July 10th, 1925, when we wrote to you asking for a statement with regard to adjustments.

Will you kindly endeavour to locate these papers and give us a report as soon as possible.

Yours very truly,
G. A. P. BRICKENDEN & Co.,
Per

20

JFM/HP.

Part Exhibit 82

(Plaintiffs' Exhibit)

K

Letter, M. W. Wilson to G. A. P. Brickenden & Co.

Toronto,
Sept. 15th, 1925.

Exhibits.
Part Ex. 82.
K.
Letter,
M. W.
Wilson to
G. A. P.
Brickenden
& Co.,
15th Septem-
ber, 1925.

Messrs. G. A. P. Brickenden & Co.,
London, Ont.

Dear Sirs :—

Re: Buckingham Apts. and London Loan.

30

As requested on the telephone today, I enclose herewith abstract of title to these lands. Also please find a copy of my letter to you of July 14th, in which I enclosed conveyance from London Loan to Durno, Mortgage from Durno to London Loan, and deed from Durno to Consolidated Trusts Corp.

W/G.

Yours truly,
M. W. WILSON.

Exhibit 86

(Plaintiffs' Exhibit)

Letter, G. A. P. Brickenden & Co. to London Loan and Savings Co.

The London Loan & Savings Co.,
220 Dundas Street,
City.

London, Canada,
September 15th, 1925.

G 41 & G 46

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 86.
Letter,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
15th Septem-
ber, 1925.

Dear Sirs :—

10

Re Buckingham Apartments

We beg to advise you that the new mortgage for \$77,000.00 in connection with the sale of the above property will be produced to you very shortly. The terms of this mortgage are as follows :—

Date, First of June, 1925; Principal \$77,000.00 with interest at 7% per annum payable half-yearly on the first days of June and December, principal repayments \$1000.00 half-yearly on the first days of June and December, first payment of principal and interest to be on the first day of December, 1925; mortgage expires June, 1930. You might accordingly enter this mortgage in your books in accordance with the above terms.

20

Yours very truly,
G. A. P. BRICKENDEN & CO.,
Per James F. McMillan.

R. S. Durno
JFM/IS.

FOLLOWING SHOWN ON BACK OF LETTER

30

Sept. 22/25
Sale
confirmed
Miss Adams

Geo. G. McC.

.....
President.

40

D 42
G 41
G 46
Durno

Loans were
\$35,000— 7½%
20,000— 7½%

55,000—

Coys claim
now \$77,055.72
R. S. Durno 7%
sold for now
\$227500.00

June 23/25—as of June 1st, 1925,

Dec. 29/25
Re: R. S. Durno.
Mortgage for \$77,000.00
at 7% half yearly
Laid over
Geo. G. McC.
.....
President.

Jan. 5/26
Loan confirmed

.....
President.

Croley

\$77,000. mtge.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 89.
Copy of
Letter,
G. A. P. .
Brickenden
& Co. to
Consolidated
Trusts Corp.,
16th Septem-
ber, 1925

Exhibit 89

(Plaintiffs' Exhibit)

Copy of Letter, G. A. P. Brickenden & Co. to Consolidated Trusts Corp.

September 16th, 1925.

Consolidated Trusts Corporation,
City.

Dear Sirs :—

Re Robert S. Durno : Buckingham Apartments

We are enclosing to you herewith Deed from Robert S. Durno to your- 10
selves in trust, registered as Number 11079 W.F.

If you will enter this up in your books in the meantime, we will give you
further instructions as to disposition at a later date.

Yours very truly,
G. A. P. BRICKENDEN & Co.,
Per

JFM/HP.
Encl.

Exhibit 87

(Plaintiffs' Exhibit)

Letter, G. A. P. Brickenden & Co. to London Loan and Savings Co. 20

London, Canada,
September 16th, 1925.

The London Loan & Savings Co.,
City.

Dear Sirs :—

Re Buckingham Apartments

We beg to report that we have received from Toronto and are enclosing
to you herewith the following documents :—

- 1.—Mortgage from R. S. Durno to yourself, registered as Number 11078 W.F.
- 2.—Deed from London Loan to R. S. Durno, registered as Number 11077 W.F. 30

Deed from R. S. Durno to Consolidated Trusts Corporation in trust, regis-
tered as Number 11079 W.F. has been forwarded to Consolidated Trusts
Corporation.

The Abstract of Title has been received this morning and we will forward
report on same in due course.

Yours very truly,
G. A. P. BRICKENDEN & Co.,
Per James F. McMillan
Per HP

JFM/HP.
Encls.

Exhibits.
Ex. 87.
Letter,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
16th Septem-
ber, 1925.

Part Exhibit 82**M**

(Plaintiffs' Exhibit)

Copy of Letter, G. A. P. Brickenden & Co. to M. W. Wilson

September 16th, 1925.

M. W. Wilson, Esq.,
 Barrister, &c.,
 Kent Building,
 Toronto, Ont.

10 Dear Sir :—

It would appear that an apology to you with regard to the receipt of the Durno papers is in order. These papers have turned up in another file in this office and were acknowledged by us on the 16th of July. However with the exception of the abstract received in this morning's mail, we have not received any other papers in connection with this deal.

We trust that you have not been put to too much inconvenience by this mistake.

Yours very truly,
 G. A. P. BRICKENDEN & Co.,
 Per

20 JFM/HP.

Exhibit 195

(Plaintiffs' Exhibit)

Letter, Martin, Currie & Co. to Manager, London Loan and Savings Company

Edinburgh,
 17th September, 1925.

The Manager,
 London Loan & Savings Company of Canada,
 220, Dundas Street,
 London,
 Ontario.

30

Dear Sir,

We wrote a letter on 4th August in relation to the questions raised in our letters of 29th April and 15th June, addressing our letter to your Vice-President, who had written us on 9th July. We had hoped to have a further letter from you in reply before this and are disappointed that no letter has reached us.

We annex an extract from a further letter from our correspondent here in regard to the Loan to S. B. Green. About this Loan the information given
 40 in your letter of 9th July was as follows :—

“With reference to your remarks in connection with loan of \$39882.68

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Part Ex. 82.
 M.
 Copy of
 Letter,
 G. A. P.
 Brickenden
 & Co. to
 M. W.
 Wilson,
 16th Septem-
 ber, 1925.

Exhibits.
 Ex. 195.
 Letter,
 Martin,
 Currie & Co.
 to Manager,
 London
 Loan &
 Savings Co.,
 17th Septem-
 ber, 1925.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 195.

Letter,
Martin,
Currie & Co.,
to Manager,
London
Loan &
Savings Co.,
17th September,
1925.

—continued.

above mentioned, this loan is entirely different to another loan which we had by the same borrower, on which we hold a second mortgage of \$35,000, and a third mortgage of \$25,000. This has also been sold on advice of our solicitors, for an amount which will cover our claim in full after deducting the cash payment which we received from the purchaser.”

This, as we indicated in our letter of 4th August, was a quite inadequate reply to the questions we had raised regarding the Loan, and as you will see, the information that has come to us through our correspondent indicates to our mind that if this property was sold, it was merely a formal sale to your own Trust Company and is still subject to Bonds in your favour for an even 10 larger amount than before.

If such is the position, we confess that it appears to us highly unsatisfactory and equally unsatisfactory that the actual position has not been fully explained to us at once. It raises questions in regard to which we should now like information, as to the amount of mortgages held by your Trust Company subject to Bonds in your favour, the value of the relative properties, etc.

In our first letter on these matters, we suggested that it is desirable for the satisfaction of debenture-holders that some independent report should be obtained, and we confess that our feeling now is that it is quite necessary that something be done in this direction, that either an independent firm of 20 accountants be asked to report in regard to your loans and particularly transactions such as the one we have referred to, or that the Registrar of Loan Companies, whose duty it is at any rate to investigate such Companies as yours, should be asked to make a special report, if this is at all permitted by his position.

The delays that have occurred in dealing with our letters suggests that the importance of these matters, from the point of view of your debenture agency, is not sufficiently realised, and we should be obliged by your cabling us on receipt of this letter saying whether you agree to a report being obtained and your proposals in the matter. Failing this, we shall seriously have to 30 consider whether we can continue to act in your debenture agency.

We are,

Yours faithfully,
MARTIN, CURRIE CO.

FOLLOWING SHOWN ON BACK OF LETTER

Sept. 29/25

Letter Martin, Currie & Co.

7

President

ANNEXATION REFERRED TO

“In a letter I have from my correspondent in Toronto, he says :—

“The London Loan Co. having been unable to find a purchaser of the 40 mortgaged premises at the auction sale, have now made conveyance of the premises under the Powers of Sale contained in their mortgage. By deed

dated 1st June, 1925, and registered on the 8th July that Company conveyed the premises to one Robt. S. Durno for the expressed consideration of \$227,500 of which \$147,000 is the assumption of the Huron & Erie Co's mortgage and \$77,000 is secured by a mortgage from the Purchaser to the Vendor, the balance of \$3,500 being apparently the cash payment, and at the same time there was registered a discharge of the second registered mortgage of \$35,000 referred to in my former report. Further, by deed dated 26th June and registered 8th July, 1925, the said Durno conveyed the mortgaged premises to 'Consolidated Trust Corporation in Trust' subject to the above two mortgages of \$147,000 and \$77,000 respectively, the consideration for this deed being \$5.00. The effect of the above is that the premises are now owned by 'Consolidated Trust Corporation, in Trust' subject to the two mortgages of \$147,000 and \$77,000 respectively.

"The Consolidated Trust Corporation is a subsidiary of—or to be more accurate is—the London Loan Co. and I am advised that Morine still retains his interest in it. You will be able to judge for yourselves from the foregoing information and from that already supplied to you, the real character of these transactions.

"Any assistance you can give in the matter will be much appreciated."

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 195.
Letter,
Martin,
Currie & Co.
to Manager,
London
Loan &
Savings Co.,
17th Septem-
ber, 1925.

—continued.

20

Part Exhibit 82

(Plaintiffs' Exhibit)

N

Letter, M. W. Wilson to G. A. P. Brickenden & Co.

Toronto,
Sept. 17th, 1925.

Messrs. G. A. P. Brickenden & Co.,
London Loan Bldg.,
London, Ont.

Exhibits.
Part Ex. 82.
N.
Letter,
M. W.
Wilson to
G. A. P.
Brickenden
& Co.,
17th Septem-
ber, 1925.

Dear Sirs :—

30

Re: London Loan and Durno
Buckingham Apts.

I have your letter of the 16th inst. and was glad to learn that you had located the papers sent you on July 14th, and that you had received the abstract of title sent you on the 15th inst.

I have paid the principal and interest on the Huron & Erie mortgage, amounting in all to \$8583.70. If there is anything else that you wish, please let me know.

W/G.

Yours truly,
M. W. WILSON.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 82

(Plaintiffs' Exhibit)

O

Exhibits.
Part Ex. 82.
O.

Copy of Letter, G. A. P. Brickenden & Co. to M. W. Wilson

Copy of
Letter,
G. A. P.
Brickenden
& Co. to
M. W.
Wilson,
18th Septem-
ber, 1925.

M. W. Wilson, Esq.,
Barrister &c.,
Kent Bldg.,
Toronto, Ont.

September 18th, 1925.

Dear Sir :—

Re Durno, Buckingham Apartments

We beg to acknowledge receipt of your letter of the 17th instant.

We beg to remind you that we have not yet received from you a complete statement of the Adjustments in connection with this sale and would like to hear from you as soon as you have them in shape for a report.

Yours very truly,
G. A. P. BRICKENDEN & Co.,
Per

JFM/IS.

10

Exhibits.
Part Ex. 13.
K.

Part Exhibit 13

(Plaintiffs' Exhibit)

K

Extracts
from Minute
Book of
London
Loan &
Savings Co.,
Page 636,
22nd
September,
1925.

**Extracts from Minute Book of London Loan and Savings Company
Minute Book, page 636**

20

Tuesday, Sept. 22, 1925.

BOARD MET—All present save Mr. Baker and Mr. Kent.
Minutes of last meeting read and confirmed.

Re Mtges. G 41 G 46

Buckingham Apts.....	Sale confirmed.	
H. A. Morine.....	\$10,000. laid over.	
Wrights Ltd.....	Letter read <i>re</i> loans. Laid over.	30

W. B. Croley

Geo. G. McC.

Acting Manager.

President.

Exhibit 90

(Plaintiffs' Exhibit)

Letter, M. J. Kent to G. A. P. Brickenden & Co.London, Canada,
Sept. 28, 1925.Messrs. Brickenden & Co.,
Barristers,
City.*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 90.
Letter,
M. J. Kent
to G. A. P.
Brickenden
& Co.,
28th Septem-
ber, 1925.

Gentlemen :—

10

Re Buckingham Apts.

During my absence, I notice that Company paid out no doubt at your request, a further amount on this loan of nearly \$4200. marked as paid Mr. Wilson.

We do not seem to have any order from Durno to pay this out as a further advance. Kindly let us have an itemized statement of the abortive sale and your expenses; or do the expenses form part of the above sum.

I do not appear to have any authority on file to make this further advance.

Yours truly,
M. J. KENT,

20 K.

*Manager.***Part Exhibit 13**

(Plaintiffs' Exhibit)

L**Extracts from Minute Book of London Loan and Savings Company****Minute Book, page 637**

September 29th, 1925.

Exhibits.
Part Ex. 13.
L.
Extracts
from Minute
Book of
London
Loan &
Savings Co.,
Page 637,
29th Septem-
ber, 1925.

BOARD MET—All present.

Minutes of last meeting read and confirmed.

30

Accountant, W. B. Croley.....Resignation accepted to take effect 15th Oct.,
1925.Martin, Currie Co.....Letter read. Left with Manager and Mr. Baker
to reply to.Accountant.....Jno. H. Hambly appointed temporarily at same
salary as present Accountant.

M. J. Kent

Manager.

Geo. G. McC.

President.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 299.
B.

Letter,
M. W.
Wilson to
G. A. P.
Brickenden
& Co.,
30th Septem-
ber, 1925.

Part Exhibit 299

(Plaintiffs' Exhibit)

B

Letter, M. W. Wilson to G. A. P. Brickenden & Co.

Toronto,
Sept. 30th, 1925.

Messrs. G. A. P. Brickenden & Co.,
London Loan Bldg.,
London, Ont.

Dear Sirs :—

10

Re: London Loan, Durno and Consolidated Trusts.

Re: Buckingham Apts.

I now enclose statement of the moneys received by me in this matter, and the disbursement of the same. I believe that this statement is self-explanatory, and the title documents have already been sent to you. If there is any further information you require, I should be glad if you would let me know.

You will notice that I have attached a voucher for \$102.30 to cover moneys used by me out of these funds to pay the registration of the Palmer quit claim deed on the Danforth Ave. property.

20

W/G.

Yours truly,
(Sgd.) M. W. WILSON.

Exhibits.
Part Ex. 82.
P.

Copy of
Letter,
M. W.
Wilson to
G. A. P.
Brickenden
& Co.,
30th Septem-
ber, 1925.

Part Exhibit 82

(Plaintiffs' Exhibit)

P

Copy of Letter, M. W. Wilson to G. A. P. Brickenden & Co.

NOT PRINTED

Same as Exhibit 299 B

**NOT
PRINTED**

Part Exhibit 82

(Plaintiffs' Exhibit)

Q**Copy of Statement re Buckingham Apartments Mortgages,
from M. W. Wilson****COPY****"A"****BUCKINGHAM APARTMENTS**

as of June 1st, 1925.

Huron & Erie Mortgage Corp.....	\$159,711.57
10 Interest at 7½% to June 1st.....	190.76
London Loan & Savings—2nd Mortgage.....	38,332.67
Interest at 7½% from Apl. 27th to June 1st.....	267.70
Taxes for 1923 to date and penalties.....	433.29
Taxes for 1924 and penalties.....	2,384.45
Taxes for 1925 to date.....	1,417.18
3rd Mortgage—London Loan & Savings.....	23,802.95
Interest thereon at 7½% to June 1st.....	496.77
Costs of sale proceedings.....	420.40
	<hr/>
	\$227,457.74

20 Please verify these figures. You will note that there is no charge allowed for the costs in this sale. You will recollect that London Loan & Savings Co. gave me a cheque for Huron & Erie for \$9539.95.

(Sgd.) M. W. WILSON.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 82
Q.
Copy of
Statement re
Buckingham
Apartments'
Mortgages,
from M. W.
Wilson,
30th Septem-
ber, 1925.

Part Exhibit 82

(Plaintiffs' Exhibit)

R**Copy of Statement of London Loan Mortgages Received
from M. W. Wilson**

Copy received from M. W. Wilson.

**STATEMENT OF MORTGAGES OF LONDON LOAN
As of June 1st, 1925.**

2nd Mortgage held by London Loan & Savings Co.— principal as of June 1st, 1925.....	\$38,332.67	10
Interest thereon to June 1st, 1925.....	267.70	
3rd Mortgage held by London Loan & Savings Co.— principal as of June 1st, 1925.....	23,802.95	
Interest thereon to June 1st, 1925.....	496.77	
Offset by 2nd mortgage from R. S. Durno to London Loan & Savings Co. of Canada, dated June 1st, 1925.....	\$77,000.00	
Received by me from London Loan.....	9,539.95	
Received by me from Sale to Durno.....	4,193.20	
Received by me for fee and disbursements <i>re</i> sale proceedings.....	420.68	20
Paid by me for London Loan & Savings Co. for regis- tration of quit claim deed <i>re</i> Palmer, 617-619 Danforth Ave., Toronto.....	102.30	
Balance due to be advanced by London Loan to com- plete advances on 2nd mortgage of \$77,000.00.....	48.38	
	<u>\$77,102.30</u>	<u>\$77,102.30</u>

You will note that you now hold only a second mortgage of \$77,000.00 as of June 1st, 1925, plus the \$13.42 over-advanced as shown by the attached account.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 82.
R.
Copy of
Statement of
London
Loan
Mortgages
Received
from M. W.
Wilson,
30th Septem-
ber, 1925.

Part Exhibit 82

(Plaintiffs' Exhibit)

S**Copy of Statement of Disbursements re Buckingham Apartments
Received from M. W. Wilson**

Copy received from M. W. Wilson.

STATEMENT OF DISBURSEMENTS*Re* LONDON LOAN & SAVINGS CO. AND BUCKINGHAM APTS.

	Received by me from London Loan.....	\$ 9,539.95	
10	Received by me from sale to Durno.....	4,193.20	
	Received by me for sale proceedings and disbursements and fees.....		420.68
	Paid for fees and disbursements <i>re</i> sale proceedings.....\$	420.68	
	Paid principal and interest to Huron & Erie to Feb. 7th, 1925.....	9,539.95	
	Paid registering deed to Durno from London Loan.....	3.70	
	Paid tax thereon.....	454.00	
	Paid registering deed—Durno to Consolidated Trusts Corp.....	3.70	
20	Paid Tax thereon.....	454.00	
	Paid registering discharge London Loan mortgage.....	1.00	
	Paid registering mortgage of \$77,000.00 to London Loan from Durno (\$22000. taxable).....	23.50	
	Paid registering sale papers.....	2.00	
	Paid on account 1923 taxes.....	525.00	
	Paid Sheriff's certificate.....	1.00	
	Paid for stamps.....	2.38	
	Paid on account of interest to Huron & Erie (total amount to June 1st is \$3737.20, which leaves a balance of \$1225.08).....	2,512.12	
30	Fee <i>re</i> sale proceedings.....	150.00	
	Allow for credit due on mortgage account as shown by statement of amounts offsetting \$77000.00 attached hereto.....	48.38	
	Amount over advanced and chargeable against mort- gage account.....	13.42	
		<hr/>	
		\$14,153.83	\$14,153.83

You will note that you now hold only a second mortgage for \$77,000.00 as of June 1st, 1925, plus the item of \$13.42 as shown by the enclosed statement, as an offset against the two original mortgages held by you and all disbursements made by you to me since June 1st, 1925.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 82.
S.
Copy of
Statement of
Disburse-
ments *re*
Buckingham
Apartments,
Received
from M. W.
Wilson,
30th Septem-
ber, 1925.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 299.
C.

Statement,
M. W.
Wilson *re*
Buckingham
Apartment
Mortgages,
30th Septem-
ber, 1925.

NOT
PRINTED.

Exhibits.
Part Ex. 299.
E.

Statement of
Durno
Mortgage
for
\$77,000.00,
30th Septem-
ber, 1925.

NOT
PRINTED.

Exhibits.
Ex. 71.
Statement of
Disburse-
ments—
M. W.
Wilson—*re*
London
Loan &
Savings Co.
and
Buckingham
Apartments,
30th Septem-
ber, 1925.

NOT
PRINTED.

Exhibits.
Part Ex. 299.
D.

Statement,
M. W.
Wilson *re*
Disburse-
ments,
Buckingham
Apartments,
30th Septem-
ber, 1925.

NOT
PRINTED.

Part Exhibit 299

(Plaintiffs' Exhibit)

C

Statement, M. W. Wilson *re* Buckingham Apartment Mortgages

NOT PRINTED.

Same as Exhibit 82 Q.

Part Exhibit 299

(Plaintiffs' Exhibit)

E

Statement of Durno Mortgage for \$77,000.

NOT PRINTED.

Same as Exhibit 82 R.

10

Exhibit 71

(Plaintiffs' Exhibit)

Statement of Disbursements—M. W. Wilson—*re* London Loan and Savings Company and Buckingham Apartments

NOT PRINTED

Same as Exhibit 82 S.

20

Part Exhibit 299

(Plaintiffs' Exhibit)

D

Statement, M. W. Wilson *re* Disbursements Buckingham Apartments

NOT PRINTED.

Same as Exhibit 82 S.

Exhibit 267

(Plaintiffs' Exhibit)

Letter, M. J. Kent to Registrar of Loan Corporations220 Dundas Street,
LONDON, Can.

Oct. 1, 1925.

Registrar,
Loan Corporations,
Toronto, Ont.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 267.
Letter,
M. J. Kent
to Registrar
of Loan
Corpora-
tions,
1st October,
1925.

10 Dear Sir :—

*Re S. B. Green & H. A. Morine, Mtges. Nos. G 41 &
G 46, \$35,000. and \$21,000. respectively*

Have just returned to business after several months' illness, and find the Company have sold the Buckingham Apartments in Toronto for \$227,500. to R. S. Durno of 392 Bay Street, Toronto, with \$3500. to be paid in cash; the assumption of the balance owing to Huron & Erie Company of \$147,000. and a mortgage back to this Company for balance \$77,000. at 7%, and in accordance with the request of your Inspectors Messrs. Harrington & Henry, "to advise you regarding all large loans", I am at once sending you this information, as the carrying out of sale means a new loan for \$77,000. to Mr. Durno.

It only came to my knowledge yesterday afternoon, that Company released good personal security for the amount of the former mortgages we held in this case of \$21,000. and \$35,000. respectively, & interest, (namely Mr. and Mrs. Morine) to which releasing I strongly object.

I presume this notification will cover any requirements of the Loan and Trust Corporations Act of 1925 to save me from any personal liability in this matter.

Yours truly,
M. J. KENT,
Manager.

30 Department of Insurance
Received
Oct. 2, 1925.
K
ONTARIO.

Deposit.....	\$ 3500.
Balance Huron & Erie Mtge.....	147000.
2nd Mortgage back.....	77000.
	<hr/>
	\$227500.

*In the
Supreme
Court of
Ontario.*

Exhibit 91

(Plaintiffs' Exhibit)

Letter, G. A. P. Brickenden & Co. to London Loan and Savings Co.

London, Canada,
October 2nd, 1925.

Exhibits.
Ex. 91.
Letter,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
2nd October,
1925.

**The London & Savings Co.,
220 Dundas Street,
City.**

Dear Sir :—

Re London Loan & Durno, Buckingham Apartments

10

We are today in receipt of a letter from M. W. Wilson enclosing Statement of Adjustments in this matter and as it speaks for itself we are enclosing herewith copy of same for your file.

Will you kindly check over these statements and advise us as to whether they are satisfactory.

Yours very truly,
G. A. P. BRICKENDEN & Co.,
Per James F. McMillan.

JFM/IS.
Encl.

Exhibit 225

20

(Defendants' Exhibit)

Copy of Letter, London Loan and Savings Company to H. A. Morine

NOT PRINTED.

Same as Exhibit 92.

Exhibits.
Ex. 225.
Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
5th October,
1925.

NOT
PRINTED.

Exhibit 92

(Plaintiffs' Exhibit)

Letter, M. J. Kent to H. A. MorineLondon, Canada,
Oct. 5, 1925.Mr. H. A. Morine,
Toronto, Ont.

Dear Sir :—

Re Buckingham Apts.

10 I understand you are collecting the rents in this case.

According to the statement there is a balance of \$629.48 still owing to complete sale to Durno of property covered by Green et al mortgages. Kindly send cheques out of rent so we may get our books entered.

Yours truly,
M. J. KENT,
Manager.E. & O. E.
K.*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 92.
Letter, M. J.
Kent to
H. A.
Morine,
5th October,
1925.**Exhibit 93**

(Plaintiffs' Exhibit)

Letter, H. R. Clewes to M. J. KentLondon, Canada,
October 5, 1925.

20

M. J. Kent, Esq.,
Mgr. London Loan & Savings Co.,
City.

Dear Sir :—

Re Buckingham Apartments, Toronto.

30 You wish a reply to your letter of October 1st regarding the above property. A few days ago we received a Deed of the above property from our solicitors, the Deed being made by R. S. Durno. We received no instructions as to what we were to do and are still awaiting same. We would be pleased to have you give us instructions as to what you wish done.

Yours very truly,
H. R. CLEWES,
Manager.

HRC/C.

Mtge. No. D 42
R. S. Durno
Oct. 6/25
Laid over.

40

Geo. G. McC.

.....
President.

Part Exhibit 13

(Plaintiffs' Exhibit)

M

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 13.
M.
Extracts
from Minute
Book of
London
Loan &
Savings Co.,
Page 638,
6th October,
1925.

**Extracts from Minute Book of London Loan and Savings Company
Minute Book, page 638**

Oct. 6, 1925.

BOARD MET—All present.

Minutes of last meeting read and confirmed.

M. Ofield & Son..... Lend \$35,000. no commission at 7%.
Buckingham Apts..... Letter read from Mr. Clewes asking for instruc- 10
tions *re* Deed and rents. Laid over.

Mtge. M. McMillan to

Durno & Son..... Purchase allowing commission of 1% to H. A.
Moline. \$1500 and interest at 7%.

M. J. Kent

Geo. G. McC.

.....
Manager......
President.

Exhibits.
Ex. 281.
Letter,
Oscar
Hudson &
Co. to
Directors,
London
Loan &
Savings Co.,
6th October,
1925.

Exhibit 281

(Plaintiffs' Exhibit)

**Letter, Oscar Hudson & Co. to Directors, London Loan and Savings
Company** 20

London, Ontario,
6th October, 1925.

President and Board of Directors
of The London Loan and Savings Company,
London, Ontario.

Dear Sirs :—

I have on two previous occasions protested against the policy of the Board in granting large loans on speculative properties. Once in a letter addressed to the President and Directors dated 6th October, 1924, (this letter was signed also by Mr. Ball) and again in a personal letter addressed to the 30 President dated 20th July, 1925. For your convenience I attach herewith copies of both these letters.

In the course of our audit it has come to my notice that the loans on Buckingham Apartments which were second and third mortgages, (the Huron and Erie Mortgage Corporation having the prior claim for \$150,000.00), have been transferred to a party named Durno; that the two former loans which amounted to \$55,000.00 have been replaced by one of \$77,000.00, and that

the security is impaired by the release of the former Guarantor from the covenant on the new mortgage.

Another loan has just been passed by the Board for \$35,000.00 on a highly speculative security, a greenhouse property situated at Grimsby, Ontario, the moral risk of which is evidently not good in view of the very heavy borrowings, while at the same time it is alleged that large profits have been derived from the operation of the business.

I hereby register a formal protest against the present Loaning policy, as it can only lead to trouble and loss for the Company, and recommend the
10 adoption by the Board of the following policy in its stead.

1—No loan will be granted in excess of, say \$15,000.00 on any one property.

2—Only loans secured by First Mortgages on approved Real Estate will be granted.

3—No loans will be granted on speculative properties.

4—That not more than 50 to 60% of the forced sale valuation will be loaned on any property.

5—That no loan will be considered, and no money advanced until the application is made on the regular printed application form of the Company, signed by the applicant in person and the certificates of
20 the valuator and solicitor are satisfactorily completed.

6—That the Directors and officers make every possible effort to realize on all the large loans which are now in arrears, both as to principal and interest, or to obtain sufficient further security to safeguard the Company's interests.

Unless I receive the assurance of the Directors that such a policy will be adopted and carried out, I regret that I will be compelled to resign my position as auditor of the London Loan and Savings Company.

Yours truly,
WM. C. BENSON.

30

Part Exhibit 254

(Defendants' Exhibit)

A

**Letter, M. J. Kent, Manager, London Loan and Savings Company, to
Martin, Currie & Co.**

Messrs. Martin, Currie & Co.,
Edinburgh, Scot.

Oct. 13, 1925.

Gentlemen :—

40 I am in receipt of your letter of the 17th ult., enclosing an extract from a further letter from your correspondent, which I presume is Mr. Maclennan.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 281.

Letter,
Oscar
Hudson &
Co. to
Directors,
London
Loan &
Savings Co.,
6th October,
1925.

—continued.

Exhibits.
Part Ex. 254.
A.

Letter,
M. J. Kent,
Manager,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
13th Octo-
ber, 1925.

In the
Supreme
Court of
Ontario.

Exhibits.
Part Ex. 254.

A.
Letter,
M. J. Kent,
Manager,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
13th Octo-
ber, 1925.

—continued.

In regard to loans to S. B. Green et al on Buckingham Apartments, I note you did not think our Vice-President's letter was a sufficient reply to your former letter.

From the tone of your letter, I feel that you are under the impression that The London Loan and Savings Company was acting from some selfish motive in connection with the sale of the Apartments, and I wish to assure you, that the action taken was under the advice of our solicitors, and purely in the interests of the shareholders and debenture holders of the Company.

The loans we held on the Buckingham Apartments fell in arrears, and because of the unsatisfactory condition of the title and because of the number of people interested, the Company were unable to secure payments, so we had to place them in our solicitors' hands for collection. 10

In accordance with the conditions in our mortgages, the property was brought to sale by public auction, which proved abortive. The purchaser has assumed the first mortgage, which has now been reduced to \$144,000. and given us a second mortgage for \$77,000. repayable in instalments with interest at rate of 7% per annum.

Apparently your informant failed to give you a copy of the abstract; the essential part of which we enclose herewith, showing the registrations that affect the Buckingham Apartments, and I would like to call your attention to the fact that to make title and secure the repayment of our mortgages, we were obliged to sell this property in order to remove a number of mechanic liens, and also a certificate of bankruptcy of S. B. Green, who had become an imbecile; and also a subsequent mortgage held by H. A. Morine for \$23,000. and registered as No. 10352 W.F. In other words, our action was forced. 20

In order to secure payment by Mr. Durno to the London L & S Company, we insisted upon a deed to the Consolidated Trusts, to be held in trust so that Mr. Durno could not sell this property to anyone without our knowledge and consent.

I am assured by our solicitors that proper notices were served on all the interested parties, and Mr. Maclennan must have had full knowledge of these facts, because he called on me and asked us to delay proceedings, but did not offer to assume our mortgages, and step into our legal position, which he could have done by the payment of approximately \$20,000. at that time. Instead of making any definite offer to us, he launched a motion in Court and secured a thirty days' stay of proceedings and when the sale took place, he did not, in the interests of his clients, nor did anyone else (some of whom were present at the sale) on behalf of the Renton interests, make any offer to purchase or protect their interests. 30

In your letter of the 17th ult., you also state "it raises questions in regard to which we should now like information as to the amount of mortgages held by your Trust Company, subject to Bonds in your favor, the value of the relative properties, etc." In reply, we hold no Bonds of the Consolidated Trusts Corporation. 40

(Written in pencil)—See letter of 16 Oct. Valn. not made for Registrar.

We are enclosing for your information, a copy of a valuation of Buckingham Apartments, which was made by an independent valuator, W. N.

Lonsdale, Esq., the Manager of Estates Department of The Toronto General Trusts Corporation for the Registrar of Loan Corporations for Ontario.

In reply to your request regarding an independent report, I am enclosing herewith a copy of the Bill No. 140 passed at the last session of the Ontario Legislature, which is an Act to amend The Loan and Trusts Corporations Act, and received the Royal assent on the 14th of April, 1925, by which you will see that the Registrar is compelled regularly to inspect our Company and prepare reports for publication, and as soon as the next one is available, we will be pleased to send it to you.

10

Yours truly,
M. J. KENT,
Manager.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 254.
A.
Letter,
M. J. Kent,
Manager,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
13th Octo-
ber, 1925.
—continued.

Exhibit 94

(Plaintiffs' Exhibit)

Letter, A. W. Dyas to Consolidated Trusts Corp.

Toronto,
Oct. 15th, 1925.

Consolidated Trusts Corp.,
London, Ont.

Exhibits.
Ex. 94.
Letter,
A. W. Dyas
to
Consolidated
Trusts Corp.,
15th Octo-
ber, 1925.

20 Dear Sir :—

Re: Buckingham Apts.

Herewith statement of rents collected for June, July, August and September and how same have been disbursed.

You will note that there is an amount of \$722.00 accumulated arrears which amount will be collected from time to time during the next couple of months as some of the tenants are slightly behind.

The Huron & Erie first mortgage account remains at \$144,000.00 as of August 7th, 1925. Payment of interest and principal will be due them on February 7th, 1926.

30

HAM/J.

Yours very truly,
A. W. DYAS.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 254

(Defendants' Exhibit)

B

Exhibits.
Part Ex. 254.

B.
Letter,
M. J. Kent,
Manager,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
16th Octo-
ber, 1925.

**Letter, M. J. Kent, Manager, London Loan and Savings Company, to
Martin, Currie & Co.**

London, Canada,
October 16th, 1925.

Messrs. Martin, Currie & Co.,
Edinburgh, Scotland.

Dear Sirs :

10

When writing to you the other day, giving you the independent valuation of the Buckingham Apartments, by Mr. Lonsdale, I omitted to state that he was not a valuator appointed by the Government, but was one obtained by the Directors of this Company. I thought you might understand from our letter, on looking it over, that Mr. Lonsdale was a Government appointee.

Yours truly,
M. J. KENT,
Manager.

K/F.

Exhibits.
Ex. 95.

Letter,
H. R.
Clewes to
M. J. Kent,
16th Octo-
ber, 1925.

Exhibit 95

(Plaintiffs' Exhibit)

20

Letter, H. R. Clewes to M. J. Kent

London, Canada,
October 16, 1925.

M. J. Kent, Esq.,
Mgr. London Loan & Savings Co.,
City.

Dear Sir :—

Re Buckingham Apts. & R. S. Durno

We enclose a letter received today from A. W. Dyas, Toronto, regarding the rents collected from the tenants in the above apartments and disposition 30 of same. We pass this letter and statement on for your information. Do we receive any remuneration in connection with this matter?

Yours very truly,
H. R. CLEWES,
Manager.

HRC/C
Enc. 1

Exhibit 96

(Plaintiffs' Exhibit)

Letter, H. A. Morine to London Loan and Savings Company

Toronto,
October 16th, 1925.

London Loan & Savings Co.,
London, Ont.

*In the
Supreme
Court of
Ontario*
—
Exhibits.
Ex. 96.
Letter,
H. A.
Morine to
London
&
Savings Co.,
16th Octo-
ber, 1925.

Gentlemen :

Re: Buckingham Apts.

10 I have looked into this matter and I can find no reason for your claim of \$600.00. When in London I checked over the mortgage account with your Mr. Crowley and the mortgage which you hold, \$77,000.00 was more than the combined mortgages which were replaced by the new mortgage. Therefore, I cannot see where your \$600.00 comes in. It will be necessary before anything else can be done for me to have further particulars as to how you work this out.

When the property was sold under Power of Sale the amount due you was stipulated and fixed in such sale, and you of course, cannot ring in anything else after that date.

20

Yours very truly,

H. A. MORINE.

HAM/J.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 287.
Deposit Slip
in London
Loan &
Savings Co.
for \$700.00,
Credit
G. A. P.
Brickenden,
10th Octo-
ber, 1925.

Exhibit 287

(Plaintiffs' Exhibit)

**Deposit Slip in London Loan and Savings Company for \$700., credit
G. A. P. Brickenden**

**LONDON LOAN AND SAVINGS CO.
of Canada**

Savings Department

.....Oct. 10.....1925

Credit G. A. P. Brickenden.....

(Re Ofield).....

10

Account No. B. 84.....

	X	1	=	
	X	2	=	
	X	5	=	
	X	10	=	
15	X	20	=	300.—
	X	50	=	
4	X	100	=	400.—

\$700.

Depositor H. M. P.....

20

Exhibits.
Ex. 97.
Letter, H. A.
Morine to
London
Loan &
Savings Co.,
30th Novem-
ber, 1925.

Exhibit 97

(Plaintiffs' Exhibit)

Letter, H. A. Morine to London Loan and Savings Company

Toronto,
November 30th, 1925.

London Loan & Savings Co.,
London, Ont.

Gentlemen :

Re: Buckingham Apartments

Kindly send me statement of the interest account in connection with the 30
above property, and oblige.

Yours very truly,
H. A. MORINE.
J.

J.

Exhibit 98

(Plaintiffs' Exhibit)

Copy of Letter, London Loan and Savings Company to H. A. Morine

Dec. 2nd, 1925.

H. A. Morine, Esq.,
Toronto, Ontario.

Dear Sir :—

Re R. S. Durno, Mtge. D.42

10 Outside of the balance owing on the agreements for purchase, and the loan on same, the arrears on the \$77,000.00 mortgage are as follows :

Overpaid.....	\$ 55.72
Interest on mortgage on overpaid from June 1 to Dec. 1/25.....	2696.96
Principal instalment.....	1000.00

Due December 1st, 1925.....	3752.68
-----------------------------	---------

and interest thereon since December 1st, at 7%.

Yours truly,

K/F.
E&OE.*Manager.***Exhibit 99**

(Plaintiffs' Exhibit)

Letter, A. W. Dyas to M. J. KentToronto,
December 7th, 1925.Mr. M. J. Kent,
London Loan & Savings Co.,
London, Ont.

Dear Sir,

Re: Buckingham Apartments.

30 Herewith cheque for \$2,696.96 covering interest account in connection with the above property, to December 1st.

If satisfactory to you, we will forward cheque to cover the instalment of principal a little later on.

Thanking you,

Yours very truly,
A. W. DYAS.AWD/J.
Encl.*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 98Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
2nd
December,
1925.Exhibits.
Ex. 99.
Letter,
A. W. Dyas
to M. J.
Kent,
7th Decem-
ber, 1925.

*In the
Supreme
Court of
Ontario.*

Exhibit 100

(Plaintiffs' Exhibit)

Exhibits.
Ex. 100.

Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Moline,
8th Decem-
ber, 1925.

Copy of Letter, London Loan and Savings Company to H. A. Morine

London,
December 8th, 1925.

H. A. Morine, Esq.,
Toronto, Ont.

Dear Sir :

Re R. S. Durno, D.42

We are in receipt of your letter enclosing cheque for \$2696.96 which we 10
have applied on account of the instalment of interest which fell due on the
above mortgage on the first of December.

The extra interest on this amount from first of December to date amounts
to \$3.60. There is a balance of \$55.72, which was over-advanced at the time
this loan was put through and there was also an instalment of \$1000.00 due
on principal to first of December. A remittance to cover this amount, at your
earliest convenience, would much oblige.

Yours truly,

H/W.

Manager.

Exhibits.
Ex. 101.
Letter, H. A.
Morine to
M. J. Kent,
9th Decem-
ber, 1925.

Exhibit 101

(Plaintiffs' Exhibit)

20

Letter, H. A. Morine to M. J. Kent

Toronto,
December 9th, 1925.

Mr. M. J. Kent,
London Loan & Savings Co.,
London, Ont.

Dear Sir,

Re: R. S. Durno D.42

In reply to yours of the 8th inst., I enclose herewith cheque for \$59.32 30
in payment of extra interest and balance of \$55.72.

Kindly acknowledge receipt of same.

Yours very truly,
H. A. MORINE.
J.

J.
Encl.

Exhibit 102

(Plaintiffs' Exhibit)

Letter, M. J. Kent to H. A. Morine

London,
December 10th, 1925.

H. A. Morine, Esq.,
Toronto, Ont.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 102.
Letter,
M. J. Kent
to H. A.
Morine,
10th Decem-
ber, 1925.

Dear Sir :

Re R. S. Durno, D.42

10 We are this morning in receipt of your letter of the 9th instant enclosing cheque for \$59.32 which we have placed to the credit of the above mortgage as follows : \$55.72 on account of principal and \$3.60 the balance of the instalment of interest which fell due on the first instant. Accept our thanks for same.

We note there was an instalment of \$1000. for principal which fell due on this mortgage on the first instant. A remittance to cover this, at your earliest convenience, would much oblige.

Yours truly,
M. J. KENT,
Manager.

H/W

Exhibit 214

(Defendants' Exhibit)

Letter, G. A. P. Brickenden & Co. to London Loan and Savings Co.

London,
December 22nd, 1925.

The London Loan & Savings Company,
City.

Exhibits.
Ex. 214.
Letter,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
22nd
December,
1925.

Dear Sirs :—

Re Buckingham Apartments; S. B. Green Loans

30 We are enclosing to you herewith three statements in connection with the sale of the above property held last Spring, being Statement of Adjustments, Statement of Disbursements and Statement of London Loan Mortgage.

Yours very truly,
G. A. P. BRICKENDEN & Co.,
Per James F. McMillan.

JFM/EM.
Encls. 3.

Exhibit 103

(Plaintiffs' Exhibit)

Letter, H. A. Morine to Consolidated Trusts Corp.Toronto,
December 24th, 1925.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 103.
Letter, H. A.
Morine to
Consolidated
Trusts Corp.,
24th Decem-
ber, 1925.

Consolidated Trusts Corp.,
London, Ont.

Gentlemen :

Kindly note that I have today forwarded to the Huron & Erie Mortgage Corp., the following policies, copies of which you will find enclosed for your 10 records :—

Royal Insurance Policy No. 285879 for \$62,500.00 expiring January 1st, 1929, covering 1623-1631 Queen Street West, in lieu of Policy 160865 expired. Prem.....	\$187.50
Royal Insurance Policy No. 285880 for \$75,000., expiring January 1st, 1929, covering 1623-1631 Queen Street West, in lieu of Policy 160866 expired. Premium.....	\$262.50
Royal Insurance Policy No. 285881 for \$62,500.00 expiring January 1st, 1929, covering 1623-1631 Queen Street West, in lieu of Policy 160867 expired. Premium.....	\$187.50 20
	<hr/>
	\$637.50

On or before January 1st next I would be very pleased if you would protect this insurance.

WISHING YOU THE COMPLIMENTS OF THE SEASON.

Yours very truly,
H. A. MORINE.
J.

J.
Encl.

Exhibit 255

(Defendants' Exhibit)

Letter, London Loan and Savings Co. to Martin, Currie & Co.

(Side notes written in pencil)

LONDON, Can.,
January 13th, 1926.

Messrs. Martin, Currie & Co.,
55 Queen Street,
Edinburgh, Scotland.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 255.
—
Letter,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
13th Janu-
ary, 1926.

10

Dear Sirs :

I am in receipt of your letter of the 17th of December last, and have carefully noted the contents of same.

20

In connection with clause 1, I very much regret the delay complained of, but it was certainly unavoidable. There were, no doubt, routine letters sent out from Company's office during the period I was laid up of which I had no knowledge, and to which my name was signed by the Accountant. During the months mentioned in your letter, I was repeatedly assured by my attending physician that I would be able to return to the office in the course of a few weeks, which ultimately ran into months; and even after my return to the office it took a considerable length of time to get in touch with matters which had taken place during my absence.

30

In regard to clause 2, referring to large mortgages made since 1922. Outside of those mentioned in your letter, the following are the only large loans Company have made : No. T.11 Turnbull Elevator Co., of Toronto, on property situated on John and Richmond Streets in that city. The loan was for \$110,000., bearing interest at 7¼%, and the property is valued at \$335,000. The principal on this mortgage has been reduced by cash payments to \$97,671.90, with no arrears of interest thereon, interest being paid to August, 1925. This is an A.1 investment and could be disposed of very readily if we were willing to take our money.

? 1st mortgage.

40

? arrears of
Int. % of loan
to valn. too
high.

No. L.43 Samuel H. Lumb, on the Donland Apartments, situated at the corner of Danforth and Donland Avenues in the City of Toronto. This loan was for \$70,000. bearing interest at 7% payable quarter-yearly, and consists of stores and apartments above. The property is valued at \$118,500. by Mr. W. N. Lonsdale. No. O.10 M. Ofield & Sons, loan of \$35,000., rate 7%, on greenhouse property at Grimsby,

} Pre-
sume
1st
mort-
gage.

? arrears.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 255.
Letter,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
13th Janu-
ary, 1926.

—continued.

? do.

? whose
personal
security.

Ontario, valued at \$150,000. by H. M. Mulholland.

No. W.54 Weismiller & MacKenzie, loan for \$25,000. at 7% quarter-yearly, on a new solid brick garage in the City of Toronto, valued by Mr. W. N. Lonsdale at \$54,000.00 on Yonge Street. I certainly had nothing to conceal regarding these loans, and it was an oversight that I did not mention them in my previous letter.

Pre-
sume
1st
mort-
gage.

10

In regard to clause 3, dealing with the valuation of the Buckingham Apartments, this was a building loan and the cost of same very much exceeded the expectation of the mortgagors when the construction of the building was undertaken. Since the loan was negotiated, and the building completed, there has been a substantial slump in Real Estate values, but the value quoted at the time the loan was passed was fairly safe (considering the excellent nature of the personal security behind the loan) as has since been borne out by the revenue receivable. Upon this loan falling in arrears, Company in due course took steps to sell the property under their mortgage, and upon taking this action, we were approached by subsequent mortgagees to postpone the sale of same, as they did not consider the conditions, just at that time, conducive to a favourable sale. The matter went so far the fourth mortgagee, represented by J. J. MacLennan, Solicitor of Toronto, took steps and secured, through the courts, a month's extension of time, in which he expected to adjust matters and complete payment for the property. Failing in this, Company continued the auction sale, which proved abortive, and it was subsequently sold to R. S. Durno, who is a building contractor, residing in the City of Toronto, and reputed to own several other properties in that city. He is not a nominee or employee of the London Loan & Savings Company. The loan of \$77,000., bearing interest at 7%, which we have on this property is in good shape, and shows no arrears of interest.

20

30

In regard to clause 5, I quite concur with your suggestion that Real Estate holdings should be shown in our Balance Sheet, under that heading, rather than under the heading of Mortgages, and we are changing our books accordingly.

40

In regard to clause 6, Mr. H. A. Morine says he was a mortgagee of this property behind W. L. Renton, and we knew no Scotch investors in this matter. W. L. Renton evidently was fifth mortgagee, and when the property was

sold by us, his, and all subsequent claims, were cut out. The explanation given by Mr. Morine as to why the property was transferred to him by S. B. Green, was because S. B. Green owed Mr. Morine \$35,000., which he had advanced on the Buckingham Apartments for building purposes, and, Mr. Green not having paid his accounts for the construction of the building, a large number of liens were placed on the property, and the property was uncompleted. Hence, Green transferred the property to Morine, who cleaned up the liens and finished the buildings, and paid the accounts. Green subsequently went insolvent.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 255.
Letter,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
13th Janu-
ary, 1926.

10

disapprove of
debs. for 1
year @ 6½%
while other
Deb. hrs.
only getting
5¼%

In regard to clause 7, in connection with the deal of \$145,000. with the Bank of Commerce. These were our one year debentures, as follows :

—continued.

- No. 1828 for \$10,000.00 @ 6½%
- “ 1829 for \$10,000.00 @ “
- “ 1830 for \$10,000.00 @ “
- “ 1831 for \$10,000.00 @ “
- “ 1832 for \$10,000.00 @ “
- “ 1833 for \$10,000.00 @ “
- “ 1834 for \$10,000.00 @ 6½%
- “ 1835 for \$10,000.00 @ “
- “ 1836 for \$10,000.00 @ “
- “ 1837 for \$10,000.00 @ “
- “ 1838 for \$25,000.00 @ “
- “ 1845 for \$25,000.00 @ “

20

held by them, and which have since been paid off. In Mr. Baker's letter to you he inadvertently called the same an *overdraft* instead of debentures.

30

In regard to an inspection of our books and accounts by Messrs. Riddell, Stead, Graham & Hutchison, we have no objection whatever to this suggestion, providing the cost, if any, to us is reasonable, and we will be glad to assist them and furnish them with all the information and particulars which they may require, and which we feel should have the effect of establishing your confidence to such an extent that we may look forward to doing an increased business with you in the future.

40

If there are any questions in your letter that I have failed to answer, or any other information which you desire, I will be glad to furnish same upon request. We have endeavoured to cover, in this reply, answers to all your inquiries, and if we have overlooked any, we will be glad to supply any lacking information.

According to the new law, the Government were to make out a yearly report of Loan Companies, giving all

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 255.
Letter,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
13th Janu-
ary, 1926.

—continued.

Too far
back to be
of use.

details of their securities, which would be of interest to investors, and cover the points mentioned in your letter; and I fully intended sending you one of them as soon as ready, but, unfortunately, there has been delay in the Department, and they are only now getting them printed, for the year 1924. The government statement for 1924 has not yet been issued.

Yours very truly,
M. J. KENT, |
Manager. |

10

K/F.

Exhibits.
Part Ex. 118.
B.

Letter,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
2nd Febru-
ary, 1926.

Part Exhibit 118

(Plaintiffs' Exhibit)

B

Letter, G. A. P. Brickenden & Co. to London Loan and Savings Co.

London, Canada,
February 2nd, 1926.

The London Loan & Savings Company,
City.

Dear Sirs :—

Re R. S. Durno, Buckingham Apartments.

20

We enclose herewith Certificate of Title in connection with the above matter.

Yours very truly,
G. A. P. BRICKENDEN & CO.
Per James F. McMillan.

JFM/EM.
Encl.

Exhibits.
Part Ex. 118.
C.

Certificate of
Title *re*
Durno
Mortgage,
2nd Febru-
ary, 1926.

Part Exhibit 118

(Plaintiffs' Exhibit)

C

Certificate of Title *re* Durno Mortgage

CERTIFICATE OF TITLE

IN THE MATTER OF the title to parts of Lots Numbers Two (2) and Three (3), according to Plan Number 512 and of part of Lot Number Sixteen (16), Plan 457, in the Registry Office for Toronto, more particularly described in a certain Mortgage from R. S. Durno to yourselves, registered as Number 11078 W.F., AND IN THE MATTER OF the said Mortgage.

30

We hereby certify that we have investigated the title to the above mentioned property including and subsequent to your two registered Mortgages, Numbers 8318 W.F. and 8716 W.F., and find the same good and sufficient for the purposes of the Mortgage referred to in the heading of this Certificate and that the said Mortgage now forms a first charge on the said lands.

DATED at London this 2nd day of February, 1926.

G. A. P. BRICKENDEN & CO.

By James F. McMillan.

TO :

10 The London Loan & Savings Company of Canada.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 118.
C.
Certificate of
Title *re*
Durno
Mortgage,
2nd Febru-
ary, 1926.

—continued.

Exhibit 104

(Plaintiffs' Exhibit)

Letter, M. J. Kent to H. A. Morine

London, Canada,
February 5th, 1926.

H. A. Morine, Esq.,
Toronto, Ontario.

Exhibits.
Ex. 104.
Letter, M. J.
Kent to
H. A.
Mordine,
5th Febru-
ary, 1926.

Dear Sir :

R. Durno.

20 I have just received a bill from Mr. Baker, Manager of the Huron & Erie Mortgage Corporation, at Toronto, through the Consolidated Trusts Corporation, asking for an interest payment of \$5400.00 and an instalment of principal, \$3000.00, in all \$8400.00, as payment on their mortgage against the Buckingham Apartments. Have you funds to pay this? Advise at once what we shall do.

Yours truly,
M. J. KENT,
Manager.

K/F.

30

6 mos. on \$144,000)	
at 7½% to 7/2/26) =	\$5400.
Prin.....	3000.
	—————
in all.....	\$8400.
due 7/2/26—	

*In the
Supreme
Court of
Ontario.*

Exhibit 105

(Plaintiffs' Exhibit)

Letter, H. A. Morine to M. J. Kent

Exhibits.
Ex. 105.
Letter, H. A.
Mordine to
M. J. Kent,
6th Febru-
ary, 1926.

Toronto,

February 6th, 1926.

Mr. M. J. Kent,
London Loan & Savings Co.,
London, Ont.

Dear Sir,

Re Buckingham Apartments.

10

In reply to yours of the 5th inst. *re* Huron & Erie statement, the interest does not fall due until the 7th and we are entitled to thirty days which would bring it to March 7th.

We are now collecting the February rents which we anticipate will be finally cleaned up next week, when we will send you a statement up to and including February rents together with expenditure, etc., and the balance will go forward to you for payment of the Huron & Erie statement. You will hear from us during the coming week with the statement above referred to.

Yours very truly,

H. A. MORINE.

20

J.

HAM/J.

144000	
	7½%
<hr/>	
10080	
	720
<hr/>	
2)10800	
5400	Int. 6 mos.
3000	Prin.
<hr/>	
\$8400.—	in all, as on notice.

30

Exhibit 202

(Plaintiffs' Exhibit)

*In the
Supreme
Court of
Ontario.***Extract from Annual Report of London Loan and Savings Co. to
Department of Insurance for 1925**Exhibits.
Ex. 202.
Extract from
Annual
Report of
London
Loan &
Savings Co.
to Depart-
ment of
Insurance
for 1925,
27th Febru-
ary, 1926.**Loan Corporations.**Name of Corporation The London Loan & Savings Company
of Canada**ANNUAL STATEMENT**10 Required to be made under the provisions of The Loan and Trust Corpora-
tions Act, R.S.O. 1914, Chapter 184,
and Amendments thereto.

For the Year Ending 31st December, 1925.

Department of Insurance,
Parliament Buildings,
Toronto.R. Leighton Foster,
Registrar of Loan
Corporations.This statement to be filled in and returned in triplicate accompanied by the
filing fee and three certified copies of the printed statement to shareholders
to the Department of Insurance on or before 1st March, 1926.20 Name of Corporation—The London Loan & Savings Co. of Canada.
Head Office—220 Dundas St., London, Ont.
Date of Incorporation—**OFFICERS**

(As at date of filing statement)

President—GEO. G. McCORMICK
Vice-Presidents—T. BAKER
W. E. ROBINSONManager—M. J. KENT
Secretary—M. J. KENT**DIRECTORS**

(As at date of filing statement)

30 GEO. G. McCORMICK.....President.
T. BAKER.....1st Vice-President.
W. E. ROBINSON }2nd Vice-President.
C. R. HUNT }
M. J. KENT.....Managing Director.

AUDITORS

W. C. BENSON, C.A.

P. D. BALL.

CAPITAL

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 202.

Extract from
Annual
Report of
London
Loan &
Savings Co.
to Depart-
ment of
Insurance
for 1925,
27th Febru-
ary, 1926.

—continued.

Amount of Capital Stock authorized.....		\$1,000,000.00	
Amount subscribed :—			
Preferred.....		\$ Nil	
Ordinary.....		892,600.	
		<hr/>	892,600.00
Amount paid in cash :—			
Preferred.....		\$ Nil	
Ordinary :—			
On \$891,050. stock fully called.....		\$891,100.	
On \$ nil stock nil % called.....			
On \$ 1,550. instalment stock.....		471.	
		<hr/>	891,571.00

10

LIST OF STOCKHOLDERS
(As at December 31st, 1925)

To be furnished in a separate schedule provided herewith.

In the Annual Return for 1925 the R. S. Durno mortgage for \$77,000. is listed under "Mortgage Loans," and is included in the listing of many 20 other Mortgage loans.

The listing appears under Loan No. D.42 as follows :

Name of Mortgagor and Address	Original Principal	Amt. of any additional advances or chgs.	Amt. of Inst. of principal due but unpaid	Amt. of Int. due and un- paid whether Cap. or not	Interest accrued	Total Amt. at which Corp. books	Amt. of any prior chgs. or mtges.
D.42 R. S. Durno, 392 Bay St., Toronto, Ont. Pts. lots 2, 3, Plan 512; Pt. lot 16, Plan 457; Nos. 1622-1631 Queen St. W.	77,000.00	637.50	1,000.00		506.30	77,000.00	147,000.00

30

Exhibit 106

(Plaintiffs' Exhibit)

Letter, M. J. Kent to H. A. Morine

London, Canada,
March 2nd, 1926.

H. A. Morine, Esq.,
Toronto, Ontario.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 106.
Letter, M. J.
Kent to
H. A.
Morine,
2nd March,
1926.

Dear Sir :

Re Buckingham Apartments.

10 On the sixth ultimo you wrote me that you would send, I presume to the Consolidated Trusts Corporation, a statement of rents, so that a payment could be made to the Huron & Erie Mortgage Corporation, on their mortgage. I presume it will come right away, otherwise we will be charged 8%, which means a lot on such a large deal.

Yours truly,
M. J. KENT,
Manager.

K/F.

Exhibit 107

(Plaintiffs' Exhibit)

Letter, H. A. Morine to M. J. Kent

Toronto,
March 3rd, 1926.

Mr. M. J. Kent,
London Loan & Savings Co.,
London, Ont.

Exhibits.
Ex. 107.
Letter, H. A.
Morine to
M. J. Kent,
3rd March,
1926.

20

re D.42.

Dear Sir,

Re Buckingham Apartments.

30 The mortgage held by the Huron & Erie Mortgage Corp. does not provide for any default. The rate is 7½% without the usual penalty of ½%.

The statement of rents and disbursements up to and including March is going forward to you this week. I have been holding this statement up waiting for collection of March rents and February arrears.

Yours very truly,
H. A. MORINE.

HAM/J.

In the
Supreme
Court of
Ontario.

Exhibit 108
(Plaintiffs' Exhibit)

Letter, A. W. Dyas to Consolidated Trusts Corp.

Toronto,
March 4, 1926.

Exhibits.
Ex. 108.
Letter, A. W.
Dyas to
Consolidated
Trusts Corp.,
4th March,
1926.

Consolidated Trusts Corp.,
London, Ont.

Gentlemen :

Re Buckingham Apartments.

Herewith statements of rents collected and disbursements in connection 10
with the above property, from the date of the last statement sent to you,
September, 1925.

You will note that we have paid out a very large amount for up-keep,
fuel, etc., which is always very heavy at this time of the year. You will notice
also an item of Six hundred odd dollars for decorating which was necessary
in view of the new tenants, it being two years since the last decorating was
done. You will also see there was an amount paid on account of taxes, and
\$200.00 for exterminating, made necessary by conditions usual in apartments
every two or three years on account of bugs, etc.

There is a very considerable amount owing and outstanding against 20
rents which will be paid no doubt during the month of March and April.

After having paid the Huron & Erie Mortgage Corp. the amount necessary
to take care of their interest, we have arranged to allow the principal install-
ment of \$3,000. to remain unpaid at present but it will be met at a later date.
If, however, you wish to step in and pay this principal and charge it up against
your mortgage, you are at liberty to do so; but in the meantime, I would say
*that in view of the fact that the expenses for the various up-keep of the prop-
erty which is extremely high from the First of October to April that you let
this stand, as I think we will be able to take care of the payment in the course
of the next couple of months, and also take care of the interest payment due 30
the London Loan & Savings Company in June out of the revenue. As above
stated, disbursements are down to a minimum from April until October, while
they are at their maximum from October to April. It has just been such
that having a capital expenditure as outlined above and a large interest falling
due in December, 1925, which was paid to the London Loan & Savings Com-
pany, and another large interest falling due this month, that it has burdened
the expenditure all at one time.

In addition, as is the case in all apartments, there are a number of vacan-
cies, but the apartments are gradually becoming filled and I anticipate at a
very early date to have every apartment taken. 40

Yours very truly,
A. W. DYAS.

AWD/J.

*As already understood, property may be otherwise disposed of at an
early date.

Exhibit 109

(Plaintiffs' Exhibit)

Letter, H. R. Clewes to London Loan and Savings Co.London, Can.,
March 6th, 1926.The Manager,
London Loan & Savings Co.,
City.*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 109.
Letter, H. R.
Clewes to
London
Loan &
Savings Co.,
6th March,
1926.

Dear Sir :—

10

Re Buckingham Apartments, Toronto.

We enclose a letter dated March 4th addressed to us by A. W. Dyas, Toronto, regarding the collection of the rents and disbursements made in connection with the above apartments, and also a complete statement of all rents and disbursements made by Mr. Dyas from September last to date.

Yours very truly,
H. R. CLEWES,
Manager.

HRC/C.
Enc.

20

Exhibit 197A

(Plaintiffs' Exhibit)

Report of Riddell, Stead, Graham & Hutchison, re Accounts of London Loan and Savings Co.**THE LONDON LOAN AND SAVINGS COMPANY OF CANADA****REPORT ON INVESTIGATION OF ACCOUNTS**

31st December, 1925.

Toronto,
18th March, 1926.30 Messrs. Martin, Currie and Company,
55 Queen Street West,
Edinburgh, Scotland.Exhibits.
Ex. 197A.
Report of
Riddell,
Stead,
Graham &
Hutchison re
Accounts of
London
Loan &
Savings Co.,
18th March,
1926.

Dear Sirs,

In accordance with your instructions we have examined the books and accounts of The London Loan and Savings Company of Canada, as at 31st December, 1925. In view of the fact that the Company's accounts had been audited by the shareholders' auditors we confined our work largely to an

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 197A.
Report of
Riddell,
Stead,
Graham &
Hutchison *re*
Accounts of
London
Loan &
Savings Co.,
18th March,
1926.

—continued.

enquiry into the values of the various assets taking such steps to verify them as we thought necessary. You will find attached hereto the following statements:—

- | | | |
|-------------|--|----|
| Exhibit "A" | Balance Sheet of The London Loan and Savings Company of Canada, as at 31st December, 1925. | |
| Exhibit "B" | Revenue and Expenditure Account of The London Loan and Savings Company of Canada, for the year ended 31st December, 1925. | |
| Exhibit "C" | Balance Sheet of The Consolidated Trusts Corporation, as at 31st December, 1925. | 10 |
| Exhibit "D" | Revenue and Expenditure Account of The Consolidated Trusts Corporation, for the year ended 31st December, 1925. | |
| Schedule 1. | Overdue Mortgages of The London Loan and Savings Company of Canada, as at 31st December, 1925. | |
| Schedule 2. | Mortgage loans of \$20,000.00 and over of The London Loan and Savings Company of Canada, as at 31st December, 1925. | |
| Schedule 3. | Percentages of Liquid Assets and Mortgages, Agreements of Sale and Real Estate held for sale as at 31st December, 1923, 1924 and 1925. | 20 |

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA

BALANCE SHEET

Cash on Hand, \$11,520.94: We counted the cash on hand on 20th February, 1926, and found it to be correct.

Cash in Bank, \$8,499.90: We received certificates from the Company's Bankers in confirmation of this amount.

Dominion of Canada Victory Bonds, \$102,822.37: We received a certificate from the Bank of Montreal, London, Ontario, confirming that the foregoing bonds were deposited with them for safe keeping. The market value of these securities at 31st December, 1925, was \$105,587.50. 30

Canadian Municipal Debentures, \$961.23: We examined these and found them to be in order.

Stocks of Loan Companies, \$299,766.20: The following are particulars of the stocks included in the foregoing amount:—

	No. of Shares held	Par Value	Book Value in- cluding accrued interest, 31st December, 1925	Market Value, 31st December, 1925			<i>In the Supreme Court of Ontario.</i>
				Price	Amount		Exhibits. Ex. 197A. Report of Riddell, Stead, Graham & Hutchison <i>re</i> Accounts of London Loan & Savings Co., 18th March, 1926.
Ontario Loan and Debenture Com- pany.....	1939	\$193,900.00	\$181,952.20	100	\$193,900.00		
10 Huron and Erie Mortgage Cor- poration.....	1000	100,000.00	117,814.00	126 $\frac{5}{8}$	126,625.00		
		<u>\$293,900.00</u>	<u>\$299,766.20</u>		<u>\$320,525.00</u>		— <i>continued.</i>

It will be noticed that the market value exceeded the book value by approximately \$20,000.00. On 26th February, 1926, these stocks had appreciated still further, when the Ontario Loan shares were quoted at \$104.00 and the Huron and Erie shares at \$130.00.

In the Company's published accounts, the investment in its subsidiary company, the Consolidated Trusts Corporation, is included in "Stocks of Loan and Trust Companies." It appears to us, however, that since the Com-
20 pany owns 2,493 of the 2,851 $\frac{1}{2}$ shares issued, this investment should be treated as part of the permanent or capital assets of the Company. Moreover, it is not a revenue producing asset, and not readily saleable. Therefore, we have thought it advisable to show it as a separate item among the assets that are less readily realisable instead of grouping it with the Ontario Loan and the Huron and Erie shares.

Loans on Collateral Security, \$11,610.95: The whole of this amount is payable on demand with the exception of a loan of \$700.00 payable on the 25th of April, 1926. We examined the securities held for each loan and they appeared to be sufficient. Some of these securities consist of the Company's
30 own debentures. The aforesaid loans include advances amounting to \$3,800.00 on the security of the Company's stock, and of which \$2,000.00 is owing by Mr. M. J. Kent, the General Manager. These loans are gradually being paid off, having been reduced from \$8,300.00 since 31st December, 1924.

Promissory Notes of Estates Holding Company, Limited, \$15,000.00. This asset consists of three notes payable on 5th March, 1926, 1927 and 1928 respectively with interest at 6% per annum. They were received in part settlement of the amount due from the Imperial Loan and Investment Com-
40 pany, and which was guaranteed by Sir Henry Pellatt. Details of the settlement with this debtor are given in a succeeding paragraph. We are informed by Mr. G. T. Clarkson, F.C.A., trustee for the Estates Holding Company, that the note maturing on 5th March, 1926, will be paid and he expects that the other two will be paid at maturity.

*First Mortgages, \$1,843,958.22; Second Mortgages, \$194,613.80; Agree-
ments for Sale, \$95,391.45:* We examined the title deeds, valuator's reports

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 197A.
Report of
Riddell,
Stead,
Graham &
Hutchison re
Accounts of
London
Loan &
Savings Co.,
18th March,
1926.

—continued.

and solicitors' certificates relating to the majority of the loans comprising these balances, including all the loans listed in Schedules Nos. 1 and 2 and we examined each loan account in the Mortgage Ledger. Interest accrued to 31st December, 1925, is not included in the foregoing balances, it being the policy of the Company to take credit only for interest actually paid.

Particulars of loans overdue as to principal or interest will be found in Schedule No. 1. The total amount of these loans is \$794,112.71 which is about one-third of the mortgages and agreements for sale held. The majority of the overdue loans are not seriously in arrear and are well secured. So far as we could ascertain, delinquent debtors are not reported systematically to the directors and it appeared to us that there was some laxity in collecting accounts. We draw the following loans to your attention as being in a very unsatisfactory condition:—

William H. Biggs, (B 46) \$18,000; Mrs. Eva Biggs, (B 47) \$12,000.00; William H. Biggs, (B 78) \$13,210.00: The first two of these loans were made for building purposes. The amounts borrowed were insufficient to complete the buildings and the third was made to enable the work to be finished and it covers all of Mr. Biggs' properties. We are informed that Mr. Biggs is endeavouring to sell one of the buildings in order to pay off the arrears. Advances on building loans should only be made as the work progresses and precautions should be taken to see that the original loan is sufficient for the proposed construction. It would appear, therefore, that these loans were not properly supervised.

Norman Baird (B 62 and B 79), \$55,291.74: The valuation on which these advances were made amounted to only \$73,150.00 and the security comprising shops, apartments and a garage, was not, in our opinion, sufficient for the original advance of \$40,000.00. The value of buildings of this kind depends largely upon the revenues which they yield and is therefore subject to fluctuation. This was a building loan and we are of the opinion that it was not properly supervised.

R. S. Durno (D 42), \$77,000.00: The security for this loan is the Buckingham Apartments. We obtained the history of the transaction from Mr. McCormick, the President of the Company, Mr. Brickenden, the Company's solicitor, from Mr. Morine, who introduced the loan, and from the correspondence and documents on file. Mr. Samuel B. Green, of Toronto, a well-known contractor, was engaged in building the Buckingham Apartments. He went to Mr. H. A. Morine of Toronto, a financial agent, to arrange his building loans, and out of which Mr. Morine was to be paid a commission. Morine secured an advance of \$150,000.00 from the Huron and Erie Mortgage Corporation on a first mortgage dated 7th February, 1923, but the Mortgage Company insisted that Mr. Morine's name be on the covenant. It was then arranged that Mr. Morine should receive one-half interest in the property for \$35,000.00 which he says he paid to Mr. Green without receiving any security. On 13th February, 1923, Morine arranged a second mortgage loan of \$35,000.00 from The London Loan and Savings Company. In May, 1923, a further advance of \$21,000.00 was obtained. Shortly afterwards Morine discovered that a large number of construction accounts were unpaid and which Mr. Green

could not discharge. It was then agreed that Green should release his interest in the property to Morine, who would pay the outstanding bills. Mr. Morine states that he advanced about \$50,000.00 for this purpose, making his personal investment \$85,000.00. He then interested W. L. Renton in the property and agreed to give him one-half interest for an advance of \$46,000.00 but on condition that Morine's name should not be on the covenant. Morine thereupon conveyed the property to his son-in-law, Mr. Dyas, who gave the mortgage to Mr. Renton. Mr. Morine says he applied some of the money received from Renton in payment of the remaining bills for construction, leaving his net investment

10 in the property, exclusive of interest, at \$48,000.00. The building was completed in the autumn of 1923 but difficulty was found in obtaining tenants at the rentals required. The first and second mortgages fell into arrear and Morine came to the conclusion that there was no equity in the property. When sale proceedings were instituted early in 1925, Morine decided not to bid for it. The sale was fixed for 25th April, 1925; but on application to the Court by the Renton interests, it was postponed for one month. It was held on 23rd May, 1925, when no bids were received. Subsequently, it was sold by private sale to R. S. Durno of Toronto, a contractor, the consideration being the assumption of the Huron and Erie Mortgage for \$147,000.00, The London

20 Loan and Savings Company's mortgage for \$77,000.00, and payment of \$3,500.00 in cash, a total of \$227,500.00. The cash was used to pay the costs of the transaction and some arrears of interest on the Huron and Erie loan to 1st June, 1925. A conveyance to the Consolidated Trusts Corporation was made to prevent Durno dealing with the property without the consent of the Loan Company. The charges which increased the Company's mortgage to \$77,000.00 are shown in the following summary :

		1923		
	G 41	23rd March	Cash Advance.....	\$35,000.00
		1925		
30		28th May	Paid Principal, Huron and Erie.....	3,000.00
			Paid Interest, Huron and Erie, to 7th February, 1925.....	6,961.63
		1st June	Interest to date, London Loan Company, capitalized.....	3,600.37
				<hr/>
				\$48,562.00
			Paid Mechanics' Liens.....	4,194.00
				<hr/>
				\$52,756.00
		1923		
40	G 42	22nd May	Cash Advance.....	\$20,000.00
		29th December	Cash Advance.....	1,000.00

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1925			
1st June	Interest to date, capitalized.....	3,299.72	
		24,299.72	
			\$77,055.72
28th December	Cash.....		55.72
			\$77,000.00

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There appears to be no explanation why the Company should have sacrificed the personal covenant of Morine, who is reputed to be a wealthy man. Renton's actions appear to have been very ill advised. The sale to Durno, while the consideration has little more than the assumption of the mortgages, nevertheless takes the property off the Company's hands and provides someone to look after it. We asked Mr. Morine if he now had any interest in the property and he replied that he had none. His son-in-law, Mr. Dyas, is, however, collecting the rents for Durno. 10

This, also was a building loan subject to a very large first mortgage. The money was advanced before the building was completed, suggesting lack of supervision, as in the previous instances. There has been a shrinkage in value, due to the fact that the revenues from the property are not proportionate to the cost. It may yet be early to form an opinion as to how the investment will turn out, but it is possible that the property is not now worth \$227,500.00, 20 the price paid by Durno, and which is only slightly in excess of the total mortgage principal outstanding.

*Imperial Loan and Investment Company (I 3), \$12,465.41: *There is no security for this debt and it should not have been retained as an asset. We are informed that it will be written off in the current year. The following is a summary of the account for the past five years :*

*Verified from Corp. letters.

1921			
1st January, Balance.....		\$61,744.55	
<i>Add:</i>			30
Interest to 31st December, 1921, capitalized.....	\$ 5,697.17		
Law costs incurred, 1923, 1924 and 1925.....	2,540.11		
Taxes to 31st December, 1924.....	2,837.00		
		\$72,818.83	
<i>Deduct:</i>			
Cash on Account received January, 1921.....	\$ 3,000.00		
Cash, Lyndhurst Lot, received 1925.....	14,314.60		
Cash, 400 shares Toronto City Estates, received 1925.....	3,976.00		
Notes, Estates Holding Company, received in 1925.....	15,000.00		40
Reserve for Mortgages, 1925.....	24,062.82		
		60,353.42	
		\$12,465.41	
	<i>Balance, 31st December, 1925.....</i>		

The history of this transaction begins with the purchase in 1916 of bonds of the par value of \$60,000.00 of the Russian Government (due in 1921) for account of the Imperial Loan and Investment Company. Sir Henry Pellatt guaranteed payment and gave as collateral a mortgage on some vacant land on Lyndhurst Avenue in Toronto and 400 shares of Toronto City Estates, Limited. The Imperial Loan and Investment Company refused to take the bonds and successfully defended their position in an action brought by the London Loan and Savings Company. A settlement was made with Sir Henry Pellatt by agreement dated 10th October, 1924, whereby Pellatt assigned
 10 to a company, known as the Estates Holding Company, Limited, certain assets to be liquidated and distributed among his creditors at the rate of thirty cents on the dollar. Pellatt released to the Company all his interest in the Russian Bonds as well as the collateral security and admitted the Company's claim at \$50,000.00. Pursuant to this agreement the Company received the three notes of \$5,000.00 each of the Estates Holding Company, Limited already referred to, and sold the aforesaid shares and the land, the mortgage on the latter being in arrears. The notes and the proceeds of the collateral were credited to the account, as shown in the foregoing statement, leaving a balance due to the Company of \$36,528.23, of which \$24,062.82 was written
 20 off to Reserve for Mortgages and the balance of \$12,465.41 was carried forward.

Patrick Lambert (L 23 and L 26), \$37,712.00: The security for the foregoing loans consists of a shop and apartment property situated on Danforth Avenue, Toronto, valued at the time the loan was made at \$60,000.00. The original loan was for \$40,000.00. There has been a considerable decline in property values on Danforth Avenue due to the fact that there are too many shops for the population adjacent. In our opinion it will be difficult to sell this property for the amount of the loan.

Harry Lucas (L 28 and L 31), \$60,000.00: This is a Danforth Avenue loan and it seems unlikely that the security would at the most realise any
 30 more than the bare amount of the advances.

Harry Lucas (L 35 and L 35½), \$57,000.00: This is a second mortgage loan on another Danforth Avenue property. The erection of these buildings containing shops of which there are too many in the district, appears to have been a somewhat speculative investment. We are of the opinion, therefore, that this loan should not have been made. At present the rents are being collected by Messrs. Mills, Raney and Company, a firm of solicitors in Toronto in whom we have confidence and who have informed us that the rentals are sufficient to pay the interest on the mortgages.

Samuel H. Lumb, \$67,706.11: This loan was made in 1925 on Danforth
 40 Avenue property. It was a building loan and the building was not completed before the money was advanced. As explained in Schedule No. 2, it has been arranged to sell the property to the Kingsdale Land Company, and, if carried out, the loan should be well secured.

Wrights, Limited (W 3), \$26,254.56: The mortgagors are a real estate company in Toronto who develop and sell sub-divisions of suburban property. The foregoing sum is the balance of a loan of \$125,000.00 made in 1913. The principal is being reduced as the lots are sold, the practice being to give a

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partial discharge of the mortgage covering each lot sold on payment of a certain sum. In 1923, \$2,240.00 was received; in 1924, \$5,600.00; and in 1925, \$5,050.00 Interest has been paid to 1st April, 1925, by being capitalized.

Wrights, Limited (W 4), \$4,651.87: This mortgage was given on 1st July, 1918, to secure past due interest at that date on the preceding property (W 3). Interest has been paid to 1st July, 1924, by being capitalised.

Wrights, Limited (W 6), \$2,996.55: This mortgage was given on 1st January, 1919, to secure past due interest at that date amounting to \$2,749.88 and \$246.67 respectively on the two foregoing mortgages, W 3 and W 4. Interest has been paid to 1st July, 1924.

It was impossible to secure a valuation of the property covered by the mortgages, W 3, 4 and 6, owing to the large number of lots which have been sold.

Mortgage Loans of \$20,000.00 and over, \$982,170.75: The amount invested in loans of \$20,000.00 and over, particulars of which are given in Schedule No. 2, is nearly one-half the total amount of the mortgages and agreements for sale. We have no hesitation in saying that the proportion of large loans is much too high. The only form of real estate which is readily saleable is residential property. Large loans are nearly always on such buildings as apartments, shops, garages, warehouses and factories. Even when conditions are most favourable there are few buyers for such properties and large loans thereon tend to become "frozen."

Replying to our enquiries, Mr. McCormick assured us that the Company would not in any circumstances lend again on second mortgages and, as regards large loans, although he did not expect any losses from the present investments, they would pursue a much more conservative policy in future.

Loans made in 1925: We looked carefully into the loans made in 1925, having particular regard to Mr. Kent's letter of April 3rd, 1926, in which he stated that it was the Company's policy to reduce its lending "to 50 per cent, as nearly as possible, of valuations received." We found that the 1925 loans appeared to be satisfactory with the exception of that to Samuel H. Lumb, on which we have commented earlier in this report. The amount loaned was in several cases as high as 60 per cent of the value of the property. Mr. McCormick informed us that the Company would endeavour to keep their loans within 50 per cent of valuations and would not in any case exceed 60 per cent.

Reserve for Mortgages, \$4,103.96: This is the balance of the foregoing reserve after charging thereto the sum of \$24,062.82 which was written off the Imperial Loan and Investment Company Account and after transferring \$6,243.52 to Profit and Loss Account. The Reserve for Mortgages Account is credited with bonuses and discounts on Mortgages. Sometimes a mortgage is purchased at a discount; or the mortgage is granted for a larger amount than that advanced; or a bonus is paid by a mortgagor for the privilege of paying off his loan before maturity. The practice has been to credit Profit and Loss Account with one-fifth of these earnings and the remainder is used as a Reserve for losses on mortgages. In 1924 the sum of \$22,812.86 was transferred to Profit and Loss Account in order to equalise profits. The entry was reversed at 1st January, 1925.

Real Estate Held for Sale, \$84,475.36: This is the amount owing for principal upon loans on properties, possession of which has been taken by the Company owing to default. Accrued interest has not been included, but arrears of taxes and legal fees paid by the Company have been added. There can be no objection to this policy provided the valuations are sound. We draw your attention to the following loans which have been transferred to Real Estate Account.

Alex. Palmer (P 11), \$43,918.63: This is the book value of a property consisting of shops and apartments at 617-619 Danforth Avenue, Toronto and made up of the original advance of \$40,000.00 made in April, 1924, and sundry charges totalling \$3,918.63 since added. The property was valued in 1923 by H. A. Morine at \$65,000.00 but a subsequent valuation by Mr. Wright, of Wrights, Limited, made in 1925, was \$37,600.00. Rents collected amounting to \$1,882.38 are on deposit in Savings Account.

Roberts Construction Company (R 34), \$5,032.27: This is the book value of house number 458 Brunswick Avenue, Toronto, valued at \$21,700.00 and subject to a first mortgage of \$12,250.00. Rents collected amounting to \$643.60 are on deposit in Savings Account.

Roberts Construction Company (R 35), \$5,032.29: This is the book value of house number 460 Brunswick Avenue, Toronto, and, like the preceding property, valued at \$21,700.00, subject to a first mortgage of \$12,500.00. Rents collected amounting to \$674.46 are on deposit in Savings Account.

Mrs. Amy E. Taylor (T 18), \$4,138.63: This is the book value of a house in London, Ontario, valued at \$5,500.00. Rents collected amounting to \$557.63 are on deposit in Savings Account.

The remaining items in the Real Estate for Sale Account are individually small in amount. Many of the properties held are suburban lots and it is difficult to estimate their realisable value. We recommend, however, that a substantial reserve of not less than one-quarter of the total book value of the Real Estate held for sale should be provided.

Office Building, \$85,000.00: This building was purchased in 1906 for \$47,000.00. The cost of alterations and improvements amounting to \$16,000.00 was capitalized, and in 1921 a safety deposit vault was added at a cost of \$22,000.00. It is a four-storey brick building, 54 feet, 4 inches in width, and 130 feet in depth, situated on the corner of Dundas Street and Park Avenue, London, Ontario, in the centre of the business section. Part of the ground floor and part of the second floor are occupied by the Company and by The Consolidated Trusts Corporation: the remainder of the building is rented to various tenants. The property is assessed at \$90,500.00 for municipal rates, and it appears to be worth much more than the book value. It is, however, an old building and the upper floors have not been kept in a good state of repair. No reserve has been provided for depreciation.

(Written in pencil. See page 16)

Investment in Consolidated Trusts Corporation, \$286,695.00: The Company holds 2,493 shares in this Corporation, the par value of which is \$249,300.00. The book value of the shares, therefore, is \$37,395.00 in excess of the par value, and which is equivalent to about 40 per cent of the Reserve Fund and

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surplus revenue of the Trusts Corporation. This value is, perhaps, not excessive since the net assets of the Trusts Corporation appear to be worth the combined amounts of its Capital, Reserve Fund and Surplus revenue. The Trusts Corporation is, however, a comparatively new organization, and its earnings are small.

2,473 shares were bought prior to 1922 at par, and 20 shares were bought in 1924 at \$115.00 per share, making a total cost of \$249,600.00. The 2,473 shares were written up by \$49,460.00 in 1922 to \$120.00 per share and were written down again in 1923 by \$12,365.00 to \$115.00 per share.

Other Assets, \$2,687.20: This balance is made up of the following items: 10

Cash Surrender Value of an Insurance Policy on the Life of George G. McCormick.....	\$2,640.00
Transfer Stamps.....	47.20
	\$2,687.20

LIABILITIES

Bank of Scotland, \$14,469.03: We have verified this liability by a certificate received from the Bank of Scotland, who have also certified that they hold 1,600 shares of the Ontario Loan and Debenture Company and £50,000.00 London Loan and Savings Company of Canada Land Mortgage Debenture as security for the foregoing advances. 20

Accrued Interest on Debentures, \$10,327.63: The foregoing amount is less than the amount shown in the Company's published balance sheet by \$1,488.25. The difference is the amount of interest accrued on the Special Debentures, which is accumulated and is not payable until the maturity of the debentures. We have added it, therefore, to the debenture principal.

Savings Bank Deposits, \$658,694.31: Interest accrued to 31st December, 1925, is included in this amount. The depositors would rank equally with the debenture holders in case of a liquidation. There are no specific assets earmarked for either class of creditors. According to law, deposits up to \$500.00 can be withdrawn on thirty days' notice, up to \$2,000.00 on sixty days' notice, 30 and over \$2,000.00 on ninety days' notice. In practice these rules are not adhered to, but they could be enforced if there was a run on the bank.

Deposits as Security for Mortgages, \$71,061.59: Frequently where the Company lends on second mortgage, it withholds an amount sufficient to pay the balance owing on the first mortgage and which it places to the credit of the borrower in Savings Account. The foregoing sum is made up of deposits of this kind and of moneys received as part payment of instalments of interest and principal due. You will see examples of these deposits in our remarks in Schedules Nos. 1 and 2. The amounts received for interest should properly be taken into Revenue but this has not been done. Interest to 31st December, 40 1925, has been credited to this account.

Capital Stock Issued, \$891,571.00: Of the 17,852 shares issued, the following are held by the Directors in their own names:

George G. McCormick.....	815 Shares
M. J. Kent.....	737 Shares
Thomas Baker.....	30 Shares
W. E. Robinson.....	190 Shares
Charles R. Hunt.....	25 Shares
	1,797 Shares

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Mr. G. A. P. Brickenden, solicitor for the Company, holds 214 shares, and his wife, Mrs. Catharine Brickenden, a daughter of Mr. George G. McCormick, the President, holds 330 shares. Other relatives of the Directors hold over
10 2,500 shares.

Dividends, \$62,409.91: The Company pays dividends at the rate of 7 per cent per annum.

—continued.

REVENUE AND EXPENDITURE ACCOUNT

Interest on Mortgages and Agreements for Sale, \$154,395.59: This represents interest paid to the Company in cash. Interest accrued to 31st December, 1925, which the Company estimates would amount to \$67,000.00, has not been taken into the accounts.

Interest on Currency Debentures: Interest on Sterling Debentures: These are now being issued at the following rates of interest :

20	Currency Debentures :
	Short Term Debentures (2 years and under) 5 per cent
	Long Term Debentures (over 2 years).....5½ per cent
	Sterling Debentures.....5¼ per cent

Interest on Savings Bank Deposits: Interest is paid at the rate of 4 per cent per annum.

Discounts on Second Mortgages, \$6,243.52: Where the Company buys a second mortgage or lends on second mortgage, the amount advanced is usually less than the principal secured. It has been the Company's practice to credit these discounts to Reserve for Mortgages Account. At 31st December, 1925,
30 the whole amount so reserved was transferred to Profit and Loss Account.

Profit on Sale of Shares in the Huron and Erie Loan Corporation, \$7,904.00: At 31st December, 1925, the Company sold 608 Huron and Erie shares to the Consolidated Trusts Corporation at \$128.00 per share, and which were held in the books at \$115.00 each. As the Consolidated Trusts Corporation is a subsidiary Company, the foregoing amount is not in reality a realised profit. We remarked on pages 2 and 3 of this report that the market value of these shares was \$126⅝ per share at 31st December, 1925, rising later to \$130.00.

CONSOLIDATED TRUSTS CORPORATION

We made our examination of this Company's accounts sufficiently compre-
40 hensive to satisfy ourselves as to the value of the Loan Company's investment therein.

BALANCE SHEET

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The Balance Sheet of the Trusts Corporation is divided into three sections, as required by Statute. The first section contains the Corporation's own Assets, Liabilities and Capital. The second section shows the amount of Trust Funds, repayment of which is guaranteed by the Corporation. The Corporation earns a profit on these Funds by investing them at a higher rate of interest than it pays to the lenders. The third section contains a summary of the Estates, Trusts and Agency Accounts, for which the Corporation acts as Executor, Trustee, or Agent receiving a fee for its services.

ASSETS OWNED BY THE COMPANY

10

—continued.

Mortgages, Principal Only, \$142,078.55: We found the loans comprising this balance to be in good standing both as to principal and interest with a few minor exceptions. It was apparent that an effective system of supervising the loans was in operation in this department. Only interest actually received has been taken into the accounts.

London Loan and Savings Company, 1,391 shares (par value \$50.00), \$76,252.75: The value at which these shares are held is equivalent to \$54.82 per share. A price of \$45.50 per share was bid for this stock at 31st December, 1925, but as it is not listed on the Stock Exchanges, the quotation is not necessarily a reliable indication of its value.

20

Huron and Erie Mortgage Corporation, 608 shares (par value \$100.00), \$77,824.00: These shares were purchased from the Loan Company for \$128.00 per share. We have already commented on their value earlier in this report.

Bonds and Debentures, \$8,450.00: The following are the items making up this investment:

	Par Value	Book Value	Market Value 31st December, 1925	
Imperial Russian Gold Bonds, due 1921.....	\$71,000.00	\$7,450.00	\$10,840.00	30
City of London, Ontario, 6% Debentures due 30th June, 1926.....	1,000.00	1,000.00	1,000.00	
		<u>\$8,450.00</u>	<u>\$11,840.00</u>	

GUARANTEED INVESTMENT ACCOUNT

Mortgages, Principal Only, \$61,245.00: Our preceding remarks on the Corporation's mortgages are also applicable to these advances.

ESTATES, TRUSTS AND AGENCY ACCOUNT

We made certain test checks of the assets pertaining to this department.

GENERAL

Policy: It appears to us that in the last four years the Company has been investing in loans of a speculative character and now has too many large mortgages. The object no doubt was to secure the higher interest rates that such loans yield. As already stated, Mr. McCormick informed us that the Company's policy would be more conservative in future. Under the provisions of the Trusts and Loan Companies Act of Ontario, Loan Companies are subjected to inspection by the Government in addition to the shareholder's audit. The Departmental view is hostile to large loans and we are informed
10 that the Registrar has criticised the Company because of the large amount so invested and has intimated that such loans will not be admitted in future. We understand that the majority of these loans have been introduced by Mr. H. A. Morine, large commissions being paid to him by the borrowers.

Position of the Company: In the paragraphs dealing with the Balance Sheet, we have given such information as will no doubt reassure you as to the solvency of the Company. It may suffer some losses on some of the large overdue loans or on some others which may fall into arrears at a later date, or on the sale of the Real Estate and we think that a substantial reserve should be provided for such contingencies. On the other hand, there are certain
20 assets not disclosed on the Balance Sheet, such as the accrued interest on mortgages, and the excess of the market values over the book values of the Huron and Erie and Ontario Loan shares, the Victory Bonds and possibly the Office Building.

In Schedule 3 will be found a statement, showing the percentages which the Liquid Assets and the Mortgages, Agreements for Sale and Real Estate Held for Sale bear to the Deposits, to the Debentures and to the Deposits plus the Debentures, at 31st December, 1923, 1924 and 1925. The trend as shown by the percentages in the Schedule is not very marked but it would appear to be toward a less liquid position. The percentage of Mortgages to
30 Deposits and Debentures increased from 125 per cent in 1923 to 133 per cent in 1925, while the percentage of Liquid Assets declined from 27.2 per cent in 1923 to 25.3 per cent in 1925. However, the liquid position shows an improvement in 1925 over 1924.

Acknowledgment: In conclusion we wish to say that the officers of the Company afforded us every opportunity to make a thorough inspection of the Company's books and records, and that Mr. Hambly, the Company's accountant, was at great pains to explain every transaction referred to him. Mr. Hambly, who has been recently appointed, appeared to us to be a competent accountant, and is making certain changes in the bookkeeping methods,
40 which will facilitate the control and supervision of the mortgage investments.

Reported by

(Copy) RIDDELL, STEAD, GRAHAM & HUTCHISON

Chartered Accountants.

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**THE LONDON LOAN AND SAVINGS COMPANY OF CANADA,
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BALANCE SHEET AS AT 31ST DECEMBER, 1925

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ASSETS			
Current Assets :			
Cash :			
On Hand.....	\$ 11,520.94		
Bank of Montreal.....	8,499.90		
	\$ 20,020.84		
Dominion of Canada Victory Bonds..	102,020.00		10
Add: Accrued Interest.....	802.37		
	102,822.37		
Canadian Municipal Debentures.....		961.23	
Stocks of Loan Companies.....	\$294,286.07		
Add: Dividends Accrued.....	5,480.13		
	299,766.20		
Loans on Collateral Security.....	\$ 11,275.00		
Add: Accrued Interest.....	335.95		
	11,610.95		
	\$ 435,181.59		20
Promissory Notes of Estates Holding Company, Limited.....		15,000.00	
First Mortgages.....	\$1,843,958.22		
Second Mortgages.....	\$194,613.80		
Deduct: Reserve for Mortgages.....	4,103.96		
	190,509.84		
Agreements for Sale.....		95,391.45	
	2,129,859.51		
Real Estate held for sale.....		84,475.36	
Office Building.....		85,000.00	30
Investment in Consolidated Trusts Corporation....		286,695.00	
Other Assets.....		2,687.20	
		\$3,038,898.66	

EXHIBIT "A"

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA,
LONDON, ONTARIO

BALANCE SHEET AS AT 31ST DECEMBER, 1925

LIABILITIES

Current Liabilities :			
	Bank of Scotland Loan.....	\$ 14,469.03	
	Accrued Interest on Debentures.....	10,327.63	
	Reserve for Dominion Income Tax.....	10,000.00	
10		<hr/>	\$ 34,796.66
	Savings Bank Deposits.....		658,694.31
	Deposits as security for Mortgages.....		71,061.59
	Debentures :		
	Canadian Currency.....	\$410,699.55	
	Sterling.....	493,045.57	
	Accumulating.....	30,838.79	
		<hr/>	934,583.91
	Rents received in advance.....		193.32
	Capital and Surplus :		
20	Capital Stock :		
	Issued : 17,852 shares of \$50.00 each.....	\$892,600.00	
	<i>Deduct:</i> Amount due from Share- holders.....	1,029.00	
		<hr/>	\$891,571.00
	Reserve Fund.....	440,000.00	
	Profit and Loss :		
	Balance, 1st January, 1925.....	\$ 3,796.74	
	<i>Add:</i> Profit for the year ended 31st December, 1925.....	76,611.04	
		<hr/>	\$ 80,407.78
30	<i>Deduct:</i>		
	Dividends.....	\$62,409.91	
	Reserve for Dominion Income Tax.....	10,000.00	
		<hr/>	72,409.91
			<hr/>
			7,997.87
			<hr/>
			1,339,568.87
			<hr/>
			\$3,038,898.66
			<hr/>

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EXHIBIT "B"

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA,
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REVENUE AND EXPENDITURE ACCOUNT FOR THE YEAR ENDED
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Revenue :

Interest :

On Bonds and Stocks.....	\$ 25,052.64	
On Loans.....	1,263.16	
On Bank Deposits.....	92.45	10
On Mortgages and Agreements for Sale.....	154,395.59	
	<u> </u>	\$180,803.84

Rents :

Office Building.....	\$ 11,123.48	
Safety Deposit Vault.....	708.10	
	<u> </u>	11,831.58

Miscellaneous Receipts.....

115.79

 \$192,751.21

Expenditure :

Interest on Debentures :

Canadian Currency.....	\$24,570.38	
Sterling.....	26,509.24	
Accumulating.....	1,554.59	
	<u> </u>	\$ 52,634.21

Interest on Savings Bank Deposits..... 31,306.55

Interest on Bank Loans..... 3,892.10

 \$ 87,832.86

General and Administrative Expense :

Salaries,—Management.....	\$ 6,000.00	
Salaries,—Office.....	9,165.62	30
Directors' Fees.....	5,100.00	
Commissions on Loans.....	2,179.38	
Travelling Expense.....	95.02	
Life Insurance.....	753.58	
Office Supplies.....	967.14	
Advertising.....	613.64	
Postage, Telegraph and Express.....	469.93	
Legal Fees.....	1,166.60	
Auditor's Fees.....	1,600.00	
Dominion Income Tax.....	5,367.85	40
Provincial Tax.....	2,030.36	
Municipal Taxes.....	4,292.03	
Heating, Lighting and Maintenance of Office Building.....	5,025.13	
	<u> </u>	44,826.28

 132,659.14 \$ 60,092.07

Other Revenue :			
Discounts on Second Mortgages.....	\$ 6,243.52		<i>In the Supreme Court of Ontario.</i>
Profit on Sale of Shares in the Huron and Erie Loan Corporation.....	7,904.00		— Exhibits. Ex. 197A.
Appreciation of Loan Company Stocks.....	720.00		Report of Riddell, Stead, Graham & Hutchison re Accounts of London Loan & Savings Co., 18th March, 1926.
Mortgage previously written off, recovered	1,651.45		
		<u>16,518.97</u>	
<i>Net Profit, per Balance Sheet.....</i>		<u>\$ 76,611.04</u>	

EXHIBIT "C"

10 THE CONSOLIDATED TRUSTS CORPORATION,
LONDON, ONTARIO

BALANCE SHEET AS AT 31ST DECEMBER, 1925

ASSETS

Assets Owned by the Company :			
Cash in Banks.....	\$ 37,063.22		
Advances :			
Guaranteed Investment Account.....	\$ 9,208.49		
Estates, Trust and Agency Accounts..	600.00		
		<u>9,808.49</u>	
20 Bonds and Debentures.....	8,450.00		
Stocks :			
London Loan and Savings Company of Canada, 1,391 shares of \$50.00 par value.....	\$ 76,252.75		
Huron and Erie Mortgage Corporation, 608 shares of \$100.00 par value.....	77,824.00		
		<u>154,076.75</u>	
Mortgages—Principal only.....	142,078.55		
		<u>\$ 351,477.01</u>	
30 Guaranteed Investment Account :			
Cash in Bank.....	\$ 200.00		
Mortgages—Principal only.....	61,245.00		
		<u>61,445.00</u>	
Estates, Trusts and Agency Account :			
Cash and Investments.....	897,052.25		
		<u>\$1,309,974.26</u>	

—continued.

LIABILITIES

Direct Liabilities of the Company :			
Provision for Government Taxes.....	\$	1,000.00	
Deferred Interest.....		83.33	
Reserve Fund.....		90,000.00	
Capital Stock Paid Up :			
Subscribed.....	\$285,150.00		
<i>Less: Amounts due by subscribers....</i>	<i>27,151.11</i>		
		<u>257,998.89</u>	
Profit and Loss Account :			
Balance, 1st January, 1925.....	\$	4,755.17	10
<i>Add: Net Profit for year ended</i>			
31st December, 1925.....		12,639.62	
		<u>\$ 17,394.79</u>	
<i>Deduct: Transferred to Reserve</i>			
Fund.....		15,000.00	
		<u>2,394.79</u>	
			<u>\$ 351,477.01</u>
Guaranteed Investment Account :			
Guaranteed Investments.....	\$	52,236.51	20
Advance from Company's own funds.....		9,208.49	
		<u>61,445.00</u>	
Estates, Trusts and Agency Accounts :			
Trust Funds.....	\$896,452.25		
Advance from Company's own funds.....		600.00	
		<u>897,052.25</u>	
			<u>\$1,309,974.26</u>

EXHIBIT "D"

THE CONSOLIDATED TRUSTS CORPORATION,
LONDON, ONTARIO

30

REVENUE AND EXPENDITURE ACCOUNT FOR THE YEAR ENDED
31ST DECEMBER, 1925

Revenue :			
Interest and Dividends :			
On Mortgages.....	\$9,839.01		
On Bonds and Debentures.....	5,263.25		
On Bank Balances.....	643.37		
On Advances to Trust Accounts.....	108.93		
On Stocks.....	4,864.99		
Profit on Guaranteed Investments.....	1,325.85		40
		<u>\$22,045.40</u>	

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 197A.
Report of
Riddell,
Stead,
Graham &
Hutchison re
Accounts of
London
Loan &
Savings Co.,
18th March,
1926.
—continued.

	Agency Fees and Commissions.....	2,486.54	
	Miscellaneous Revenue.....	231.20	
		<u> </u>	\$24,763.14
	Expenses :		
	Rent (paid to London Loan and Savings Company of Canada).....	\$ 3,000.00	Exhibits. Ex. 197A. Report of Riddell, Stead, Graham & Hutchison <i>re</i> Accounts of London Loan & Savings Co., 18th March, 1926.
	Salaries.....	5,016.00	
	Directors' Fees.....	1,075.00	
	Auditors' Fees.....	400.00	
10	Printing and Stationery.....	354.87	
	Telegrams, Telephone and Express Charges.....	147.87	
	Advertising.....	334.77	
	Commissions paid on loans and on sale of Real Estate.....	274.96	
	Taxes.....	1,330.19	
	Miscellaneous.....	189.86	
		<u> </u>	12,123.52
	<i>Net Profit, per Balance Sheet.....</i>		<u> </u> <u> </u> \$12,639.62

—continued.

SCHEDULE 1.
 THE LONDON LOAN AND SAVINGS COMPANY OF CANADA, LONDON, ONTARIO
 MORTGAGES OVERDUE AT 31ST DECEMBER, 1925

Reference		Interest Rate	Principal, 31st Decem- ber, 1925	Valuation	Remarks
A 12	F. Walczah Farm.	7½%	\$ 5,801.00	\$ 9,400.00	Interest is paid to date; three payments of \$300.00 each on account of principal are overdue.
B 2	Col. A. E. Belcher, Property in Southampton, Ontario.	8 %	2,128.60	3,200.00	Interest is paid to date; principal is overdue. There is \$27.81 in Savings Account.
B 27	Mrs. Nellie K. Bougard, Warehouse and Offices, 331-3 King Street West, Toronto.	8 %	13,231.89	20,500.00	Six months' interest to 13th September, 1925, is unpaid.
B 31	George B. Beattie, Store, 563 Danforth Avenue, Toronto.	7½%	13,866.00	25,000.00	Six months' interest, due 6th October, 1925, paid 4th January, 1926. \$500.00 due on principal is unpaid. There is \$97.51 in Savings Account.
B 46	Wm. H. Biggs, Apartment Building, 116 Elm- wood Ave., London, Ontario.	7½%	18,000.00	31,800.00	Interest in arrears since 14th November, 1924, and four payments of \$250.00 each on principal overdue.
B 47	Mrs. Eva V. Biggs, (wife of Wm. H. Biggs), Apart- ment Building, 315-319 Ridout Street, London, Ontario.	7½%	12,000.00	21,000.00	This is a second mortgage; the first mortgage is for \$2,000.00 and for which there is \$2,015.06 in Savings Account as collateral. Interest is paid to date, but nothing has been paid off the principal, \$450.00 being overdue.
B 78	Wm. H. Biggs, On 4 apartment buildings in London, Ontario	8 %	13,210.00		
	(1) 114 Elmwood Avenue			13,700.00	Subject to a first mortgage for \$7,000.
	(2) 116 Elmwood Avenue			31,800.00	Subject to foregoing mortgage B 46.
	(3) 315-319 Ridout Street			21,000.00	Subject to foregoing mortgage B 47.
	(4) 311-313 Ridout Street			14,800.00	Subject to a first mortgage for \$10,000.00. This mortgage is repayable in monthly instalments of \$250.00 to
	Forward			\$ 78,237.49	

Reference		Interest Rate	Principal, 31st December, 1925	Valuation	Remarks	
		Forward	\$ 78,237.49			
B 78	Wm. H. Biggs (Cont'd)				include principal and interest. The amount due at 31st December was \$3,250.00, of which only \$400.00 has been paid.	
B 57	Richard A. Bayly, Residential Property, London, Ontario.	7 %	3,198.55	\$ 3,270.00	Interest for the quarters ending 3rd October, 1925, and 3rd January, 1926, is unpaid; also \$100.00 of principal is overdue.	
B 62	Norman Baird, Toronto Property.	8 %	40,000.00	73,150.00	See Schedule 2.	
B 79	Norman Baird, Toronto Property (B 62)	10 %	15,291.74	73,150.00	See Schedule 2.	
B 67	Thomas Baker London Property.	A Director	7 %	1,350.00	2,400.00	Interest is unpaid for year ended 31st December, 1925.
B 68	Thomas Baker London Property.		7 %	900.00	2,400.00	One year's interest is unpaid.
B 77	Mrs. Charlotte Brown, Property in Corunna, Ontario.	8 %	5,500.00	9,900.00	Interest is paid to date. An instalment of principal, \$500.00, is overdue.	
D 33	Dale Furniture Company, Toronto Property.	7½%	39,076.37	76,000.00	See Schedule 2.	
D 42	R. S. Durno, Buckingham Apartments, Toronto.	7 %	77,000.00	310,400.00	See Schedule 2.	
G 52	Mrs. Florence Graham, London Property.	8 %	205.00	2,400.00	Six months' interest due 1st September, 1925, is unpaid. The second mortgage is expected to pay this loan off.	
H 28	Joseph Hillis, London Property.	8 %	2,477.00	3,000.00	Interest has not been paid since 11th January, 1925, but there is \$171.26 in Savings Account.	
		Forward	\$263,236.15			

Reference		Interest Rate	Principal 31st December, 1925	Valuation	Remarks
		Forward	\$263,236.15		
H 44	A. T. Heintzman, Vacant Land in Township of York, near Toronto.	7 %	2,848.00	\$ 5,948.00	Interest for the quarter ended 30th November, 1925, has not been paid.
I 2	Eli Jenkins, Farm.	8 %	1,025.50	2,000.00	Nothing has been paid on this mort- gage since 20th May, 1924.
I 3	Imperial Loan and Investment Company (Sir Henry Pellatt)		12,465.41		See Schedule 2.
J 19	Harry H. Jewell, Property in Steelton, Ontario.	9 %	550.00	1,800.00	Six months' interest to 3rd November, 1925, is unpaid.
K 17	E. B. Knight, Farm.	8 %	1,779.00	2,700.00	Interest is in arrears since 17th Janu- ary, 1924. There is \$75.21 in Savings Account.
K 26	W. A. Kyro, Farm.	9 %	119.90	3,800.00	Nothing has been paid for principal or interest since 29th August, 1922.
L 20	Mrs. D. V. W. Lizmore, Dwelling in Westminster Town- ship (near London).	8 %	1,000.00	1,950.00	Six months' interest to 26th July, 1925, is unpaid, and the interest due 26th January, 1926, is also in arrears.
L 21	Charles S. Lucas, Store, 704 Danforth Avenue, Toronto.	8 %	4,839.00	25,000.00	This loan is subject to a first mortgage for \$11,800.00. There is one year's interest overdue. The first mortgage is also overdue and the Company intend to purchase it, so as to protect their own mortgage. There is \$76.45 in Savings Account.
L 23	Patrick Lambert, 636-640 Danforth Avenue,	7½%	22,400.00	60,000.00	See Schedule 2.
L 26	Patrick Lambert, 636-640 Danforth Avenue, Toronto.	7½%	15,312.00		See Schedule 2.
		Forward	<u>\$325,574.96</u>		

Reference		Interest Rate	Principal 31st December, 1925	Valuation	Remarks
		Forward	\$325,574.96		
L 27	Patrick Lambert, 628-634 Danforth Avenue, Toronto.	7½%	11,445.76	\$ 75,000.00	Interest is in arrears since 19th September, 1924, and insurance premiums amounting to \$330.00 included in the principal are unpaid.
L 28	Harry Lucas, Stores, 741 Danforth Avenue, Toronto.	7½%	40,000.00	90,000.00	See Schedule 2.
L 31	Harry Lucas, Stores, 741 Danforth Avenue, Toronto.	10 %	20,000.00		See Schedule 2.
L 35	Harry Lucas, Stores, 676-8 Danforth Ave., Toronto.	7½%	45,000.00	199,500.00	See Schedule 2.
L 35½	Harry Lucas, Stores, 676-8 Danforth Ave., Toronto.	10 %	12,000.00		See Schedule 2.
L 43	Samuel H. Lumb, Apartment, Stores, Danforth Avenue, Toronto.	7 %	67,706.11	105,000.00	See Schedule 2.
Mc 25	Mrs. Margaret McMillan, London Property.	8 %	2,700.00	5,900.00	Six months' interest to 1st October, 1925, is unpaid.
Mc 31	Mrs. Joan A. McRae, Residential Property, Toronto.	7½%	12,532.00	25,000.00	Interest for six months due 26th December, 1925, is unpaid and \$1,000.00 is overdue on account of principal.
Mc 34	John McEachern, Property in Annabel Township.	8 %	750.00	1,500.00	Interest is in arrears since 20th December, 1923. There is \$18.34 in Savings Account, and a chattel mortgage for \$360.00 is held as collateral.
		Forward	\$537,708.83		

Reference		Interest Rate	Principal 31st December, 1925	Valuation	Remarks
	Forward		\$537,708.83		
Mc 37	Dr. Walter McKeown, Farm Property in Dunwich, Ontario.	7 %	1,500.00	\$ 2,500.00	One year's interest to 2nd November, 1925, is unpaid.
N 15	James Neilson, London Property.	7½%	1,700.00	2,250.00	Interest is in arrears from 25th June, 1924. There is \$98.91 in Savings Account. The tenant is now paying the rent direct to the Loan Company at \$22.00 per month.
N 17	James Neilson, Property as in N 15.	7 %	300.00		Interest is in arrears from 25th June, 1924.
N 18	James Neilson, Property as in N 15 and N 16.	7 %	300.00		Interest is in arrears from 25th June, 1924.
O 2	Ontario Market Gardens (Dr. Walter McKeown), Farm.	8 %	957.13	3,000.00	Six months' interest due 4th Septem- ber, 1925, unpaid. There is \$7.45 in Savings Account.
P 29	Wm. Pillsworth, London Property, (same as P 29).	6 %	1,100.00	2,800.00	Six months' interest due 12th October, 1925, is unpaid. There is \$324.38 in Savings Account to be applied on mortgages P 29 and P 36.
P 36	Wm. Pillsworth, London Property.	7½%	815.00		Interest in arrears from 13th February, 1925, and a payment of \$50.00 prin- cipal, due 13th August, 1925, has not been received.
P 31	Miss Myrtle M. Penniman, Farm.	8 %	970.00	1,600.00	Interest is in arrears from 21st January, 1925.
P 40	Julius Pearlman, Store, 525 Danforth Avenue, Toronto.	7½%	15,000.00	27,000.00	Interest is paid to date but two quarterly payments of \$100.00 each on account of principal are overdue.
	Forward		\$560,350.96		

Reference		Interest Rate	Principal 31st December, 1925	Valuation	Remarks
		Forward	\$560,350.96		
R 23	Roberts Brothers, House, 211 Evelyn Crescent, Toronto.	7½%	8,350.00	\$ 17,000.00	Six months' interest due 7th December, 1925, and 3 instalments of principal of \$150.00 each are overdue.
S 3	Alex. Strachan, Property in Southampton, Ontario.	8 %	950.00	1,500.00	Six months' interest due 15th December, 1925, and three payments of \$50.00 each on account of principal are unpaid. There is \$36.13 in Savings Account.
S 37	Robert W. Shaw, Foundry, London, Ontario.	8 %	5,693.04	30,000.00	Nothing has been paid either for principal or interest since the date of the advance, 1st May, 1923. Disbursements for insurance and legal expenses totalling \$693.04 have been added to the principal. This loan has been involved in litigation, in which the Company has been successful. It is expected that payment will now be made. It is apparently well secured.
S 38	Suydam Realty Company, Apartment Building, Toronto.	7½%	49,000.00	90,000.00	See Schedule 2.
S 41	James C. Suydam, Apartment Building, Toronto.	7½%	20,350.00	50,000.00	See Schedule 2.
S 49	Charles Speers, House, 41 Humbercrest Ave., Humber Bay, Toronto.	8 %	1,649.57	2,850.00	Interest is in arrears from 1st February, 1924. Legal expense, \$149.57 is included in the principal.
S 60	Thomas Simpson, Dwelling in Fort William, Ontario.	9 %	1,000.00	1,900.00	Interest is paid to date; \$200.00 principal, is overdue. There is \$10.50 in Savings Account.
		Forward	\$647,343.57		

Reference		Interest Rate	Principal 31st December, 1925	Valuation	Remarks
	Forward		\$647,343.57		
T 11	Turnbull Elevator Company, Limited, Factory, Toronto.	7¼%	97,671.90	\$335,818.00	See Schedule 2.
W 3	Wrights, Limited, Princess Subdivision on North Yonge Street, near Toronto.	10 %	26,254.56		See foregoing report.
W 4	Wrights, Limited, Princess Subdivision on North Yonge Street, near Toronto.	10½%	4,651.87		See foregoing report.
W 6	Wrights, Limited, Princess Subdivision on North Yonge Street, near Toronto.	10½%	2,996.55		See foregoing report.
T 21	Charles W. Pugsley, London Property.	8 %	3,750.00	6,500.00	Six months' interest and \$50.00 principal, due 28th October, 1925, are unpaid. There is \$40.26 in Savings Account.
T 23	George Turner, Toronto Property.	8 %	350.50	1,000.00	Six months' interest due 1st November, 1925, is unpaid. There is \$6.41 in Savings Account. This mortgage is overdue.
W 14	Wm. J. Wilkey, London Property.	6½%	1,779.41	2,800.00	Monthly payments comprising principal and interest totalling \$365.00 are in arrears. This property has been transferred to Real Estate since 31st December, 1925.
W 21	Charles B. West, London Property.	8 %	2,000.00	3,000.00	Interest is paid to date; \$350.00 is overdue on account of principal. There is \$33.65 in Savings Account.
W 47	Mrs. Phoebe Wilkins, Property in Steelton, Ontario.	8 %	851.20	1,200.00	The loan was originally for \$500.00. Taxes and insurance have been added.
	Forward		\$787,649.56		

Reference		Interest Rate	Principal 31st December, 1925	Valuation	Remarks
	Forward		\$787,649.56		
W 47	Mrs. Phoebe Wilkins (Cont'd) Property in Steelton, Ontario				Interest is in arrears from 1st November, 1924. This property has been transferred to Real Estate since 31st December, 1925.
W 49	Daniel C. Wade, London Property.	7 %	1,863.00	\$ 1,900.00	The debtor has paid nothing for principal or interest since the loan was made on 17th June, 1924. There is \$947.75 in Savings Account as collateral.
W 50	H. I. Williams, Dwelling, in Township of York, near Toronto.	8 %	1,400.15	2,500.00	Interest is paid to date; \$180.00 principal is overdue.
W 53	John F. Wallace, London Property.	7 %	3,200.00	6,100.00	Six months' interest and \$50.00, principal, due 1st November, 1925, are unpaid.
			\$794,112.71		

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In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 197A.
Report of
Riddell,
Stead,
Graham &
Hutchison re
Accounts of
London
Loan &
Savings Co.,
18th March,
1926.
—continued.

*In the
Supreme
Court of
Ontario.*

THE LONDON LOAN AND SAVINGS
MORTGAGE LOANS OF \$20,000.00

Exhibits. Ex. 197A. Report of Riddell, Stead, Graham & Hutchison re Accounts of London Loan & Savings Co., 18th March, 1926.	Reference Number	Mortgagor	Property	Amount Outstanding 31st Decem- ber, 1925	Valuation	Interest
	B 62	Norman Baird.	Garage, Stores and Apartments, Bloor Street and Lansdowne Avenue, Toronto.	\$ 40,000.00	\$ 73,150.00	8%, half-yearly
	B 79	Norman Baird.	Garage, Stores and Apartments, Bloor Street and Lansdowne Avenue, Toronto.	15,291.74		10%, half-yearly
	B 76	Mrs. Rebecca Persiko.	Apartment House, Lamb Avenue, Toronto.	22,500.15	35,000.00	7%, half-yearly
	C 14	Dr. W. J. Cook.	Property in Sudbury, Ontario	43,300.00	75,000.00	8%, half-yearly
	D 33	Dale Furniture Company.	Warehouse, 107 McGill Street, Toronto.	39,076.37	76,000.00	7½%, half-yearly
	D 35	Danforth, Woodbine Theatre, Limited.	Moving Picture Theatre on Danforth Avenue, Toronto.	40,050.00	127,900.00	8%, half-yearly
	D 40	Rowland G. Darby.	Moving Picture Theatre, Bloor Street West, Toronto	25,309.50	38,150.00	7½%, half-yearly
	D 42	R. S. Durno.	Buckingham Apartments, Queen St. West, Toronto	77,000.00	310,400.00	7%, half-yearly
	K 33	Kingsdale Lands, Limited	Lots 14, 15, 16, 17, Plan D 1413, and part lots 7 and 8, Plan D 1413; vacant land, Austin Terrace, Toronto	20,000.00	37,670.00	6½%, half-yearly
	K 34	Kingsdale Lands, Limited	Lots 18 to 21 inclusive, Plan D 1413, and part lots 8 and 9, Plan D 1413	21,000.00		6½%, half-yearly
	L 22	Lyric Theatre Company, Limited.	Moving Picture Theatre in Kitchener, Ontario	55,000.00	126,000.00	7½%, half-yearly
				Forward	\$398,527.76	

—continued.

COMPANY OF CANADA, LONDON, ONTARIO
AND OVER AT 31ST DECEMBER, 1925

SCHEDULE 2.

*In the
Supreme
Court of
Ontario.*

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Exhibits.
Ex. 197A.
Report of
Riddell,
Stead,
Graham &
Hutchison *re*
Accounts of
London
Loan &
Savings Co.,
18th March,
1926.

Date of Mortgage	Terms of Repayment	Remarks
8th December, 1923	9 consecutive half-yearly payments, at \$600.00 each, the first due 8th June, 1924, and the last on 8th December, 1928.	This was a building loan and the final advance was made on 6th February, 1925. Nothing has been paid since, either for principal or interest. The accrued interest, less balance in savings accounts \$878.09, is \$2,613.51. The Loan Company has been in possession since 1st February, 1926, and the property is to be sold.
28th January, 1925	Due at maturity—28th January, 1926.	This was a further advance to enable the mortgagor to complete construction. A Deed was given to the Consolidated Trusts Corporation, in trust, to reconvey to the mortgagor on repayment of the loan on the due date. The amount owing has not been paid and the London Loan & Savings Company is now in possession. The intention is to sell this property.
15th November, 1924	9 consecutive half-yearly payments, of \$250.00 each; first payment due 15th May, 1925, and balance on 15th November, 1929.	Principal and Interest both paid to date.
1st December, 1920	\$2,500.00 half-yearly until paid.	Principal and Interest paid to date.
8th December, 1923	9 consecutive half-yearly payments of \$500.00 each; first payment due 8th June, 1924.	Interest for half year ended 8th December, 1925, is not paid and two payments on principal of \$500.00 each are not paid. There is \$1,145.99 in Savings Account.
15th January, 1924	9 consecutive half-yearly payments of \$1,500.00 each; first payment due 15th July, 1924, and balance 15th January, 1929.	Three payments on principal have not been paid, but payment has been waived by agreement. Interest is paid to date.
1st May, 1924	19 consecutive half-yearly payments of \$1,000.00 each; first payment due 1st November, 1924, and balance 1st May, 1934.	Principal and Interest are paid to date.
1st June, 1925	9 consecutive half-yearly payments of \$1,000.00 each; first payment due 1st December, 1925, and balance 1st June, 1930.	Full particulars of this transaction will be found in the foregoing report. Interest is paid to date, but the instalment of principal, due 1st December, 1925, has not been paid.
30th November, 1925	5 consecutive half-yearly payments of \$2,000.00 each; first payment on 30th May, 1926, and the balance on 30th November, 1928.	This property was sold by the Company to the Kingsdale Lands, Limited, under the Powers of Sale contained in four mortgages from D. C. Kay, upon which was owing \$40,603.87 for principal and \$3,116.13 for interest.
30th November, 1925	5 consecutive half-yearly payments of \$2,000.00 each; first payment on 30th May, 1926, and balance on 30th November, 1928.	The Company received \$41,000.00 in mortgages (K-33 and K-34), and \$3,000.00 in cash, less \$280.00 applied in payment of the costs of the sale.
12th June, 1922	19 consecutive half-yearly payments of \$2,500.00 each; first payment due 12th December, 1922, and the balance on 12th June, 1932.	This loan was originally for \$60,000.00. The interest is paid to date, but three instalments of principal are in arrears. We are informed that the security has been improved by additions to the building, costing approximately \$20,000.00.

—continued.

*In the
Supreme
Court of
Ontario.*

THE LONDON LOAN AND SAVINGS
MORTGAGE LOANS OF \$20,000.00

Exhibits. Ex. 197A. Report of Riddell, Stead, Graham & Hutchison re Accounts of London Loan & Savings Co., 18th March, 1926.	Reference Number	Mortgagor	Property	Amount Outstanding 31st Decem- ber, 1925	Valuation	Interest
	L 23	Patrick H. Lambert.	636-640 Danforth Avenue, Toronto, Ontario	Forward \$398,527.76 22,400.00	60,000.00	7½%, half-yearly
	L 26	Patrick H. Lambert.	636-640 Danforth Avenue, Toronto, Ontario	15,312.00		7½%, half-yearly
	L 25	Harry Lucas.	737-739 Danforth Avenue, Toronto, Ontario, Shops and Apartments	21,800.00	50,000.00	7½%, half-yearly
	L 28	Harry Lucas.	741 Danforth Avenue, Toronto, Apartments, Shops and Bowling Alleys	40,000.00	90,000.00	7½%, half-yearly
	L 31	Harry Lucas.	741 Danforth Avenue, Toronto, Apartments, Shops and Bowling Alleys	20,000.00		10%, half-yearly
	L 35	Harry Lucas.	676-678 Danforth Avenue, Toronto, Shops and Apartments	45,000.00	199,500.00	7½%, half-yearly
	L 35½	Harry Lucas.	676-678 Danforth Avenue, Toronto, Shops and Apartments	12,000.00		10%, half-yearly
	L 43	Samuel H. Lumb.	Corner Danforth and Donlands Avenues, Toronto, Ontario, Don- lands Apartments	67,706.11	105,000.00	7%, quarterly
	O 10	M. Ofield and Son.	Greenhouse Property, Grimsby, On- tario. About 16 acres.	35,000.00	150,000.00	7%, half-yearly

Forward \$677,745.87

COMPANY OF CANADA, LONDON, ONTARIO
AND OVER AT 31ST DECEMBER, 1925

SCHEDULE 2. (Cont'd)

In the
Supreme
Court of
Ontario.

Date of Mortgage	Terms of Repayment	Remarks	Exhibits. Ex. 197A. Report of Riddell, Stead, Graham & Hutchison re Accounts of London Loan & Savings Co., 18th March, 1926.
19th September, 1922	9 consecutive half-yearly payments of \$400.00 each; first payment due 19th March, 1926, and the balance on 19th September, 1927.	Interest for six months ended 19th September, 1925 is not paid. Sale proceedings were taken in July and all arrears to 19th March, 1925, were paid. There is \$142.34 in Savings Account. This mortgage was originally \$24,000.00.	
15th August, 1922	9 consecutive half-yearly payments of \$300.00; first payment due 15th February, 1923, and the balance on 15th August, 1927.	Interest for six months to 15th February, 1925, was paid 4th February, 1926. Interest to 15th August, 1925, is not paid. The mortgage was originally for \$16,000.00. There is \$55.82 in Savings Account.	—continued.
15th August, 1922	9 consecutive half-yearly payments of \$400.00 each; first payment due 15th February, 1923, and balance on 15th February, 1927.	Interest is paid to 15th August, 1925. Interest to 15th February, 1926, has not been paid, but there is \$1,077.26 in Savings Account to apply on Mortgages L-25 and L-28. The mortgage was originally for \$23,000.00.	
27th February, 1923	19 consecutive half-yearly payments of \$600.00 each; first payment due 27th August, 1923, and the balance on 27th February, 1933.	Interest for 6 months to 27th August, 1925, was paid 10th February, 1926. The mortgage was originally for \$40,000.00.	
18th June, 1923	12 consecutive quarterly payments of \$500.00 each; first payment due 9th July, 1924, and the balance 9th July, 1927.	The mortgage was originally for \$17,000.00 and was reduced to \$10,000.00 at 15th March, 1924. On 21st May, 1924, a further \$10,000.00 was advanced. Interest has not been paid since 9th April, 1924, and nothing has been paid on the principal. There is \$1,077.26 in Savings Account.	
11th September, 1923	9 consecutive half-yearly payments of \$1,000.00 each; first payment due 11th March, 1924, and the balance on 11th September, 1928.	This is a second mortgage, there being a first mortgage of \$62,000.00 in favour of the Huron and Erie Mortgage Corporation. Interest has not been paid since 11th September, 1924, and nothing has been paid on the principal. There is \$1,500.00 in Savings Account as collateral security for this loan and for mortgage No. L. 35½.	
11th September, 1923	Payable in full on 11th September, 1928.	Nothing has been paid on this mortgage for either principal or interest. It is really part of loan No. L. 35.	
1st May, 1925	18 consecutive quarterly payments of \$400.00 each; first payment due 1st November, 1925, and the balance 1st May, 1930.	The first payment of principal and interest, due 1st November, 1925, has not been paid. The mortgage has been increased to \$70,307.11 by the payment and capitalization of an insurance premium of \$2,601.00 paid on 6th February, 1926. The property was offered for sale at public auction but without success and the Company has since made a private sale to Kingsdale Land Company, under which the Company's mortgage is to be assumed and the purchaser will complete the building at an estimated cost of \$20,000.00.	
5th October, 1925	9 consecutive half-yearly payments of \$500.00 each; first payment due 5th April, 1925, and the balance 5th October, 1930.	This is a new loan.	

THE LONDON LOAN AND SAVINGS

MORTGAGE LOANS OF \$20,000.00

In the Supreme Court of Ontario.		THE LONDON LOAN AND SAVINGS					
Exhibits. Ex. 197A.		MORTGAGE LOANS OF \$20,000.00					
Report of Riddell, Stead, Graham & Hutchison re Accounts of London Loan & Savings Co., 18th March, 1926.	Reference Number	Mortgagor	Property	Amount Outstanding 31st Decem- ber, 1925	Valuation	Interest	
	R 31	Louis Hartman, Harris and Davis Goldberg (formerly Roberts Brothers).	468-70 Richmond Street West, To- ronto, Ontario. New Warehouse Building.	Forward \$677,745.87 80,000.00	161,300.00	7%, half-yearly	
	S 38	The Suydam Realty Company, Limited.	Spadina Road and Coulson Avenue, Toronto, Ontario. Apartment Building.	49,000.00	90,000.00	7½%, half-yearly	
	S 41	James C. Suydam.	Lot 12 and part lot 13, Plan M-408, Spadina Road, Toronto, Apart- ment Building	20,350.00	50,000.00	7½%, half-yearly	
	T 11	Turnbull Elevator Com- pany, Limited.	John and Richmond Streets, Toronto, Ontario. Factory and Offices.	97,671.90	335,818.00	7¼%, half-yearly	
	W 3	Wrights, Limited.	Plan 1801, Township of York, Vacant land near Toronto.	26,254.56		10%, quarterly	
	W 4	Wrights, Limited.	Plan 1801, Township of York, Vacant land near Toronto.	4,651.87		10½%, quarterly	
	W 6	Wrights, Limited.	Plan 1801, Township of York, Vacant land near Toronto.	2,996.55		10½%, quarterly	
	W 46	Weismiller and Macken- zie.	2041-5 Yonge Street, Toronto, On- tario. Shops and Bowling Alleys.	23,500.00	50,000.00	7½%, half-yearly	
				<u>\$982,170.75</u>			

—continued.

COMPANY OF CANADA, LONDON, ONTARIO
AND OVER AT 31ST DECEMBER, 1925

SCHEDULE 2. (Cont'd)

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 197A.
Report of
Riddell,
Stead,
Graham &
Hutchison *re*
Accounts of
London
Loan &
Savings Co.,
18th March,
1926.

Date of Mortgage	Terms of Repayment	Remarks
1st November, 1924	7 consecutive half-yearly payments of \$2,500.00 each; first payment due 1st May, 1926, and the balance on 1st November, 1929.	This is a building loan, the first advance having been made on 9th June, 1925. Interest has been paid to 1st November, 1925.
22nd June, 1923	9 consecutive half-yearly payments of \$1,500.00 each; first payment due 22nd December, 1923, and balance on 22nd June, 1928.	Interest has been paid to date and the principal has been reduced from \$55,000.00.
1st September, 1923	9 consecutive half-yearly payments of \$350.00 each; first payment due 1st March, 1924, and balance on 1st September, 1928.	Interest has been paid to date, but only one payment has been made on account of principal.
10th February, 1922	8 consecutive half-yearly payments of \$3,500.00 each; first payment due 10th February, 1923, and the balance on 10th February, 1927.	Interest has been paid to 10th August, 1925, but the interest due 10th February, 1926, has not been paid. The mortgage was originally for \$110,000.00. Nothing has been paid on account of principal since 13th August, 1924. There is \$2,540.60 in Savings Account as collateral security for the interest due 10th February, 1926.
	See foregoing report.	
	See foregoing report.	
	See foregoing report.	
1st January, 1924	9 consecutive half-yearly payments of \$500.00 each; first payment due 1st July, 1924, and balance on 1st January, 1929.	Interest and principal have been paid to date.

—continued.

**THE LONDON LOAN AND SAVINGS COMPANY OF CANADA,
LONDON, ONTARIO**

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 197A.
Report of
Riddell,
Stead,
Graham &
Hutchison *re*
Accounts of
London
Loan &
Savings Co.,
18th March,
1926.

**PERCENTAGES OF LIQUID ASSETS, MORTGAGES, AGREEMENTS
FOR SALE AND REAL ESTATE TO SAVINGS DEPOSITS AND DE-
BENTURES AS AT 31ST DECEMBER, 1923, 1924 AND 1925.**

	Assets	Percentage to Deposits	Percentage to Deben- tures	Percentage to Deposits and Deben- tures	
<i>—continued.</i>					
31st December, 1923 :					
Liquid Assets :					
Cash.....	\$ 61,016.43				
Victory Bonds.....	50,399.00				
Municipal Debentures.....	1,400.00				
Stocks of Loan Companies.....	371,397.20				
Loans on Collateral Security..	23,162.02				
Life Insurance.....	2,408.23				10
	\$ 509,782.88	66.3	46.2	27.2	
Mortgages, Agreements for Sale and Real Estate held for sale.	\$2,335,047.79	303.8	211.6	124.8	
31st December, 1924 :					
Liquid Assets :					
Cash.....	\$ 21,347.13				
Victory Bonds.....	50,339.00				
Municipal Debentures.....	1,447.62				
Stocks of Loan Companies.....	371,397.20				
Loans on Collateral Security.	15,700.01				
Life Insurance.....	2,607.20				30
	\$ 462,838.16	54.2	45.1	24.6	
Mortgages, Agreements for Sale and Real Estate held for sale.	\$2,382,826.19	279.	232.	126.8	
31st December, 1925 :					
Liquid Assets :					
Cash, less Overdraft, Bank of Scotland.....	\$ 5,551.81				
Victory Bonds.....	102,822.37				
Canadian Municipal Deben- tures.....	961.23				40

Stocks of Loan Companies.....	299,766.20				<i>In the Supreme Court of Ontario.</i>
Loans on Collateral Security.	11,610.95				
Life Insurance.....	2,687.20				
	<u>\$ 423,399.76</u>	58.	44.8	25.3	Exhibits. Ex. 197A.
Notes of Estates Holding Com- pany, Limited.....	\$ 15,000.00				Report of Riddell, Stead, Graham & Hutchison <i>re</i> Accounts of London Loan & Savings Co., 18th March, 1926.
Mortgages, Agreements for Sale and Real Estate held for sale.	2,214,334.87				
	<u>\$2,229,334.87</u>	305.	236.	133.	

—continued.

10

Exhibit 110

(Plaintiffs' Exhibit)

Letter, Huron & Erie Mortgage Corp. to Consolidated Trusts Corp.Toronto 2, Canada,
May 12th, 1926.Consolidated Trusts Corpn.,
London, Ont.Exhibits.
Ex. 110.
Letter,
Huron &
Erie
Mortgage
Corp. to
Consolidated
Trusts
Corp.,
12th May,
1926.

Dear Sirs :—

Re P. 2491, Buckingham Apartments, N.S. King St. W., Toronto

20 We wish to remind you that the instalment of principal due under the
above loan on the 7th of February, 1926, has not yet been paid. We agreed to
allow this instalment of principal to stand on the distinct understanding
that it would be paid in full by the 15th of April.

The amount necessary to pay the arrears in full, if received on or before
Monday next, the 17th instant, appears to be \$3,056.60, made up as follows :—

Arrears of Principal.....	\$3,000.00
Interest on Arrears.....	56.60
	<u>\$3,056.60</u>

30 We trust you will arrange payment of these arrears on or before Monday
next.

Yours truly,
R. P. BAKER,
Manager.

RPB/GPB.
E&OE.

FOLLOWING SHOWN ON BACK OF LETTER

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 110.
Letter,
Huron &
Erie
Mortgage
Corp. to
Consolidated
Trusts
Corp.,
12th May,
1926.

—continued.

D.42
R. S. Durno,
Buckingham Apts.
Mortgage \$77,000.
Balance Jan. 4/26—\$77,637.50.
Int. pd. to Dec. 1/25.
First Mtge. to Huron & Erie for \$150,000.
Int. paid to Aug. 7/25; sold for \$227,500.
—May 18/26.
Send copy to Morine and ask him to take
it up with H. & E.

10

Geo. G. McC.,
President.

Exhibits.
Part Ex. 196.
A.
Copy of
Letter,
Martin,
Currie & Co.
to George G.
McCormick,
17th May,
1926.

Part Exhibit 196

(Plaintiffs' Exhibit)

A

Copy of Letter, Martin, Currie & Co. to George G. McCormick

17th May, 1926.

George G. McCormick, Esq.,
President,
London Loan and Savings Company of Canada,
220 Dundas Street,
London, Ontario.

20

Dear Sir,

We have carefully considered the Report dated 18th March last by Messrs. Riddell, Stead, Graham & Hutchison, Chartered Accountants, on your Company's Accounts as at 31st December last and feel constrained to remark that the animadversions contained therein regarding the selection and supervision of the mortgages held by your Company are somewhat disquieting to us as representing a large proportion of the debenture-holders. We have been dissatisfied for some time regarding certain features of your Company's accounts such as the writing up of stocks owned, the non-disclosure of real estate on hand and of pledged Assets, and the type of mortgages approved by your Board. We have asked on more than one occasion for information regarding large mortgages held and some details were submitted to us from time to time, but it now appears that the existence of a number of large mortgages was withheld from us. For example, we were not informed of the loans made in 1923 on second and third mortgages over Buckingham Mansions totalling \$55,000 until the matter was brought to our notice by a solicitor 30 40

here, nor the large loans made in 1923/24 to Mr. Harry Lucas although interest has been in arrear on certain of these loans totalling \$77,000 since 1924—in one case since the loan was granted in 1923.

We have drawn up a Memorandum containing a number of points on which we should like to be furnished with your observations and we may say that we attach particular importance to the questions regarding Mr. H. A. Morine's associations with your Company.

We do not know whether any one of the Directors or officials is more responsible than another for the unsatisfactory position but we can scarcely think that the whole Board can have been giving full attention to the affairs of the Company, and it seems to us that such reorganization is called for as will result in all the Board being actively interested. This is necessary if the confidence of the Debenture-holders is to be retained, and we would suggest that one or two of the present Board should make way for new Directors, of whom we should be entitled to nominate one as representing the interests of the Debenture-holders. We should be glad to know at your convenience whether your Board agree to this proposal and what changes they would propose to make to meet it.

We observe that Mr. Baker and Mr. Hunt, two of your Directors, only hold 30 and 25 shares respectively of your Company in their own names.

We send you herewith for your observation a copy of our letters to Mr. Thomas Baker, your Vice-President, dated 4th August, and to Mr. Kent, dated 17th December last, in which we referred to various matters on which we required further information. We received no reply from Mr. Baker, but our letter to Mr. Kent was replied to partially on 13th January last.

Yours faithfully,
(Sgd.) MARTIN, CURRIE & Co.

Part Exhibit 196

(Plaintiffs' Exhibit)

B

Memorandum re Specified Loans

LONDON LOAN AND SAVINGS COMPANY OF CANADA

MEMORANDUM by Martin, Currie & Co., C.A., 55 Queen Street, Edinburgh, on the Report received from Messrs. Riddell, Stead, Graham & Hutchison, C.A., dealing with the Company's Mortgages and Accounts.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 196.

A.
Copy of
Letter,
Martin,
Currie & Co.
to George G.
McCormick,
17th May,
1926.

—continued.

Exhibits.
Part Ex. 196.
B.
Memoran-
dum re
Specified
Loans,
May, 1926.

May, 1926.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 196.
B.
Memoran-
dum re
Specified
Loans,
May, 1926.
—continued.

Amount of large loans. It appears to us that during the last four years the Directors have been investing the Company's funds in large mortgages, many of which are secured on property of a speculative character. It is clear that at the close of 1925 the amount invested in loans of \$20,000 and over was nearly one half of the total amount of the mortgages and agreements for sale. We understand that the Loan Registrar has taken exception to the amount of such loans and has intimated that these will not be admitted in future. We shall be glad to know whether the Directors have settled on any policy with regard to the amount and nature of any new loans which may be made in future. 10

Nature of loans. It is observed that a number of large loans have been made on speculative property which was in process of building and in several cases additional loans were found necessary in order to complete the buildings and with the view of endeavouring to protect the original advance. It is obvious that a much greater proportion of the funds should have been invested on mortgages over residential property instead of on shops, garages, warehouses and factories. The Accountants point out that certain of the loans should not have been made and also that they were not properly supervised. *Valuations of properties.* Our attention has been drawn particularly to the following loans of substantial amount which do not appear to be well secured, and we shall be glad to have your remarks regarding each of them, viz. :— 20

1. (B 46) *William H. Biggs*—\$18,000.
(B 47) *Mrs. Eva V. Biggs*—\$12,000.
(B 78) *William H. Biggs*—\$13,210.

In the case of these loans it appears that precautions were not taken to see that the original loan was sufficient for the proposed erection. The name of the Company's valuator may be stated.

2. (B 62 and B 79)—*Norman Baird*—\$55,291.74. The Accountants state that the valuations in this case amounted to only \$73,150 and that the security which comprised shop apartments and a garage was not sufficient for the original advance of \$40,000 which was afterwards increased by over \$15,000 to complete construction. We understand that the Company has now taken possession of the security. 30
3. (D 42)—*R. S. Durno*—\$77,000. This loan was also advanced on property in course of construction and was subject to a first mortgage of \$150,000 from the Huron and Erie Company. It is understood that the original valuation by Morine amounted to about \$400,000., subsequent valuations by Dyas (son-in-law of Morine) being \$350,000 40 and by Lonsdale \$310,400, while the property when exposed to sale by auction did not realise sufficient to pay off in cash the first three bonds amounting to \$206,000. It appears to us that the Company might be left with this property on their hands at any time as the purchaser only put up a nominal amount of cash. We refer further to this loan later on.

4. (I 3)—*Imperial Loan and Investment Company, \$12,465.41.* There appears to be no security for this debt and the amount should have been written off in the accounts for the year to 31st December last or earlier. We are surprised that this was not insisted on by your Auditors.
5. (L 23 and L 26)—*Patrick Lambert—\$37,712.* This property was valued at \$60,000 but the Accountants state that in their opinion it will be difficult to sell the security for the amount of the loan. The name of the valuator may be stated.
- 10 6. (L 28 and L 31)—*Harry Lucas—\$60,000.* The property covered by this loan was valued at \$90,000 and the name of the valuator may be given. The Accountants remark that it seems unlikely that the security would at the most realise any more than the bare amount of the advance.
7. (L 35 and L 35½)—*Harry Lucas—\$57,000.* This is a second mortgage loan which is regarded as being a somewhat speculative investment although secured on property valued at \$199,500. The Huron and Erie Company hold a first mortgage for \$62,000. The valuator's name may be given.
- 20 8. (L 43)—*Samuel H. Lumb—\$67,706.11, since increased to \$70,307.11 by the capitalization of an insurance premium of \$2,601 paid on 6th February, 1926.* This loan was only made on 1st May, 1925, and no interest or principal has since been paid. The property was apparently offered for sale by public auction without success and has since been sold privately to the Kingsdale Land Company. The name of the valuator in this case should be stated. (following written by pen) Mr. Kent referred to this loan for the first time in his letter of 13th Jan. last but did not disclose the fact that interest was in arrear.
- 30 9. (P 11)—*Alex. Palmer—\$43,918.63.* This property, which was valued by Morine in 1923 at \$65,000, was subsequently valued by Mr. Wright in 1925 at \$37,600, which does not reflect credit on the original valuator. (following written in pen) The security has now been taken over by the Company.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 196.
B.
Memoran-
dum re
Specified
Loans,
May, 1926.

—continued.

Rate of interest on loans. That a number of the loans granted were of a distinctly speculative nature can be observed from the fact that interest has been charged in certain cases up to 10½% and in one or two cases of new loans no interest has been paid since the dates of the advances.

40 *Reserve for mortgages.* It appears that in 1924 a sum of \$22,812.86 was transferred to Profit and Loss Account in order to equalize profits while this entry was reversed on 1st January, 1925. As the balance at credit of this account was fully required to meet possible or actual losses on doubtful mortgages and real estate held, we are of opinion that it should not have been applied in writing up profits in 1924.

Consolidated Trusts Corporation. We agree with the Accountants' remark that the investment in the shares of this Corporation should be shown as a separate entry in your Company's Balance Sheet in view of the holding of 2,493 out of 2,851½ shares. This is most necessary in view of the fact that the investment is not revenue producing and is not readily realisable.

In the
Supreme
Court of
Ontario.

Exhibits.
Part Ex. 196.
B.

Memoran-
dum re
Specified
Loans,
May, 1926.

—continued.

It is observed that the Consolidated Trusts Corporation holds 1,931 shares of the London Loan Company at a book value of \$54.82 whereas the last price of these shares was \$45.50 bid.

Kingsdale Lands Limited. The properties covered by a number of doubtful loans have recently been made over to this Company and we shall be glad to know whether any of the Directors or other officials of the London Loan Company have any interest in the Company as Shareholders or otherwise. The low rate of interest charged to this Company on the loans Nos. K 33 and 34, totalling \$41,000, viz., 6½%, may be explained in view of the inadequate security.

Capitalisation of Interest. The capitalisation of the first interest due on certain loans which amounted to over \$13,000 in 1925 is open to serious objection, especially in the case of loans which are not well covered.

Loan to the Turnbull Elevator Company (T 11). In the postscript to the London Loan Company's letter of 3rd April, 1925, it was stated that the principal on this mortgage had been reduced to \$43,629.86 whereas the loans appear in the Accountants' Statement at \$97,671.90, nothing having been paid on account of principal since 13th August, 1924. An explanation may be given of the discrepancy.

Non disclosure of large loans. The Managing Director was asked by us on more than one occasion for detailed information regarding large loans but the existence of the following loans was not disclosed (following written in pen) until we received the accountants' report. Mr. Kent's letter of 13th Jan. last professed to contain information regarding all large loans other than those referred to in previous correspondence.

	Valua- tion	Amt. out- standing	Date of Mortgage	Rate of Int.	Remarks
B 62 Norman Baird	\$ 73,150	\$ 40,000.	8th Dec., 1923	8%	No principal or interest paid since 6th Feb., 1925. Property now in possession of Company.
B 79 Do.		15,291.74	28th Jan., 1925	10%	Additional advances over above property to complete construction.
D 33 Dale Furniture Company	76,000	39,076.37	8th Dec., 1923	7½%	Interest for half year ended 8th Dec., 1925, not paid; also two instalments of principal.
D 35 Danforth Wood-bine Theatre, Danforth Avenue	127,900	40,050.	15th Jan., 1924	8%	Interest paid to date but payment of principal instalments waived by Agreement.
K 33 Kingsdale		20,000.			
K 34 Lands Ltd.	37,670	21,000.	30th Nov., 1925	6½%	This property was sold by the Company to the Kingsdale Lands Ltd. under the Powers of Sale contained in four mortgages from D. C. Kay upon which was owing \$40,603.87 for principal and \$3,116.13 for interest. The Company received \$41,000 in mortgages and \$3,000 in cash.

Note:—D. C. Kay's loans not previously reported.

		Valua- tion	Amt. out- standing	Date of Mortgage	Rate of Int.	Remarks	<i>In the Supreme Court of Ontario.</i> — Exhibits. Part Ex. 196. B. Memoran- dum <i>re</i> Specified Loans, May, 1926. — <i>continued.</i>
L 23	Patrick H. Lambert, Danforth Avenue	60,000	22,400.	19th Sept., 1922	7½%	Interest for six months ended 19th Sept., 1925, is unpaid.	
L 26	Do. Do.		15,312.	15th Aug., 1922	7½%	Interest for half year to 15th Aug. is unpaid.	
L 25	Harry Lucas, Danforth Avenue	50,000	21,800.	15th Aug., 1922	7½%	Interest to 15th Feb., 1926, unpaid.	
10 L 28	Harry Lucas, Danforth Avenue	90,000	40,000.	27th Feb., 1923	7½%	Interest to Aug., 1925, paid in Feb., 1926.	
L 31	Do.		20,000.	18th June, 1923	10%	Interest has not been paid since 9th April, 1924. \$10,- 000 of the principal was advanced on 21st May, 1924.	
L 35	Do.	199,500	45,000.	11th Sept., 1923	7½%	This is a second mortgage there being a first mortgage of \$62,000 in favour of the Huron & Erie Company. Interest has not been paid since 11th Sept., 1924.	
20							
L 35½	Do.		12,000.	Do.	10%	Nothing has been paid on this mortgage for principal or interest.	
R 31	Louis Hartman	161,300	80,000.	1st Nov., 1924	7%	Interest paid to date. Loan on new warehouse building.	

Note.—A number of smaller loans are in a bad position and two have been transferred to real estate since 31st December, 1925.

30 *Profit and Loss Account.* It appears to us that the following sums credited to Profit and Loss Account for the year 1925 should not have been so dealt with, viz. :—

Discounts on Second Mortgages—\$6,243.52. We are of opinion that this amount should have been applied in writing down the real estate account.
Profit on sale of Huron and Erie Shares to the Consolidated Trusts Corporation—\$7,904. These shares were merely sold to a subsidiary company and the appreciation should have been applied in writing down the remaining holding or carried to Reserve Fund.

40 *Appreciation of Loan Company Stocks—\$720.*
Mortgage previously written off recovered—\$1,651.45.

These sums should also have been applied in writing down the existing investments.

Loans to Thomas Baker (B 67 and B 68)—\$1,350 and \$900. It may be stated whether the borrower is the same Mr. Baker who acts as a Director of the Company. It is noted that the interest on these loans has not been paid for 1925.

Debentures raised in Canada with specific security. We strongly object to the raising of Debentures with specific security which occurred in the case of the loan of \$160,000 by the Bank of Montreal for 1 year at 6½%. It is obvious

In the
Supreme
Court of
Ontario.
—
Exhibits.
Part Ex. 196.
B.
Memoran-
dum re
Specified
Loans,
May, 1926.
—continued.

that this practice weakens the security of the other Debenture-holders and the rate of interest paid on this particular loan is also open to objection as it is fully 1% in excess of the rate paid on other debentures placed here or in Canada without specific security. (following written in pen) It is the practice in this country to disclose any pledging of Assets in a note on the balance sheet and we are unable to understand why your Auditors did not insist on this being done in the case of these Debentures.

Real Estate held. The Accountants recommend that a substantial reserve of not less than one quarter of the total book value of the real estate held for sale should be provided and we shall be glad to know whether the Directors are prepared to give effect to this provision out of ordinary revenue without writing up capital assets. 10

Liquid balances. The Registrar's Report and also the accounts show that your Company carries scarcely any money in bank. This is not satisfactory as the credits might be withdrawn or reduced on giving certain notice. We would refer you to the Report by the Government Registrar which shows the small percentage of liquid assets as compared with other similar companies. The total amount of deposits up to \$500 held by your Company might be stated. *H. A. Morine.* It appears that a number of the large speculative loans granted by your Company were made on valuations by Mr. Morine, and the Accountants remark that large commissions were paid to him by the borrowers. We shall be glad to receive replies to the following points in this connection, viz. :— 20

1. To what extent were Morine's valuations accepted in the case of the large loans granted by the Company?
2. Did Morine act as valuator for your Company in any case in which he received a commission from the borrower?
3. Is it the practice in Canada for a valuator to take commissions on arranging loans?
4. Has any valuator or other party employed by the Company drawn such commissions? 30
5. Has the Company now dispensed with Morine's services as was done by another similar Company?
6. Were the Danforth Avenue properties valued by Morine, or if not, who are the valutors responsible?
7. Why did your Board sacrifice the personal covenant of Morine, who is reputed to be a wealthy man, in the case of the large mortgage to him over the Buckingham Mansions property? In his letter of 13th Jan. last, Mr. Kent stated that "the value quoted at the time the loan was passed was fairly safe considering the excellent nature of the personal security behind the loan," but he omitted to refer to our inquiry on this point when replying to our letter of 26th Jan. It appears that the rents are being collected by Morine's son-in-law although the property was sold by private sale to R. S. Durno. (following written in pen) Is Morine or Durno the real owner of the property? It is understood that the Huron & Erie Co. who hold the first mortgage for 40

- \$150,000 insisted on Morine's name being on the covenant.
(following is all written in pen)
8. Was it not in the interests of Morine to take over the property subject to the mortgages thereon in view of the large sum of about \$85,000 applied by him and by Renton in completing construction of the property? His failure to assume the ownership for the sum of \$227,500, being the figure arranged with Durno, does not reflect credit on his original valuation of about \$400,000.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 196.
B.
Memoran-
dum *re*
Specified
Loans,
May, 1926.
—continued.

FOLLOWING SHOWN ON BACK OF LAST SHEET :

10 LONDON LOAN AND SAVINGS COMPANY
OF CANADA

MEMORANDUM by Martin, Currie &
Co., C.A., 55 Queen Street, Edin-
burgh, on the Report received from
Messrs. Riddell, Stead, Graham &
Hutchison, C.A., dealing with the
Company's Mortgages and Accounts.

May, 1926.

20

Exhibit 111
(Plaintiffs' Exhibit)

Letter, M. J. Kent to H. A. Morine

London, Canada,
May 18th, 1926.

H. A. Morine, Esq.,
Toronto, Ontario.

Exhibits.
Ex. 111.
Letter, M. J.
Kent to
H. A.
Morine.
18th May,
1926.

Dear Sir :

On request of my Board of Directors, I now enclose you copy of dun from Huron & Erie for \$3,000.00 of principal on their first mortgage on the Buckingham Apartments, and they desire you to take the matter up with
30 the first mortgagees, and advise how you are arranging it.

Yours truly,
M. J. KENT,
Manager.

K/F.

Exhibit 112

(Plaintiffs' Exhibit)

Letter, H. A. Morine to M. J. Kent

Toronto,

May 19th, 1926.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 112.
Letter, H. A.
Morine to
M. J. Kent,
19th May,
1926.

Mr. M. J. Kent,
London Loan & Savings Co.,
London, Ont.

Dear Sir :—

Re Buckingham Apartments.

10

I acknowledge receipt of yours of the 18th inst., enclosing copy of letter from Huron & Erie Mortgage Corp. in reference to the above.

It was arranged to waive the principal repayments of \$3,000.00 until a little later date in view of the very heavy expenses met during the winter months, and it was hoped to pick up the arrears of principal by next due date of mortgage interest. There are no arrears whatever except this amount. I do not know where you get the idea of \$12,000. in arrears.

The rate of $7\frac{1}{2}\%$, of course, was the current rate of interest when the mortgage was placed, but the mortgage contained no penalties whatsoever.

Yours very truly,

20

H. A. MORINE.

HAM/J.

FOLLOWING SHOWN ON BACK OF LETTER :

75,000

80,000

60,000

215,000*re* D 42R. S. Durno.

Exhibit 113

(Plaintiffs' Exhibit)

Letter, H. A. Morine to M. J. Kent

Toronto,

June 17th, 1926.

*In the
Supreme
Court of
Ontario.*—
Exhibits.
Ex. 113.
Letter, H. A.
Mordine to
M. J. Kent,
17th June,
1926.

Mr. M. J. Kent,
London Loan & Savings Co.,
London, Ont.

Dear Sir,

10 *Re Buckingham Apartments.*

We have not as yet received a statement of the interest due the London Loan & Savings Company which I think falls due this month. Kindly send statement of amount due.

In connection with the above we will be in a position to pay the interest due the London Loan & Savings Company on their mortgage but there is the question of the \$3,000 of principal due Huron & Erie Mortgage Corporation. When in London some time ago I pointed this out to you and the suggestion was made that this amount be advanced by the Consolidated Trusts Corporation and charged up against the Buckingham account and as the Con-
20 solidated Trusts hold the Deed of this property, probably this would be the best way to treat it. Will we therefore pay the London Loan interest account and you send me a cheque in favor of the Huron & Erie for \$3,000 on account of principal, or will we pay the Huron & Erie and allow the London Loan interest to remain overdue.

Since the last report was made to you a very considerable amount has been spent for improvements, taxes, etc. I attach hereto full statement up to the present date.

Kindly advise.

Yours very truly,

30

H. A. MORINE.

HAM/J.
Encl.

Exhibit 114

(Plaintiffs' Exhibit)

*In the
Supreme
Court of
Ontario.*—
Exhibits.
Ex. 114.Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Mordine,
22nd June,
1926.**Copy of Letter, London Loan and Savings Co. to H. A. Morine**

London,

June 22, 1926.

H. A. Morine, Esq.,

603 Kent Bldg.,

Toronto, Ont.

Dear Sir :

Re R. S. Durno Mtge., D.42, Buckingham Apartments.

10

We are this morning in receipt of your letter of the 17th instant, enclosing statement of the Rents and Disbursements in connection with the above mortgage for the months of March, April, May and June, for which accept our thanks. In regard to the notice of the instalment of interest which fell due on this mortgage on the 1st June, 1926, this was sent out in due course and we do not understand why you did not receive the same. However, we enclose herewith a duplicate and would be obliged if you would kindly send us a remittance to cover same as soon as possible.

In regard to the payment of \$3,000.00 on account of principal to the Huron & Erie Mortgage, we notice by your statement the interest has been paid up on this mortgage and we think for the present it would be as well to allow the instalment on account of principal to stand, unless there is some special reason why it should be dealt with otherwise. We certainly do not feel that we can allow the interest to run behind in our mortgage and think this should be paid in preference to the \$3,000.00 on principal to the Huron & Erie. 20

Yours truly,

Manager.

H/GW.

Exhibit 115

(Plaintiffs' Exhibit)

Copy of Letter, London Loan and Savings Co. to H. A. Morine

June 22nd, 1926.

H. A. Morine, Esq.,
603 Kent Building,
Toronto, Ont.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 115.
Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
22nd June,
1926.

Dear Sir :

Re Buckingham Apartments, Mortgage D.42.

10 Yours of the 17th instant received, with statement, which I laid before my Board today. They would prefer that the interest be paid on our mortgage, rather than Huron & Erie principal, so please forward cheque. I enclose statement of the amount. As to the payment of principal on the first mortgage, you might discuss this with my Board when you come to the City on Thursday next.

As you are collecting the rents, we naturally expected monthly reports with remittances, which would cover the interest payments as they fell due, hence no advance notice was sent.

Yours truly,

Manager.

20

K/F.

P.S. Of the nine properties on hand, we have now received reports from you on six, and would thank you to let us have the other three as soon as possible.

Exhibit 116

(Plaintiffs' Exhibit)

Letter, H. A. Morine to M. J. Kent

Toronto,
June 23rd, 1926.

30 Mr. M. J. Kent,
London Loan & Savings Co.,
London, Ont.

Exhibits.
Ex. 116.
Letter, H. A.
Morine to
M. J. Kent,
23rd June,
1926.

Dear Sir,

Re R. S. Durno—Buckingham Apts.

The Huron & Erie Mortgage Corp. were very insistent in the payment of \$3,000.00 instalment of principal and, to prevent additional expense. I have paid same.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 116.
Letter, H. A.
Morine to
M. J. Kent,
23rd June,
1926.

—continued.

I would suggest that, as Consolidated Trusts Corp. are the registered owners of the building, that they advance \$3,078.80, amount paid Huron & Erie, charging same up against the property. They, of course, can charge their interest account against amount so advanced. This was a suggestion made by Mr. Kent and when this is done, I will then be in a position to send you a cheque for \$3,367.20 to cover your account as per statement which I have received today.

As you are aware, the heavy expenditure months are over and as the next three months should give us summer, our expenses should be small.

Yours very truly,
H. A. MORINE.

10

HAM/J.

FOLLOWING SHOWN ON BACK OF LETTER

Mtg. D 42.
Letter *re*
R. S. Durno
from H. A. Morine
decline
Geo. G. McC.,
President.

20

Exhibit 197

(Plaintiffs' Exhibit)

Exhibits.
Ex. 197.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
5th July,
1926.

Letter, George G. McCormick, President London Loan and Savings Co., to Martin, Currie & Co.

London, Can.,
July 5th, 1926.

Messrs. Martin, Currie & Company,
55 Queen Street,
Edinburgh, Scotland.

Dear Sirs :—

30

Re Letter 17th of May

I was very glad to receive your letter of May 17th and it indeed pleased me to have the audit taken by Messrs. Riddell & Co. and, although they did not convey to you the exact situation as I had hoped they would, nevertheless they acted fairly and honestly and I am satisfied.

It was gratifying to me that you mentioned in your letter that "the matter was brought to our attention by a solicitor here." Mr. McLennan, a solicitor in Toronto, came to this office and interviewed our solicitor regarding the

mortgage sale of the Buckingham property and very frankly stated that unless we would carry the property along without trying to realize on our security, he would hurt us in every way he could through you in Scotland. As has been explained to you in a former letter, a sale had to take place to make a proper title for anyone to deal with it. We asked Mr. McLennan to pay up the arrears which would not be more than, approximately, \$20,000.00 (as he claimed to represent the Scotch Investors in the Renton Mortgage). He said he could not do it. He maintained an antagonistic attitude, threatened us with a distorted and biased report of our Company to you and at the same time asked us to let our security stand without taking proper precautions to protect it. What could or would you have done under similar circumstances if you knew (as we did) that you were right? At this point I should like to refer you to a copy of a letter received from Mr. H. A. Morine in answer to our letter asking for an explanation of the situation,—

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 197.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July,
1926.

—continued.

“June 8th, 1926.

Dear Mr. McCormick :—

I understand that certain reflections by certain clients of yours in Scotland have been made upon myself in regard to certain business relations and have asked for a report. I just wish to say that undoubtedly these insinuations have been made at the behest of certain Scotch Investors, and also by a certain Solicitor in the City of Toronto who acted on behalf of a Scotch Solicitor. I do not wish to go into a long story but would like to set forth a few facts :—

- 1.—For the last year I have heard certain rumours and whispers in connection with my association with a Mr. Renton, and I wish to point out that not one dollar was obtained by me from Renton, nor did I have any knowledge of any person that Renton may have received money from in Scotland. So far as I am concerned the only person I dealt with was Mr. W. L. Renton.
- 2.—The investing of the money in the Buckingham Apartments was made by W. L. Renton personally, without any influence or representation on my part and purely and solely on the basis of a possible profit then quite apparent. In this respect I think W. L. Renton was justified as I myself invested a large sum of money under the same conditions in the same property.
- 3.—The handling of the Renton and Scotch interest while in the hands of a certain Toronto Solicitor was, in my opinion, unbusinesslike in every particular, causing an unnecessary loss to those interested in the said Mortgage. With one exception I was never interviewed by anyone representing the Scotch investor. Although willing at all times to furnish any information I could in the interest of the property, same was never solicited from me in any way whatsoever.
- 4.—I wish finally to make the statement that if any person representing any Scotch Investor will make a statement that I have in any way misrepresented any security, misrepresented any value of property or in any way taken from any mortgage company any commission or from the Borrower any commission to which they were not thoroughly agreeable to and aware of or made any charge in excess of any amount agreed upon, retained any money or done anything which will not bear the light of day, I will bring the matter to a test

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 197.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July,
1926.

—continued.

case by taking action against any person who has or will come forward and lay any charge along the above lines.

In all dealings which I had had with Mortgagors, Mortgagees and Investors, every possible avenue of information and possible detail has been laid open, clear and above board at all times.

Therefore, if you will pass this along so that it will reach the ears or eyes of some of those who wish to insinuate but are not man enough to make a statement and give an opportunity to make a statement on which I can take some action, I will be pleased to take the matter up.

Yours very truly,
H. A. MORINE."

10

Re H. A. Morine.

I should like to answer this part of your request before dealing with other matters in your enclosed memorandum, as you seem to attach more importance to this part of your inquiry than to any other. On Page Six of your memorandum "Re H. A. Morine, It appears that a number of large speculative loans granted by your Company were made on valuations by Mr. Morine and Accountants remark that large commissions were paid to him by the Borrowers. We should be glad to receive replies to the following points in this connection, that is,"

20

1.—In no case were any of these loans granted as a result of Mr. Morine's valuation. Mr. Morine furnished applications for the loans in the usual way, giving full particulars of the property. The board took such applications into consideration and in each case, as will be shown later, the valuations were made by independent valuers at the Company's request. Mr. Lonsdale, who served in most cases, is the chief valuator for the Toronto General Trusts Corporation, of Toronto, and in our opinion, one of the most able and honourable men for this work.

(note written in pencil)

30

Can Mortgage Corp. get good bus. without paying comm.

The Company pays Mr. Morine a commission of One per cent on such loans as are presented by him and accepted by the Company. This One per cent is universal and granted to all agents whose loans are accepted by Loan Companies, Insurance Companies and private lenders in Ontario. There are some exceptions where larger commissions may be paid.

2.—Mr. Morine did not act as Valuator for our Company on any loan in which he was interested as Applicant for the loan and was not paid for valuations made by him on any loan in which he was interested. Mr. Morine or any other applicant for a loan may be entitled to receive a commission from the Borrower and we regard it as the business of the Borrower and no affair of ours if he receives such other commission; providing always that we are amply satisfied with the loan and accept it on its merits. As a rule, the Lender is perfectly well

40

(notes in margin written in pencil)

Enquire whether double comm. usual in case of other corps.

10

20

30

40

See previous letters.

aware that the commission paid by the Lender may or may not be the only consideration the Agent receives; while the Borrower on his part is perfectly well aware that the amount he pays such Agent is regardless of the amount received from the Lender.

3.—The valuator is not the Agent of the Borrower. The Valuator is generally an independent party, authorized by the Lender to report on the property at the expense of the Borrower. The Valuator does not receive commissions for arranging loans.

4.—Embodied in Number Three.

5.—This Company has never had the services of Mr. Morine except in so far as applications received from him may meet with the approval of the Board and except in so far as the recommendations or other reports may be received from him. He is not the Agent of the Company as this Company has no Agents and it has been absolutely and always the right of this Company to consider any application made by him on exactly the same basis as applications made by any other applicant. As far as I know, no other Company has had his services in any other capacity and no other Company has dispensed with his services which they have never had. This Company has been and is now absolutely open to receive applications from him or anyone else in the usual course of business. Mr. Morine's applications have been given the fullest consideration at all times and have been checked by Independent valutors for the Company and by different directors of the Company and have been treated in exactly the same manner as any other applications are treated.

The remark you make regarding Number Five and another Company has been investigated by myself and I find that the big Companies to which you might have reference have asked him within the last three weeks to send some applications to them.

6.—Most of the valuations on Danforth were made by Mr. W. N. Lonsdale, copies of which are enclosed herewith and will be taken up later in this letter.

7.—The loan was made on Buckingham Apartments on the basis of its value and not on the basis of any personal or other covenant. The value of said property was made by the Valuator for the Toronto General Trusts Corporation, also directors of our Company and on the general report of the property. The valuation made at the time the loan was placed was very much less than the value of the property was expected to be upon completion, and estimated revenue to be received. I might add that upon the application of Mr. McLennan for a stay of our mortgage proceedings, he produced a valuation to Mr. Justice Kelley of \$310,000.00 upon the property and Mr.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 197.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July,
1926.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 197.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July,
1926.

—continued.

(notes in margin written in pencil)

What
about
personal
security?

1st loan
probably
quite
safe but
2nd &
3rd Mort-
gages
doubtful.

The Co.
took the
risk
while

Justice Kelley remarked that, "As there was ample security for the protection of all parties concerned, he would grant one month's stay of our mortgage proceedings." We could not sell this property without the mortgage sale. S. B. Green was regarded as a very substantial Mortgagor when the loan was made. Mr. Morine's son-in-law has been employed by R. S. Durno to collect the rents in connection with the Buckingham Apartments. We have every assurance that this security will be ample for our investment and I have also reason to believe that a very favourable turn in this security will take place before September 1st or soon thereafter. 10

8.—The Huron & Erie Mortgage Corporation loaned \$150,000.00 on a valuation of \$325,000.00 made by their own Valuator, which valuation met the approval of their local Toronto Board. It is comprised of some of the most astute business men in that City. This property cost more than \$285,000.00, construction only, exclusive of architects' fees or general supervision; all of which is a proper amount to add to the value; the original builder being the architect and supervisor. This is undoubtedly one of the best constructed Apartment Buildings in the City of Toronto but, like all other properties at the present time, has depreciated in value on account of the general depreciation due to the business conditions existing in that City, and it is safe to say that all property in Toronto today is approximately Thirty per cent off normal values placed upon it in 1923; due to rents being equally affected by the Thirty per cent decrease; while up-keep, taxes and general expenditure remains the same. This condition will, no doubt, cease with this property when, like all other Toronto properties, it comes back to what is considered its normal condition, and the property will realize more than the full amount set forth in the valuations made by different Valuators. There is no reason in the world to feel that this property will not some time bring the full amount of \$325,000.00 placed upon it by the Valuators in 1923, and re-valued at the same figures in 1925, as per valuation attached. 20

Mr. R. S. Durno was an Independent Builder in the City of Toronto, who has been constructing properties, and I was quite glad to have him buy this property from us. This property was offered by auction in the usual legal way, after due notice to all concerned, including holders of the Renton Mortgage, and I had hoped that those interested in the Renton Mortgage would have purchased the property; and not being sold at the Auction Sale it was this Company's privilege and duty to resell the property at private sale. The private sale took place to Mr. Durno and a new mortgage was taken back to this Company, covering a term of years with the option to discharge it at any 40

(notes in margin written in pencil)

10 Durno was time by the Purchaser. A re-arrangement of the mortgages to take was made for reasons which will be very easily explained, namely, any profit —that the next day the Purchaser might be called upon to pay without putting up the mortgage which it would be ordinarily impossible for him to do without definite terms being arranged. Therefore, as is usual with all Companies when they sell property as a result of a mortgage sale, conditions and terms are given a new purchaser to enable him to carry on and keep the property in its proper order and preserve the mortgage interest and value with a hope that the future will justify the purchase and mortgage. This was exactly what was done with Mr. R. S. Durno.

20 Not satisfactorily. Another reason that influenced the Company in releasing the covenant of Mr. Morine in so far as the Mortgage given by him was concerned was the difficulty of litigation which might be necessary on account of about \$25,000.00 of mechanics' liens filed against the property, which liens would have prevented the transfer of the property and the giving of a legal title to the property; and any purchaser would insist upon the discharge of these liens. These liens were incurred against the property by the original owner, Mr. S. B. Green, and only filed against the property after certain advances under the mortgages had been made, but before it had entirely been advanced. Thus, causing a claim against the property affecting all mortgages providing such liens were approved by the Courts as prior claims, if such could be established. When the sale was made to Mr. Durno to enable the title to be thoroughly cleaned up, Mr. Morine (having a moral obligation to us to adjust certain matters) discharged all mechanics' liens by paying them, the discharges being duly entered on the register; thus enabling a clear title to be given to the purchaser without litigation and without possible loss to this Company. Mr. Morine is not today the owner of the property. His mortgage for \$25,000.00 which followed the mortgage to Renton was wiped out by the sale proceedings and we understand by the whole transaction, Mr. Morine loses approximately \$35,000.00. Mr. Morine's interest in holding the property was not as great as the interest of those interested in the Renton mortgage and I, of course, thought it was up to Renton to come in and buy the property and retain all the mortgages which were prior and thereby, if desirable, retain the covenant to Mr. Morine because all they had to do was to take an Assignment of the Mortgage overdue, which was held by this Company and by taking the assignment, Mr. Morine would have been held under his covenant in the mortgage so assigned, or Mr. Renton could have paid off the mortgage and taken a re-assignment of it from those who held the property. You can see that it would be impossible for us to sell the property and at the same time retain the covenant.

30 legal Auditors state that Morine had half int. in property & advanced up to \$85,000.

40 Not necessary to sell the property if covenant good.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 197.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July,
1926.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 197.

Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July,
1926.

—continued.

(notes in margin written in pencil)

Morine
was re-
sponsible
for valn. of
property.

Auditors
state that
Huron &
Erie in-
sisted on
Morine's
covenant
see p. 5.

Has
Registrar
insisted
that "no
more large
loans"?

We were in the position of finding it to our advantage to procure the discharge of all the liens and get a title that would satisfy any purchaser. It would appear to me that those interested in the Renton Mortgage, who had a prior security to Mr. Morine's mortgage, and who had greater interest in the property than he had, should have stepped in and purchased the property with all the mortgages then existing. Instead of which, they let the property go and, in our opinion, were very ill advised and unwarranted in the position they took in protecting their interests. Mr. Morine was compelled to sacrifice his mortgage interest in the property because to preserve his interest he would have had to protect the Renton Mortgage, while the people interested in the Renton Mortgage were content to abandon the property regardless of the valuation which they had of \$310,000.00 at the time of sale proceedings by us. 10

I am informed that the Huron & Erie Mortgage Corporation, after making the loan of \$150,000.00 to S. B. Green, paid Mr. Morine a commission of One per cent for the loan even though he did offer his covenant to them for what it might be worth. We do not think the question of value of the property reflects on Mr. Morine or ourselves as the actual disbursements on the property, I am informed, were over \$285,000.00, while the valuation placed on the property even up to this date appears to be over \$300,000.00, which does not provide builder's profits which I have stated before and basing the property on the rents then anticipated of \$52,000.00 per year. The ultimate value at which this property was expected to sell was \$400,000.00 according to conditions in 1923 in Toronto. 20

Referring again to your Memorandum *re amount of large loans on Page One*. It is not the policy of this Company to make large loans in the future and during the past year we have attempted to reduce the number. When we have made one it has been under exceptional circumstances and we will not make a definite statement that there will be no more large loans, but it is our intention to continually cut down on our large investments where possible. 30

"*The Nature of Loans*"—The reason we desire building loans in many cases is because the security is up-to-date, having been recently constructed. We always try to avoid an old security and the only way to keep our mortgages on modern property is to accept a certain number of building loans. Our experience in dealing with shops, garages and warehouses has been very favourable except in some recent cases. It is easier to secure revenue, we have found, out of shops, garages, etc., than on some residential property, as there are more people applying for shops and a continually increasing demand for 40

(notes in margin written in pencil)

garages, as the automobile has become much cheaper in this country than formerly.

“Re Valuations of Properties”—

Enclosed are the following valuations :—

- 1.—William H. Biggs and Mrs. Eva Biggs..... S. B. Gorwill, London Loan Company Valuator.
- 2.—Norman Baird..... W. N. Lonsdale.
- 3.—R. S. Durno (Buckingham). W. N. Lonsdale and P. Fetterley.
- 4.—Patrick Lambert..... M. J. Kent, Company Manager.
- 5.—Harry Lucas..... W. N. Lonsdale.
- 6.—Lumb Apartments..... W. N. Lonsdale.
- 7.—Alex Palmer..... S. B. Gorwill and P. Fetterley.
- 8.—Turnbull Elevator..... Theron Gibson.
- 9.—Dale Furniture Co..... W. N. Lonsdale (Valuation from Mutual Life Co.)
- 10.—Danforth-Woodbine Theatre..... W. N. Lonsdale.
- 11.—D. C. Kay..... W. N. Lonsdale.
- 12.—Louis Hartman..... W. N. Lonsdale.

10

20

Not satisfactory seeing that Morine got comm. from borrowers & lenders.

In many cases the valuations were addressed to H. A. Morine for the simple reason that before Mr. Morine’s loans were accepted by our Board, we required that he produce W. N. Lonsdale’s valuations.

Re Valuations of Properties.

B.46	W. H. Biggs.....	\$18,000.00
B.47	Mrs. Eva Biggs.....	12,000.00
B.78	W. H. Biggs.....	13,210.00

30

I am sending herewith copy of valuations used upon the original advances. W. H. Biggs has been well known to me for a great many years and I have found him exceedingly honest in all his transactions. Mrs. Eva Biggs is his wife. These valuations were made by S. B. Gorwill, the Company Valuator, who is on a salary and received nothing for individual valuations. Biggs is paying on account of this loan out of the rents which seem quite adequate to carry the property. On my advice he turned down an offer to sell half of his properties which would have cleared up the \$12,000.00, B.47 Mortgage and one-half of the B.78, \$13,210.00 Mortgage. My reason for suggesting to him that he decline the offer was that the purchaser was anxious to buy and would raise his offer several thousand dollars. The proposed Purchaser has raised his offer \$2,000.00 but it is to be hoped he will raise it \$5,000.00 and this particular amount will be well cared for by the proposed sale, which should take place in the next few days.

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In the Supreme Court of Ontario.

Exhibits. Ex. 197.

Letter, George G. McCormick, President, London Loan & Savings Co., to Martin, Currie & Co., 5th July, 1926.

—continued.

In the
Supreme
Court of
Ontario.

(notes in margin written in pencil)

Re Norman Baird, B.62 and B.79, \$55,291.74.

Exhibits.
Ex. 197.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July,
1926.

—continued.

If property
so valuable
why was
it made
over to
the Co.

Originally this loan was made for \$20,000.00 on a valuation of \$40,000.00 upon property facing on Bloor Street which consisted of stores, apartments and offices. Subsequently since there was an exceedingly great demand in this congested portion of Toronto for garage space and storage, the proposition was made to us whereby Baird should build a modern garage building with adequate elevators, etc., to relieve the great need for this sort of storage in Toronto. We secured additional valuations from time to time, and if I remember correctly, this property was inspected by four or five different individuals, I being one of those who inspected the property after the garage had been erected. When the additional advance of \$15,000.00 was required we secured a valuation from McFarlane & Company, of Toronto, who valued this property at \$86,000.00 and stated that their valuation was a very conservative one. As a collateral arrangement with the final advance of \$15,000.00, we were deeded the property upon which we had an offer to purchase, but, thinking we could make more money upon the sale of the property, we held out until now when we have a substantial Company prepared to pay a price which will net us a profit. This sale has been pending for some time and as soon as certain arrangements can be reached with other parties in Toronto, we propose to accept the offer we now have which will pay us one hundred cents on the dollar on our claim, plus a handsome profit.

3.—*D.42, R. S. Durno, \$77,000.00.*

This has been taken up at length earlier in this letter under the heading of "*Re H. A. Morine*".

4.—*L.3, Imperial Loan & Investment Co., \$12,465.41.*

This item was written off on March 20th, 1926.

5.—*L.23 and L.26, Patrick Lambert, \$27,312.00.*

This property was valued by Mr. M. J. Kent, our Company Manager, at \$60,000.00, which was far below the opinions of others in Toronto, as to its value. L.23 has been reduced from \$24,000.00 to \$22,420.22 and L.26 was for \$16,000.00 and has been reduced to \$15,026.00. I do not anticipate the slightest difficulty with this loan.

6.—*L.28 and L.31, Harry Lucas, \$60,000.00.*

These two loans are on the same property on the south side of Danforth Avenue, and our own Company Valuator, Mr. S. B. Gorwill, valued this property at \$90,000.00. We are now attempting to make a legal title to this property as we have a purchaser waiting to purchase it at an amount in excess of our claim, so that if the owner does not come in and protect, we are satisfied that our claim is amply secured. The rents which have been

66%
advanced
why?

(notes in margin written in pencil)

collected by the agent of Harry Lucas, have been sent in to us regularly and are more than enough to carry the property.

7.—*L.35 and L.35½, Harry Lucas, \$37,000.00.* \$57000

Your information is not altogether correct in this item, as \$45,000.00 is a first mortgage upon this property and the additional \$12,000.00 which brings the amount up to your statement of \$57,000.00 is collaterally secured by the balance of the equity covering the property upon which the \$45,000.00 loan is placed, and also property on the north side of Danforth upon which, as you state, the Huron & Erie Co. hold a first mortgage for \$62,000.00; valued by C. F. Wright & Co. at the amount you state. The valuation of \$199,500.00 is divided in this way:—

Valuation of the property upon which our \$45,000.00 mortgage is made, is \$100,100.00. The loan upon which The Huron & Erie have a first mortgage of \$63,000.00, is valued at \$99,400.00. There is also an Offer to Purchase pending upon this property and as soon as we are guaranteed sufficient reduction in our mortgages, we will accept their offer, which will give us the same security with a covenant which will be valuable in itself as well as having our claim substantially reduced. I have personally seen a valuation prepared for a Life Insurance Company which showed a value of \$212,550.00. The rents upon this property are also being collected by an Agent of the owner, Harry Lucas, and they are more than enough to take care of our claim and current expenses, but in spite of these rents, we anticipate the proposed sale as suggested above and this should be completed in the course of a few months.

8.—*L.43, Samuel H. Lumb, \$67,706.11.*

Since the Auditors made their report to you we have been approached by a possible purchaser for this property and on their assurance that they would pay us our full claim, plus a profit, we secured a quit claim of this property; added several thousand dollars to our claim to put it in first class shape for occupancy. This having been completed we accepted the most substantial offer made to us at our last Board meeting which will give us a profit and carry back a mortgage of \$65,000.00; with the security much improved because of the additional money spent upon the building and the rents which will be secured from the property by the new owner, as the apartments are rapidly filling and seem very popular; it should be a good loan. This property was valued by W. N. Lonsdale at \$105,000.00 before it was completed and with the additional decorations and refrigerating system throughout, plus fire escapes and elevator, etc., this property is worth a great deal more, although to comply with your *apparent desire to hurry these securities* instead of taking the proper time, which our many years of experience has shown us is advisable, we are going to accept less than the

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price

Loan too high in propn.

Our desire is to avoid these securities.

In the Supreme Court of Ontario.

— Exhibits. Ex. 197. Letter, George G. McCormick, President, London Loan & Savings Co., to Martin, Currie & Co., 5th July, 1926.

—continued.

In the
Supreme
Court of
Ontario.

(notes in margin written in pencil)

valuation which, of course, will place us in a strong position.
I am personally satisfied that this loan will be worth while.

Exhibits,
Ex. 197.

Letter,
George G. McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July,
1926.

65)44 (67

390

—

500

67%

advanced

9.—P.11, Alex Palmer, \$43,918.63.

(This property you say was valued by Morine in 1923, at \$65,000.00). You are quite right, we asked Morine to send in his valuation when he applied for the loan but we had no intention of taking his valuation as our guide. It was merely for the sake of securing his own opinion that we asked him for his valuation. Several members of our Board went down to Toronto and personally interviewed the people in the vicinity and secured first-hand information as to the value of this property. I also have inspected this property and because of my own opinion upon this property I declined to accept an offer which was in excess of our claim some time ago. We have, subsequently, made arrangements with the Adams Furniture Company, a substantial establishment of excellent standing, to rent our property, make expensive alterations on it, all of which has improved our property, with only a verbal understanding that we are prepared to sell the property at an increase over and above our claim, if purchased during the next few months. In the meantime, they are paying us a rental which more than carries our claim. Mr. Morine in 1923, was, in my opinion, justified in saying the property was worth, approximately, \$65,000.00. Since that date, as I have mentioned elsewhere, this property and others have depreciated some in value. There is no reflection upon his valuation after two years have intervened but, with the additional amount of money spent on this property by the Adams Furniture Company, for which they have no security, I feel that we are in a good position and one which will be cleared up to the entire satisfaction of everyone during the next few months.

Re Rates of Interest on Loans.

The loans referred to were made in 1922/24.

This is irrelevant.

We, of course, secure as high a rate of interest as is possible, consistent with safety. The rate of Ten and a half per cent was only slightly over the current rate when these loans were placed. You must not forget that some of these loans have been on our books for a great many years. For your information, I should like to point out to you that we have one loan on our books which (no doubt, you have seen if you have referred to the entire list of our investments) Joseph and Jonathan Ardiel, A.8, was placed in May of 1891. The valuation by our own valuator was \$6,000.00. We loaned him \$1,500.00 and have been collecting ever since that date Eight per cent on our loan. He has never been in arrears and we are still collecting the Eight per cent.

—continued.

(notes in margin written in pencil)

Only
justified
if no losses
to write
off.

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Re Reserve for Mortgages.

The amount, as you state, of \$22,812.86, was transferred to profit and loss account. The reason for that was that there had been an excessive amount of interest which was not necessarily overdue but outstanding and as soon as this amount came in after the first of the year, we reversed the entry. As we do not take accrued interest into our statements as an asset and you surely understand that every other Company does, we regard this as one of the strong points of our Company. Until we actually have collected our interest in cash, we do not show it in our statement.

Re Consolidated Trusts Corporation.

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We keep a separate ledger account of the various stocks held by this Company, and this particular investment in Consolidated Trusts stock is, in my opinion, very valuable, as we have been building up the reserve and not paying any interest to our shareholders. Business has so increased in this Trust Company that it is now before the Directors as to the advisability of paying a dividend. This point I prefer not to answer at this time as there are several things which may make it to our advantage if we do not pay a dividend upon this stock. It would be a very easy matter to pay it, but as it has been our policy in the past, we should like to have a very substantial reserve fund and as we are doing in The London Loan, so we are doing in The Consolidated Trusts Corporation, that is, not taking any credit for our accrued interest until it is paid. You suggest that the Consolidated Trusts Corporation holds 1931 shares of London Loan stock at \$54.82; whereas the last price of these shares was \$45.50, bid, according to your information. It would be, as you know, a very simple matter to have our stock quoted at \$54.82 or, if necessary, \$60.00. There are many reasons why we do not want our stock to be quoted at too high a figure for the present. This matter, I believe, I discussed with your Mr. Mackelvie when he was in Canada. If we liquidated, as we have no thought or desire of doing, we could pay every shareholder approximately *One Hundred and Twenty-five per cent.* This is my own personal opinion from calculations I have made during the past few weeks and this allows for excessive expenditures in realizing upon assets but, as no such thing could reasonably happen, I do not think it advisable to discuss at any greater length.

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Re Kingsdale Lands Limited.

Kingsdale Lands Company has practically cleared up its indebtedness to us through sales and quit claims, etc. I might add that there is no director or other official of The London Loan Company that has any interest whatsoever in the Kingsdale

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 197.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July,
1926.

—continued.

In the
Supreme
Court of
Ontario.

(notes in margin written in pencil)

Exhibits.
Ex. 197.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July,
1926.

—continued.

Lands Limited and, in addition, I might say that I am surprised at you making such a suggestion that such could possibly be a reason for a low rate of interest, as you claim it is. At the present time, companies are loaning money in many places at Six per cent and you, apparently, think that Six and half per cent is exceedingly low. Unfortunately, I am obliged to write to you and I cannot express in the way I should like today, the situation as it is here. Our rates of interest change from year to year and what might be regarded as an exceedingly reasonable rate in 1891, is an excessive rate today, but as these loans, K.33 and K.34, are practically a matter of past history, I do not think it is necessary to deal with them at any greater length, except to state that I hope there will be no other insinuation as to any favouritism being given to Directors, which I do not admit, but deny.

Re Capitalization of Interest.

It is not our intention to capitalize interest unless we feel that it is amply secured or if there is any other way of amply protecting our investment. I do not like capitalizing interest and I am sure I speak for every member of our Board but there are times when, because of certain conditions which are of a local nature, it is advisable, if not imperative to do so. You may rest assured that while we may do it in the future in some cases, it will not be done unless it is absolutely necessary.

Re Loan to Turnbull Elevator Co., T.11.

I have no copy before me of the letter of the Third of April, 1925, to which you refer as having stated that the principal on this mortgage had been reduced to \$43,629.86; whereas the loans appear in the Accountants' statement at \$97,671.90, but I want to call your attention to the fact that on the First of April, 1925, the Palmer Loan above referred to as Number Nine, "P.11," stood at that amount, "\$43,629.86," and I think this will cover the explanation you require. The Turnbull loan is regarded by us as one of our best loans. The interest upon this loan is paid up to the last interest day and there is none owing until the Tenth of August next. This property was valued by our own Valuator at \$400,000.00 and you will also see the enclosed valuation of land only, which is far in excess of our claim, which valuation was made by Theron Gibson, that is \$115,583.00, excluding buildings. The buildings, in all probability, would cost approximately \$500,000.00 to construct but, as a conservative valuation, our Valuator put the figure at \$400,000.00, land and buildings included.

Re Non-Disclosure of Large Loans.

When your letters which are addressed to the Company arrive, they are usually referred to the various members of the

(notes in margin written in pencil)

Board before the Board meeting and then taken up at the Board meeting and discussed. It was distinctly understood that when you asked Mr. Kent for information regarding large loans that he would send it to you. We have at the present time an Accountant, J. H. Hambly (replacing our former accountant) who has had years of experience in financial matters, and it is upon him that the future responsibility of London Loan book-keeping and routine rests. He has a very favourable reputation and is in full charge of all matters pertaining to the management of the Company, outside of the general manager and the directors. He is very particular about details, is very conservative in his summing up of situations and was appointed with a view to improving our internal management and also establishing in your minds, as he has already done in the minds of others, that Company affairs will receive every attention that it is possible to give them. He also has a knowledge of legal matters beyond the average layman and since Mr. Kent's accident of last year, a great deal of responsibility has been placed on Mr. Hambly's shoulders under the careful supervision of our entire Board.

Regarding the loan of R.31, Louis Hartman, upon which we made a loan of \$80,000.00.

In November of 1924, the valuation in that case was made by W. N. Lonsdale of \$161,300.00. The loan was made upon a new property at the rate of Seven per cent, which, I am informed, was offered to the Borrower from several other sources and it was particularly desirable to secure this loan. The interest has been paid in full to the First of May, 1926. There is nothing due until the First of November next. He has also made a reduction in principal of \$2,500.00. I regret exceedingly that Mr. Kent did not give you the information regarding that loan.

Re Profit and Loss Account.

This appears to me to be a matter of bookkeeping, and, as President, I feel that this matter should be attended to by our Accountant and have asked him to read carefully what you have said on Page Six of your memorandum, and to give it his attention, consistent with our rules.

Re Profit on Sale of Huron & Erie shares to Consolidated Trusts Corporation.

Regarding the profit on sale of Huron & Erie shares to Consolidated Trusts Corporation, this stock was sold to them at three points less than the market value. We have been approached many times to secure this block of stock by outsiders, but we preferred to give the Consolidated Trusts Corporation the preference. We would now sell out our Huron & Erie stock at One Hundred and Thirty-five, which is carried in our statement at One Hundred and Fifteen.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 197.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July.
1926.

—continued.

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30

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Why?

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 197.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July,
1926.

—continued.

(notes in margin written in pencil)

Mortgage Previously Written Off Recovered, \$1,651.45.

This mortgage was written off our books. This was the case of Fabrian A. LaBelle, of Fort William. He ceased to make his payments and our report was that it would be advisable to write off the investment, although we continued to press for our money, as we always do. Then, without any warning, he commenced making his payments and has continued to do so regularly ever since. We do not like to put a thing of this kind into our profit account as we are obliged to pay taxes on it. 10

Why was it
credited to
P. & L.

Loans to Thomas Baker, B.67 and B.68, \$1,350.00 and \$900.00.

It is the same Mr. Baker who acts as Director for the London Loan & Savings Company. The loan of \$1,350.00 was made in June of 1924, upon the security valued by our Company Inspector S. B. Gorwill, at \$2,400.00 and B.68, for \$900.00, was made in June, 1924, upon a valuation by our Mr. S. B. Gorwill of \$2,400.00. This was allowed to remain in arrears at the request of Mr. Baker, who had sales pending for these small properties and, as the security appeared in our minds ample, we permitted the interest to remain in arrears, *which we understood was to help the sale of property*; as the matter is a very small one and as we would oblige any old customer who had plenty of security, we granted this request to Mr. Baker. Mr. Baker has informed me that he will pay off these loans shortly and we passed a resolution subsequently that no loans be made to Directors or any member of their family, nor is any loan to be made on Company's stock. I might add that legislation has made it almost impossible to loan money to Directors or their families. For this, our Canadian Companies were sorely in need. 30

This shd. not
have been
allowed.
How?

Re Debentures Raised in Canada with Specific Security.

Enquire
about
possible
future
transactions.

I noted your objection to this item *re* Canadian Bank of Commerce, not Bank of Montreal as you state, in former correspondence and, as this has been entirely paid off, and your objection noted, I do not see that I can add anything more to what has been said and done.

Real Estate Held.

I do not see the point you make in connection with your recommendation. As I have pointed out to you before, we have more than sufficient hidden reserves to take care of any possible losses, and I personally, after having inspected these various properties myself, do not think that this Company will lose any money whatever on the investments in question in your memorandum of any others of any consequence. I do not think that you have given sufficient considerations to *our hidden assets and I do not think that the Accountants, when they looked into our books, gave sufficient attention to our hidden reserves.* When 40

(notes in margin written in pencil)

our accrued interest alone amounts to Seventy odd Thousand Dollars and we have refused an offer of \$150,000.00 for our office building and three stores, which are assessed for \$95,500.00 and which we carry in our report at \$85,000.00, you will see that these items alone would care for the provision of a possible reserve. I might also call your attention to the fact that it was you who suggested that we do not set up a special reserve for any purpose whatsoever, aside from our regular reserve. It was you who had so changed our former method or suggestion many years ago and advised us not to carry a separate reserve as it would not be regarded favourably by your Scotch Debenture holders. I do not understand why you advise one thing on one occasion and another on another occasion.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 197.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July,
1926.

—continued.

Re Liquid Balances.

In our experience we have studied very carefully small deposits under Five Hundred Dollars, the amount of money required for depositors and over the many years the average seems to be approximately what we carry. We have in mind, of course, the credits which are guaranteed by the banks, about which I am sure you have every particular, which cannot be withdrawn without the required notice, and if the required notice were given to us there would be sufficient money come in for mortgages, etc., to average much more than is required. In addition to those precautions we have also, as you know, a block of \$100,000.00 worth of Government Bonds which is in the custody of the Bank of Montreal here, upon which we have a line of credit. We have also One Thousand shares of Huron & Erie stock which is not pledged and could be used on a moment's notice. I have (and I am sure the management in general) applied practical applications of my banking experience and have not attempted to carry this company on from a theoretical standpoint. I have taken the average over a period of five years and have found exactly how much money we can anticipate being paid into the Company from mortgages daily. I have taken the average of withdrawals for a period of five years. I have figured the possible "runs" and the circumstances which might cause them and I feel that we are amply protected in our present course which, you will find during the next few years, will be even more conservative than in the past, as I am doing everything in my power to convince people generally (as I have already convinced myself) that this Company is a first-class, gilt-edged loan corporation with its investments all within Ontario (which you cannot say of many of our other companies) and all investments within easy reach of any Inspector or any Director who may wish to satisfy himself as we have done. We have on deposit in sums of less than Five Hundred Dollars,

Bad com-
parison
with other
Co's.

In the
Supreme
Court of
Ontario.

(notes in margin written in pencil)

\$183,474.93, as to the First of July, 1926.

not large proportion of \$655,000.

Exhibits.
Ex. 197.

Re Directors.

Our Board of Directors is regarded by many as one of the best Boards in this district. You call my attention particularly

Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July,
1926.

(written in pencil)
(\$5000 in name of London &
Western Trust Co. *re* Baker)

Thos. Baker	30	\$1500	Stock	
Mrs. Do	158	7900	Do	
C. R. Hunt	25	1250	Do	10
Mrs. M. A. Hunt (diff. address)	34	1700	Do	
Mrs. M. L. Do	34	1700	Do	

—continued.

verify
from
list.

to Mr. Baker and Mr. Hunt. Mr. Baker has one hundred and thirty shares of London Loan stock in his own name and not thirty, as you state in your letter. His wife has one hundred and sixty shares and his daughter has one hundred shares.

Mr. Hunt has fifty-four shares in his own name, thirty-four in his wife's name and thirty-four shares in his mother's name. Mr. Baker is a Director of the London Life Insurance Company, a very solid, conservative institution, the London Cold Storage and Warehousing Company, and also the President of the London Hunt and Country Club, Limited, which office is prized as a very great honour in this community. He is also a partner in the firm of Dymont-Baker Lumber Company. Mr. Hunt is the managing director of the Hunt Milling Company, a Director of the London Cold Storage and Warehousing Company, a Director of the Goderich Elevator and Transit Co., and a Director of the Canadian National Millers Association of Canada. I do not know where better or more representative men could be secured as directors of this Company. I have mislaid a copy which I have of the liability placed upon Directors by a recent Amendment to the Loan and Trust Corporations Act of Ontario. If it is possible for me to find it before this letter is typed, I will enclose it herewith. The liability of the Directors has been so increased that it is very difficult, if not impossible, for any Director to evade his responsibility and liability in connection with each and every investment that is placed on the Company's books. I am the heaviest shareholder, I believe, of this Company, and if at any time I felt that there was the slightest possibility that we were going to experience difficulties, I should, in my own interest, insist upon liquidation. For that reason and for the reason that I believe in keeping our securities written down to their lowest value, I am confident that the shareholders of this Company, not to mention the debenture holders and depositors who come before them, are more than secured.

(notes in margin written in pencil)

This is an exceedingly long letter and I may have missed some point which it was your desire for me to discuss. It was not my intention to omit anything. If I have done so, please call my attention to it. It was my sole object in this letter to so thoroughly convince you that our securities and our management is trying to be right and will be right in the future that there will be no opportunity for you or for anyone else to reflect upon us.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 197.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July,
1926.

10

I have written this letter with the idea that it is final and that you may be thoroughly convinced that as the largest shareholder of this Company, I am protecting myself when I protect you and, as a result of the confidence and the assurance that this letter must surely bring out, there will be a substantial increase in your Scotch debentures and that you will exert considerable effort in increasing our debentures, which assurance you gave us when making the request for an Audit, providing you are satisfied as, I feel sure, you will be now.

—continued.

Yours very truly,

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“GEO. G. McCORMICK,”

President.

P.S. Please give my kindest regards to Mr. Alex Mackelvie.

Exhibit 198

(Plaintiffs' Exhibit)

Draft of Letter, George G. McCormick, President London Loan and Savings Co., to Martin, Currie & Co.

NOT PRINTED.

Draft of Exhibit 197.

Exhibits.
Ex. 198.
Draft of
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
5th July,
1926.

NOT
PRINTED.

Part Exhibit 199

(Plaintiffs' Exhibit)

A**Letter, Martin, Currie & Co. to George G. McCormick**

Edinburgh,

12th October, 1926.

George G. McCormick, Esq.,

President,

London Loan & Savings Company of Canada,

220 Dundas Street,

London, Ontario.

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Dear Sir,

We have now carefully considered your letter of 5th July last, for which we thank you, and while we appreciate the difficult times with which your Company has had to contend, we are not yet satisfied regarding certain features of the management during the past few years. We have drawn up and send you herewith a Memorandum dealing with certain points which occur to us, and we shall be glad to hear from you further in regard to these at your convenience.

In the meantime, while we shall endeavour to renew the Debentures 20 maturing next month, we regret that we cannot see our way to advertise your Company's Debentures in any way as regards new money pending receipt of your reply to the enclosed Memorandum. We are of opinion that it will be necessary for your Board to offer a rate of not less than $5\frac{1}{4}\%$ for the renewal of the Debentures maturing at the Martinmas Term, and we shall be glad to receive your Company's instructions by cablegram on receipt of this letter.

In view of the Company's unpleasant experience in connection with the loans introduced by Mr. Morine during the past few years, we feel that we are justified in asking your Board not to accept any further loans introduced from this source, and we shall be glad to know that they agree to this request. 30

We are,

Yours faithfully,

MARTIN, CURRIE & CO.

Oct. 25 Rec'd.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 199.
A.
Letter,
Martin,
Currie & Co.
to George G.
McCormick,
12th Octob-
er, 1926.

FOLLOWING SHOWN ON BACK OF LETTER

180 ft.
120

3600
180

21600
3500

25100

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 199.
A.
Letter,
Martin,
Currie & Co.
to George G.
McCormick,
12th October,
1926.

—continued.

Part Exhibit 199

(Plaintiffs' Exhibit)

B**Memorandum, by Martin, Currie & Co.****LONDON LOAN & SAVINGS COMPANY OF CANADA**

Memorandum by Martin, Currie & Co., C.A., Edinburgh.

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(written in pencil)

Sale couldn't be closed; H. & E. would not take money without bonus of \$10,000.—but must take it in Feb. next.

1. *Transactions with Morine.*

20

The statement by Mr. McCormick regarding the release of Morine's covenant in connection with the loans over the Buckingham Mansions Property is not convincing. He states that it was impossible for them to sell the property and at the same time retain the covenant, but the fact remains that Morine was responsible to the London Loan Company for the safety of their loans and there was no reason why Morine should have been released simply because Renton's mortgage came in front of his. As a matter of fact, the ultimate purchaser of the property only put up a nominal amount of cash, thereby leaving the London Loan Company with the risk of their mortgages but without any prospect of a capital profit. In the second place, Morine's statement in his letter to Mr. McCormick that the investment was made by W. L. Renton without any influence of representation on his part is at variance with the statement by the Accountants that "he then interested W. L. Renton "in the property and agreed to give him one-half interest for

30

Exhibits.
Part Ex. 199.
B.
Memoran-
dum by
Martin,
Currie & Co.,
12th Octo-
ber, 1926.

In the
Supreme
Court of
Ontario.

Exhibits.
Part Ex. 199.
B.

Memoran-
dum by
Martin,
Currie & Co.,
12th Octo-
ber, 1926.

—continued.

“an advance of \$46,000, but on condition that Morine’s name should not be on the covenant. Morine thereupon conveyed the property to his son-in-law, Mr. Dyas, who gave the mortgage to Mr. Renton.” Thirdly, it is scarcely correct to say that Renton had a larger interest in the property than Morine as the net loss incurred by each was practically similar and Morine would appear to have been responsible for the introduction of the business both to the London Loan Company and to Renton. Fourthly, it is significant that, as stated by the Accountants, the Huron & Erie Company insisted on Morine’s name being on the covenant and only advanced about 50% of the valuation made by them, whereas the London Loan Company advanced an additional \$56,000. on second and third mortgages, and afterwards released Morine from his covenant. 10

It seems a strange coincidence that most of the doubtful loans of large amount which were granted between 1922 and 1924 were arranged by Morine and it is not consistent with the valuations being entirely independent on behalf of the Company that they were obtained by and addressed to him instead of to the Company. In the case of Loan P.11—Alexander Palmer—the sum of \$43,918 was advanced on Morine’s valuation in 1923 of \$65,000, namely, 67% of the valuation, while the property was valued by Mr. Wright in 1925 at only \$37,600. In the case of the loan to S. H. Lumb for \$67,706, made on 1st May, 1925, no interest has been paid on the loan and no offer was received when the property was exposed to sale by auction, although valued by Lonsdale at \$105,000. This loan was made when the slump in real estate was at its height and there does not seem to be any reasonable excuse for the large amount of depreciation. In his valuation dated 27th April, 1925, Lonsdale refers to the depressed conditions of letting at that time. 20 30

(written in pencil)—H. & E. wanted bonus *re* Palmer.

(Profiteers) tendered but wouldn’t take it.

2. It is noted that the Directors have decided not to make large loans in the future except under exceptional circumstances and it might be stated whether the Accountants are correct in reporting “that the Registrar has criticised the Company “because of the large amount so invested and has intimated “that such loans will not be admitted in future.”

3. *Loans on New Buildings.*

Certain loans were made on valuations which were obtained while the buildings were in course of erection, and this no doubt explains the unduly high percentage of loans advanced as compared with the valuation figures. For example, in the case of the Palmer Loan referred to above where 67% was advanced, and in the case of Loans L.28 and L.31, Harry Lucas, where 40

\$60,000 was advanced on the Company's valuation of \$90,000, equivalent to 66%.

*In the
Supreme
Court of
Ontario.*

4. *Buckingham Mansions.*

The original loan over Buckingham Mansions appears to have been made on 13th February, 1923, while the valuation produced by Lonsdale is dated 1st December, 1924. A copy of the original valuation obtained by the Company may be produced.

Exhibits.
Part Ex. 199.
B.
Memorandum by
Martin,
Currie & Co.,
12th October, 1926.

5. *Loans at 10% Interest.*

10 The statement that 10% interest was only slightly over the current rate when certain loans were placed is scarcely correct and the reference to the old established loans still on the books is rather irrelevant. The following loans which were referred to were made in 1923/1925 and these appear to have been additional loans which were required owing to the fact that the original loans granted were not sufficient to complete the erection of the buildings, viz. :—

	B 79	Norman Baird	\$15,291.74	10%	28th January, 1925.
	L 31	Harry Lucas	20,000.00	10%	10th June, 1923.
20	L 35½	Do.	12,000.00	10%	11th September, 1923

—continued.

(written in pencil)
Cleaned up by
Mr. Baker.

6. *Loans to Mr. Baker.*

30 It is surprising that Mr. Baker should have asked for delay in the payment of interest on the loans to him of \$1350 and \$900, and it is difficult to understand the statement that the decision to allow the interest to remain in arrears was to help the sale of the property. The amount involved is small but the principle is very unsound.

7. *Assets Pledged to the Bank.*

(written in pencil)
Bk. of Scot. for their deb.

40 The question as to the desirability of obtaining financial assistance from the Bank has frequently been discussed in the past and while the practice of granting the Company's own Debentures to the Bank in security is not in itself objectionable, strong exception must be taken to the pledging of the Company's assets, such as Government Bonds and Huron and Erie stock as security. This has the effect of weakening the security of the Debenture-holders while placing the Bank in a strong position. An undertaking should be given that no such pledging of assets should take place in any circumstances in the ordinary course

In the
Supreme
Court of
Ontario.

Exhibits.
Part Ex. 199.

B.
Memoran-
dum by
Martin,
Currie & Co.,
12th Octo-
ber, 1926.

—continued.

of the Company's business but that such assets should be held in reserve to meet any sudden crisis arising from political or other causes. This point is referred to further under the next paragraph.

8. *Liquid Balances.*

The Report of the Registrar of the Loan and Trust Corporations for the year ended 31st December last shows that the Company's percentage of cash and Government securities was only 9.47% of the deposits as at 31st March, 1926, which compares very unfavourably with the similar percentages held by other companies (see Report page 47). For example :—

	Percentage of Cash, etc., Held
Hamilton Provident and Loan Corporation.....	39.27%
Huron and Erie Mortgage Corporation.....	50.96%
Ontario Loan and Debenture Company.....	308.18%
Toronto Savings and Loan Company.....	100.74%
Industrial Mortgage and Savings Company.....	94.12%

Only two other companies having a very small amount of deposits carry such a small percentage of Liquid Assets as the London Loan Company, the nearest approach of the remaining companies (about thirty in number) being a percentage of 26.17. It is true that the London Loan Company can employ a line of credit with the Bank if necessary, but it is quite evident from the position of the other companies' Liquid Assets that this is not regarded as sound finance in the case of a mortgage company.

(written in pencil)

Find out from Mr. Baker.

9. *Reserves.*

You will observe from the Accountants' Report that they recommend that "a substantial reserve of not less than one-quarter of the total book value of the real estate held for sale should be provided." We cannot trace having previously stated any views regarding the undesirability of special reserves.

10. *Commissions to Borrowers' Agents.* We were not aware that it was the practice of Canadian Companies to pay commissions to parties who also acted for and received commissions from the borrowers. We were previously of opinion that the Company was able through its own organization to arrange mortgages without any expense in the way of commission, etc., all such expenses being paid by the borrower.

11. *Mortgage previously written off recovered, \$1,651.45.*

Mr. McCormick states "we do not like to put a thing of

“this kind into our Profit Account as we are obliged to pay taxes “on it,” but it is not stated why the amount was credited to Profit and Loss instead of being carried to Reserve. A similar remark applies to the profit on the sale of the Huron and Erie shares amounting to \$7,904.

29 Charlotte Square,
Edinburgh, 12th October, 1926.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 199.
B.
Memoran-
dum by
Martin,
Currie & Co.,
12th Octo-
ber, 1926.

—continued.

Exhibit 121

(Plaintiffs' Exhibit)

10 **Letter, H. A. Morine to Consolidated Trusts Corp.**

Toronto,
October 15th, 1926.

Consolidated Trusts Corp.,
London, Ont.

Exhibits.
Ex. 121.
Letter, H. A.
Mordine to
Consolidated
Trusts
Corp.,
15th Octo-
ber, 1926.

Gentlemen :

I send herewith statements *re* Buckingham Apartments, together with a cheque for \$1,797.34, being balance on hand.

20 There are now only three apartments vacant, which is the best rented condition we have had for some seasons. The rents are thirty per cent down from the highest peak, but as leases and new tenants come in, there will be an appreciable increase in charges made, as the turn in rents has now arrived. The physical condition of the building is good, as considerable money has been spent in painting and decorating since the original construction of the building.

30 You will note that in addition to paying extensive repairs and decorations, on account taxes, and reducing the Huron & Erie principal \$3,000, leaves the above balance. It will be well to pay the Huron & Erie the outstanding due them in September. The balance to reimburse you for the present advance to the Huron & Erie will be picked up within the next two months from rent account.

Yours very truly,

H. A. MORINE.

HAM/J.
Encl.

*In the
Supreme
Court of
Ontario.*

Exhibit 122

(Plaintiffs' Exhibit)

Exhibits.
Ex. 122.

Letter, Huron & Erie Mortgage Corp. to Consolidated Trusts Corp.

Letter,
Huron &
Erie
Mortgage
Corp. to
Consolidated
Trusts
Corp.,
30th Octo-
ber, 1926.

Toronto 2, Canada,

October 30, 1926.

The Consolidated Trusts Corporation,

London, Ontario.

Dear Sirs :

Re P. 2491—Part Lot Nos. 2 and 3, N.S. King Street, Toronto.

We acknowledge receipt of your letter of October 26th pursuant to our 10 enquiry with reference to payment of the arrears under this loan. We now understand that you are the Trustee of this property and that you have referred our letter to your Trustor. Will you kindly advise us as soon as possible as to the intentions of the Trustor. If we are not able to obtain payment of these arrears in full immediately, we will have no other option but to place the matter in the hands of our Solicitors.

We must ask you to give this matter your immediate attention.

Yours truly,

R. P. BAKER,
Manager.

20

HH/AB.

FOLLOWING SHOWN ON BACK OF LETTER

D 42

Nov. 11/26.

Re Buckingham Apartments.

Mortgage D.42.

Letter from Huron & Erie *re* payment
on first mortgage which is overdue.
File.

Geo. G. McC.,
President.

30

Exhibit 123

(Plaintiffs' Exhibit)

Letter, M. J. Kent to H. A. Morine

London, Canada,
Nov. 2nd, 1926.

H. A. Morine, Esq.,
603 Kent Bldg.,
Toronto, Ont.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 123.
Letter, M. J.
Kent to
H. A.
Mordine,
2nd Novem-
ber, 1926.

Dear Sir :—

10 *Re* Buckingham Apartments, Mtge. D.42.
Enclosed please find copy of letter received from the Huron & Erie
Mortgage Corp. *re* the Buckingham Apartments.

Yours truly,
M. J. KENT,
Manager.

H/W.

FOLLOWING SHOWN ON BACK OF ABOVE LETTER

Mr. Hambly :

20 I understood from you in London
you were paying the H. & E. See my
letter to the Consolidated Trusts date Oct.
15th which gave you all particulars of
rents and exp., inclosed a cheque, and
stated when balance would be taken
care of.

H. A. MORINE.
3/10/1926.

Part Exhibit 200

(Plaintiffs' Exhibit)

B

Copy of Letter, R. Leighton Foster to H. A. Morine

NOT PRINTED BY CONSENT.

Exhibits.
Part Ex. 200.
B.
Copy of
Letter, R.
Leighton
Foster to
H. A.
Mordine,
2nd Novem-
ber, 1926.

NOT
PRINTED.

30

*In the
Supreme
Court of
Ontario.*

Exhibit 124

(Plaintiffs' Exhibit)

Copy of Letter, London Loan and Savings Co. to H. A. Morine

November 5th, 1926.

Exhibits.
Ex. 124.
Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
5th Novem-
ber, 1926.

H. A. Morine, Esq.,
603 Kent Building,
Toronto, Ont.

Dear Sir :

Re R. S. Durno, D.42.

The Consolidated Trusts Corporation handed us the enclosed letter and statement this morning in connection with a Hydro Electric Account contracted by Mrs. W. White, who we presume was a tenant in the Buckingham Apartments. We are forwarding this account to you for your attention and see no reason why this account should not be paid by Mrs. White. However, we will leave it in your hands to arrange as we do not wish to make any further charges against the mortgage accounts for small items such as this.

Yours truly,

Manager.

H/GW.

Exhibit 125

(Plaintiffs' Exhibit)

20

Letter, Huron & Erie Mortgage Corp. to Consolidated Trusts Corp.

Toronto 2, Canada,
November 26, 1926.

Exhibits.
Ex. 125.
Letter,
Huron &
Erie
Mortgage
Corp. to
Consolidated
Trusts
Corp.,
26th Novem-
ber, 1926.

The Consolidated Trust Corporation,
London, Ontario.

Dear Sirs :

Re P. 2491—Buckingham Apartments, King Street West, Toronto.

The payment which fell due under the above loan on August 7th last has not as yet been met. These arrears, as of Tuesday, November 30th, appear 30 to amount to \$8,483.32, made up as follows :

Arrears of Principal.....	\$3,000.00
Arrears of Interest.....	5,287.50
Interest on Arrears.....	195.82
	<hr/>
	\$8,483.32
	<hr/>

As this instalment of principal and interest is now over three months overdue, we must insist upon payment at once. If this payment is not received by Tuesday, November 30th, we shall then feel free to instruct our Solicitors to take what proceedings they deem necessary to collect this amount.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 125.
Letter,
Huron &
Erie
Mortgage
Corp. to
Consolidated
Trusts
Corp.,
26th Novem-
ber, 1926.

Yours truly,
R. P. BAKER,
Manager.

ABT/AB.
E&OE.

10

FOLLOWING SHOWN ON BACK OF LETTER

—continued.

Mtge. No. D.42—Durno.
Prin., \$77,637.50. Int. in arrears—on 1st
June, 1926, for 6 months, \$2,660—besides
\$2,000. on prin. Bal. at 7%. 1st mtge.
to H. & E., \$141,000. and Int. at 7½%;
arrears, \$8,483.32.

Valn. \$
by
Sold for \$227,500, but dep. not paid.
Nov. 30/26.

20

No action.

Exhibit 126

(Plaintiffs' Exhibit)

Copy of Letter, H. A. Morine to Consolidated Trusts Corp.

Toronto, Ontario,
November 26th, 1926.

The Consolidated Trusts Corporation,
London, Ontario.

Exhibits.
Ex. 126.
Copy of
Letter, H. A.
Morine to
Consolidated
Trusts
Corp.,
1st Decem-
ber, 1926.

Dear Sirs :

30

Re P. 2491—Buckingham Apartments, King Street West, Toronto.

The payment which fell due under the above loan on August 7th last has not as yet been met. These arrears, as of Tuesday, November 30th, appear to amount to \$8,493.32, made up as follows :

Arrears of Principal.....	\$3,000.00
Arrears of Interest.....	5,287.50
Interest on Arrears.....	195.82
	\$8,483.32

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 126.
Copy of
Letter, H. A.
Morine to
Consolidated
Trusts
Corp.,
1st Decem-
ber, 1926.

—continued.

As this instalment of principal and interest is now over three months overdue, we must insist upon payment at once. If this payment is not received by Tuesday, November 30th, we shall then feel free to instruct our Solicitors to take what proceedings they deem necessary to collect this amount.

Yours truly,
(Sgd.) R. P. BAKER,
Manager.

Toronto, Ont.,
1st December, 1926.

Consolidated Trusts Corp. :—

I cannot see your object in delaying payment as undoubtedly the mortgagees will go into possession of the property and operate the same at a very much increased expense and the question of the balance of interest held by you would be an absolute matter of indifference and very seriously affect your security. Of course, no doubt you recognize that it is not necessary for them to take proceedings, only being necessary for them to go into possession for arrears, stay there, collect, disburse and charge for such collections. In addition, the property being in the hands of the First Mortgagee for non-payment of interest might seriously affect sale negotiations for reasons you can readily understand.

H. A. MORINE.

10

20

Exhibits.
Ex. 128.
Copy of
Letter, J. H.
Hambly to
H. A.
Morine,
2nd Decem-
ber, 1926.

Exhibit 128

(Plaintiffs' Exhibit)

Copy of Letter, J. H. Hambly to H. A. Morine

Dec. 2nd, 1926.

H. A. Morine, Esq.,
603 Kent Bldg.,
Toronto, Ont.

Dear Sir :

Re Mtge. D.42.

We are in receipt of your letter undated and unsigned and on the foot of the notice addressed to the Consolidated Trusts Corp. from the Huron & Erie Mortgage Corp. in connection with the arrears of principal and interest overdue on the above mortgage. We would be obliged if you would kindly send us a return and remittance for the rents collected up to the present time in connection with this matter so that we may know exactly where we stand and take such steps as we think necessary to protect our interests.

Yours truly,

Acting-Manager.

H/W.

30

40

Exhibit 127

(Plaintiffs' Exhibit)

Letter, H. A. Morine to London Loan and Savings Co.Toronto,
December 3rd, 1926.Messrs. The London Loan & Savings Company,
London, Ontario.

Dear Sirs :—

Re Mtge. D.42.

10 As telephoned your Mr. Hambly this morning, my young lady's father died and she will not be on the job until Monday. Matters outstanding, therefore, will have to remain over.

The undated and unsigned memo which you referred to in your letter of December 2nd, was a copy of that received from the Consolidated Trusts, and the memo which we put on the bottom of it was returned to you in the same manner as received.

Yours truly,
H. A. MORINE.

HAM/FM.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 127.
Letter, H. A.
Morine to
London
Loan &
Savings Co.,
3rd Decem-
ber, 1926.

20 .

Exhibit 226

(Defendants' Exhibit)

Letter, Huron & Erie Mortgage Corp. to T. H. BakerToronto 2, Canada,
December 7th, 1926.Mr. T. H. Baker,
Vice-President,
London Loan & Savings Co.,
London, Ont.

Dear Sir :—

30 *Re P. 2491, Buckingham Apartments, King St. West, Toronto.*

We have just received a communication from our Treasurer, Mr. C. J. Clarke, to the effect that you have discussed with him the possibility of our accepting prepayment of this loan at the present time.

This loan does not mature until the 7th of February, 1933, and in view of the fact that the mortgage bears interest at the rate of $7\frac{1}{2}\%$, we would not be justified in accepting prepayment in full at this time.

We regret our inability to meet your wishes in the matter.

Yours truly,
(Sgd.) R. P. BAKER,
Manager.

40

RPB/GPB.

Exhibits.
Ex. 226.
Letter,
Huron &
Erie
Mortgage
Corp. to
T. H. Baker,
7th Decem-
ber, 1926.

In the
Supreme
Court of
Ontario.

Exhibit 129

(Plaintiffs' Exhibit)

Letter, Salter & Stapells to H. A. Morine

Toronto, Canada,
January 7th, 1927.

Exhibits.
Ex. 129.

Letter,
Salter &
Stapells to
H. A.
Morine,
7th Janu-
ary, 1927.

Mr. H. A. Morine,
Kent Building,
Toronto, 2.

Dear Sir :

Re Huron & Erie vs. Morine.

10

We have been handed for collection the arrears on the Buckingham Apartments on Queen Street West, amounting to \$8,554.85, made up as follows :

Instalment of Principal due August 7th.....	\$3,000.00
Interest due August 7th.....	5,287.50
Interest on Arrears to date.....	267.35
	\$8,554.85

Being unable to obtain any satisfaction from the Consolidated Trusts Company of London, our clients have issued us instructions today to issue a writ against you for the payment of these arrears unless they are paid by 20 Monday next, the 10th inst., at two o'clock.

Yours very truly,
SALTER & STAPELLS,
H. G. STAPELLS
per

HGS/EF.
E&OE.

Exhibit 130

(Plaintiffs' Exhibit)

Copy of Letter, H. A. Morine to G. A. P. Brickenden

January 8th, 1927. 30

Exhibits.
Ex. 130.
Copy of
Letter, H. A.
Morine to
G. A. P.
Brickenden,
8th Janu-
ary, 1927.

Mr. G. A. P. Brickenden,
London Loan Bldg.,
London, Ont.

Dear Sir,

I am served with the enclosed notice *re* Buckingham Apartments.

I am extremely surprised that your people would allow this condition to arise. Of course, it will therefore be necessary for me to place the matter in the hands of my solicitor to take such action as may be necessary to protect my interest, which will involve a considerable amount of expense and which seems to me to be unnecessary. Would it not be wise, therefore, to send a cheque to the Huron & Erie Mortgage Corporation?

Yours very truly,

HAM/J.
Encl.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 130.
Copy of
Letter, H. A.
Morine to
G. A. P.
Brickenden,
8th January,
1927.

—continued.

10

Exhibit 131

(Plaintiffs' Exhibit)

Copy of Letter, H. A. Morine to J. H. Hambly

January 10th, 1927.

Mr. Hambly,
The London Loan & Savings Co.,
London, Ont.

Exhibits.
Ex. 131.
Copy of
Letter, H. A.
Morine to
J. H.
Hambly,
10th January,
1927.

Dear Sir,

Re Buckingham Apartments.

It would appear as if the Company's refusal to pay the Huron & Erie
20 Mortgage Corporation the amount due on account of principal and interest
under their mortgage has culminated in the Huron & Erie Mortgage Corpora-
tion taking an action under the mortgage for the principal and interest now
due and not the whole principal under the mortgage. As I am on the covenant
of their mortgage, of course they will take action against me. I will therefore
have to take such steps as are necessary for the protection of myself and have
the property put up for sale to satisfy the judgment. The amount against
the property is, I understand, about \$138,000.00 after paying amount now
claimed by Huron & Erie.

It would appear to me as if this action would be unexplainable from the
30 Company's point of view, because, if the property is sold, it will only be sold
subject to the existing mortgage and not give any chance to wipe out the whole
mortgage. Further, I would think it would bring up the question as to how
this mortgage is to be treated in your statement with the Government and
many subjects very unwisely opened up.

Some of the rents have already been forwarded to London to assist in the
payment of this amount and about \$2,500. or \$3,000. is now available to help
wipe out the amount now overdue, so if you will forward balance cheque,
it will settle the Huron & Erie account.

(2) G. A. P. Brickenden.

*In the
Supreme
Court of
Ontario.*

I regret very much the Company's delay in this matter and cannot see for the life of me where it will serve the London Loan any good purpose, but on the contra do harm in many ways.

Exhibits.
Ex. 131.
Copy of
Letter, H. A.
Moline to
J. H.
Hambly,
10th Janu-
ary, 1927.
—continued.

HAM/J.

Yours very truly,

Exhibit 132

(Plaintiffs' Exhibit)

Letter, H. A. Moline to G. A. P. Brickenden

Exhibits.
Ex. 132.
Letter, H. A.
Moline to
G. A. P.
Brickenden,
10th Janu-
ary, 1927.

Mr. G. A. P. Brickenden,
London Loan Building,
London, Ont.

Toronto,
January 10, 1927. 10

Dear Sir,

Re Buckingham Apartments.

Confirming my phone conversation of this afternoon, if there is any way *that you can sell* the Buckingham Apartments to advantage there is no reason that I know that you should delay. I have up to date given co-operation in endeavouring to dispose of the property to the best advantage to the Company. If you can dispose of it without my co-operation, do so. As long as possible, 20 however, I will assist if that assistance can be of any help. When it ceases to be, don't delay yourself.

Yours very truly,
H. A. MORINE.

HAM/J.

Exhibit 133

(Plaintiffs' Exhibit)

Copy of Letter, H. A. Moline to Salter & Stapells

Exhibits.
Ex. 133.
Copy of
Letter, H. A.
Moline to
Salter &
Stapells,
11th Janu-
ary, 1927.

Messrs. Salter and Stapells,
14 King St. E.,
Toronto.

January 11th, 1927. 30

Dear Sirs :

Re Huron & Erie vs. Moline.

I am advised by Mr. G. A. P. Brickenden representing the Consolidated Trusts Corporation at London, and am authorized to notify you, that they

will tomorrow, Wednesday, pay at London, to the Huron & Erie Mortgage Corp., the amount necessary to settle your claim as per your letter of the 7th inst.

I would be very glad if you would advise me on Thursday or Friday next, that this settlement has been made.

Yours very truly,

HAM/J.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 133.

Copy of
Letter, H. A.
Morine to
Salter &
Stapells,
11th Janu-
ary, 1927.

—continued.

Part Exhibit 134

(Plaintiffs' Exhibit)

A

Letter, H. A. Morine to G. A. P. Brickenden

Toronto,

January 11th, 1927.

Exhibits.
Part Ex. 134.
A.

Letter, H. A.
Morine to
G. A. P.
Brickenden,
11th Janu-
ary, 1927.

10

Mr. G. A. P. Brickenden,
London Loan Bldg.,
London, Ont.

Dear Sir,

Re Buckingham Apts.

Herewith copy of my letter of even date to Salter and Stapells and under
20 separate cover Mr. Dyas is sending you a memo and a cheque covering the
funds on hand. The additional collections for this month will be required to
dispose of necessary expenditure for maintenance. You, of course, will get
your next statement in February in the usual way.

Yours very truly,

H. A. MORINE.

HAM/J.
Encl.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 134

(Plaintiffs' Exhibit)

B

Copy of Letter, H. A. Morine to Salter & Stapells

January 11th, 1927.

Exhibits.
Part Ex. 134.
B.
Copy of
Letter, H. A.
Morine to
Salter &
Stapells,
11th Janu-
ary, 1927.

Messrs. Salter and Stapells,
14 King St. E.,
Toronto.

Dear Sirs :

Re Huron & Erie vs. Morine.

10

I am advised by Mr. G. A. P. Brickenden representing the Consolidated Trusts Corporation at London, and am authorized to notify you, that they will tomorrow, Wednesday, pay at London, to the Huron & Erie Mortgage Corp., the amount necessary to settle your claim as per your letter of the 7th inst.

Yours very truly,

HAM/J.

Exhibits.
Part Ex. 200.
E.
Copy of
Letter,
George G.
McCormick,
President, to
R. Leighton
Foster,
27th Janu-
ary, 1927.

Part Exhibit 200

(Plaintiffs' Exhibit)

E

20

Copy of Letter, George G. McCormick, President, to R. Leighton Foster
NOT PRINTED BY CONSENT.

NOT
PRINTED.

Exhibit 227

(Defendants' Exhibit)

Copy of Letter, London Loan and Savings Co. to H. A. Morine

January 29th, 1927.

Exhibits.
Ex. 227.
Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
29th Janu-
ary, 1927.

H. A. Morine, Esq.,
Toronto, Ontario.

Dear Sir :

Re Buckingham Apts. D.42.

30

We received the enclosed bill from the British American Oil Co. today, and, if it is correct, we will be obliged if you will O.K. it and return it to us.

Yours truly,

Acting-Manager.

H/F.

Part Exhibit 200

(Plaintiffs' Exhibit)

C**Copy of Letter, R. Leighton Foster to George G. McCormick, President
London Loan and Savings Co.****NOT PRINTED BY CONSENT.***In the
Supreme
Court of
Ontario.*Exhibits.
Part Ex. 200.
C.Copy of
Letter,
R. Leighton
Foster to
George G.
McCormick,
President,
London
Loan &
Savings Co.,
10th Febru-
ary, 1927.**Exhibit 136**

(Plaintiffs' Exhibit)

**Letter, J. H. Lavery to London Loan and Savings Co.
with Memorandum by H. A. Morine**

10

Toronto, Feb. 14, 1927.
735 Shaw.The London Loan & Savings Com. of Canada.
J. H. Hambly, Esq.

Dear Sir :

Your reply *re* the Buckingham Apart. to hand. But you did not give the price of the apartment. I cannot offer for sale a building when I do not know the *price*. Kindly give the *price*, *amount of rent* and the *amount of mortgages* if any, and oblige,

20

Yours respectfully,
J. H. LAVERTY.

(written in pencil on back.)

This man is only asking for information *re* price and this is unwise as he is not a buyer or any intention that way. He better make an offer—say abt. \$275,000.

H. A. M.

NOT
PRINTED.Exhibits.
Ex. 136.
Letter, J. H.
Lavery to
London
Loan &
Savings Co.,
with
Memoran-
dum by
H. A.
Morine,
14th Febru-
ary, 1927.**Exhibit 135**

(Plaintiffs' Exhibit)

Letter, J. H. Hambly to H. A. Morine

30

London, Canada,
February 22nd, 1927.Mr. H. A. Morine,
Toronto, Ontario.

Dear Sir :

Re Durno, D.42, Buckingham Apts.

A short time ago we received an enquiry from J. H. Lavery, 735 Shaw Street, Toronto, in regard to the above property. We enclose herewith a

Exhibits.
Ex. 135.
Letter, J. H.
Hambly to
H. A.
Morine,
22nd Febru-
ary, 1927.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 135.
Letter, J. H.
Hambly to
H. A.
Morine,
22nd Febru-
ary, 1927.

—continued.

copy of the reply which we sent him, and we are now in receipt of a further letter asking for additional information. You will notice we did not quote him any price, and merely asked him for an offer on the property. We have today written him advising him that we have referred the matter to you, and any further information which he may desire you will be glad to furnish. On the face of his letter, I do not think he looks like a likely buyer.

Yours truly,
JNO. H. HAMBLY,
Manager.

H/F.

10

Exhibits.
Ex. 137.
Letter, H. A.
Morine to
J. H.
Hambly,
23rd Febru-
ary, 1927.

Exhibit 137

(Plaintiffs' Exhibit)

Letter, H. A. Morine to J. H. Hambly

Toronto,
February 23rd, 1927.

Mr. J. H. Hambly,
The London Loan & Savings Co.,
London, Ont.

Dear Sir,

Re Durno : Buckingham Apts.

20

In reply to yours of the 22nd inst. enclosing Mr. Laverty's letter and your reply thereto, I wish to advise that this man is only asking for information *re* price and it is unwise to give it to him as he is not a buyer and has no such intention, and giving a price will only do the property harm. However, the property will be sold and the sale will turn a profit to the Company in due time.

Yours very truly,
H. A. MORINE.

HAM/J.

Exhibits.
Ex. 203.
Extract from
Annual
Report for
1926,
25th Febru-
ary, 1927.

Exhibit 203

(Plaintiffs' Exhibit)

Extract from Annual Report for 1926

30

In Annual Return for 1926 R. S. Durno mortgage is shown as Real Estate owned by the Corporation, with other properties.
The listing of all real estate owned by the Corporation is printed hereafter.

EXTRACT FROM EXHIBIT 203.
SCHEDULE "A"
REAL ESTATE OWNED BY THE CORPORATION.

*Description of Property	Date Acquired	Amount of Encumbrances	Actual Cost	Book Value	Market Value	Operations during 192				Net Loss (See Footnote †)
						Expended for repairs and Improvements on Capital Account	Gross Income	Taxes and all Running Expenses	Net Income	
Lot 1, part lot 2, Danforth Ave., Plan 551, E. Toronto.	Nov. 23/25	nil	\$92,634.42	\$92,634.42	110,000.00	nil	869.00	nil	869.00	
Part Lots 1 and 2, n.s. Wells Ave., Blk. C, Plan 324, Toronto.	Nov. 23/25	12,000.00	4,835.83	4,835.83	18,000.00	508.79	975.00	445.10	21.11	
Part Lots 2 and 3, w.s. Brunswick Ave., Plan 324, Block C., Toronto.	Nov. 23/25	11,800.00	4,778.65	4,778.65	18,000.00	235.50	1,235.00	278.13	721.37	
Part Lots 63 and 64, w.s. Spadina Rd., Plan 930, Toronto.	Mch. 30/26	nil	17,510.81	17,510.81	17,200.00	nil	nil	nil	nil	
Part Lot 7, Plan 200, 617-19 Danforth Ave., Toronto.	June 6/25	nil	45,463.65	45,463.65	65,000.00	470.68	2,942.50	532.16	1,939.66	
Lots 410, 519, 520, 417, 420, 421, 523, 423, 425, 427, 428, 429, 430, 431, 432, 513-4, 440-1, 446-7, 448, 450, Plan 1801, Tp. York.	Nov. 2/25	nil	4,543.64	4,543.64	10,220.00	nil	nil	nil	nil	
458 Brunswick Ave., Toronto.	Nov. 23/25	11,950.00	5,081.16	5,081.16	18,000.00	508.85	1,650.00	575.84	565.31	
460 Brunswick Ave., Toronto.	Nov. 23/25	11,950.00	5,082.18	5,082.18	18,000.00	394.46	1,650.00	516.09	739.51	
27 Cloverdale Rd., Toronto.	Oct. 12/25	3,800.00	2,308.27	2,308.27	8,500.00	nil	125.92	.....	125.92	
247 Pall Mall, London.	Jan'y 25/	nil	3,664.78	3,644.78	5,500.00	35.96	290.00	169.52	84.58	
TOTAL.....		51,500.00	185,903.39	185,883.39	288,420.00	2,154.12	9,737.42	2,516.84	5,066.46	3.54

All credit to R.E. (written in pencil)

777

*In the case of leasehold property a brief statement of the terms of the lease should be given here, and the other columns of the schedule filled in where applicable.

†State here whether the net revenue or loss is credited or charged to (1) Principal of Real Estate Account or to (2) Profit and Loss Account.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 203.
Extract from
Annual
Report for
1926,
25th Febru-
ary, 1927.
—continued.

EXTRACT FROM EXHIBIT 203.
 SCHEDULE "A"
 REAL ESTATE OWNED BY THE CORPORATION.

*Description of Property	Date Acquired	Amount of Encum- brances	Actual Cost	Book Value	Market Value	Operations during 1926				Net Loss (See Footnote †)
						Expended for repairs and Im- prove- ments on Capital Account	Gross Income	Taxes and all Running Expenses	Net Income	
Part Lots 6, 7, 8, Bloor St., and Part Lot 16, St. Helen's Ave., Plan 352, Toronto.	Jan. 8/26	nil	29,653.92	29,653.92	40,000.00	100.00	2,239.40	1,755.12	384.28	
Parts Lots 2 and 3, Plan 512; Part Lot 16, Plan 457; 1622- 31 Queen W., Toronto.	June /25	135,000.00	77,000.00	77,637.50	227,500.00	424.08	20,549.01	19,493.51	631.42	
Lots 436-437, Elmwood Blvd.; Lots 165-166, Hollywood Blvd.; Plan 1801, Tp. N. York.	Dec. 19/25	nil	1,590.68	1,590.68	1,756.00	nil	nil	nil	nil	
Lots 132-3-4-5, Plan 1801, Tp. N. York.	Dec. 19/25	nil	1,433.22	1,433.22	1,760.00	nil	nil	nil	nil	
Lots 14-15-16-17, n.s. Austin Cres.; Lots 7 and 8, Plan D-1413, Toronto.	July 5/26	nil	23,974.58	23,974.58	18,835.00	nil	nil	nil	nil	
Part Lot 8, s.s. Danforth Ave. Plan 96, Toronto.	Aug. 12/26	nil	28,882.90	28,882.90	50,000.00					
96 1st.	Aug. 12/26	nil	40,000.00	40,000.00	90,000.00					
96 2nd.	Aug. 12/26	nil	22,003.79	22,003.79	.....	35.00	13,900.00	2,402.77	11,462.23	
TOTAL.....		186,500.00	410,442.48	411,059.98	699,436.00	2,713.20	46,425.83	26,168.24	17,544.39	3.54

All credit to R.E. (written in pencil)

778

*In the case of leasehold property, a brief statement of the terms of the lease should be here given, and the other columns of the schedule filled in where applicable.

†State here whether the net revenue or loss is credited or charged to (1) Principal of Real Estate Account or to (2) Profit and Loss Account.

EXTRACT FROM EXHIBIT 203.
SCHEDULE "A"
REAL ESTATE OWNED BY THE CORPORATION

Description of Property	Date Acquired	Amount of Encumbrances	Actual Cost	Book Value	Market Value	Operations during 192				
						Expended for repairs and Improvements on Capital Account	Gross Income	Taxes and all Running Expenses	Net Income	Net Loss (See Footnote †)
564 Sherbourne St., Sault Ste. Marie, Ont.	Sept. /26	nil	885.76	885.76	400.00	nil	nil	nil	nil	
11 Oakmount Rd., Toronto.	July 17/26	10,000.00	8,563.75	8,563.75	16,000.00	260.00	423.46	70.52	92.94	
165 High Park Ave., Toronto.	July 17/26	nil	14,239.33	14,239.33	14,000.00	81.68	326.68	29.75	215.25	
London Loan Bldg.	Feb. 23/06	nil	91,000.00 (in pencil)	85,000.00	200,000.00 (in pencil)	592.09	11,984.80	3,556.47	7,836.24	P. & L.
TOTAL.....		196,500.00	434,131.32 91,000.00 (in pencil)	519,748.82 85,000.00 (in pencil)		3,646.97	59,160.77	29,824.98	25,688.82	3.54
			<u>525,131.32</u>	<u>434,748.82</u>						

779

In the
 Supreme
 Court of
 Ontario.
 Exhibits.
 Ex. 203.
 Extract from
 Annual
 Report for
 1926.
 25th Febru-
 ary, 1927.
 —continued.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 200

(Plaintiffs' Exhibit)

D

Copy of Letter, R. Leighton Foster to George G. McCormick

NOT PRINTED BY CONSENT.

Exhibits.
Part Ex. 200.
D.
Copy of
Letter,
R. Leighton
Foster to
George G.
McCormick,
2nd March,
1927.

NOT
PRINTED.

Exhibit 228

(Defendants' Exhibit)

Copy of Letter, London Loan and Savings Co. to H. A. Morine

March 9th, 1927.

Mr. H. A. Morine,
Toronto, Ontario.

10

Exhibits.
Ex. 228.
Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
9th March,
1927.

Dear Sir :

Re Buckingham Apartments.

We have not yet received statement of rents in the above case, from the first of the year, and will be obliged to receive same without further delay.

Yours truly,

Manager.

H/F.

Part Exhibit 138

(Plaintiffs' Exhibit)

A

Letter, John H. Hambly to H. A. Morine

London, Canada,
March 21st, 1927.

H. A. Morine, Esq.,
603 Kent Bldg.,
Toronto, Ont.

20

Exhibits.
Part Ex. 138.
A.
Letter,
John H.
Hambly
to H. A.
Morine,
21st March,
1927.

Dear Sir :

Enclosed herewith you will find a copy of a letter which we received today from Geo. R. Dane in regard to Real Estate for sale in the City of 30

Toronto. I do not think there is anything in this inquiry, but we have referred him to you for any information he may desire.

In the Supreme Court of Ontario.

Yours truly,

JNO. H. HAMBLY,
Manager.

Exhibits.
Part Ex. 138.
A.
Letter,
John H.
Hamblly
to H. A.
Morine,
21st March,
1927.

H/W.
Encl.

—continued.

Part Exhibit 138

(Plaintiffs' Exhibit)

B

Copy of Letter, George R. Dane to Consolidated Trusts Corp.

17 Adelaide St. East,
Toronto 2,

Exhibits.
Part Ex. 138.
B.
Copy of
Letter,
George R.
Dane to
Consolidated
Trusts
Corp.,
18th March,
1927.

10

Mar. 18, 1927.

The Consolidated Trusts Corp.,
London, Ontario.

Dear Sirs :

We have been negotiating on the sale of a large apartment house in Toronto. Our buyer seems to mean business. We are trying to round up a few other apartments to have to show him in case the one we have for sale does not meet with his approval.

If you are interested in selling, kindly let us have the price, particulars of rents, expenses and any other information which you think might be of service to us in our sales talk.

Thanking you in anticipation of an immediate reply, we are,

Yours very truly,

(Sgd.) GEO. R. DANE.
(V. H.)

*In the
Supreme
Court of
Ontario.*

Exhibit 139

(Plaintiffs' Exhibit)

Letter, Huron & Erie Mortgage Corp. to Consolidated Trusts Corp.

Toronto 2, Canada,
April 6, 1927.

Exhibits.
Ex. 139.
Letter,
Huron &
Erie
Mortgage
Corp. to
Consolidated
Trusts
Corp.,
6th April,
1927.

Consolidated Trusts Corporation,
London, Ont.

Dear Sirs :—

Re P. 2491, Buckingham Apartments, King Street West, Toronto.

The payment due under the above loan on the 7th of February last has 10
not yet been met, and we would thank you to let us know by return mail
when we may expect payment of these arrears.

Your early attention to this matter will be appreciated.

Yours truly,
R. P. BAKER,
Manager.

RPB/GPB.

(in pencil) Refer to L. L. & S. Co.

Paid 20 Apr./27.

FOLLOWING SHOWN ON BACK OF LETTER

20

Apl. 12/27.

Re Durno—D.42.
Letter from Huron & Erie *re* payment
due Feby. 7/27.
Pay. 20 Apl./27.

Geo. G. McC.,
President.

Exhibit 229

(Defendants' Exhibit)

Copy of Letter, London Loan and Savings Co. to H. A. Morine

30

NOT PRINTED BY CONSENT.

Exhibits.
Ex. 229.
Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
8th April,
1927.

NOT
PRINTED.

Exhibit 231

(Defendants' Exhibit)

Letter, A. W. Dyas to J. H. Hambly**NOT PRINTED BY CONSENT.****Exhibit 230**

(Defendants' Exhibit)

Letter, A. W. Dyas to Consolidated Trusts Corp.Toronto,
April 9th, 1927.10 Consolidated Trusts Corp.,
London, Ont.

Dear Sirs :

Re Buckingham Apts.

Herewith cheque for \$1,400.00 on account of the above apartment, which will appear in detail in our next statement covering the rents and disbursements *re* the above property.

Yours very truly,
A. W. DYAS.J.
20 Encl.**Part Exhibit 200**

(Plaintiffs' Exhibit)

A**Letter, George G. McCormick, President London Loan and Savings Co., to Martin, Currie & Co.**London, Can.,
April 14th, 1927.Messrs. Martin, Currie & Company,
29 Charlotte Square,
Edinburgh, Scotland.

30

Dear Sirs :—

Re Confidential London Loan Matters.

I regret that an answer to your letter of October 12th could

*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 231.
Letter,
A. W. Dyas
to J. H.
Hambly,
9th April,
1927.**NOT
PRINTED.**Exhibits.
Ex. 230.
Letter, A. W.
Dyas to
Consolidated
Trusts
Corp.,
9th April,
1927.Exhibits.
Part Ex. 200.
A.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
14th April,
1927.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 200.

A.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
14th April,
1927.

—continued.

(notes in margin written in pencil)

not have been sent forward to you before this, but conditions have been improving and purchasers for our various properties have been numerous, and in each case we have been trying to sell at a figure which would net the Company a reasonable profit if possible. After closing a couple of these sales by way of an Agreement, various things arose which made it impossible to complete the transactions and in each case I was waiting until I had something more definite to report to you than a mere Agreement.

Understood
that prop-
erty did
not belong
to Co.

The Buckingham transaction we had hoped to complete last September, but a purchaser came up to London and, after an interview with our late Manager, Mr. M. J. Kent, the sale fell through. We have never been able to find out exactly what caused the difficulty.

Why was
covenant
withdrawn?

At this point I should like to tell you that we have been successful in retiring Mr. M. J. Kent from the management of this Company and also from the Board. We have received from the Department in Toronto letters congratulating us upon his retirement; also one letter from the Bench and several others

Proof of
our view
regarding
weak
manager.

from financial institutions and business men throughout Canada. The general impression seems to be that The London Loan will now advance and, with all due respect to Mr. Kent's age and years of service, he has been regarded by many as a millstone around our necks. At the last annual meeting he attempted to get control of the Company and elect himself President with a Board of Directors consisting of men of straw, and utterly failed.

In his place we have John Harry Hambly, a very highly respected citizen of long standing; one with considerable experience in legal matters and at one time in the employ of The London Life Insurance Company. Upon his appointment, we received many gratifying letters and feel sure that, under his guidance, with the conservative policy which the Board has adopted, everyone will be reassured of the stability and conscientious attempt of the Directors to do what they feel sure is right.

Strong
evidence
of Regis-
trar's dis-
approval
of loan
policy.

By this time you have no doubt received the new Govern-ment statement which has removed the clause regarding a possible loss of \$100,000.00 upon our real estate. You will find enclosed herewith a copy of their letter to us of February 10th, 1927. I am also enclosing herewith Department letter to us of March 2nd, 1927. This letter we regard as of great importance. The co-operation we have received from the Department since Mr. Kent's retirement has made my office as President a pleasure to me, and the confidence the Department seems to have in our new manager and his method of supervision is very satisfying, to say the least.

(notes in margin written in pencil)

(Lucas)

- Why second mortgage if cash rec'd? The loan which you objected to some time ago, known as the Irene Apartment loan, was paid off in full on September 3rd, 1927; whereupon we received \$50,425.00 cash, and subsequently a ten per cent second mortgage, which was held by us in the name of the same Mortgagor, was reduced to \$5,000.00. We are expecting the payment of this loan in full in the course of a few weeks.
- 10 Sold at profit of \$6,000. (still outstg.) The property known as Numbers 737 to 741 Danforth Avenue, in the name of Harry Lucas, is now being negotiated for sale at a profit. In the meantime the rents are completely paying the interest and rapidly reducing the investment.
- Can. Permanent still paying 5%. We are reducing our Debenture rate in Canada to Five per cent on all debentures. The Huron & Erie Mortgage Corporation have reduced their debenture rates to four and three-quarter per cent for one and two years, and four and a half per cent for three years and upwards.
- 20 Very unsatisfactory. We thought when we carried out your suggestion for an independent audit and were willing to pay for it that you on your part would do your utmost to advance the sale of our debentures when you found the statement from them satisfactory. When the auditors were in London, they assured us that they regarded our Company in excellent condition, and assured us that the statement was favourable. There are several items we presume in every company, regardless of the care shown, which could be improved.
- Report does not bear this out. We are making no change for the present in our Old Country Debenture rate, but the Board feels that you have not done your best for us and, for that reason and because of the fact that we have some hesitancy regarding the future of our debentures with you, we have prepared to pay them all off. It is not our desire to do this, and we hope that it will not be necessary for us to do it, but in the future we are determined to take no chances. I am perfectly satisfied in my own mind that we are as solid an institution as conditions in this country would permit us to be *under the old management*; and under the new management I feel equally sure that you will not only be delighted yourselves, but will get information whenever it is required and in as frank a manner as it is possible to convey on paper.
- 30 Good. My reason for saying that is that we should always prefer to discuss these matters with you personally. There is always a stilted appearance to a letter which is not intended, and we could answer your questions and volunteer information to you in conversation (and we did volunteer it all to the independent
- 40 Must have full state-

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 200.
A.

Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
14th April,
1927.

—continued.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 200.
A.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
14th April,
1927.

(notes in margin written in pencil)
ments in
future.

auditors when they were here), but I am sure you appreciate that. As soon as statements are reduced to writing there is a formality about them and frequently this leads to misunderstanding.

When it comes to matters of bookkeeping, I (as President) do not pretend to keep myself posted beyond generalities but as a matter of policy I am determined that this Company should be as liquid as good business will warrant. As you know, I have a large portion of my assets invested in this Company and to me it is of vital importance that everything should be right and should be kept right. 10

Regarding your memorandum,—

—continued.

Number One

Transactions with Mr. Morine.

Yes—
matter of
reput'n.

We have done what we thought was in the best interests of our Company throughout our dealings with Morine. You speak of the Buckingham Mansions. I discussed this matter at great length in my letter to you of July 5th and I do not see how it is possible for me to give you any more assurance in connection with this matter, except to say that we do not think it was any of our business whether Morine interested Renton or whether Renton interested himself in the Buckingham transaction. Surely matters of that kind cannot and do not enter into a transaction between our Old Country agents and The London Loan & Savings Company. Is that not more a matter to be dealt with by the people who are attempting to influence you and W. L. Renton? We do not see where this comes into our internal management. I was told indirectly, not later than Saturday of last week, that Renton had made considerable money in his dealings with Mr. Morine and without any influence being brought to bear upon him whatsoever, he put his profits with his principal into this proposition (without being influenced by Mr. Morine). I believe that Mr. Renton would tell you this himself if you or the people who are trying to influence you would take the trouble to ask him. This matter, it seems to me, does not concern us at all. The part I am personally interested in is to see that the London Loan gets one hundred cents on the dollar upon its investments, which the rents on the present basis should warrant. 20 30 40

Good bus.
on part of
Huron &
Erie.

In connection with the sale of this property the people who were anxious to buy this property for cash objected very strenuously to the Huron & Erie Mortgage which was on this property, and, when they attempted to pay it off, found the Huron & Erie demanding a bonus of \$10,000.00 to accept their money. Their mortgage was for a period of ten years, but a

(notes in margin written in pencil)

10 mortgage in Ontario cannot be enforced against an individual after the five-year period is ended; although it can against a corporation. In other words, the first five years of the Huron & Erie Mortgage will end in February of next year and they are hoping to collect a bonus upon an additional five years, not realizing, however, that the law is very definite in permitting a Mortgagor (other than a Corporation) to pay off at the end of five years. If we are unable to secure a purchaser who will assume these mortgages as they stand today, the matter is not likely to be touched until February of next year when this mortgage will be paid off. it is expected, and a sale arranged. However, an applicant was in touch with me today and expects to give me an answer by Wednesday of next week as to whether he will purchase the property, paying us cash and assuming the mortgages. The property was all rented on Saturday last and, while there are vacancies from time to time and changes in tenants, the gross revenue should amount to approximately \$27,000.00. There is, however, a tendency to increase rents in Toronto at the present time. The depression seems to have ended and we are looking for increased rents when the leases are renewed.

Answer by Wed. ? completed.

20

Not desirable.

30

It has been our policy to retain loans even though they should become real estate on hand, if however, the rents are sufficient to justify the investment and hold until the opportunity arises to sell advantageously. You speak of it being a strange coincidence that most of the doubtful loans were arranged by Morine, and also that the valuations were addressed to him instead of the Company. Most of our loaning in Toronto has been through Morine and the reason for the valuations being addressed to him is that we compel him to produce the valuation and, therefore, he pays for it, but we nominate the Valuator and in each case we are given our choice of Valuators.

Re Palmer Loan, P.11.

60% lent
See letter to Foster agreeing to reduce limit to 50%
40 65)44 (6
450
—

You state that \$43,918.00 was advanced on Morine's valuation in 1923 of \$65,000.00. You are hardly correct in this. The Huron & Erie had a mortgage upon the property of \$26,500.00, and, as I recall the loan, additional money was requested to make some addition to the property or some improvement, and Mr. Morine sent in with his application a valuation of \$65,000.00. We drew a mortgage for \$40,000.00 in which we agreed to assume the Huron & Erie Mortgage (and in that way make our mortgage a first mortgage), and paid the difference to the Mortgagor in cash, but not before there had been a personal inspection by one of our own Valuators and other members of the Board. We did not, however, demand a written

In the Supreme Court of Ontario.

Exhibits. Part Ex. 200. A.

Letter, George G. McCormick, President, London Loan & Savings Co., to Martin, Currie & Co., 14th April, 1927.

—continued.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 200.
A.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
14th April,
1927.

(notes in margin written in pencil)

617/9 Dan-
forth Ave.

Verify from
Auditors'
Rep.

Advertised
for sale at
present?
Price asked?

valuation from him and in 1925, as you say, we secured a valuation by Wrights, Limited, in Toronto, which was for the sum of \$65,000.00; not, as you said, for \$37,600.00. I do not see where you can have secured this figure, \$37,600.00. Surely it must be a mistake, but the part I object to is that you did not pay very close attention to my letter of July 5th, as on page twelve, under Section nine, the question of valuation was fully dealt with. The property today should stand a valuation of more than \$75,000.00. We tendered Huron & Erie the money required to pay off their loan and they refused to accept it without a bonus. This, however, makes no difference to us.

now 10
paid
off

—continued.

Re S. H. Lumb.

Sold on
Wednesday?

Still being
negotiated
—given
till 1st
June.

Since our letter to you conditions have changed materially in connection with the above loan. The sale which I mentioned to you for this property in my last letter fell through because of some complications regarding the amount of cash which was to have been paid to us. This did not affect our position as the entire building is splendidly rented and we have in our possession an Agreement for Sale which is to be closed on the First of May, but may be closed next Wednesday, when I hope to be in Toronto to transact other business. A new sale will reduce our claim considerably by a cash payment and incidentally provide a purchaser for the property who has had great experience in the apartment business. The district in which this apartment building is situated is advancing very rapidly; hence the great demand for apartment buildings and this apartment is one of the best in this district and is constantly in demand.

30

Number Two.

Good.

You say Directors have decided not to make large loans except under exceptional circumstances. I am enclosing herewith a copy of a letter which was sent to the Department in Toronto on January 27th, 1927, and would like to call your attention particularly to the fact that it is not our intention to make loans beyond \$10,000.00 (until our real estate in Toronto is in better shape) unless we are making in return for a larger loan, a sale of some property which we now have or a mortgage back upon the property we are selling. I am sure you will see the advisability of this action. Again, at this point, let me refer you back to their letter to us of the 10th of February, 1927.

40

Number Three.

Regarding the Palmer Loan.

The tenant who is occupying this property has spent

(notes in margin written in pencil)

considerable money upon it, for which he has no security whatever and has promised to buy this property from us in the near future. In the meantime it is well rented.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 200.

Completed?
Yes—
cleared up
at profit.

Regarding Loans L.28 and L.31—Harry Lucas.

There is an Agreement for Sale, as mentioned earlier in the letter, whereby this property will be sold at a figure in advance of our valuation.

A.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
14th April,
1927.

10

Was Kent
qualified
to value
property?

Number Four.

Re Buckingham Mansions.

The Buckingham Mansions Loan appears in our books to have had an advance made upon it in February, 1923. We had additional facts before us than those stated by the auditors.

Huron & Erie
loan well
covered but
not 2nd & 3rd
mortgages.

We had the fact that there was at that time a valuation placed upon it by the Huron & Erie valuator of over twice the value of their mortgage, which was \$150,000.00, and, while the valuation you speak of by Lonsdale is dated the First of December, 1924, we had several other valuations in the meantime and the first one was made before the advance you speak of, by one of the officials of this Company, namely, M. J. Kent.

—continued.

20

Number Five—Loans at 10% Interest.

Re B.79—Norman Baird, \$15,291.74, 10%, 28th January, 1925.

This loan was paid off in full on December 8th, 1926.

Re L.31—Harry Lucas—\$12,000.00.

This loan was referred to above and was reduced to \$5,000.00 on the Third of March, 1927, and I am informed that this will be paid off in full whenever we make the request. This is a part of the loan you referred to in Number Three and will in all probability be completely wiped out next Wednesday. The rents upon this property have been more than sufficient to liquidate the interest payments and have also reduced our investment.

30

Number Six.

Re Loans to Mr. Baker.

I appreciate what you say in this item and, while the amount involved was small, you bear out my contention which has been definitely adopted by our Board. I might add that these loans were fully paid off by Mr. Baker before our annual statement was prepared for last year. There are at the present time no loans to Directors. There is a loan upon Mr. M. J. Kent's home of \$3,500.00, which property should be worth in the neighbourhood of \$17,000.00 or \$18,000.00, but Mr. Kent

40

*In the
Supreme
Court of
Ontario.*

(notes in margin written in pencil)

is no longer a Director of the London Loan & Savings Company and the security, as you will see from the valuation, is splendid.

Exhibits.
Part Ex. 200.

A.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
14th April,
1927.

Number Seven.

Re Assets Pledged to the Bank.

The Bank of Scotland have as collateral security to their debenture, Ontario Loan and Debenture stock. I thoroughly appreciate the point you bring out in connection with this item. Our loans from the Bank are used only in cases of emergency and in cases where it is imperative to take advantage of some special circumstances. For instance, the Bank of Scotland, as you know, gives us a very favourable line of credit and it is used to provide for maturing coupons and debentures and it is not our intention to use this line of credit for loaning purposes. The loan we have with the Bank of Montreal in London is made merely for the purpose of taking advantage of certain business conditions, such as special advantageous loans and the four dividend dates upon which there is an excessive demand. We feel that it is better to have our Government Bonds in their hands as a security rather than having the cash. It reduces the amount of our uninvested capital to a minimum, during which time we are receiving the regular rate upon the Government Bonds. This, I am sure, you will also agree, is good business.

—continued.

Weakens
security of
Deb. Lns.
Will Bank
not give
adv. without
special sec.
rate paid
5%.

Number Eight.

Liquid Balances.

Line of
credit not
equivalent
to cash
as in bad
times it
might be
withdrawn.

I cannot see your point of view in connection with this item. I doubt if there is another Company carrying a line of credit on the same terms as The London Loan. Our line of credit with the Bank of Scotland is for a definite period and to us it is much better than actual cash in the bank, which would not earn sufficient money to warrant its retention. I do not think the Government statement of percentage is fair to The London Loan. As a matter of fact, you know there is no window dressing in The London Loan and Savings Company. Many companies, I believe, will stop loaning a few weeks before the end of each quarter and thus accumulate considerable money to show as cash on hand and the day after the statement is returned to the Government reduce their cash reserves to the minimum. Why should we be pledged to do such things? We think it far better to take advantage of the definite contracts which we have with the Banks to provide lines of credit which are far better for our purposes than idle cash. However, our percentage was 21.52 over the Savings Bank accounts subject to call, at our last meeting.

(notes in margin written in pencil)

Number Nine.

Re Reserves.

Special
reserve a/c
agreed to
in letter
to Foster.

10

I recall (and my opinion is confirmed by the other Directors) that we had at one time a special reserve set up in our annual statement, and it was at your request that it was removed. It made no difference to us at that time. I do not think at the present time such a thing would be advisable and again I call your special attention to the copy of the letter which is enclosed herewith, dated February 10th, 1927, from the Department to ourselves "to eliminate the objectionable footnote with respect to the \$100,000.00 investment reserve.

Number Ten.

Re Commissions to Borrowers' Agents.

These can
only come
from sound
Agent.

20

Our organization is sufficient to give us many mortgages without paying any commission whatever to agents, but it is not sufficient to supply us with the number we require and we find that it is advisable to pay agents a commission, regardless of whether they receive a commission from the Borrower or not, so that the *best possible securities* may come to us.

Number Eleven.

Re Mortgage Previously Written Off Recovered, \$1,651.45.

Could have
been placed
towards
losses. See
para. 2 of
Foster's
letter.

30

This is a matter which pertains more particularly to the Accountant's Department and, as I see it, I do not know how it would be possible to put this item into reserve without first putting it into profit and loss but, as I explained in my former letter to you on page seventeen, this is left entirely to the Company Accountant and the auditors. This item I have referred to them.

This
conveys
nothing.

40

Regarding Mr. Morine.—I discussed him at considerable length in my letter to you of the 5th of July, and I set out as well as I could the whole situation as I saw it. Conditions have not changed since then except for the better. Mr. Morine has an entree to the Ontario Parliament Buildings that is the envy of most financial men. Almost any request he makes from the Department is granted. I am enclosing herewith a copy of a letter sent to Mr. H. A. Morine and signed by R. Leighton Foster, the Registrar of Loan Corporations for Ontario. Your objection to Mr. Morine was noted on a certain occasion when the government auditors were in London and the report went indirectly to Mr. Morine. He immediately sent this letter to me. It was not the department that raised the objection but yourselves, and Mr. Morine thought it was the department, whereupon this letter found its way to Mr. Morine. I regard

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 200.
A.

Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
14th April,
1927.

—continued.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 200.
A.
Letter,
George G.
McCormick,
President,
London
Loan &
Savings Co.,
to Martin,
Currie & Co.,
14th April,
1927.

—continued.

(notes in margin written in pencil)

Possibly,
but not
approved
for new
loans.

Mr. Morine as the most logical person in Toronto to remove from our books the real estate which we have on hand. He has an interest beyond the dollars involved to retain a reputation for the success of his loans and he has done his utmost to date to live up to it, and from every report, I gather he is continuing to do so with greater vigor than ever.

I am in hopes that in the next few days I may report to you the actual completion of the transactions which are pending now for the sales of a number of these properties, all of which have been arranged through Mr. Morine and his clients. In conclusion, let me add that the Department removed the footnote calling attention to the \$100,000.00 item because they realized that our office premises are in our statement at a ridiculously low figure. We have refused an offer for the building of \$150,000.00. The most prominent architect in this City has valued this building alone at \$150,000.00 and the land at \$110,000.00, totalling \$250,000.00, as against our value in the statement of \$85,000.00. The corner upon which our building is situated has become almost the centre of the business district. The erection of a seven-storey hotel with stores on the ground floor within a block of our corner, the erection of a new City Hall across the road from it, and the erection of a million dollar building by The London Life a block and a half from here has enhanced the value of this property beyond that mentioned by the valuator.

How much
is good?
All con-
sidered good.
Over 8%
on \$600,000.

We have accrued interest not taken into the statement of approximately \$52,000.00. The margin on our Ontario Loan and Debenture stock, as of the Second day of April, 1927, was \$38,250.00 for the amount carried on our books. The margin upon our Huron & Erie stock, upon the same date, amounted to \$28,000.00 over and above the amount shown by our books. Surely facts revealing hidden assets of this kind must impress you more than anything else I could say to you.

As I said before, we are preparing to pay off our debentures in Scotland, not that it is our desire to do it, and we sincerely hope that it will not be necessary, but because you led us to believe when we carried through your suggestion regarding an independent audit that you would do your utmost to further our interests regarding Scotch debenture-holders. This, apparently, you have not deemed it advisable to carry out.

May I hope that this letter may bring from you a letter which will show your utmost confidence in ourselves and also

prove to us that you are doing your utmost to further our interests.

Yours very truly,
GEO. G. McCORMICK,
President.

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Part Ex. 200.
 A.

Encls.

(below, written in pencil)
 NOTE. I arranged with Hambly to send us a quarterly detailed statement in columnar form of all Loans of \$10,000. or over, and of all loans under \$10,000. with int. in arrears for more than 6 mos.

Letter,
 George G. McCormick,
 President,
 London Loan & Savings Co.,
 to Martin, Currie & Co.,
 14th April, 1927.

—continued.

J. A. F.

10

(written in ink)
 P.S. Kindly address future communications to our *new Manager.*

Exhibit 296

(Plaintiffs' Exhibit)

Account, G. A. P. Brickenden & Co. with London Loan and Savings Co. for \$75.00

Exhibits.
 Ex. 296.
 Account,
 G. A. P. Brickenden & Co. with London Loan & Savings Co. for \$75.00,
 19th April, 1927.

20

London Loan Building, 220 Dundas Street,

LONDON,.....April 19th.....1927.

The London Loan & Savings Co.,.....

220 Dundas Street, CITY.....

IN ACCOUNT WITH
G. A. P. BRICKENDEN & CO.
 Barristers, Solicitors, Notaries, etc.

To Professional Charges relating to Martin, Currie & Company.

1926
 July
 30

5th Instructions to prepare a reply to a long letter of inquiry received from Messrs. Martin, Currie & Company as a result of the investigation of your company made by their auditors; numerous attendances on the officers of the London Loan obtaining data and attending London Loan obtaining documents, checking account, etcetera; drafting and engrossing long letter to Martin, Currie & Company; attending submitting same for the approval of the Company; revising and re-engrossing and arranging for same to be forwarded,—

*In the
Supreme
Court of
Ontario.*

1927
April 14th

Exhibits.
Ex. 296.
Account,
G. A. P.
Brickenden
& Co. with
London
Loan &
Savings Co.
for \$75.00,
19th April,
1927.

Received instructions to prepare and forward on behalf of the London Loan reply to a long letter received from Messrs. Martin, Currie & Company in October, 1926, perusing long letter from Messrs. Martin, Currie & Company; attending on Company directors obtaining necessary information; attending examining books; several attendances discussing proposed letter with Manager and President of the Company; drafting, re-drafting and revising long letter to Martin, Currie & Company; submitting same for approval and arranging for forwarding,— 10

Our fee in all,— \$75.00

—continued.

19/4/27
Approved
ordered paid.
Geo. G. McC.

Exhibit 232

(Defendants' Exhibit)

**Copy of Letter, London Loan and Savings Co. to Huron & Erie
Mortgage Corp.**

April 19th, 1927. 20
D.42.

Exhibits.
Ex. 232.
Copy of
Letter,
London
Loan &
Savings Co.
to Huron
& Erie
Mortgage
Corp.,
19th April,
1927.

The Huron & Erie Mortgage Corporation,
Toronto 2, Ontario.

Dear Sirs :

Re Buckingham Apts. Mtge. P.2491.

Replying to your letter of the 6th instant, I now enclose herewith cheque for \$8,295.95, being amount due on the above mortgage on Feb'y. 7/27, made up as follows :

Instalment of interest due Feb. 7/27.....	\$5,175.00	
Instalment of principal due Feb. 7/27.....	3,000.00	30
Extra interest on above to Apl. 20/27.....	120.95	
	<u>\$8,295.95</u>	

Yours truly,

Manager.

E&OE.

Exhibit 234

(Defendants' Exhibit)

Copy of Letter, London Loan and Savings Co. to H. A. Morine

April 27th, 1927.

H. A. Morine, Esq.,
603 Kent Building,
Toronto, Ontario.

Dear Sir :

I am enclosing herewith tax notices *re* Durno, Buckingham Apartments,
10 and *re* Palmer, 617-619 Danforth Avenue, for 1927 taxes. We will be obliged
if you will check these, and if they are O.K., return them to us in time for us
to pay same on the 4th proximo.

We have not yet received notice for taxes on the following properties,
and will be obliged if you will have same forwarded to us without delay.
Norman Baird, Pt. lots 6, 7, 8, Bloor St., and pt. lot 16, St. Helen's Ave.,
plan 352.

Kingsdale Lands, Ltd., lots 14 and 15, Austin Crescent.

Harry Lucas, Pt. lot 8, plan 96, 737-739 Danforth Ave.

Harry Lucas, 741 Danforth Ave.

20 S. H. Lumb, Donlands Apartments.

H. J. McDonald, Pt. lots 63 and 64 Spadina Road. (294)

Roberts Construction Co.—460 Brunswick Ave.

W. P. Evans, 27 Cloverdale Road.

H. M. Deeth, 11 Oakmount Road.

E. S. Mott, 165 High Park Ave.

Yours truly,

Manager.

H/E.

Exhibit 233

(Defendants' Exhibit)

Letter, H. A. Morine to London Loan and Savings Co.*Re D.42.*

Toronto,
April 29th, 1927.

The London Loan & Savings Co. of Canada,
London, Ont.

Dear Sirs :

Attention of Mr. Jas. H. Hambly.

I return herewith 1927 Tax Bills covering Buckingham Apartments,

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 234.

Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
27th April,
1927.

Exhibits.
Ex. 233.
Letter, H. A.
Morine to
London
Loan &
Savings Co.,
29th April,
1927.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 233.
Letter, H. A.
MORINE to
London
Loan &
Savings Co.,
29th April,
1927.

after I have duly noted the vacancies during 1927.

I would therefore ask that you send me the cheque, together with the tax bills, so that I can pay the same, after which I will be in a position to make a claim for vacancies. It is, of course, necessary to pay the taxes first, and then see if we can obtain a refund.

Yours very truly,
H. A. MORINE.
J.

HAM/J.
Encl.

—continued.

Exhibits.
Ex. 235.
Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
MORINE,
3rd May,
1927.

Exhibit 235

10

(Defendants' Exhibit)

Copy of Letter, London Loan and Savings Co. to H. A. Morine

May 3rd, 1927.

H. A. Morine, Esq.,
603 Kent Building,
Toronto, Ontario.

Dear Sirs :

Re Real Estate Accounts :
R. S. Durno, D.42.
A. Palmer, P.11.
W. P. Evans, S.51.
H. Lucas, L.25-28.
N. Baird, B.62.
Kingsdale Lands, K.33.
Agreement, Mellway Bros., B.52.

20

We duly received your letter enclosing tax bills for 1927 in connection with the above accounts. We are now returning same herewith, together with cheques to cover the full payments payable thereon. As in several of these cases we have no means of checking up the street numbers or confirming the correctness of these accounts, we wish you to go over same, and see that the enclosed accounts cover only the properties we are interested in. If you find same correct, you can then make the payment of the taxes thereon and return the vouchers to us in due course.

Yours truly,

Manager.

H/F.

Exhibit 236
(Defendants' Exhibit)

**Extract from Copy of Letter, London Loan and Savings Co. to
H. A. Morine**

July 18th, 1927.

H. A. Morine, Esq.,
Toronto, Ontario.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 236.
Extract from
Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
18th July,
1927.

Dear Sir :

.....
Re R. S. Durno, R.E. D.42.

10 The Consolidated Trusts have also handed us the statement and vouchers
re rents collected in connection with this matter. We notice included in the
Janitor's voucher for salary, supplies amounting to \$16.02. There are no detail
vouchers covering this amount. We certainly think that these should be sup-
plied to us. We also notice the account of the Associated Chemical Company
for \$3.99 dated July 14/25, also one for Lavoline Cleaner Company dated
Aug. 11/26. While we notice these accounts were not paid until March 25th,
1927, we do not think it is good business to allow same to remain outstanding
for such a long period of time. We would prefer that all outstanding accounts
be paid up to the date rental returns are made to us, as this is the only way
20 we have to keep tab of the expenses.
.....

Yours truly,

H/F.

Manager.

Part Exhibit 148
(Plaintiffs' Exhibit)

D

**Copy of Letter, London Loan and Savings Co. to Huron & Erie
Mortgage Corp.**

August 8th, 1927.

30 The Huron & Erie Mtge. Corporation,
14 King St. E.,
Toronto, Ont.

Exhibits.
Part Ex. 148.
D.
Copy of
Letter,
London
Loan &
Savings Co.
to Huron
& Erie
Mortgage
Corp.,
8th August,
1927.

Dear Sirs :

Enclosed herewith you will find cheque payable to your order for \$8,062.50,
which we would be obliged if you would kindly apply to the credit of loan
P.2491, \$3,000.00 on account of principal and \$5,062.50 in payment of the
instalment of interest which fell due on the 7th instant.

Kindly let us have usual acknowledgment for same, and oblige,

Yours truly,

H/GW.

Manager.

Exhibit 201

(Plaintiffs' Exhibit)

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 201.

Letter,
Martin,
Currie & Co.
to J. H.
Hambly,
Managing
Director,
London
Loan &
Savings Co.,
2nd Septem-
ber, 1927.

**Letter, Martin, Currie & Co. to J. H. Hambly, Managing Director,
London Loan and Savings Co.**

Edinburgh,
2nd September, 1927.

J. H. Hambly, Esq.,
Managing Director,
London Loan and Savings Company of Canada,
220 Dundas Street,
London, Ontario.

10

Dear Sir,

With reference to our Mr. Falconer's meeting with you in May last, we now await the statement containing the following particulars of loans of \$10,000 and upwards and also of any loans in arrear for six months or more, viz. :—

Number of Loan.
Date of Loan.
Name of Borrower.
Name of Valuer.
Amount of Loan.
Amount of Valuation.
Rate of Interest.
Particulars of Prior Mortgage.
Date from which interest in arrear.
Remarks.

20

We have carefully perused the correspondence which has passed between your Company and ourselves during the past two years, and while we are satisfied that some improvement has taken place in the position of the real estate following on the general improvement in the prices of property in Toronto and district, we consider that we are entitled to press for definite answers to the following points regarding the Buckingham Apartments loan, viz. :—

1. Why was Morine released from his covenant while the Huron and Erie Company declined to release him?
2. Why was the equity in the above property sold to Durno for a nominal amount while the Company retained the risk of loss through its large amount on second Mortgage?

If we are to continue to act as your Company's Debenture Agents in this country, we must insist on your agreement to the condition that no new loans should be accepted either directly or indirectly through Morine's introduction and we shall be glad to know that your Directors are prepared to accept this condition.

Subject to the above points being disposed of satisfactorily, we are prepared to do our best to advance your Company's Debenture connection here,

and we shall be glad to know in due course the terms on which your Company is prepared to renew the Debentures maturing at the Martinmas Term and also the rate for new money.

With regard to the Refuge Assurance Company Debenture for £10,000, which falls due on 11th November next, you may take it that the Company will not be prepared to accept a lower rate for renewal than $5\frac{1}{4}\%$.

We are,
Yours faithfully,
MARTIN, CURRIE & CO.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 201.
Letter,
Martin,
Currie & Co.
to J. H.
Hambly,
Managing
Director,
London
Loan &
Savings Co.,
2nd Septem-
ber, 1927.

10

Exhibit 268

(Plaintiffs' Exhibit)

Extract from Letter, London Loan and Savings Co. to Martin, Currie & Co.

220 Dundas Street,
London, Can.,
Sept. 28th, 1927.

—continued.

Exhibits.
Ex. 268.
Extract from
Letter,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
28th Septem-
ber, 1927.

Dear Sirs :

I am in receipt of your letter of the 2nd instant. Replying thereto I would say I am having a statement prepared showing all the loans the Company has accepted since 1st January, 1927, and also statement of all mortgages in arrears for interest for six months and over. It will take a short time to have the above statement completed and checked, and the same would have been sent forward before this, but owing to the summer holiday season intervening, and consequently short handed staff in the office, I have not had an opportunity of attending to same before.

I might say for your information, that the cash receipts for interest for the first six months of this year, ending June 30th, 1927, show an increase of approximately \$10,000.00 over the corresponding six months of last year.

Replying to your questions *re* H. A. Morine and the Buckingham Mansions, these questions, I understand, have been previously asked, and in May last, when I had the pleasure of meeting your Mr. Falconer, I gave him all the information I was possessed of regarding this matter; and also on looking over the letter of our Mr. McCormick, written you on April 14th, 1927, regarding this matter, a full explanation would appear to have been furnished you regarding same. However, I might say, the mortgage held by The Huron & Erie Mortgage Corporation on the Buckingham Mansions will be in existence five years on the 7th February next, and at that time we intend paying same off and taking an assignment thereof, which will put us in control of the property, and in this connection Mr. Morine is a party to the mortgage, consequently he will still be on the covenant. This mortgage has been one of the serious obstacles in the way of making a sale of this property, and we hope as

*In the
Supreme
Court of
Ontario.*

soon as we take over the above mortgage, we will be successful in effecting a sale. Pending a sale being made, the revenue derived therefrom will be applied on our own mortgage.

Exhibits.
Ex. 268.
Extract from
Letter,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
28th Septem-
ber, 1927.

In regard to accepting any new loans from H. A. Morine, since January last we have not accepted any business from Mr. Morine except in cases where a sale has been effected by him of some real estate on hand, and only, as part of the arrangement in connection with such sale, have certain mortgages been taken, a full statement of which will appear on the schedule of our new loans, which we are now preparing, and will send forward shortly.

—continued.

In so far as Mr. Morine is concerned, we feel he can be very useful to us in assisting to dispose of the real estate which we have in the City of Toronto. He is familiar with the properties which we have on hand, and is more or less in touch with parties to whom sales might be made, and until such times as our Toronto properties are disposed of we think it would be unwise to break with him. Hence the reason we have been following the policy as above outlined.

Yours truly,
JNO. H. HAMBLY,
Manager.

H/F.

20

Exhibit 269

(Plaintiffs' Exhibit)

Exhibits.
Ex. 269.
Extract from
Letter,
Martin,
Currie & Co.
to J. H.
Hambly,
22nd Octo-
ber, 1927.

Extract from Letter, Martin, Currie & Co. to J. H. Hambly

22nd October, 1927

J. H. Hambly, Esq.,
Manager,
London Loan & Savings Company of Canada,
220 Dundas Street,
London, Ontario.

Dear Sir :

30

We are favoured with your letter of 28th ult., and await the Statement regarding your Company's Mortgages in the form arranged with our Mr. Falconer some months ago. We are glad to learn that the cash receipts for interest show an increase of approximately \$10,000 for the first six months of this year as compared with a similar period in the previous year.

With regard to the Buckingham Mansions transaction, we beg to point out that Mr. McCormick's letter of 14th April last did not adequately explain why Mr. Morine was relieved of his covenant in respect of your Company's loans, nor did our Mr. Falconer receive a satisfactory explanation on this point from Mr. McCormick or yourself.

40

We note that you have not accepted any new loans from Mr. Morine since January last, apart from those in connection with the sale of existing buildings, and we shall be glad to receive the assurance of your Directors that no fresh transactions other than those referred to will in future be entered into with Mr. Morine.

In the Supreme Court of Ontario.

Exhibits.
Ex. 269.
Extract from Letter, Martin, Currie & Co. to J. H. Hambly, 22nd October, 1927.

Yours faithfully,
MARTIN, CURRIE & CO.

Part Exhibit 148

(Plaintiffs' Exhibit)

E

Copy of Letter, London Loan and Savings Co. to Huron & Erie Mortgage Corp.

November 5th, 1927.

The Huron & Erie Mortgage Corporation,
Toronto, Ontario.

Dear Sirs :

Re Buckingham Apartments, 623-631 Queen St. W.

We beg to advise you that it is our intention to pay the above mortgage off on the 7th February, 1928. We are serving you with this notice as a matter of courtesy, and to give you the opportunity of making arrangements for the re-investment of the funds in the meantime. We will be obliged if you will kindly acknowledge receipt of this notice.

Yours truly,

Manager.

H/F.

Exhibit 311

(Plaintiffs' Exhibit)

Copy of Letter, London Loan and Savings Co. to Huron & Erie Mortgage Corp.

NOT PRINTED.

Same as Exhibit 148E.

Exhibits.
Ex. 311.
Copy of Letter, London Loan & Savings Co. to Huron & Erie Mortgage Corp., 5th November, 1927.

NOT PRINTED.

10

30

Exhibit 256

(Defendants' Exhibit)

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 256.
Extracts
from
Letter,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
9th Novem-
ber, 1927.

Extracts from Letter, London Loan and Savings Co. to Martin, Currie & Co.

London, Can.,
November 9th, 1927.

Messrs. Martin, Currie & Co.,
29 Charlotte Square,
Edinburgh, Scotland.

Dear Sirs :

10

Referring to your letter of the 22nd ultimo, I now enclose herewith a list of all the mortgages in arrears for six months or over. The most of these, you will notice, are at the present time in our Solicitors' hands for collection, and should be straightened up in the near future.

Re Buckingham Mansions, R. S. Durno, D.42.

With regard to this matter, we had thought that the circumstances surrounding the release of Mr. Morine from the covenant had been satisfactorily explained. At no time was any agreement made with Mr. Morine to release him from the covenant, nor was he voluntarily released by this Company. Mr. Morine's release was involuntary and carried out *not* by agreement, but 20 by operation of law in connection with the sale of the property.

Owing to the involved state of the property, encumbered as it was by third and fourth mortgages, mechanics' liens, executions, and the bankruptcy and insanity of the original owner, it became evident that none of the persons holding an interest in the property subsequent to that of this Company would be able to take over the property as against the other encumbrances and this Company decided that the only course open to them was that of putting the property up for sale under their mortgage, with a view to having the property taken over by a new purchaser who would obtain a clear title as a result of this proceeding. Such a sale was finally arranged to one, R. S. Durno, 30 for the full amount of the London Loan's claim and, while the question was not discussed, this sale had of course the effect of releasing Mr. Morine from the covenant under the original mortgage.

The London Loan had no reason to believe that Mr. Durno would not be able to carry out his contract and their whole idea in effecting the sale was to get the property into the hands of one who would be able to manage it effectively, rather than to leave it at the mercy of lien holders, execution holders, subsequent mortgagees and others who showed no disposition to give the property proper attention.

On the 5th November we served notice on the Huron & Erie Mortgage 40 Corporation that we intend to pay off their Mortgage, which will be five years in existence on the 7th February next. Our intention is to take an

assignment of this mortgage, which, I understand, Mr. Morine is a party to, and in that way he will again be on the covenant to the extent of their mortgage. In the meantime the rental collections can be applied on account of the second mortgage, which we hold, so that I do not see that our position has been impaired very seriously. There is no doubt the first mortgage held by the Huron & Erie Mortgage Corporation, which bears interest at the rate of $7\frac{1}{2}\%$, has been a very serious obstacle in the way of effecting a sale of this property, and we feel that when we have obtained absolute control in the matter, it will be much easier to effect a sale than it has been at any time
10 heretofore.

I have endeavoured to give you full details of the transactions which have gone through this office since the first of the year, and if there is anything which I have overlooked, or on which you might desire any further information, I would be pleased to furnish same. I remain,

Yours faithfully,

JNO. H. HAMBLY,
Manager.

H/F.

Part Exhibit 148

(Plaintiffs' Exhibit)

F

Letter, Huron & Erie Mortgage Corp. to John H. Hambly

Toronto 2, Canada,
November 11, 1927.

John H. Hambly, Esq.,
Manager,
The London Loan & Savings Co. Ltd.,
London, Ont.

Dear Sir :

30 *Re P.2491, Buckingham Apartments, 623-31 Queen St. W.*

This will acknowledge with thanks receipt of your letter of the 5th instant, from which we note that it is your intention to pay this loan in full on the 7th of February, 1928.

As you know, the loan does not mature until February 7th, 1933, but we assume that you intend to take advantage of the provisions of R.S.O. 112, Section 17, which gives the borrower the right to pay a loan at the end of five years with a bonus of three months' additional interest. Unless, therefore,

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 256.
Extracts
from
Letter,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
9th Novem-
ber, 1927.

—continued.

Exhibits.
Part Ex. 148.
F.
Letter,
Huron &
Erie
Mortgage
Corp. to
John H.
Hambly,
11th Novem-
ber, 1927.

*In the
Supreme
Court of
Ontario.*

we hear from you to the contrary, we will assume that the loan will be paid in full on the 7th of February, 1928, with a bonus of three months' additional interest.

Exhibits.
Part Ex. 148.
F.

Yours truly,
R. P. BAKER,
Manager.

Letter,
Huron &
Erie
Mortgage
Corp. to
John H.
Hambly,
11th Novem-
ber, 1927.

RPB/GPB.
E&OE.

Exhibit 312

(Plaintiffs' Exhibit)

10

Copy of Letter, Huron & Erie Mortgage Corp. to J. H. Hambly

NOT PRINTED.

Same as Exhibit 148F.

—continued.

Exhibits.
Ex. 312.
Copy of
Letter,
Huron &
Erie
Mortgage
Corp. to
J. H.
Hambly,
11th Novem-
ber, 1927.

Part Exhibit 148

(Plaintiffs' Exhibit)

G

NOT
PRINTED.

Letter, G. A. P. Brickenden & Co. to London Loan and Savings Co.

Exhibits.
Part Ex. 148.
G.

Letter,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
18th Novem-
ber, 1927.

The London Loan & Savings Co.,
220 Dundas Street,
City.

London, Canada,
November 18th, 1927.
Re R.E. D.42.

20

Dear Sirs :

Re Buckingham Apartments.

We are returning to you herewith letter from the Huron & Erie Mortgage Corporation to yourselves dated November 11th, 1927. This letter correctly states the position as to redeeming this mortgage, your right to redeem being based on Chapter 112, Section 17, ss. 1, which reads as follows :

“Where any principal money or interest secured by a mortgage of freehold or leasehold property, made after the 1st day of July, 1903, is not, under the terms of the mortgage, payable till a time more than five years after the date of the mortgage, then if, at any time after the expiration of such five years, any person liable to pay or entitled to redeem tenders or pays to the person entitled to receive the money the amount due for principal money and interest to the time of such tender or payment, together with three months' further interest in lieu of notice, no further interest shall be chargeable, payable or 30

recoverable at any time thereafter on the principal money or interest due under the mortgage.”

This right to redeem can be exercised at any time after five years and before the final maturity of the mortgage, but payment in this case should be carried out on the immediate expiry of the five years as the benefit gained by your Company is that of a reduction of the interest rate as offset by the bonus paid and the amount gained in this way will be reduced from day to day by any delay in redeeming the mortgage.

Yours very truly,

G. A. P. BRICKENDEN & CO.
Per James F. McMillan.

10

JFM/IS.
Encl.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 148.
G.
Letter,
G. A. P.
Brickenden
& Co. to
London
Loan &
Savings Co.,
18th Novem-
ber, 1927.

—continued.

Exhibit 237

(Defendants' Exhibit)

Copy of Letter, London Loan and Savings Co. to H. A. Morine

R.E. D.42.
H. A. Morine, Esq.,
Toronto, Ontario.

Dec. 5th, 1927.

Exhibits.
Ex. 237.
Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
5th Decem-
ber, 1927.

Dear Sir :

20

Re R. S. Durno.

The last rental return which we received from you in connection with the above mortgage was apparently in July last. As it is now drawing near the close of the year, before we get into the rush of the last ten days, I would be obliged if you would kindly let us have a statement of the rental returns in connection with the above property, and also all other properties in connection with which you are collecting rents. I would esteem it a favour if you would kindly give this matter your early attention so that we can get the necessary entries made in our books before preparing to close same for the end of the year.

Yours truly,

Manager.

30 H/F.

*In the
Supreme
Court of
Ontario.*

Exhibit 238

(Defendants' Exhibit)

Copy of Letter, H. A. Morine to London Loan and Savings Co.

Exhibits.
Ex. 238.
Copy of
Letter, H. A.
Morine to
London
Loan &
Savings Co.,
6th Decem-
ber, 1927.

Toronto,
December 6th, 1927.

The London Loan & Savings Co. of Canada,
London, Ont.

Dear Sirs :

Re R. S. Durno.

In reply to yours of the 5th inst., I wish to advise that you already have 10
in your possession statement of rents and disbursements as of November 1st,
1927. If you will look into this matter you will find that I am correct.

Yours very truly,
H. A. MORINE.
J.

HAM/J.

L 337.

Exhibits.
Ex. 152.
Letter, H. A.
Morine to
London
Loan &
Savings Co.,
8th Decem-
ber, 1927.

Exhibit 152

(Plaintiffs' Exhibit)

Letter, H. A. Morine to London Loan and Savings Co.

20

Toronto,
December 8th, 1927.

The London Loan & Savings Co.,
London, Ont.

Dear Sirs,

Re Buckingham Apartments.

Kindly send me a statement of the amounts due the Company in con-
nection with the above property as of December 15th, as I have fixed this
date for a possible sale of the property.

You will hear from me a little later giving full particulars. Meantime, 30
I desire this statement as early as possible. The above statement is to include
the balance owing the Huron & Erie Mortgage Corp.

Yours very truly,
H. A. MORINE.

HAM/J.

Exhibit 153
(Plaintiffs' Exhibit)

Letter, London Loan and Savings Co. to H. A. Morine

December 9th, 1927.

H. A. Morine, Esq.,
603 Kent Building,
Toronto, Ontario.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 153.
—
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
9th Decem-
ber, 1927.

Dear Sir :

Re Buckingham Apartments.

10 I am in receipt of your letter of the 8th instant, and the amount of our claim, made up to the 15th instant, in connection with the above property, is \$250,786.12. This is made up as follows :

Huron & Erie Mtge. Corp'n claim.....	\$139,432.50
London L. & S. Co.'s claim.....	111,353.62
	<hr/>
	\$250,786.12

I would certainly be more than delighted if you are successful in effecting a sale of this property by the date stated in your letter.

Yours truly,

JNO. H. HAMBLY,
Manager.

H/F.
20 E&OE.

Exhibit 154

(Plaintiffs' Exhibit)

Letter, London Loan and Savings Co. to H. A. Morine

December 10th, 1927.

H. A. Morine, Esq.,
Toronto, Ontario.

Exhibits.
Ex. 154.
—
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
10th Decem-
ber, 1927.

Dear Sir :

Re Buckingham Apartments.

30 Replying to your telephone conversation of this morning, we would advise you the amount owing our Company as of 15th December, 1927, and providing there is no change in the account in the meantime, is \$111,353.62. The amount of the claim of the Huron & Erie is \$139,432.50, which makes a total of \$250,786.12. Trusting the above contains the information you desire, we remain,

Yours truly,

JNO. H. HAMBLY,
Manager.

H/F.
E&OE.

Exhibit 155

(Plaintiffs' Exhibit)

Offer to Purchase by May RutherfordDye & Durham, Toronto,
Form 116**OFFER TO PURCHASE**

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 155.

Offer to
Purchase by
May
Rutherford,
12th Janu-
ary, 1928.

To

I, M. Rutherford.....
of the City.....of Toronto.....(as purchaser), hereby agree to
and with.....London Loan & Savings Co..... 10
(as vendor), through J. C. Crawford & Ed. T. Hickey.....Agents,
to purchase all and singular the premises situate on the North side of King
St. in the City.....of Toronto.....Known as Buckingham Apartments.....
number 1592 to 1594.....having frontage of about 76' on King St. & 76' on
Queen more or less, by a depth of about 199'4'' on the E side & 140' on W. side
St. more or less.....being.....Lot No.....according to
Plan No.....Registered in the Registry Office for Toronto.....
at the price or sum of Two Hundred & Seventy-five Thousand Dollars (\$275,-
000.00) as follows :.....Dollars (\$.....)
cash to the said Agent on this date as a deposit, and covenant, promise and 20
agree to pay : Give back a first mortgage for 225000.00 payable 2000.00 half-
yearly at 6½% per annum and having five years to run; Also assign a 2nd
mortgage for 75000.00 secured on the "Shoreview" Apartments, King St. W.,
payable 1000.00 half-yearly at 6½% per annum and having about five years to
run, being preceded by a 1st mortgage for 100,000.00 at 6½% payable 2500.00
half-yearly; Also to give deed for 232 High Park Ave., Toronto, at the price
or sum of Twenty-two Thousand Dollars (22000.00) subject to a 1st mortgage
for 12000.00 at 6½% per annum and payable 100.00 half-yearly and having
about five years to run; Also give a deed for 73 Wheeler Ave., subject to a 30
1st mortgage for 3500.00 at 6½% straight for about 4 years also subject to a
2nd mortgage for 1600.00 at 6½% payable 30.00 quarterly and having about
four years to run, price of said house 10,000.00; The London Loan & Savings
Co. is to pay me the difference \$39900.00 in cash on closing of sale.
PROVIDED the title is good and free from encumbrance, except local rates,
and except as aforesaid; said title to be examined by me at my own expense,
and I am not to call for the production of any Title Deeds, or Abstract of
Title, Proof or Evidence of Title, or to have furnished any copies thereof,
other than those in Vendor's possession or under their control. The purchaser
accepts the property subject to the restrictions and covenants that run with
the land. The purchaser to be allowed ten days from the date of acceptance 40
hereof to investigate the title at her own expense, and if within that time she
shall furnish the Vendor in writing with any valid objection to the title which
the Vendor shall be unable or unwilling to remove, and which purchaser
will not waive, this agreement shall be null and void and the deposit money
returned to the purchaser without interest. This offer to be accepted by Jan.

18th, 1928, otherwise void; and sale to be completed on or before the 31st day of January, 1928, on which date possession of the said premises is to be given me, or I am to accept the present tenancies and to be entitled to the receipt of the rents and profits thereafter.

UNEARNED Fire Insurance Premiums, Taxes, Interest, Rentals and all Local Improvements and Water Rates to be proportioned and allowed to date of completion of sale; Deed or Transfer to contain covenant on part of Purchaser to pay off said assumed Mortgage, to be executed by Purchaser and prepared at the expense of the Vendor and Mortgage at my expense.

10 Each party is to pay the costs for registration and taxes on his own documents. THIS offer, if accepted, shall with such acceptance constitute a binding contract of purchase and sale.

TIME shall be the essence of this agreement.

Dated at Toronto this 12th day of January, A.D. 1928.

WITNESS : | May Rutherford.
.....Ed. T. Hickey |

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 155.
Offer to
Purchase by
May
Rutherford,
12th Janu-
ary, 1928.

—continued.

I hereby accept the above offer and its terms, and covenant, promise and agree to and with the said above-named purchaser to duly carry out the same on the terms and conditions above mentioned, and

20 hereby accept the deposit of \$ _____ out of which
the agent is hereby authorized
to retain h commission of _____ per cent.
Dated _____ A.D. 19 _____

WITNESS : | Copy
 | original to London Loan Co.

Exhibit 156

(Plaintiffs' Exhibit)

Copy of Offer to Purchase by May Rutherford

NOT PRINTED.

Same as Exhibit 155.

Exhibits.
Ex. 156.
Copy of
Offer to
Purchase by
May
Rutherford,
12th Janu-
ary, 1928.

NOT
PRINTED.

Part Exhibit 148

(Plaintiffs' Exhibit)

A**Copy of Letter, London Loan and Savings Co. to Huron & Erie Mortgage Corp.**

January 16th, 1928.

The Huron & Erie Mortgage Corporation,
14 King Street East,
Toronto, Ontario.

Dear Sirs :

Re Buckingham Apartments.

We will be obliged if you will kindly let us have a statement of the amount required to pay off the above mortgage on the 7th of February next, and in which kindly include the cost of an assignment, as we will require this instead of a discharge.

Yours truly,

Manager.

H/F.

10

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 148.
A.
Copy of
Letter,
London
Loan &
Savings Co.
to Huron
& Erie
Mortgage
Corp.,
16th Janu-
ary, 1928.

Part Exhibit 148

(Plaintiffs' Exhibit)

B**Copy of Letter, London Loan and Savings Co. to Huron & Erie Mortgage Corp.**

January 20th, 1928.

The Huron & Erie Mortgage Corporation,
14 King Street East,
Toronto, Ontario.

Dear Sirs :

Re Buckingham Apartments.

We are in receipt of your letter of the 19th instant, enclosing statement of the amount required to pay off the above mortgage on the 7th proximo, for which accept our thanks. 30

We would be obliged if you would kindly prepare a draft form of the assignment of the above mortgage, in favour of the London Loan & Savings Company, and forward it to us for perusal before same is finally executed. We will esteem it a favour if you will kindly give this matter your early attention.

Yours truly,

Manager.

H/F.

Exhibits.
Part Ex. 148.
B.
Copy of
Letter,
London
Loan &
Savings Co.
to Huron
& Erie
Mortgage
Corp.,
20th Janu-
ary, 1928.

20

Exhibit 275

(Plaintiffs' Exhibit)

Letter, Huron & Erie Mortgage Corp. to London Loan and Savings Co.

The London Loan & Savings Co.,
220 Dundas St.,
London, Ont.

Toronto 2, Canada,
January 19, 1928.
R. Est.
D.42.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 275.
Letter,
Huron &
Erie
Mortgage
Corp. to
London
Loan &
Savings Co.,
19th Janu-
ary, 1928.

Dear Sirs :—

10

Re P.2491—Buckingham Apts.

We would advise that the amount necessary to pay off our loan on the above property on the 7th of February, 1928, appears to be \$139,432.50, made up as follows :

Principal.....	\$132,000.00
Interest.....	4,950.00
Bonus (3 mos. interest).....	2,475.00
Assignment fee.....	7.50

\$139,432.50

20 Upon receipt of your cheque for this amount, we will have the assignment prepared, executed and forwarded to you, together with the papers in connection with this loan.

Yours truly,
R. P. BAKER,
Manager.

WJB/VM.
E&OE.

Part Exhibit 148

(Plaintiffs' Exhibit)

C

30 **Copy of Letter, London Loan and Savings Co. to Huron & Erie Mortgage Corp.**

The Huron & Erie Mortgage Corporation,
14 King Street East,
Toronto, Ont.

January 21st, 1928.

Exhibits.
Part Ex. 148.
C.
Copy of
Letter,
London
Loan &
Savings Co.
to Huron
& Erie
Mortgage
Corp.,
21st Janu-
ary, 1928.

Dear Sirs :

When forwarding us a draft form of assignment of the above mortgage, we would esteem it a favour if you would also kindly enclose us your copy of the original mortgage in order that we have may same with which to check

*In the
Supreme
Court of
Ontario.*

the details of the assignment. This will save us the expense of procuring a certified copy from the registry office. We will return same to you when returning the assignment.

Yours truly,

Manager.

Exhibits.
Part Ex. 148.

C.
Copy of
Letter,
London
Loan &
Savings Co.
to Huron
& Erie
Mortgage
Corp.,
21st Janu-
ary, 1928.

H/F.

Exhibit 147

(Plaintiffs' Exhibit)

Assignment Mortgage, Huron & Erie Mortgage Corp. to London Loan and Savings Co., No. 13475 W.F.

—continued.

P.2491. 10

THIS INDENTURE made in duplicate this Seventh day of February, A.D. 1928.

BETWEEN :

THE HURON & ERIE MORTGAGE CORPORA-
TION, hereinafter called the Assignor,
OF THE FIRST PART,

—AND—

THE LONDON LOAN AND SAVINGS COMPANY
OF CANADA, hereinafter called the Assignee,
OF THE SECOND PART. 20

WHEREAS by a Mortgage dated the Seventh day of February, A.D. 1923, and registered in the Registry Office for the Registry Division of West Toronto on the Sixteenth day of February, A.D. 1923, as Number 8317 W.F., SAMUEL B. GREEN, of the City of Toronto in the County of York, Builder, and HORACE A. MORINE, of the said City of Toronto, Financial Broker, in their individual capacity and as co-partners in the business of improving the lands hereinafter described (their wives joining therein to bar their dower) did grant and mortgage the lands and premises therein and hereinafter described, to the Assignor, its successors and assigns, for securing the payment of One Hundred and Fifty Thousand Dollars (\$150,000.00) and interest 30 as therein mentioned :

AND WHEREAS there is now owing upon the said Mortgage for principal money the sum of One Hundred and Thirty-two Thousand Dollars (\$132,000.00) together with interest thereon at the rate expressed in the said Mortgage from the Seventh day of February, A.D. 1928 :

AND WHEREAS the Assignee has applied to the Assignor for an assignment to it of the said Mortgage which the Assignor has agreed to make upon payment by the Assignee of the sum of One Hundred and Thirty-nine Thousand, Four Hundred and Thirty-two Dollars and Fifty Cents (\$139,432.50).

Exhibits.
Ex. 147.
Assignment
Mortgage,
Huron &
Erie
Mortgage
Corp. to
London
Loan &
Savings Co.,
No. 13475
W.F.,
7th Febru-
ary, 1928.

NOW, THEREFORE, THIS INDENTURE WITNESSETH that in consideration of the sum of One Hundred and Thirty-nine Thousand, Four Hundred and Thirty-two Dollars and Fifty Cents (\$139,432.50) of lawful money of Canada now paid by the Assignee to the Assignor (the receipt whereof is hereby by it acknowledged) the Assignor doth grant and assign unto the Assignee, its successors and assigns forever ALL AND SINGULAR that certain parcel or tract of land (as described in Exhibit 3).

In the Supreme Court of Ontario.
—
Exhibits. Ex. 147. Assignment Mortgage, Huron & Erie Mortgage Corp. to London Loan & Savings Co., No. 13475 W.F., 7th February, 1928.

TOGETHER with the said Mortgage and all the moneys now owing thereunder as aforesaid and all moneys that may hereafter become due or
10 owing in respect of the said Mortgage and the full benefit of all powers and all covenants and provisos contained in the said Mortgage.

TO HOLD UNTO and to the use of the Assignee, its successors and assigns forever SUBJECT NEVERTHELESS to the terms, provisos and conditions contained in the said Mortgage.

—continued.

AND the Assignor for himself, its successors and assigns covenants with the Assignee, its successors and assigns that the said Mortgage hereby assigned is a good and valid security and that the sum of One Hundred and Thirty-two Thousand Dollars (\$132,000.00) is now owing and unpaid and that it has not done or permitted any act, matter or thing whereby the said Mortgage
20 has been released, discharged or encumbered either partly or in entirety and that it has the right to assign the said Mortgage and lands.

IN WITNESS WHEREOF the Corporate Seal of the Assignor has been hereto affixed under the hands of its Chairman of the Board and Treasurer.

WITNESS : THE HURON & ERIE MORTGAGE CORPORATION.

C. N. Judd }T. G. Meredith.....
Chairman of the Board.

THE HURON & ERIE MORTGAGE CORP.
.....Chas. J. Clarke.....
Treasurer.

30

(Seal)

No. 13475 W.F.

I certify that the within Instrument is duly entered and Registered in the Registry Office for the Registry Division of Toronto, in Book W.F., at 10.00 o'clock A.M. of the 17th day of Feb., A.D. 1928.

W. J. C. McCREA,
Deputy Registrar.



Exhibit 286

(Defendants' Exhibit)

Copy of Letter, G. A. P. Brickenden & Co. to Cronyn & Betts

February 9th, 1928.

Messrs. Cronyn & Betts,
Barristers, &c.,
442 Richmond Street,
CITY.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 286.

Copy of
Letter,
G. A. P.
Brickenden
& Co. to
Cronyn &
Betts,
9th Febru-
ary, 1928.

Dear Sirs :—

Attention Mr. Smith.

10

Re London Loan, Buckingham Apartments, Toronto.

The London Loan have handed to us a draft assignment of the Buckingham Apartments Mortgage for approval and as stated in our telephone conversation this afternoon, there are one or two clauses we would like added to the last page of the assignment. We would like to have the first paragraph extended to read as follows :—

“Together with the said mortgage and all the moneys now owing thereunder as aforesaid and all moneys that may hereafter become due or owing in respect of the said mortgage and the full benefit of all powers and all covenants and provisos contained in the said mortgage.”

20

We would also like to have the covenant inserted at the last of the assignment as follows :—

“That it has the right to assign the said mortgage and lands.”

We will be much obliged if you will have the assignment amended in this way and have same executed by your client and return same to us at your earliest convenience.

Yours very truly,
G. A. P. BRICKENDEN & CO.
Per

JFM/IS.

30

Exhibit 260

(Defendants' Exhibit)

Extracts from Annual Report, London Loan and Savings Co. to Registrar Loan Corporations for 1927

In Annual Return for 1927, R. S. Durno Mortgage is listed as Real Estate owned by the Corporation, among other properties. Therefore the list of real estate owned by the Corporation is copied under this Exhibit.

Exhibits.
Ex. 260.
Extracts
from
Annual
Report,
London
Loan &
Savings Co.
to Registrar
Loan Corps.
for 1927,
27th Febru-
ary, 1928.

SCHEDULE "A"
REAL ESTATE OWNED BY THE CORPORATION.

*Description of Property	Date Acquired	Amount of Encumbrances	Actual Cost	Book Value	Market Value	Operations during 192					See Foot-note †
						Expended for repairs and Improvements on Capital Account	Gross Income	Taxes and all Running Expenses	Net Income	Net Loss	
1. Part Lots 6, 7, 8, Bloor St.; Part Lot 16, St. Helen's Ave., Plan 352, Toronto.	Jan. 28/26	nil	29,653.92	29,941.62	40,000.00	399.29	1,200.00	391.06	409.65	nil	R.E.
2. Part Lots 2 & 3, Plan 512, Part Lot 16, Plan 457, 1622-31 Queen W., Toronto.	June 26/25	132,000.00	77,000.00	96,718.56	227,500.00	795.74	21,754.85	10,419.86	10,539.25	nil	R.E.
3. Lots 436-7 Elmwood Blvd.; 165-6 Hollywood Blvd., Plan 1801, Tp. N. York.	Dec. 19/25	nil	1,590.68	1,590.68	1,756.00	nil	nil	nil	nil	nil	R.E.
4. Lots 132-3-4-5, Plan 1801, Tp. N. York.	Dec. 19/25	nil	1,433.22	1,433.22	1,760.00	nil	nil	nil	nil	nil	R.E.
5. Lots 14 & 15, n.e. side Austin Cres., Toronto.	July 5/26	nil	9,014.58	10,092.46	10,760.00	nil	nil	nil	nil	nil	R.E.
6. Part Lots 63 & 64, w.s. Spadina Rd., Toronto, Plan 930.	Mar. 30/26	nil	17,000.00	18,284.48	17,200.00	22.40	525.00	36.50	466.10	nil	R.E.
7. Part Lot 7, s.s. Danforth Ave., Plan 200, Toronto.	Jan. 6/25	nil	40,857.81	45,998.33	65,000.00	86.65	3,159.00	630.23	2,440.12	nil	R.E.
TOTAL.....		132,000.00	176,550.21	204,059.35	363,976.00	1,304.08	26,638.85	11,477.65	13,855.12	nil	

*In the case of leasehold property, a brief statement of the terms of the lease should be here given, and the other columns of the schedule filled in where applicable.

†State here whether the net revenue or loss is credited or charged to (1) Principal of Real Estate Account or to (2) Profit and Loss Account.

In the
Supreme
Court of
Ontario.
Exhibits.
Ex. 260.
Extracts
from
Annual
Report,
London
Loan &
Savings Co.
to Registrar
for 1927,
27th Febru-
ary, 1928.
—continued.

In the
 Supreme
 Court of
 Ontario.
 Exhibits.
 Ex. 260.
 Extracts
 from
 Annual
 Report,
 London
 Loan &
 Savings Co.
 to Registrar
 Loan Corps.
 for 1927,
 27th Febru-
 ary, 1928.
 —continued.

SCHEDULE "A"
REAL ESTATE OWNED BY THE CORPORATION.

*Description of Property	Date Acquired	Amount of Encum- brances	Actual Cost	Book Value	Market Value	Operations during 192					See Foot- note †
						Expended for repairs and Im- prove- ments on Capital Account	Gross Income	Taxes and all Running Expenses	Net Income	Net Loss	
8. Lots 410, 519, 520, 417, 420, 421, 523, 423, 425, 427-8-9, 430- 1-2, 513-4, 440-1, 446-7-8, 450, Plan 1801, Tp. York.	Nov. 2/25	nil	4,543.64	4,543.64	10,220.00	nil	nil	nil	nil	nil	R.E.
9. Part Lots 1, 2 & 3, Plan 324, 460 Brunswick Ave., Toronto.	Nov. 22/25	nil	5,032.29	6,776.82	18,000.00	21.50	900.00	255.35	623.15	nil	R.E.
10. do.			12,251.00	12,251.00	do.						
11. Lot 44, Cloverdale Ave., Plan 1760, Toronto.	Oct. 12/25	nil	5,494.70	6,457.81	8,500.00	83.10	175.00	8.75	83.15	nil	R.E.
12. Part Lot 36, w.s. Wellington St., Plan 219, London.	Jan. /25	nil	3,964.37	3,644.78	5,500.00	174.02	315.00	189.42	nil	48.44	R.E.
13. Lot 40, e.s. Oakmount Rd., Plan 1486, Toronto. Pugsley.	July /26	9,100.00	7,800.00	9,834.53	16,000.00	111.28	850.00	38.25	700.47	nil	R.E.
14. Part Lot 6, Plan 61, London, e.s. Ridout St.	Nov. /27	nil	3,905.25	3,905.25	6,500.00	nil	200.00	4.00	196.00	nil	R.E.
15. Knight. Part Lot 6, Seymour St., Meaford, and Part Lot 15, Con. 4, Tp. St. Vincent.	June /27	nil	1,881.78	1,449.94	400.00	nil	nil	nil	nil	nil	nil
TOTAL.....			141,100.00	221,423.24	252,923.12	429,096.00	1,693.98	29,078.85	11,973.42	15,457.89	48.44

*In the case of leasehold property, a brief statement of the terms of the lease should be here given, and the other columns of the schedule filled in where applicable.
 †State here whether the net revenue or loss is credited or charged to (1) Principal of Real Estate Account or to (2) Profit and Loss Account.

SCHEDULE "A"
REAL ESTATE OWNED BY THE CORPORATION.

*Description of Property	Date Acquired	Amount of Encumbrances	Actual Cost	Book Value	Market Value	Operations during 192					See Foot-note †
						Expended for repairs and improvements on Capital Account	Gross Income	Taxes and all Running Expenses	Net Income	Net Loss	
16. Thompson. Part Lot 11, Plan 367, London. E. 32 ft. River-view Ave.	Oct. /27	nil	2,337.68	2,503.98	1,600.00	nil	nil	nil	nil	nil	nil
17. Swick. Lot 124, Plan 435, London, Barker St.	Aug. /27	nil	546.13	624.65	700.00	nil	nil	nil	nil	nil	nil
18. Whitehead. Part Lot 4, Plan 444, London, 21 Rathgar St.	July /27	nil	2,569.98	2,569.98	3,000.00	13.00	100.00	73.96	13.04	nil	R.E.
19. Dale. Lot 52, McGill St., Plan 303, Part Lot 3, Con. 3, Tp. York, 12 acres.	Sept. 6/27	nil	39,276.76	39,318.96	76,000.00	nil	1,249.98	nil	1,249.98	nil	R.E.
28. Shirrett. Part Lot 5 & 6, Con. 5, Tp. Oliver.	Oct. /27	nil	753.00	753.00	850.00	nil	nil	nil	nil	nil	nil
London Loan Block, London.	May /06	nil	91,000.00	85,000.00	200,000.00	.....	12,165.75	7,419.79	4,745.96	nil	P.&L.
TOTAL.....			141,100.00	357,906.79	383,693.69	711,246.00	1,706.98	42,594.58	19,467.17	21,466.87	48.44

*In the case of leasehold property, a brief statement of the terms of the lease should be here given, and the other columns of the schedule filled in where applicable.

†State here whether the net revenue or loss is credited or charged to (1) Principal of Real Estate Account or to (2) Profit and Loss Account.

In the
Supreme
Court of
Ontario.
—
Exhibits,
Ex. 260.
Extracts
from
Annual
Report,
London
Loan &
Savings Co.
to Registrar
Loan Corps.
for 1927.
27th Febru-
ary, 1928.
—continued.

*In the
Supreme
Court of
Ontario.*

Exhibit 239

(Defendants' Exhibit)

Letter, A. W. Dyas to Consolidated Trusts Corp.

Exhibits.
Ex. 239.
Letter,
A. W.
Dyas to
Consolidated
Trusts
Corp.,
14th March,
1928.

R. Est.
D.42.

Consolidated Trusts Corp.,
London, Ont.

Toronto,
March 14th, 1928.

Dear Sirs,

Re Buckingham Apts.

Herewith cheque for \$1,800.00, full particulars of which will appear in
next rent statement covering the above property. 10

Yours very truly,
A. W. DYAS.
J.

AWD/J.
Encl.

Exhibit 240

(Defendants' Exhibit)

Copy of Letter, London Loan and Savings Co. to H. A. Morine

20

Exhibits.
Ex. 240.
Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
15th March,
1928.

R.E. D.42.

H. A. Morine, Esq.,
Toronto, Ontario.

March 15th, 1928.

Dear Sir :

Re Buckingham Apartments.

We are in receipt of your letter of the 14th instant, addressed to the
Consolidated Trusts Corporation, enclosing cheque for \$1,800.00 on account
of the rents collected in connection with the above property, for which accept
our thanks.

Yours truly,

Manager.

H/F.

30

Exhibit 158

(Plaintiffs' Exhibit)

Copy of Letter, G. A. P. Brickenden & Co. to H. A. Morine*Re* Buckingham Apartments.H. A. Morine, Esq.,
603 Kent Bldg.,
Toronto 2, Ontario.

March 15th, 1928.

Dear Sir:—

10 As requested, we are enclosing herewith abstract of 1430 Yonge Street to 6 May, 1926, and abstract Buckingham Apartments to 8 July, 1925.

Yours very truly,
G. A. P. BRICKENDEN & Co.
Per

JFM/IS.
Encls.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 158.
Copy of
Letter,
G. A. P.
Brickenden
& Co. to
H. A.
Morine,
15th March,
1928.

Exhibit 157

(Plaintiffs' Exhibit)

Letter, H. A. Morine to G. A. P. Brickenden & Co.

20

G. A. P. Brickenden & Co.,
The London Loan Bldg.,
London, Ont.Toronto,
April 14th, 1928.

Dear Sirs,—

Re Buckingham Proposed Sale for \$275,000.00, giving back a mortgage of \$235,000 bearing interest at 6½% per annum, with repayments of \$2,000 one year from date of mortgage, and thereafter repayments of \$2,000 half-yearly on account of principal, balance of principal in ten years.

30 Mr. T. H. Wilson on behalf of the purchaser, May Rutherford, having satisfied himself as to the title of the above property, now requires a Draft Deed from the Consolidated Trusts Corp. to May Rutherford (Spinster), together with a Draft Mortgage for \$235,000 as set out above.
(Written in pencil on margin)—(wanted 1.—Agreement. 2.—Mtges.)

Mr. Wilson has now placed in my hands a second mortgage for \$75,000 on property known as Shoreview Apartments on King Street West, subject

Exhibits.
Ex. 157.
Letter, H. A.
Morine to
G. A. P.
Brickenden
& Co.,
14th April,
1928.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 157.
Letter, H. A.
MORINE to
G. A. P.
BRICKENDEN
& Co.,
14th April,
1928.

—continued.

to a prior mortgage of \$100,000 to the London Life. This property was purchased by May Rutherford for \$220,000.00. The \$75,000 mortgage is to replace an existing mortgage now on the property for \$65,000 and I am negotiating a sale of the \$75,000 mortgage, out of the proceeds of which \$40,000 is to go to the London Loan & Savings Company to equalize the \$275,000 sale of the Buckingham.

I am also advised by McPherson & Company today that they are satisfied with the title of the Buckingham and that they are placing, on behalf of a client of theirs, a second mortgage of \$28,000 on the Buckingham following the \$235,000 first mortgage named above. It is therefore advisable to send me the Draft Deed and Mortgage so that I may submit the same to Mr. Wilson for his acceptance. When this is done, I am hopeful of being in a position to close the sale. All adjustments will be made as of the date of closing. 10

Yours very truly,

H. A. MORINE.

HAM/J.

Exhibit 159

(Plaintiffs' Exhibit)

Copy of Letter, G. A. P. Brickenden & Co. to H. A. Morine

April 17th, 1928. 20

H. A. Morine, Esq.,
603 Kent Bldg.,
Toronto 2, Ontario.

Dear Sir :—

Re Consolidated Trusts & Rutherford.

We are enclosing herewith draft deed from the Consolidated Trusts Corporation to May Rutherford, also mortgage in duplicate from May Rutherford to the London Loan & Savings Company of Canada to be executed by her.

Yours very truly,

G. A. P. BRICKENDEN & Co. 30
Per

JFM/IS.
Encls.

Exhibit 302

(Plaintiffs' Exhibit)

Letter, G. A. P. Brickenden & Co. to H. A. Morine**NOT PRINTED.**

Same as Exhibit 159.

*In the
Supreme
Court of
Ontario.*—
Exhibits.
Ex. 302.
Letter,
G. A. P.
Brickenden
& Co. to
H. A.
Morine,
17th April,
1928.**NOT
PRINTED.****Exhibit 160**

(Plaintiffs' Exhibit)

Statement of Durno Mortgages

April 18th, 1928.

Exhibits.
Ex. 160.
Statement of
Durno
Mortgages,
18th April,
1928.

10	<i>Re R. S. Durno.</i>		in
	Dec. 15/27, balance from previous statement.....	\$109,353.52	pencil
	Interest on above from Dec. 15/27 to April 19/28.....	2,643.48	(20.97)
		<u>\$111,997.00</u>	
	<i>Re No. 57:</i>		in
	Feb. 7/28, To cash paid to Huron & Erie Mortgage Corp'n	139,432.52	pencil
	Interest on above to April 19/28.....	2,062.45	(28.65)
		<u>\$253,491.97</u>	
	Total amount of Co's. claim as April 19/28.....		
	E. & O.E.		
	<i>Re Rents:</i>		
20	Balance retained by H. A. Morine on statement of March		
	22/28.....	\$ 1,257.28	
	March and April rents, say.....	4,000.00	
		<u>\$ 5,257.28</u>	
	March 22/28, By cash, rents.....	1,680.63	
		<u>\$ 6,937.91</u>	
	Taxes for 1928, \$3371.35.		
	Proportion to April 20, \$1032.91.		

*In the
Supreme
Court of
Ontario.*

Exhibit 161

(Plaintiffs' Exhibit)

Telegram, T. H. Wilson to G. A. P. Brickenden & Co.

Exhibits.
Ex. 161.
Telegram,
T. H. Wilson
to G. A. P.
Brickenden
& Co.,
19th April,
1928.

1928 Apr 19 PM 1 46

RA171 10

F TORONTO ONT 19 130P

G A P BRICKENDEN AND CO

116 BARRISTERS LONDON ONT

ALL MATTERS ADJUSTED WITH MCPHERSON READY CLOSE

SEND STATEMENT ADJUSTMENTS

10

T H WILSON.

Exhibit 162

(Plaintiffs' Exhibit)

Statement of Adjustments re Rutherford Sale

G. A. P. BRICKENDEN & CO.

STATEMENT OF ADJUSTMENTS

Re Sale of Buckingham Apartments.
Adjustments as of April 20th, 1928.

	Debit	Credit
Total London Loan claim as of April 19, 1928.....		\$253,491.97 20
Additional interest to April 20th.....		49.62
Proportion of taxes 1928 to April 20th.....		1,032.91
Credit for rents received March 22nd, cash.....	\$ 1,680.63	
Balance held by H. A. M.....	1,257.28	
Unexpired Insurance Policy Royal 285879, Premium \$187.50, expires Jan. 1/29 for 3 years.....	43.40	
Unexpired Insurance Policy Number 285880, Royal, Premium \$262.50, expires Jan. 1/29, 3 years.....	67.05	
Unexpired Insurance Policy Number 285881, Royal, Premium \$187.50, expires Jan. 1/29, for 3 years....	43.40	30

Exhibits.
Ex. 162.
Statement of
Adjustments
re Rutherford
Sale,
20th April,
1928.

	Unexpired Insurance North American Accident Policy Number 28441, expires May 25, 1928, 1825 Queen Street West, Premium \$8.33.....	.80	<i>In the Supreme Court of Ontario.</i>
	Unexpired Insurance North American Accident Policy Number 28442, expires May 25/28, 1631 Queen Street West, Premium \$6.31.....	.63	<i>Exhibits. Ex. 162. Statement of Adjustments re Rutherford Sale, 20th April, 1928.</i>
	Unexpired Insurance North American Accident Policy Number 28443, expires May 25/28, 1627 Queen Street West, Premium \$8.44.....	.80	
10	Unexpired Insurance North American Accident Policy Number 28444, expires May 25, 1928, 1629 Queen Street West, Premium \$8.88.....	.86	<i>—continued.</i>
	Unexpired Insurance North American Accident Policy Number 28445, expires May 25, 1928, 1623 Queen Street West, Premium \$7.96.....	.77	
	Balance to close.....	251,478.88	
		\$254,574.50	\$254,574.50

Exhibit 270

(Plaintiffs' Exhibit)

20 **Extract from Letter, London Loan and Savings Co. to Martin,
Currie & Co.**

May 2nd, 1928.

Messrs. Martin, Currie & Co.,
Edinburgh, Scotland.

*Exhibits.
Ex. 270.
Extract from
Letter,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
2nd May,
1928.*

Dear Sirs :

.....

In connection with the Buckingham Mansions as intimated in our letter of the 9th November last, we have paid the first mortgage on this property held by the Huron & Erie Mortgage Corporation, taking an assignment of their mortgage. This practically puts us in control of the property. Since
30 that time we have been negotiating a sale of same, which we expect to get closed out in the course of the next few days.

I remain,
Yours faithfully,
JNO. H. HAMBLY,
Manager.

H/F.

*In the
Supreme
Court of
Ontario.*

Exhibit 241

(Defendants' Exhibit)

Letter, H. A. Morine to Consolidated Trusts Corp.

Exhibits.
Ex. 241.
Letter, H. A.
Morine to
Consolidated
Trusts
Corp.,
5th May,
1928.

Re Real Est. D.42.

May 5th, 1928.

Consolidated Trusts Corp.,
London, Ont.

Dear Sirs,—

Herewith cheque for \$1,800.00 *re* Buckingham Apartments, particulars of which will appear in next statement going forward to you.

10

Kindly acknowledge receipt.

Yours very truly,
H. A. MORINE.

HAM/J.
Encl.

Exhibit 242

(Defendants' Exhibit)

Copy of Letter, London Loan and Savings Co. to H. A. Morine

Exhibits.
Ex. 242.
Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
7th May,
1928.

H. A. Morine, Esq.,
Toronto, Ontario.

May 7th, 1928.

20

Dear Sir :

Re R. S. Durno.

We are in receipt of your letter addressed to the Consolidated Trusts Corp'n, enclosing cheque for \$1800.00 on account of the rental collections *re* Buckingham Apts. for which accept our thanks. We will be glad to receive a statement in connection with this matter at your earliest convenience.

Yours truly,

Manager.

H/F.

30

Exhibit 163

(Plaintiffs' Exhibit)

Letter, H. A. Morine to G. A. P. BrickendenToronto 2,
May 16th, 1928.Mr. G. A. P. Brickenden,
London Loan Bldg.,
London, Ont.*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 163.
Letter, H. A.
Morine to
G. A. P.
Brickenden,
16th May,
1928.

Dear Sir,—

10

Re Buckingham Apts.

The mix-up between King, Trustees and Imperial Trust is such that there is no possibility of getting the above deal over before June 12th in any case, and I am not in a position to say what will happen when the 12th of June comes. Therefore, I am proceeding along other lines and may find some other method of cleaning this up.

Yours very truly,
H. A. MORINE.

HAM/J.

Part Exhibit 164

(Plaintiffs' Exhibit)

A**Letter, H. A. Morine to G. A. P. Brickenden**Toronto 2,
June 25th, 1928.Mr. G. A. Brickenden,
London Loan Bldg.,
London, Ont.Exhibits.
Part Ex. 164.
A.
Letter, H. A.
Morine to
G. A. P.
Brickenden,
25th June,
1928.

20

Dear Sir,—

30 The prospects of getting the sale of the Buckingham Apartments through by taking over a mortgage as originally proposed, appears to be farther away than ever.

On Saturday I was advised that not only have they not been able to accomplish a settlement as between Heyd and McPherson, but that the first mortgagees, The London Life, on which I was selling the second mortgage, have not been paid their interest account amounting to \$5750.00, with the result that the Imperial Trusts, acting for the registered owner of the property, has refused to pay the interest account, although they had previously paid the interest under the second mortgage which I had arranged to purchase,

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 164.

A.
Letter, H. A.
MORINE to
G. A. P.
BRICKENDEN,
25th June,
1928.

HAM/J.

with a result that the first mortgagees, The London Life, are taking proceedings. This, therefore, makes a glorious mess and prevents the sale of the second mortgage. You will therefore understand that until this is cleaned up, there will be a very considerable delay in the finalizing of the sale.

Yours very truly,
H. A. MORINE.
J.

—continued.

Exhibits.
Part Ex. 164.

B.
Letter, H. A.
MORINE to
G. A. P.
BRICKENDEN,
26th June,
1928.

Part Exhibit 164

(Plaintiffs' Exhibit)

10

B

Letter, H. A. Morine to G. A. P. Brickenden

Toronto 2,
June 26th, 1928.

Mr. G. A. P. Brickenden,
London Loan Bldg.,
London, Ont.

Dear Sir :—

Further to my letter of yesterday *re* Buckingham Apartments, I wish to point out an error. Where I showed \$750.00 it should have been \$5,750.00. Kindly correct this in the copy which you have.

Yours truly,
H. A. MORINE.
J.

HAM/J.

Exhibits.
Ex. 165.

Copy of
Letter,
G. A. P.
BRICKENDEN
to H. A.
MORINE,
27th June,
1928.

Exhibit 165

(Plaintiffs' Exhibit)

Copy of Letter, G. A. P. Brickenden to H. A. Morine

NOT PRINTED BY CONSENT

NOT
PRINTED.

Exhibit 166

(Plaintiffs' Exhibit)

Copy of Letter, G. A. P. Brickenden & Co. to H. A. Morine

July 10th, 1928.

H. A. Morine, Esq.,
603 Kent Building,
Toronto 2, Ontario.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 166.
Copy of
Letter,
G. A. P.
Brickenden
& Co. to
H. A.
Moline,
10th July,
1928.

Dear Sir :—

Re Buckingham.

10 Your telegram arrived a few minutes ago saying that you would phone tomorrow afternoon, but I have received some information regarding the above matter from Mr. Baker since this morning's meeting and thought you should have it.

Mr. Baker reports they were given until the 12th of July and that Ludwig & Ballantyne are collecting the rents upon the Shoreview Apartment and they expected to have the rents by the 10th of July, which is today.

Please do your utmost to close something this week.

Yours very truly,

GAPB/HP.

20

Exhibit 167

(Plaintiffs' Exhibit)

Telegram, H. A. Morine to G. A. P. Brickenden

1928 JUL 10 PM 3 53

RA403 8

Exhibits.
Ex. 167.
Telegram,
H. A.
Morine to
G. A. P.
Brickenden,
10th July,
1928.

TORONTO ONT 10 343P

G A P BRICKENDEN

318

BARRISTER LONDON ONT

NOTHING SPECIAL SINCE PHONE WILL REPORT TOMORROW

AFTERNOON

30

H A MORINE.

*In the
Supreme
Court of
Ontario.*

Exhibit 168

(Plaintiffs' Exhibit)

Copy of Letter, G. A. P. Brickenden & Co. to H. A. Morine

NOT PRINTED BY CONSENT.

Exhibits.
Ex. 168.
Copy of
Letter,
G. A. P.
Brickenden
& Co. to
H. A.
Morine,
16th July,
1928.

Part Exhibit 169

(Plaintiffs' Exhibit)

NOT
PRINTED.

A

Letter, E. R. Barber to Consolidated Trusts Corp.

Exhibits.
Part Ex. 169.
A.
Letter, E. R.
Barber to
Consolidated
Trusts
Corp.,
2nd August,
1928.

Aug. 2nd, 1928.
68 Ostend Ave.,
Toronto "3".

10

General Manager,
Consolidated Trust,
London, Ont.

Dear Sir :—

"Re Buckingham Apt., Toronto."

We believe your Company would consider selling your apartment house and stores adjoining with frontage both on King & Queen Streets, Toronto. If this is correct would appreciate having full particulars *re* same, as we have a syndicate at present which are figuring taking over some seven or eight 20 between now and October.

Would further state that my clients are in a position to offer cash, and any information you may forward me will be treated strictly confidential. Trusting you will give this your immediate attention.

Sincerely yours,

E. R. BARBER.

Part Exhibit 169

(Plaintiffs' Exhibit)

B**Copy of Letter, G. A. P. Brickenden & Co. to E. R. Barber**

August 7th, 1928.

E. R. Barber, Esq.,
68 Ostend Avenue,
Toronto 3, Ontario.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 169.
B.
Copy of
Letter,
G. A. P.
Brickenden
& Co. to
E. R.
Barber,
7th August,
1928.

Dear Sir:—

10 *Re* Buckingham Apartments, Toronto.

The Manager of The Consolidated Trusts Corporation handed us your letter of August 2nd to answer.

We are informed that this is one of the best built Apartments in the City of Toronto. The stores facing on Queen Street are becoming more valuable all the time and the Apartments are rented almost to their maximum at all times.

We would be glad to receive your best cash offer.

Yours very truly,
G. A. P. BRICKENDEN & Co.
Per

20 GAPB/HP.

Part Exhibit 169

(Plaintiffs' Exhibit)

C**Letter, E. R. Barber to G. A. P. Brickenden & Co.**

August 8th, 1928.
68 Ostend Ave.,
Toronto "3".

30 G. A. P. Brickenden & Co.,
London, Ont.

Exhibits.
Part Ex. 169.
C.
Letter, E. R.
Barber to
G. A. P.
Brickenden
& Co.,
8th August,
1928.

Dear Sirs,—

"Re Buckingham Apartments."

If you will be so good as to give me the information that I asked for in my first letter as to price, size of lot and a balance sheet for 1927 showing gross rents and running expenses, etc., so that I can take matter up with my

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 169.

C.
Letter, E. R.
Barber to
G. A. P.
Brickenden
& Co.,
8th August,
1928.

—continued.

Exhibits.
Part Ex. 169.

D.
Copy of
Letter,
G. A. P.
Brickenden
& Co. to
E. R.
Barber,
9th August,
1928.

clients and think they would arrive at some offer but without same are at a loss to proceed.

Would also like a letter of authority to inspect stores and apartments with this and above information will be able to get down to business in the matter.

Trusting you will give this your immediate attention, I am,

Yours truly,
E. R. BARBER.

Part Exhibit 169

(Plaintiffs' Exhibit)

10

D

Copy of Letter, G. A. P. Brickenden & Co. to E. R. Barber

August 9th, 1928.

E. R. Barber, Esq.,
Real Estate Broker,
68 Ostend Avenue,
Toronto 3, Ontario.

Dear Sir:—

Re Buckingham Apartments.

Please accept our thanks for your letter of August 8th in which you state we did not give you the information you requested. Your previous letter did not mention price nor balance sheet for 1927. 20

However, according to the registered description, the property has a frontage of 76' on King Street running through to Queen Street on which it also has a frontage of 76'. Owing to the fact that these two streets at this point are approaching themselves at an angle, the depth at the East limit of the property is 199'4" and at the West limit of the property 141'. On King Street, there is an apartment house entrance only, but on Queen Street the first storey contains five stores. In addition to these stores, the building contains thirty-three apartments which are of various sizes; also an apartment in the basement of the property for the use of the janitor. Thirty-one of these apartments are of four and five rooms and bath, and two of the apartments and the janitor's apartment are three rooms and bath. 30

The building is 76' by 130' and, according to the information before the writer, it is a fireproof apartment building with refrigerating system; oil burning boilers; steel fire-escapes on balconies; steel beams throughout; automatic telephone system to each apartment; concrete and brick walls; tile walls and floors in all bath-rooms; tile floors in all halls; plumbing fixtures consist of high-grade silent closets, built-in tubs and pedestal basins; oak floors throughout over concrete floors; built-in kitchen cabinets; equipped linen 40

drawers; flour bins and broom cupboards; best quality electric ranges in each suite; electric fixtures; blinds and fully decorated throughout; complete laundry and drying facilities.

As the writer expects to be in Toronto on Tuesday next, he will call at your address, 68 Ostend Avenue, some time between 10:30 and 11:30 in the morning. If this is not satisfactory, kindly wire me.

Yours very truly,

Exhibit 243

(Defendants' Exhibit)

10 **Letter, H. A. Morine to Consolidated Trusts Corp.**

Toronto 2,
August 21st, 1928.

Consolidated Trusts Corp.,
London, Ont.

Dear Sirs,—

Herewith cheque for \$1,500.00 *re* Buckingham Apartments, particulars of which will appear in next statement going forward to you.

Yours very truly,
H. A. MORINE.

20 HAM/J.
Encl.

Exhibit 244

(Defendants' Exhibit)

Letter, H. A. Morine to Consolidated Trusts Corp.

Toronto,
September 8th, 1928.

Consolidated Trusts Corp.,
London, Ont.

Dear Sirs,—

30 *Re* Buckingham Account.

Herewith cheque for \$1,500.00 *re* the above, particulars of which will appear in next statement going forward to you.

Yours very truly,
H. A. MORINE.
J.

J.
Encl.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 169.
D.
Copy of
Letter,
G. A. P.
Brickenden
& Co. to
E. R.
Barber,
9th August,
1928.

—continued.

Exhibits.
Ex. 243.
Letter, H. A.
Morine to
Consolidated
Trusts
Corp.,
21st August,
1928.

Exhibits.
Ex. 244.
Letter, H. A.
Morine to
Consolidated
Trusts
Corp.,
8th Septem-
ber, 1928.

Part Exhibit 13

(Plaintiffs' Exhibit)

N

Extracts from Minute Book of London Loan and Savings Co.

Minute Book—Page 774

Tuesday, October 9th, 1928.

BOARD MET—All present except Mr. Hunt.
Minutes of last meeting read and confirmed.

- Re* Buckingham Apts. Offer to purchase received from Mr. Lymbery for \$276,000. 20,000 shares of stock in the Canusa Mining and Exploration Company, valued at \$12,000., to be put up as deposit on same; balance to be secured by a mortgage for \$264,000., repayable \$1,500. quarterly account principal, balance at end of five year term, interest in the meantime at 6%, payable quarterly. Also privilege, in case no default, on expiration of mortgage, to renew same on same terms and conditions. Laid over for further consideration. 10
- Requisition for Special Meeting of Shareholders. Received from J. A. E. Braden. Same referred to Solicitors for their opinion and report thereon.
- Re* Special Meeting. Moved by J. H. Hambly, seconded by W. E. Robinson, that the petition received, calling for a special meeting of the Shareholders of the Company, be referred to the Solicitor, and he be empowered to obtain such advice thereon as may be necessary. Carried. 20
- Resolved that in sending out notices calling any meeting of the Shareholders of this Company a clause be inserted in such notice, requesting any proxies to be used at such meeting to be filed with the Manager of the Company at least seventy-two hours before the time set for the holding of such meeting. 30
- Re* Assets of Company Owing to the present unsettled state of the Company's affairs, it has been advisable to appoint a small committee to realize on some of the Assets of the Company. Moved by Mr. Robinson, seconded by Mr. Hambly, that a committee of the Board be hereby appointed and empowered

to realize upon any bonds, stock or mortgages held by the Company upon such terms as the members of the committee may deem advisable, either for cash or credit, and that the committee consist of Mr. McCormick and Mr. Baker. Carried.

Jno. H. Hambly,

Geo. G. McC.,

.....
Manager.

.....
President.

Exhibit 245

(Defendants' Exhibit)

10 **Letter, J. C. Crawford to London Loan and Savings Co.**

Re Real Est. D.42.

December 12th, 1928.

To
London Loan & Savings Co. Ltd.

Gentlemen :

Re Buckingham Apts.

- I. You will recall that in the past an offer was signed for the purchase of the Buckingham Apts. As you well know, the deal dragged along for 8 *months* when it came to point where it could not be dragged any longer and was *dropped*. No fault of the purchaser. Who was to *blame*?
20
- II. Once bitten twice shy. *Ah*, sucker to be caught the second time.
- III. On Sept. 9th, 1928, the writer had an offer drawn by your Solicitor, James McMillan, and upon his instructions I got the offer signed and that is the last I have seen of the offer but not the last you will hear of the deal.
- IV. On the assurance of your agent that the deal was through for the Buckingham, I got my commission from the other side and they are out \$9,000.00. "Who is the sucker?"
- V. "The court will decide."
- 30 VI. In the agreement I got signed I was to get \$1,000.00 as my cash commission and take the balance in shares. Surely you are not going to allow your reputation to be damaged or have your name in court for the sake of paying what your lawyer agreed to.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 13.
N.
Extracts
from
Minute Book
of London
Loan &
Savings Co.,
Page 774,
9th Octo-
ber, 1928.

—continued.

Exhibits.
Ex. 245.
Letter, J. C.
Crawford to
London
Loan &
Savings Co.,
12th Decem-
ber, 1928.

*In the
Supreme
Court of
Ontario.*

VII. Please instruct your agent here to deliver back the agreements he got from me as I want to bring this most disgusting disagreeable matter to a close.

Exhibits.
Ex. 245.
Letter, J. C.
Crawford to
London
Loan &
Savings Co.,
12th Decem-
ber, 1928.

P.S. I might just say the shares are now selling at 75c. per share and after Jan. 1st will be listed at \$1.00 per share.

No doubt your agent would be willing to go through with both deals once the shares are listed at \$1.00 per share and could sell them on the market and make a profit of 40c. per share.

—continued.

No more chance of pulling a deal of that sort with me as agent than a *cat* has in H-ll without *claws*. 10

You can return this letter to your agent or write to the writer at 31 Winchester St., Toronto.

Yours truly,
(Sgd.) J. C. CRAWFORD.

Exhibit 246

(Defendants' Exhibit)

Letter, H. A. Morine to J. H. Hambly

Toronto 2,
January 14th, 1929. 20

Mr. J. H. Hambly,
The London Loan & Savings Co.,
London, Ont.

Dear Sir :—

Re Buckingham Apartment.

Herewith cheque for \$1,200.00 on account, particulars of which will appear in the next statement going forward to you.

Yours very truly,
H. A. MORINE.

J.
Encl.
Written in pencil—(ch returned for signature) 30

Exhibit 170

(Plaintiffs' Exhibit)

Letter, London Loan and Savings Co. to H. A. MorineLondon, Can.,
January 15th, 1929.H. A. Morine, Esq.,
Toronto, Ontario.*In the
Supreme
Court of
Ontario.*—
Exhibits.
Ex. 170.
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
15th Janu-
ary, 1929.

Dear Sir :

Re Buckingham Apts.

10 We are in receipt of your letter of the 14th instant, enclosing cheque for \$1,200. on account of rental collections in connection with the above matter. We will be obliged *if you will kindly make this cheque, and all subsequent cheques, payable to the London Loan & Savings Company.* We notice you have also omitted to sign same.

The reason we ask you to make these cheques payable to our Company is, in paying same through the Consolidated Trusts Corp'n, it requires their endorsement on same, and on depositing these we are obliged to pay our Bank a commission for the collection thereon, whereas if it is made directly payable to our Company, we get away from this expense.

20

Yours truly,

JNO. H. HAMBLY,
Manager.

H/F.

Exhibit 261

(Defendants' Exhibit)

**Extract from Annual Report, London Loan and Savings Co. to Registrar
Loan Corporations for 1928**

30 In annual return for 1928, R. S. Durno mortgage is listed as "Real Estate" owned by the Corporation, among other properties. Therefore the list of real estate owned by the Corporation is copied under this Exhibit.

Exhibits.
Ex. 261.
Extract from
Annual
Report,
London
Loan &
Savings Co.
to Registrar
Loan
Corporations
for 1928,
27th Febru-
ary, 1929.

SCHEDULE "A"
REAL ESTATE OWNED BY THE CORPORATION.

*Description of Property	Date Acquired	Amount of Encumbrances	Actual Cost	Book Value	Market Value	Operations during 192					See Foot-note †
						Expended for repairs and Improvements on Capital Account	Gross Income	Taxes and all Running Expenses	Net Income	Net Loss	
1. Part Lots 6, 7, 8, s.s. Bloor St., and Part Lot 16, St. Helen's Ave., Plan 352, Toronto.	28/1/26	nil	29,653.92	29,941.62	40,000.00	nil	1,530.00	925.09	604.91	nil	R.E.
2. 1622-1631 Queen St. W. Part Lots 2 & 3, Plan 512, and Part Lot 16, Plan 457, Toronto.	26/6/25	nil	77,000.00	100,057.23	227,500.00	nil	21,808.05	12,610.52	9,197.53	nil	R.E.
3. do.		(1st mtg. re above)	139,432.52	139,432.52		nil					
4. Lots 436, 437 Elmwood Blvd.; Lots 165 & 166 Hollywood Blvd., Plan 1801, Tp. N. York.	19/12/25	nil	1,590.68	1,590.68	1,756.00	nil					
5. Lots 132-3-4-5, Plan 1801, Hollywood Blvd., Tp. N. York.	19/12/25	nil	1,433.22	1,433.22	1,760.00	nil					
6. Lots 14 & 15, Austin Cres., Plan D.1413, Toronto.	5/7/26	nil	9,014.58	10,820.12	10,760.00	nil					
7. 294 Spadina Rd., Toronto.	30/3/26	nil	17,000.00	18,284.48	17,200.00	nil	1,095.00	508.23	586.77	nil	R.E.
8. 617-9 Danforth Ave., Toronto.	6/1/25	nil	40,857.81	46,134.33	65,000.00	nil	4,367.10	2,422.46	1,944.64	nil	R.E.
TOTAL.....		nil	315,982.73	347,694.20	363,976.00	nil	28,800.15	16,466.30	12,333.85	nil	

*In the case of leasehold property, a brief statement of the terms of the lease should be here given, and the other columns of the schedule filled in where applicable.

†State here whether the net revenue or loss is credited or charged to (1) Principal of Real Estate Account or to (2) Profit and Loss Account.

SCHEDULE "A"
REAL ESTATE OWNED BY THE CORPORATION.

*Description of Property	Date Acquired	Amount of Encumbrances	Actual Cost	Book Value	Market Value	Operations during 192					See Foot-note †	
						Expended for repairs and Improvements on Capital Account	Gross Income	Taxes and all Running Expenses	Net Income	Net Loss		
9. Lots 410, 519, 520, 417, 420-1, 523, 423, 425, 427-8-9, 430-1-2, 513-4, 440-1, 446-7-8, 450, Plan 1801, Tp. York.	2/11/25	nil	4,543.64	4,543.64	10,220.00	nil	nil					
10. 460 Brunswick Ave., Toronto.	23/11/25	nil	5,032.29	6,826.82	18,000.00	nil	2,100.00	1,406.15	693.85	nil	R.E.	
11. do.	do.	(1st mtge. re above)	12,251.00	12,251.00	.....						
12. 27 Cloverdale Rd., Toronto.	12/10/25	nil	5,494.70	7,041.03	8,500.00	443.52	114.00	206.36	nil	92.36	R.E.	
13. 247 Pall Mall, London.	/1/25	nil	3,964.37	3,644.78	5,500.00	nil	330.00	232.76	97.24	nil	R.E.	
14. 11 Oakmount Rd., Toronto.	17/7/26	8,800.00	7,800.00	9,834.53	16,000.00	nil	1,190.00	1,306.00	nil	116.00	R.E.	
15. Part Lot 6, Seymour St., Meaford; Part Lot 15, Con. 4, Tp. St. Vincent.	4/6/27	nil	1,881.78	1,449.94	400.00	nil	nil					
16. 21 Rathgar St., London.	/7/27	nil	2,569.98	2,647.37	2,800.00	nil	180.00	122.31	57.69	nil	R.E.	
17. Part Lot 3, Con. 3, from Bay, Tp. York.	6/9/27	nil	4,681.92	4,681.92	6,000.00	nil	nil					
18. Part Lots 5 & 6, Con. 5, Tp. Oliver	/10/27	nil	753.00	738.00	850.00	nil	nil					
19. 445 Wembley Ave., Toronto.	14/2/28	nil	1,802.77	1,802.77	2,850.00	nil	nil					
20. 447 Wembley Ave., Toronto.	14/2/28	nil	1,802.67	1,802.67	2,850.00	nil	nil					
TOTAL.....		8,800.00	368,786.35	405,184.17	437,946.00	443.52	32,714.15	19,739.88	13,182.63	208.36		

*In the case of leasehold property, a brief statement of the terms of the lease should be here given, and the other columns of the schedule filled in where applicable.

†State here whether the net revenue or loss is credited or charged to (1) Principal of Real Estate Account or to (2) Profit and Loss Account.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 261.
Extract from
Annual
Report,
London
&
Savings Co.
Loan &
to Registrar
Loan
Corporations
for 1928,
27th Febru-
ary, 1929.
— continued.

In the
 Supreme
 Court of
 Ontario.
 Exhibits.
 Ex. 961.
 Extract from
 Annual
 Report,
 London
 Loan &
 Savings Co.
 to Registrar
 Loan
 Corporations
 for 1928,
 27th Febru-
 ary, 1929.
 —continued.

SCHEDULE "A"
REAL ESTATE OWNED BY THE CORPORATION.

*Description of Property	Date Acquired	Amount of Encum- brances	Actual Cost	Book Value	Market Value	Operations during 192					See Foot- note †
						Expended for repairs and im- prove- ments on Capital Account	Gross Income	Taxes and all Running Expenses	Net Income	Net Loss	
21. 121 Evelyn Crescent, Toronto.	1/2/28	nil	9,486.59	9,986.61	9,600.00	500.02	nil	nil			
22. Lots 19-24, Breadalbane St., Southampton.	Oct. /28	nil	2,734.19	2,734.19	3,200.00	nil	nil	nil			
23. Lot 116, Plan 1671, Virginia St., Toronto.	31/12/28	nil	800.00	800.00	800.00	nil	nil	nil			
24. Donland Apartments, Lot 1 and Part Lot 2, Plan 551, E. Toronto.	8/8/28	nil	98,000.00	99,955.87	110,000.00	nil	2,520.00	1,031.67	1,488.33	nil	R.E.
TOTAL.....			8,800.00	479,581.63	518,435.34	561,546.00	943.54	35,234.15	20,771.55	14,670.96	208.36
London Loan Block.	May /06	nil	91,000.00	85,000.00	200,000.00	nil	11,069.21	7,912.85	3,156.36	nil	P.&L.
TOTAL.....			8,800.00	570,581.63	603,435.34	761,546.00	943.54	46,303.36	28,684.40	17,827.32	208.36

*In the case of leasehold property, a brief statement of the terms of the lease should be here given, and the other columns of the schedule filled in where applicable.
 †State here whether the net revenue or loss is credited or charged to (1) Principal of Real Estate Account or to (2) Profit and Loss Account.

Exhibit 285

(Defendants' Exhibit)

**Receipt for Documents Received by London Loan and Savings Co.
from G. A. P. Brickenden & Co. re Durno Sale**

March 7th, 1929.

Received of Messrs. G. A. P. Brickenden & Company the following papers in connection with the Buckingham Apartments, King & Queen Street, Toronto :—

- 1.—Mortgage, Samuel B. Green, *et al*, to Huron & Erie, registered as Number 8317 W.F.
- 2.—Assignment of Mortgage, Huron & Erie to London Loan & Savings Company registered as Number 13475 W.F.
- 3.—Discharge of Mortgage, London Loan & Savings Company of Canada to Samuel B. Green and Horace A. Morine, dated the blank day of April, 1928.
- 4.—Mortgage, R. S. Durno *et ux* to The London Loan and Savings Company, registered as Number 11078 W.F.
- 5.—Discharge of same, dated April, 1928.
- 6.—Mortgage, Samuel B. Green and H. A. Morine to the London Loan & Savings Company, registered as Number 8318 W.F.
- 7.—Discharge of same, dated April, 1928.
- 8.—Statement *re* R. S. Durno, dated December 9th, 1927.
- 9.—Royal Insurance Policy, Number 285880, for \$75,000.00, which expired January 1st, 1929.
- 10.—Royal Insurance Policy, Number 285879, for \$62,500.00, which expired January 1st, 1929.
- 11.—North American Accident Insurance Policy, Number 28445, covering 1623 Queen St. W., Toronto, which expired May 25th, 1928.
- 12.—North American Accident Insurance Policy, Number 28444, covering 1629 Queen St. W., Toronto, which expired May 25th, 1928.
- 13.—North American Accident Insurance Policy, Number 28443, covering 1627 Queen St. W., Toronto, which expired May 25th, 1928.
- 14.—North American Accident Insurance Policy, Number 28442, covering 1631 Queen St. W. Toronto, which expired, May 25th, 1928.
- 15.—North American Accident Insurance Policy, Number 28441, covering 1625 Queen St. W., Toronto, which expired May 25th, 1928.
- 16.—Royal Insurance Policy, Number 285881, for \$62,500.00, which expired January 1st, 1929.
- 17.—Bundle of 1927 Tax receipts.
- 18.—Valuation of Lonsdale, dated December 1st, 1924.
- 19.—Deed of Land, registered as Number 11079 W.F.
- 20.—Release, Robert S. Durno and The Consolidated Trusts Corporation, dated 8th July, 1925.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 285.
Receipt for
Documents
Received by
London
Loan &
Savings Co.
from
G. A. P.
Brickenden
& Co. *re*
Durno Sale,
7th March,
1929.

- In the Supreme Court of Ontario.*
—
Exhibits.
Ex. 285.
Receipt for Documents Received by London Loan & Savings Co. from G. A. P. Brickenden & Co. re Durno Sale, 7th March, 1929.
—continued.
- 21.—Survey of part of Lot 16, Plan 457, and parts of Lots 2 & 3, Plan 512, Toronto, made by Abrey & Co.
22.—Deed, John E. Laxton to Samuel B. Green, registered as Number 7638 W.F.
23.—Mortgage, Samuel B. Green to Huron & Erie, registered as Number 8047 W.F.
24.—Mortgage, Samuel B. Green to Huron & Erie, registered as Number 7639 W.F.
25.—Conveyance, London Loan to Robert S. Durno, registered as Number 11077 W.F.
26.—Statutory Declaration of H. A. Morine, dated 16th December, 1922. 10
27.—Declaration of S. B. Green and H. A. Morine, dated 14th February, 1923.
28.—Declaration of S. B. Green, dated 6th January, 1923.
29.—Declaration of S. B. Green, dated April 25th, 1922.
30.—Declaration of S. B. Green, dated 22nd February, 1922.
31.—Receipt for registration charges *re* Assignment, Number 13475 W.F.

THE LONDON LOAN & SAVINGS CO. OF CANADA.
(Sgd.) E. P. FLETCHER.

Exhibits.
Ex. 249.
Letter,
G. A. P. Brickenden & Co. to London Loan & Savings Co.,
8th March, 1929.

Exhibit 249

(Defendants' Exhibit)

Letter, G. A. P. Brickenden & Co. to London Loan and Savings Co. 20

London, Canada,
March 8th, 1929.

The London Loan & Savings Co.,
220 Dundas Street,
City.

D.42.

Dear Sirs :—

Re Buckingham Apartments.

Herewith documents in our possession with regard to the Buckingham Apartments property. Will you kindly execute the enclosed receipt for same. 30

Yours very truly,
G. A. P. BRICKENDEN & Co.
Per James F. McMillan.

JFM/IS.
Encls.

Exhibit 247
(Defendants' Exhibit)
Letter, H. A. Morine to J. H. Hambly

Toronto 2,
March 9th, 1929.

Mr. J. H. Hambly,
The London Loan & Savings Co.,
London, Ont.

D.42.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 247.
Letter, H. A.
Morine
to J. H.
Hambly,
9th March,
1929.

Dear Sir,—

10

Re Buckingham Account.

Herewith cheque for \$1,500.00 *re* the above, full particulars of which will appear in statement when same is forwarded to you.
Kindly acknowledge receipt.

Yours very truly,
H. A. MORINE.
J.

J.
Encl.

Exhibit 248

(Defendants' Exhibit)

Letter, H. A. Morine to J. H. Hambly

20

Toronto 2,
March 14th, 1929.

Mr. J. H. Hambly,
The London Loan & Savings Co.,
London, Ont.

Exhibits.
Ex. 248.
Letter, H. A.
Morine
to J. H.
Hambly,
14th March,
1929.

Dear Sir,—

Re Buckingham Apartments.

I send herewith statements of rents and disbursements to which I have attached vouchers covering each disbursement *re* the above property, for
30 the following months :—

October, 1928.
November, 1928.
December, 1928.
January, 1929.
February, 1929.

Yours very truly,
H. A. MORINE.
J.

HAM/J.
40 Encl.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 257.

Extract from
Letter,
London
Loan &
Savings Co.
to Martin,
Currie & Co.,
6th April,
1929.

Exhibit 257
(Defendants' Exhibit)

**Extract from Letter, London Loan and Savings Co. to Martin,
Currie & Co.**

London, Can.,
April 6th, 1929.

Messrs. Martin, Currie & Co.,
Edinburgh, Scotland.

Dear Sirs :

Your cablegram received, in reply to which we now confirm our reply 10
thereto as follows : "Mailing reports today with letter of explanation for delay
and full particulars. Renew maturing debentures at present rate."

I am very sorry our Annual Statements for 1928 have not been sent for-
ward to you earlier, but the explanation for the delay has been owing to certain
changes which have taken place in the Directorate of the Company at the
Annual Meeting held on the 5th February last. For some time past it has
been felt among certain shareholders of the Company that the progress of
the Company might be improved if a change was made in the Directorate
thereof, and in this connection, at the Annual Meeting held on the above stated
date, a group of shareholders, represented by Lt.-Col. W. G. Coles and Mr. 20
J. A. E. Braden, succeeded in obtaining control of the Company, and elected
the following as Directors for the ensuing year :

Lt.-Col. W. G. Coles,
W. E. Robinson,

J. A. E. Braden,
Chas. R. Hunt,

William Gorman.

At a subsequent meeting of the Directors, Lt.-Col. Coles was elected President
of the Company; J. A. E. Braden, First Vice-President, and W. E. Robinson,
Second Vice-President. From the above you will notice only two of the old
Directors were re-elected, namely, Messrs. Robinson and Hunt. The new
Directors are Lt.-Col. Coles, who has been a resident of this City practically 30
all his life, and is at the present time President of The Daly Grange Teas Co.,
which carries on a very successful business here, and is also a Director of the
Premier Trust Company of this City; Mr. J. A. E. Braden is a barrister and
solicitor, and is recognized as one of the most prominent and outstanding
members of the legal profession in Western Ontario, who formerly resided in
Milton, Ontario, but some ten or twelve years ago removed to this City, and
went into partnership with Messrs. Gibbons, Harper & Gibbons, who were
formerly the solicitors for this Company. You will, no doubt, remember Sir
George Gibbons, the senior member of the firm, now deceased. The other
Director elected is Mr. William Gorman, who is President of The Gorman & 40
Eckert Co., who do a very extensive business in the manufacture of spices
and pickles, etc. He is also President of the I.X.L. Spice and Coffee Company,
President of Messrs. J. V. Boudrais & Fils, of Montreal, Canada, and a Director
of The London Life Insurance Company of this City, one of the most successful
of Canadian insurance companies.

As a result of the retirement of Mr. McCormick as President and a Director of the Company, the services of his son-in-law, Mr. G. A. P. Bricken-
 den, who was formerly solicitor for the Company, have been dispensed with,
 and Messrs. Braden & McAlister have been appointed solicitors of the Company
 in his place. The new Board of Directors have also dispensed with the services
 of Mr. H. A. Morine of Toronto. While Mr. Morine was never appointed the
 authorized agent of the Company in the City of Toronto, a very large volume
 of business came through his hands, and for a number of years he looked after
 the collection of the rents, etc., of any real estate properties which the Com-
 10 pany was holding.

*In the
 Supreme
 Court of
 Ontario.*
 —
 Exhibits.
 Ex. 257.
 Extract from
 Letter,
 London
 Loan &
 Savings Co.
 to Martin,
 Currie & Co.,
 6th April,
 1929.

The management of the real estate on hand at the present time has been
 placed in the hands of Messrs. R. B. Rice & Sons, 66 Victoria Street, Toronto,
 who are regarded as one of the most reliable and up-to-date real estate firms
 conducting business in that City, and the new Board are in hopes that, with
 the change as above made, a very substantial reduction will be made this year
 in the amount of real estate at present held.

—continued.

In comparing our Financial Statement for the year 1928 with that of the
 year 1927 you will no doubt notice there is an increase of approximately
 \$221,607.00 in the amount of real estate held for sale. In explanation of this
 20 I might say, and as you no doubt already know, the Huron & Erie Mortgage
 Corporation held a first mortgage on the Buckingham Apartments of approxi-
 mately \$140,000., which was bearing interest at the rate of 7½% payable
 half-yearly, and which mortgage was negotiated on the 7th February, 1923,
 and was made for ten years. Under the statutory provisions of the Short
 Forms of Mortgages Act, we were allowed the privilege of paying this mortgage
 off at the end of five years, without a bonus, which time expired on the 7th
 February, 1928. The London Loan & Savings Co. held a second mortgage
 against this property of \$77,000. For a considerable length of time we had
 been endeavouring to make a sale of this property, but one of the chief obstacles
 30 in that connection was the fact that the Huron & Erie Mortgage Corporation
 held the first mortgage which bore interest at 7½% and which it would be
 necessary for a purchaser to assume in case of a sale being effected. In February
 last, therefore, we considered our position would be considerably improved
 if the Huron & Erie Mortgage was paid off so that we would have absolute
 control of the property. Consequently, at that time we paid off the Huron
 & Erie and took an assignment of their mortgage, which gave us absolute
 control of the property, and in case of a sale, the purchaser could negotiate
 a new mortgage for the unpaid balance of the purchase money.

40

Yours truly,
 JNO. H. HAMBLBY,
 Manager.

H/F.

Exhibit 250

(Defendants' Exhibit)

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 250.

Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Mordine,
12th April,
1929.

Copy of Letter, London Loan and Savings Co. to H. A. Morine

R.E. D.42.

April 12th, 1929.

H. A. Morine, Esq.,
Toronto, Ontario.

Dear Sir :

Re Buckingham Apartments.

Referring to your letter of the 9th instant, when forwarding us a statement 10
in connection with the above mortgage, we understood there were some out-
standing bills which you were to secure and pay out of the balance retained
by you. As we are particularly anxious to get matters in connection with
Buckingham Apartments straightened up as soon as possible, we would esteem
it a favour if you would kindly let us have your final statement in connection
therewith without delay.

Yours truly,

Manager.

H/F.

Exhibit 251

(Defendants' Exhibit)

20

Exhibits.
Ex. 251.
Letter, H. A.
Mordine
to J. H.
Hambly,
24th April,
1929.

Letter, H. A. Morine to J. H. Hambly

Toronto 2,
April 24th, 1929.

Mr. J. H. Hambly,
The London Loan & Savings Co.,
London, Ont.

Real Est. D.42.

Dear Sir,—

Re Buckingham Account.

On account of all vouchers not being in, and as I will receive statement 30
of this account from the Bank the end of the month, I will have a statement
in your hands by the first of May next.

Yours very truly,
H. A. MORINE.
J.

HAM/J.

Exhibit 252

(Defendants' Exhibit)

Copy of Letter, London Loan and Savings Co. to H. A. Morine

R.E. D.42.

April 24th, 1929.

H. A. Morine, Esq.,
Toronto, Ontario.

Dear Sir :

Re Buckingham Apartments.

10 We wrote you some time ago in regard to letting us have final report in connection with the rental collections, etc., in regard to the above matter, but up to the present time we have received no reply to our letter. As we are particularly anxious to have this matter straightened up, we must ask you to kindly let us have a statement and return without further delay.

Yours truly,

Manager.

H/F.

Exhibit 253

(Defendants' Exhibit)

Letter, H. A. Morine to J. H. Hambly

20

Toronto 2,
May 7th, 1929.Mr. J. H. Hambly,
Manager,
The London Loan & Savings Co.,
London, Ont.

D.42.

Dear Sir,—

Re Buckingham Apartments.

30 Herewith statement of rents and disbursements covering the months of March and April, to which you will find vouchers attached covering each disbursement, which concludes the Buckingham Account.

Enclosed you will find the following Leases :—

*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 252.
Copy of
Letter,
London
Loan &
Savings Co.
to H. A.
Morine,
24th April,
1929.Exhibits.
Ex. 253.
Letter, H. A.
Morine
to J. H.
Hambly,
7th May,
1929.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 253.
Letter, H. A.
Morine
to J. H.
Hambly,
7th May,
1929.

Written
in pencil } 23/5/29
 } Sent these
 } leases to
 } R. B. Rice
 } & Sons.

W. G. James.....	Apartment	2.
C. H. Wilson.....	"	9.
Mrs. Warren.....	"	23.
Laurence Cunningham.....	"	25.
Melville & Liddell.....	"	30.
Garnet Parr.....	1625 Queen W.	
Rachel Goodman.....	1629 Queen W.	

—continued.

Also herewith letter from Benson & Walfish, acting on behalf of Rachel Goodman, stating that she will vacate the premises, 1629 Queen W., on August 6th, next.

10

Kindly acknowledge receipt.

Yours very truly,
H. A. MORINE.
J.

HAM/J.
Encl.



Exhibit 1
(Plaintiffs' Exhibit)
Abstract of Title to Buckingham Apartments

REGISTRY OFFICE FOR THE REGISTRY DIVISION OF TORONTO
ABSTRACT OF TITLE

I CERTIFY that the following are correct extracts from the only instruments recorded in this office which mention, refer to, or affect the land being

Part of Lot 16, on S.S. Queen St., according to registered Plan 457, and Part Lots 2 & 3, according to registered Plan 512, as described in Instrument No. 7638 W.F., from and including same.

THIS ABSTRACT DOES NOT PURPORT TO GIVE ENTRIES FROM GENERAL REGISTER OR BANKRUPTCY BOOKS

No. of Instrument	Instrument	Its Date	Date of Reg.	Grantor	Grantee	Consideration or Amount of Mortgage	Quantity of Land and Remarks
7638 W.F.	Grant.	27 Apr., 1922	14 July, 1922	Jno. E. Laxton, Grace (his wife).	Samuel B. Green.	\$100	76' on n.s. King St. x 199'4". Com'g at E. limit of lands in 2388 and running W.
7639 W.F.	Mortg. not in full.	21 Apr., 1922	14 July, 1922	Samuel B. Green, Ethel B. (his wife)	Huron & Erie Mortg. Corp.	\$105,000	Lands in 7638 W.F. Disch'd by No. 8817 W.F.
7858 W.F.	Grant.	21 Apr., 1922	15 Sept., 1922	Sam. B. Green, Ethel B. (his wife).	Sam. B. Green, Horace A. Morine, (partnership).	\$10	Lands in 7638 W.F.
8046 W.F.	Grant.	14 Nov., 1922	16 Nov., 1922	Samuel B. Green, Horace A. Morine.	Samuel B. Green.	\$10	Lands in 7638 W.F.
8047 W.F.	Mortg. not in full.	15 Nov., 1922	16 Nov., 1922	Samuel B. Green, Ethel B. Green.	Huron & Erie Mortg. Corp.	\$135,000	Lands in 7638 W.F. Disch'd by No. 8818 W.F.
8048 W.F.	Grant.	16 Nov., 1922	16 Nov., 1922	Samuel B. Green, Ethel B. (his wife).	sd. Samuel B. Green & Horace A. Morine in partnership.	\$10 &c.	Lands in 7638 W.F. Subj. to Mortg. for \$105,000.
8317 W.F.	Mortg. not in full.	7 Feb., 1923	16 Feb., 1923	Samuel B. Green, Horace A. Morine individually and as co-partners; Ethel B. Green and Estelle M. Morine.	Huron & Erie Mortg. Corp.	\$150,000	Lands in 7638 W.F.

847

In the
Supreme
Court of
Ontario.
Exhibits.
Ex. 1.
Abstract of
Title to
Buckingham
Apartments,
14th June,
1929.

No. of Instrument	Instrument	Its Date	Date of Reg.	Grantor	Grantee	Consideration or Amount of Mortgage	Quantity of Land or Remarks
8318 W.F.	Mortg. not in full.	13 Feb., 1923	16 Feb., 1923	Samuel B. Green, Horace A. Morine individually and co-partners; Ethel B. Green, Estelle M. Morine.	London Loan & Savings Co.	\$35,000	Lands in 7638 W.F. Disch'd by No. 11076 W.F.
8761 W.F.	Mortg. not in full.	23 May, 1923	1 June, 1923	Sam. B. Green, Ethel B. (his wife), Horace A. Morine, Estelle M. (his wife), individually and as partners.	London Loan & Savings Co.	\$20,000	Lands in 7638 W.F.
8789 W.F.	Grant and Qt. Claim.	8 June, 1923	9 June, 1923	Samuel B. Green, Ethel B. (his wife).	Horace A. Morine.	\$10 &c.	Lands in 7638 W.F.
8817 W.F.	Dis. M.	26 Apr., 1923	19 June, 1923	Huron & Erie Mortg. Corp.	Sam. B. Green.		Mortg. 7639 W.F.
8818 W.F.	Dis. M.	26 Apr., 1923	19 June, 1923	Huron & Erie Mortg. Corp.	Sam. B. Green.		Mortg. 8047 W.F.
11877 M.L.W.	Mec. Lien	31 July, 1923	31 July, 1923	Fess Oil Burners of Canada, Ltd.	Samuel B. Green, Horace A. Morine & Huron & Erie Mortg. Corp.	\$2,245.29	Pt. Lots 2 & 3, and Pt. Lot 16, Plan 457, being 76' on n.s. King St. x 199'4". Com'g at E. limit of lands in 2388 and running W. Disch'd by No. 11905 M.L.W.
11878 M.L.W.	Mec. Lien.	31 July, 1923	31 July, 1923	Michael C. Foley, trading as The Foley Lumber Co.	Samuel B. Green, Horace A. Morine, individually and as S. B. Green & Co., Huron & Erie Mortg. Corp., London Loan & Savings Co. of Canada.	\$1,289.38 & \$25.00 costs	Lands in 11877 M.L.W.
11887 M.L.	Mec. Lien.	2 Aug., 1923	3 Aug., 1923	The McClary Mfg. Co., Limited.	Samuel B. Green, Horace A. Morine, individually and as Green & Morine, Huron & Erie Mortg. Corp., London Loan & Savings Co.	\$595.37 & \$10.00 costs	Lands in 11877 M.L.W.

No. of Instrument	Instrument	Its Date	Date of Reg.	Grantor	Grantee	Consideration or Amount of Mortgage	Quantity of Land or Remarks
11894	M.L.W. Mec. Lien.	11 Aug., 1923	11 Aug., 1923	Seaman-Eaton Flooring Co. Limited.	Samuel B. Green, H. A. Morine, individually and as (S. B. Green & Morine), Huron & Erie Mtge. Corp., London Loan & Savings Co. of Canada Ltd.	\$3,302.34 & \$25.00 costs	Lands in 11877 M.L.W.
11895	M.L.W. Mec. Lien.	13 Aug., 1923	14 Aug., 1923	Adriana J. Andrew, as Andrew's Sign Studio.	S. B. Green, Huron & Erie Mortg. Corp., H. A. Morine, London Loan & Savings Co.	\$46.73 & \$10.00 costs	Lands in 8048 W.F. Disch'd by No. 11916 M.L.W.
11899	M.L.W. Dis. Lien.	14 Aug., 1923	16 Aug., 1923	The McClary Mfg. Co.	Sam. B. Green.	\$1	Lands in 11877 M.L.W.
11905	M.L.W. Dis. M. Lien.	20 Aug., 1923	20 Aug., 1923	Fess Oil Burners of Canada Ltd.	Horace A. Morine.		Lien No. 11877 M.L.W.
11909	M.L.W. Mec. Lien.	16 Aug., 1923	21 Aug., 1923	Ebsary Gypsum Co.	Sam'l B. Green, H. A. Morine, Huron & Erie Mortg. Corp., London Loan & Savings Co., Ltd.	\$1,593.84	Lands in 11877 M.L.W.
9019	W.F. Cert. of Action M.L.A.	25 Aug., 1923	25 Aug., 1923	Michael C. Foley as The Foley Lumber Co.	Samuel B. Green, Horace A. Morine, Defts.	\$1,289.39	Lands in 7638 W.F.
11916	M.L. Dis. Lien.	18 Aug., 1923	24 Aug., 1923	Adrianus J. Andrew.	H. A. Morine.	\$46.73	Lands in 11877 M.L.W.
11928	M.L.W. Mec. Lien.	31 Aug., 1923	1 Sept., 1923	Jno. C. Gilchrist Lumber Co. Ltd.	Horace A. Morine, Sam. B. Green, Huron & Erie Mtge. Corp., London Loan & Savings Co., Foley Lumber Co., The McClary Mfg. Co. Ltd., Seaman-Eaton Flooring Co. Ltd., Ebsary Gypsum Co.	\$997.36 & \$33.00 costs	Lands in 7638 W.F. Disch'd by No. 11930 M.L.W.
11930	M.L.W. Dis. Lien.	1 Sept., 1923	4 Sept., 1923	Jno. C. Gilchrist Lumber Co. Ltd.	Horace A. Morine.		Lien No. 11928 M.L.W.

No. of Instrument	Instrument	Its Date	Date of Reg.	Grantor	Grantee	Consideration or Amount of Mortgage	Quantity of Land or Remarks
11931 M.L.W.	Mec. Lien.	5 Sept., 1923	5 Sept., 1923	Automatic Telephones & Time Recorders Ltd.	Sam. B. Green, Horace A. Morine, Huron & Erie Mtge. Corp., London Loan & Savings Co.	\$470.98 & \$10.00 costs	Lands in 7638 W.F. Disch'd by No. 11950 M.L.W.
9084 W.F.	Grant.	9 Aug., 1923	18 Sept., 1923	Horace A. Morine, Estelle M. (his wife).	Arthur W. Dyas.	\$1 Val. Cons.	Lands in 7638 W.F.
9085 W.F.	Mortg. not in full.	10 Aug., 1923	18 Sept., 1923	Arthur W. Dyas, Evelyn W. (his wife).	W. Lawson Renton in trust.	\$46,000	Lands in 7638 W.F.
11950 M.L.W.	Dis. Lien.	22 Sept., 1923	22 Sept., 1923	Automatic Telephones & Time Recorders Ltd.	Horace A. Morine.		Lien No. 11931 M.L.W.
11953 M.L.W.	Mec. Lien.	25 Sept., 1923	27 Sept., 1923	Alex'r L. McKay.	Edward G. Clarkson, Trustee of Property of Sam'l B. Green, Horace A. Morine, & Sam'l B. Green, trading as S. B. Green & Co., Huron & Erie Mortg. Corp., London Loan & Savings Co. of Canada.	\$1,974.04 & \$25.00 costs	Lands in 7638 W.F.
11957 M.L.W.	Mec. Lien.	3 Oct., 1923	3 Oct., 1923	James Casey.	Edward G. Clarkson, Assignee of Property of Sam'l B. Green, under B.A., sd. Sam'l B. Green, Horace A. Morine, & sd. Sam'l B. Green, trading as Sam'l B. Green & Co., sd. Horace A. Morine, Arthur W. Dyas, W. L. Renton, London Loan & Savings Co., Huron & Erie Mortg. Corp.	\$7,264.45 & \$25.00 costs	Lands in 7638 W.F.
153 B.A.	Ass't for B. of C.	15 Sept., 1923	4 Oct., 1923	Sam'l B. Green, Debtor.	Edward G. Clarkson, Trustee.		Lands in 7638 W.F.

No. of Instrument	Instrument	Its Date	Date of Reg.	Grantor	Grantee	Consideration or Amount of Mortgage	Quantity of Land or Remarks
9171 W.F.	Cert. of Action M.L.A.	16 Oct., 1923	16 Oct., 1923	Seaman-Eaton Flooring Co. Ltd., Plaintiff.	Edward G. Clarkson, Trustee of Sam'l B. Green, Horace A. Morine, S. B. Green & Co., London Loan & Savings Co., Arthur W. Dyas, W. Lawson Renton, Defts.	\$3,302.34	Lands in 7638 W.F.
9316 W.F.	Cert. of Action M.L.A.	23 Nov., 1923	23 Nov., 1923	Alex'r McKay, Pltff.	Edward G. Clarkson, Trustee of Sam. B. Green, Horace A. Morine, S. B. Green & Co., London Loan & Savings Co., Arthur W. Dyas, W. Lawson Renton, Defts.	\$1,907.04	Lands in 7638 W.F.
12013 M.L.W.	Dis. Lien.	20 Nov., 1923	5 Dec., 1923	James Casey.	Horace A. Morine.	\$1 in full	Lands in 7638 W.F.
10302 W.F.	Mortg. not in full.	27 Oct., 1924	30 Oct., 1924	Arthur W. Dyas, Evelyn W. (his wife).	Horace A. Morine.	\$23,000	Pts. Lots 2 & 3, & Pt. Lot 161 on Plan 457, being 76' on n.s. King St. x 141' deep on W. to s.s. Queen St. x 76' on Queen St. x 199'4" on E. limit being E. limit of lands in 2388 (reg'd) 17 June, 1887.
10510 W.F.	Ass't M. not in full.	4 Dec., 1924	3 Jan., 1925	W. Lawson Renton.	W. Lawson Renton, Geo. M. Kelley, Trustees	\$2	Mortg. 9085 W.F.
11005 W.F.	Cert. of Order Dis. Liens and Lis. Pens.	13 June, 1925	16 June, 1925	Michael Chas. Foley, as Foley Lumber Co., Pltffs. —and— Michael Chas. Foley, as Foley Lumber Co., Pltff. —and— Seaman-Eaton Flooring Co. Ltd., Pltff.	Sam'l B. Green, Horace A. Morine, Defts. —and— E. G. Clarkson, Trustee of Sam'l B. Green & Horace A. Morine, Defts. —and— Edw'd G. Clarkson, Trustee of Sam'l B. Green, Assignor of H. A. Morine, S. B. Green & Co., London Loan & Savings Co.		Dis. Lien Nos. 11878 M.L., W. 11953 M.L.W., 11894 M.L.W., & 11909 M.L.W. & Certs. of Action 9019 W.F., 9316 W.F. & 9171 W.F.

No. of Instrument	Instrument	Its Date	Date of Reg.	Grantor	Grantee	Consideration or Amount of Mortgage	Quantity of Land or Remarks
				Alex'r McKay, Pltff.	of Can., A. W. Dyas, W. L. Renton, Defts. E. G. Clarkson, <i>et al</i> , as above Defts.		
				—and— Alfred N. Morine, Assignee of M.L. claim of M. C. Foley, Pltff.	Sam'l B. Green, Hor- ace A. Morine, Defts.		
				—and— Alfred N. Morine, As- signee of M.L. claim of Seaman-Eaton Flooring Co., Pltff.	E. G. Clarkson, <i>et al</i> , (as 2nd above) Defts.		
				—and— Alfred N. Morine, As- signee of M.L. claim of Alex'r McKay.	E. G. Clarkson, <i>et al</i> , (as 3rd above) Defts.		
11076 W.F.	Dis. M.	3 July, 1925	8 July, 1925	London Loan & Sav- ings Co. of Canada.	Samuel B. Green, Horace A. Morine.		Mortg. 8318 W.F.
11077 W.F.	Grant, P. of S.	1 June, 1925	8 July, 1925	London Loan & Sav- ings Co. of Canada.	Robert S. Durno.	\$227,500 &c.	Lands in 10302 W.F. See Re- citals. Subj. to Mortg. for \$147,000.
11078 W.F.	Mortg. not in full.	1 June, 1925	8 July, 1925	Robert S. Durno, Mary E. (his wife).	London Loan & Sav- ings Co. of Canada.	\$77,000	Lands in 10302 W.F.
11079 W.F.	Grant.	26 June, 1925	8 July, 1925	Robert S. Durno, Mary E. (his wife).	Consolidated Trusts Corp'n in trust.	\$5 &c.	Lands in 10302 W.F.
Deposit No. 4046 13475 W.F.	Ass't M. not in full.	7 Feb., 1928	17 Feb., 1928	Huron & Erie Mortg. Corp.	London Loan & Sav- ings Co.	\$139,432.50	Mortg. 8317 W.F.

Dated 14th June, 1929, at
 10 o'clock a.m.
 W. J. C. McCREA.
 Dep. Registrar.

Exhibit 171

(Plaintiffs' Exhibit)

Letter, Braden & McAlister to H. A. Morine

London,
June 27th, 1929.

H. A. Morine, Esq.,
803 Sterling Tower,
Toronto 2, Ontario.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 171.
Letter,
Braden &
McAlister
to H. A.
Morine,
27th June,
1929.

Dear Sir :

10 *Re* Buckingham Apartments.

We have been asked by the Board of Directors of the London Loan & Savings Company to investigate certain transactions which took place in respect to the ownership of these lands. It appears that a sale was arranged in June, 1925, to one Durno under and by virtue of a third mortgage, held on the property by the London Loan & Savings Company. The transaction was put through in the following way : Durno agreed to assume a first mortgage to the Huron & Erie for One Hundred and Forty-seven Thousand Dollars. He gave back to the London Loan & Savings Company a second mortgage for Seventy-seven Thousand Dollars, and gave a cheque for Thirty-five
20 Hundred Dollars. A discharge was then given to you in respect to the existing second mortgage, this discharge being dated July 3rd, 1925, and registered July 8th, 1925. The Deed to Durno and the mortgage from Durno back to the London Loan were also registered on July 8th, 1925, and a conveyance was given by Durno to the Consolidated Trusts Corporation, which conveyance also appears to have been recorded on the same date as the other documents.

We are informed that the cheque for Thirty-five Hundred Dollars which Durno was said to have given was not paid and that on July 8th, when the registrations were made, it was a well-known fact that Durno could not carry out the sale.

30 The reason we are asking you for these explanations is because you were on the covenant in the second and third mortgages held by the London Loan & Savings Company and the Directors cannot understand why the discharge of mortgage was given to you under the circumstances as apparently no consideration was given to the London Loan & Savings Company to execute the discharge, if the discharge was executed by the Company, which the present Board of Directors do not admit.

Yours truly,
BRADEN & McALISTER.
Per J. A. E. B.

40 JAEB/T.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 172.
Letter, H. A.
Moline to
Braden &
McAlister,
28th June,
1929.

Exhibit 172

(Plaintiffs' Exhibit)

Letter, H. A. Moline to Braden & McAlister

Toronto 2,
June 28th, 1929.

Messrs. Braden & McAlister,
Barristers, Solicitors, &c.,
Dundas Building,
London, Canada.

Dear Sirs,—

10

Attention of Mr. Braden.
Re Buckingham Apartments.

I beg to acknowledge receipt of your letter of the 27th inst., and have noted contents.

The records of the Company should and do show that all steps taken in connection with this property were fully approved of by the Board and carried out with their consent and instructions. The Company's records should also show that they received the sum of \$3,500.00 which was paid by Durno in connection with this transaction. Subsequently the Company did exercise acts of ownership in connection with this property and as a matter of fact ²⁰ sold the property for a sum which would yield them a handsome profit over and above their investment of the same.

Yours very truly,
H. A. MOLINE.

HAM/J.

Exhibit 313

(Plaintiffs' Exhibit)

Charter of London Loan Assets, Limited

Exhibits.
Ex. 313.
Charter of
London
Loan
Assets, Ltd.,
2nd July,
1929.

SEAL

(Coat of Arms)
PROVINCE OF ONTARIO

30

BY THE HONOURABLE
LINCOLN GOLDIE

PROVINCIAL SECRETARY

TO ALL TO WHOM THESE PRESENTS SHALL COME
GREETING.

WHEREAS The Companies Act provides that with the exceptions therein mentioned the Lieutenant-Governor may by letters Patent create and constitute bodies corporate and politic for any of the purposes to which the authority of the Legislature of Ontario extends;

AND WHEREAS by the said Act it is further provided that the Provincial Secretary may under the Seal of his office have, use, exercise and enjoy, any power, right, or authority conferred by the said Act on the Lieutenant-Governor;

10 AND WHEREAS by their Petition in that behalf the persons herein mentioned have prayed for a Letters Patent constituting them a body corporate and politic for the due carrying out of the undertaking hereinafter set forth; AND WHEREAS it has been made to appear that the said persons have complied with the conditions precedent to the grant of the desired Letters Patent and that the said undertaking is within the scope of the said Act;

NOW THEREFORE KNOW YE that under the authority of the hereinbefore in part recited Act I DO BY THESE LETTERS PATENT CONSTITUTE the Persons hereinafter named, that is to say :—

20 William George Coles, Broker; John Andrew Ernest Braden, Barrister-at-law; William Elliott Robinson, Gentleman; and Charles Riches Hunt and William Gorman, Manufacturers; all of the City of London, in the County of Middlesex and Province of Ontario; and any others who have become subscribers to the memorandum of agreement of the Company, and persons who hereafter become shareholders therein, a corporation under the name of

LONDON LOAN ASSETS, LIMITED

for the following purposes and objects, that is to say :—

(a) To purchase, acquire and take over from The Huron and Erie Mortgage Corporation a portion of the assets purchased by that corporation from The London Loan and Savings Company of Canada and (subject to the provisions of The Companies Act), to pay for the same, wholly or partly, in shares of the Company fully paid up and non-assessable; (b) Subject to the provisions of The Companies Act, to pay out of the funds of the Company the costs, charges and expenses incurred or payable by any person or corporation in respect of : (1) The Investigation of the affairs of The London Loan and Savings Company for the purpose of ascertaining and getting in the assets acquired from The Huron and Erie Mortgage Corporation; (2) The prosecution of any claims against directors, officers, servants or agents of The London Loan and Savings Company or other persons whom the directors may consider under liability to the Company or The London Loan and Savings Company or The Huron and Erie Mortgage Corporation in respect of the affairs of

40 The London Loan and Savings Company; and (3) The prosecution of all other claims and demands arising out of the affairs of The London Loan and Savings Company which are not specifically retained from the assets of The London Loan and Savings Company by The Huron & Erie Mortgage Corporation; (c) To assent to any compromise and release of any claims or demands referred to in the next preceding paragraph as the directors may deem fit; (d) To sell, mortgage, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 313.
Charter of
London
Loan
Assets, Ltd.,
2nd July,
1929.

—continued.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 313.
Charter of
London
Loan
Assets, Ltd.,
2nd July,
1929.

—continued.

of the Company for the purpose of converting the assets of the Company into money and to distribute, from time to time, in the discretion of the directors, the money of the Company amongst its shareholders; (e) To invest and deal with the moneys of the Company not immediately required for the purposes of the Company in such manner as, from time to time, may be determined; (f) To pay all the fees, costs and charges incurred by The London Loan and Savings Company or The Huron and Erie Mortgage Corporation or the Company in respect of the transfer of the assets of The London Loan and Savings Company to The Huron and Erie Mortgage Corporation and the acquisition by the Company of any of such assets; and (g) If thought fit, to obtain an Act of the Legislature of the Province of Ontario to confirm, alter, enlarge or modify the powers or constitution or charter provisions of the Company; 10

PROVIDED, however, that except as to taking and holding mortgages for any unpaid balance of the purchase money on any of the lands, buildings or structures sold by the Company it shall not be lawful for the Company hereby incorporated to transact or undertake any business within the meaning of The Insurance Act or of The Loan and Trust Corporations Act;

THE CAPITAL of the Company to be divided into Twenty Thousand shares without any nominal or par value; 20

THE HEAD OFFICE of the Company to be situate at the said City of London; and

THE PROVISIONAL DIRECTORS of the Company to be William George Coles, John Andrew Ernest Braden, William Elliott Robinson, Charles Riches Hunt and William Gorman, hereinbefore mentioned;

AND IT IS HEREBY ORDAINED AND DECLARED :

(1) THAT the Company may distribute any of its property or assets in specie among its shareholders; and

(2) THAT the Company may pay out of its funds all or any of the expenses of or incidental to the formation or organization of the Company. 30

THE CAPITAL of the Company shall be at least equal to the sum of the aggregate par value of all issued shares having par value, plus the aggregate amount of consideration received by the Company for the issuance of shares without par value, plus such amounts as, from time to time, by by-law of the Company, may be transferred thereto, a certified copy of the contract or by-law fixing the amount of consideration received by the Company for the issuance of shares without par value to be filed forthwith in the office of the Provincial Secretary.

GIVEN under my hand and seal of office at the City of Toronto in the said Province of Ontario this second day of July, in the year of Our Lord 40 one thousand nine hundred and twenty-nine.

(SEAL)

(Signed) "L. Goldie,"
Provincial Secretary.

Exhibit 208

(Plaintiffs' Exhibit)

Extracts from Printed Copy Amalgamation Agreement, London Loan and Savings Co., Huron & Erie Mortgage Corp., and London Loan Assets, Limited, with Certificates*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 208.
Extracts
from
Printed
Copy of
Amalgama-
tion
Agreement,
London
Loan &
Savings Co.,
Huron &
Erie Mtge.
Corp., and
London
Loan
Assets, Ltd.,
with
Certificates,
3rd July,
1929.

THIS AGREEMENT, made in triplicate this 3rd day of July, 1929,

BETWEEN :

10 THE LONDON LOAN AND SAVINGS COMPANY
OF CANADA, hereinafter called the "Loan Company,"
OF THE FIRST PART,

—AND—

THE HURON AND ERIE MORTGAGE CORPORA-
TION, hereinafter called the "Mortgage Corporation,"
OF THE SECOND PART,

—AND—

THE LONDON LOAN ASSETS, LIMITED, herein-
after called the "New Company,"
OF THE THIRD PART.

20 WHEREAS the Loan Company and Mortgage Corporation have been
duly incorporated under the laws of the Province of Ontario (and the Mort-
gage Corporation also under the laws of the Dominion of Canada), to carry
on the general business of loan savings companies, and with power to purchase
the assets of any other company carrying on a similar business;

AND WHEREAS the Loan Company has agreed to sell and the Mortgage
Corporation has agreed to purchase the assets of the Loan Company upon
the terms and subject to the conditions of this agreement ;

AND WHEREAS the New Company has been incorporated under the
laws of the Province of Ontario for the purposes of this agreement ;

30 AND WHEREAS the Mortgage Corporation has agreed to sell and the
New Company has agreed to purchase assets of the Loan Company repre-
senting the surplus over and above the amount of liabilities of the Loan
Company to the public upon the terms and subject to the conditions of this
agreement ;

NOW THIS AGREEMENT WITNESSETH that in consideration of
the covenants and agreements herein contained and of the consideration
hereinafter set forth, the parties hereto agree each with the other as follows :—

PART I

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 208.
Extracts
from
Printed
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Amalgama-
tion
Agreement,
London
Loan &
Savings Co.,
Huron &
Erie Mtge.
Corp., and
London
Loan
Assets, Ltd.,
with
Certificates,
3rd July,
1929.

—continued.

1. The Loan Company agrees to sell and sells to the Mortgage Corporation, and the Mortgage Corporation agrees to purchase and purchases from the Loan Company the entire assets and undertaking of the Loan Company, including :—
 - First :—The goodwill of the said business of the Loan Company, with whatever rights are or may be capable of being transferred to use the name of the London Loan and Savings Company of Canada in connection with the business so purchased and to hold out and represent the Mortgage Corporation as carrying on such business 10 in continuation of the Loan Company's business and in succession thereto, and to use the words "formerly The London Loan and Savings Company of Canada" or any other words indicating that the business is carried on in continuation of or in succession to the said Loan Company.
 - Second :—All the freehold and leasehold properties belonging to the Loan Company.
 - Third :—All mortgages, stocks and debentures and securities for money owned by the Loan Company.
 - Fourth :—All the book and other debts due or to become due to the 20 Loan Company in connection with the said business, and the full benefit of all securities for such debts.
 - Fifth :—The full benefit of all contracts and engagements, covenants and provisos to which the Loan Company is or may be entitled in connection with the said business.
 - Sixth :—All rights of action arising out of or incidental or appurtenant to ownership of any assets hereby assigned or conveyed or affecting the value thereof insofar as these rights of action are capable of being transferred.
 - Seventh :—All cash in hand and at any bank, and all bills and notes 30 held by the Loan Company in connection with said business.
 - Eighth :—All other assets and property to which the Loan Company is or may become entitled in connection with the said business.
2. The consideration for the sale by the Loan Company to the Mortgage Corporation shall be as follows :—
 - (a) The Mortgage Corporation undertakes and agrees with the Loan Company to pay, satisfy and perform all the debts, liabilities, contracts and engagements of the Loan Company in relation to the said business :
 - (b) The Mortgage Corporation agrees to transfer and assign to 40 the Loan Company, or its nominees 20,000 shares of the capital stock of the New Company (being all the capital stock of the New Company) which are to be received by the Mortgage Corporation as hereinafter provided as part of the consideration for the transfer of certain assets to the New Company.

(c) The Mortgage Corporation agrees to pay to the Loan Company the sum of \$720,000 in cash forthwith after the ratification of this agreement as required by law.

(d) As part of the consideration for the said sale, The Mortgage Corporation shall at all times keep the Loan Company indemnified against any debts, liabilities, obligations, contracts and engagements of the Loan Company and against all actions, proceedings, costs, damages, claims, demands and other proceedings in respect thereof.

- 10 3. The Mortgage Corporation shall accept such title to the properties, mortgages and other assets hereby agreed to be transferred as the Loan Company possesses and the titles to all such properties, mortgages and other assets and the certificates thereof are to be deemed prima facie valid and sufficient.
4. Any right of action hereby assigned or transferred by the Loan Company to the Mortgage Corporation may be exercised or enforced, and any proceedings which may have been commenced by the Loan Company in connection therewith at the date of ratification of this agreement may be continued in the name of the Mortgage Corporation or in the name of the Loan Company, for the benefit of the Mortgage Corporation. Nevertheless, nothing in this agreement shall derogate from or extinguish any right of action now vested in the Loan Company in connection with the business of the Loan Company prior to the ratification of this agreement which is not capable of assignment or transfer, and any such right of action shall remain vested in and enforceable by the Loan Company and the Loan Company may take any proceedings to enforce, exercise or realize upon such rights of action in its own name and for the benefit of its own shareholders.
- 20 5. This agreement is conditioned upon receiving the ratification of shareholders and assent of the Lieutenant-Governor-in-Council required by law, but subject thereto, the agreement shall be effective and all adjustments made as of September 1st, 1929, provided, however, that, notwithstanding anything herein contained, the Loan Company shall, until this agreement is duly ratified and assented to as required by law, be at liberty to carry on its business in the same manner as heretofore so as to maintain the same as a going concern and for the purposes of carrying on its business as aforesaid the Loan Company may sell, assign, exchange, convey, appropriate, lease, surrender, charge, mortgage, pay out, or otherwise deal with its property in the usual and ordinary course of its business in such manner as to the Loan Company may seem best, but from and after the date of this agreement the Loan Company shall not make any extraordinary or unusual use or disposition of any of its assets that may have the effect of impairing their value, except with the consent of the Mortgage Corporation.
- 40 6. As soon as practicable after the ratification of and assent to this agreement required by law, the Loan Company will deliver to the Mort-

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 208.
Extracts
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tion
Agreement,
London
Loan &
Savings Co.,
Huron &
Erie Mtge.
Corp., and
London
Loan
Assets, Ltd.,
with
Certificates,
3rd July,
1929.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
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Extracts
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tion
Agreement,
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Savings Co.,
Huron &
Erie Mtge.
Corp., and
London
Loan
Assets, Ltd.,
with
Certificates,
3rd July,
1929.

—continued.

gage Corporation possession of all its property and assets herein-
before agreed to be sold, subject to existing tenancies and encum-
brances, and at the same time the Mortgage Corporation shall pay
and satisfy the consideration for this sale hereinbefore mentioned
and thereupon the Loan Company and all other necessary parties
(if any) over whom the Loan Company has control, shall execute
and do all such assurances and things as may reasonably be required
for vesting the said assets in the Mortgage Corporation and giving
to it the full benefit of this agreement.

7. If this agreement is duly ratified the Loan Company shall make provision 10
for the immediate payment to its shareholders out of the moneys
received from the Mortgage Corporation as consideration for this
sale, of the sum of Thirty-five dollars in cash for each fully paid up
share of capital stock of the Loan Company owned by its shareholders
and the Loan Company shall, at the same time, deliver to its share-
holders one share of the capital stock of the New Company for each
fully paid up share of the capital stock of the Loan Company owned
by its shareholders. The shareholders of the Loan Company shall
only be entitled to this payment and delivery upon surrender of the
shares of the capital stock of the Loan Company duly endorsed 20
and transferred to three trustees to be named at the general meeting
of shareholders of the Loan Company at which this agreement is
ratified. These trustees shall have power to represent the share-
holders of the Loan Company at subsequent meetings of the company
and to take all such action as the shareholders themselves could take
for the carrying out of the provisions of this agreement and the
protection of the rights and interests of the shareholders in all matters
affecting the Loan Company. Any balance of moneys remaining
after the payment to shareholders of the Loan Company as herein
provided shall be applied as the Directors of the Company may 30
deem best as remuneration or honorarium to the officers and staff
of the Loan Company for past services and for the relinquishment
of their positions with the Company, in payment of the costs of this
transaction or of any future proceedings required for the protection
of the interests of the shareholders.
8. All corporate powers of the Loan Company necessary or useful for the
exercise of rights of action mentioned in paragraph Number Four
hereof and for the administration and distribution of the money
and other consideration to be received for the sale of its assets under
the terms of this agreement and for the effective carrying out of the 40
intention of this agreement shall persist unimpaired insofar as is
necessary to give full effect to this agreement.

PART II

9. Subject to the ratification of this agreement as required by law, the
Mortgage Corporation hereby agrees to sell to the New Company,

and the New Company hereby agrees to purchase from the Mortgage Corporation, the assets formerly belonging to the Loan Company which are listed in the Schedule to this agreement, representing the surplus over and above the liabilities of the Loan Company to the public, which schedule is duly verified by the signatures of the parties hereto and deposited for record purposes with the Registrar of Loan Corporations for Ontario and hereinafter referred to as "The Schedule."

10. The New Company hereby accepts the title of the Mortgage Corporation to the assets listed in the Schedule, subject to any charges or encumbrances which may exist against the same when transferred by the Loan Company to the Mortgage Corporation.
11. It is hereby understood and agreed that the New Company shall have all rights of action arising out of or incidental or appurtenant to ownership of any assets purchased by the New Company or affecting the value thereof, together with the right to take or continue any proceedings for the enforcement of such rights of action in the name of the New Company or of the Mortgage Corporation, or both, for the benefit of the New Company.
12. As consideration for the sale of the assets listed in the Schedule to the New Company, the New Company hereby covenants and agrees with the Mortgage Corporation, to issue and allot, or secure the transfer, to the Mortgage Corporation or its nominees, of 20,000 shares of the capital stock of the New Company (being all the capital stock of the New Company) forthwith after the completion of this agreement and to pay or cause to be paid to the Mortgage Corporation, on or before September 1st, 1934, the sum of \$720,000 (hereinafter called the purchase money) with interest on the amount from time to time unpaid at the rate of 6% per annum from September 1st, 1929, until the whole sum is fully paid, such interest to be payable quarterly on the first days of December, March, June and September in each year, the first payment of interest to become payable on December 1st, 1929; provided, however, that if on September 1st, 1934, the New Company is not in default in payment of interest due hereunder and has reduced the amount of the purchase money owing the Mortgage Corporation to the sum of \$200,000.00 or less, the time for payment of such purchase money shall be extended, if the New Company requests such extension, for a further period of two years from September 1st, 1934, subject to the terms of this agreement.
13. The New Company may pay to the Mortgage Corporation any sum on account of the principal due under this agreement at any time without notice or bonus, but the New Company hereby covenants and agrees that in each twelve month period after September 1st, 1929, it will pay to the Mortgage Corporation a sum on account of principal due hereunder of not less than \$100,000.00 provided that, if in any such period the New Company pays a larger sum than the

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 208.
Extracts
from
Printed
Copy of
Amalgama-
tion
Agreement,
London
&
Savings Co.,
Huron &
Erie Mtge.
Corp., and
London
Loan
Assets, Ltd.,
with
Certificates,
3rd July,
1929.

—continued.

In the
Supreme
Court of
Ontario.

said \$100,000.00 on account of principal, the amount of such excess shall be credited to the New Company as payment on account of subsequent annual instalments as and when due.

Exhibits.
Ex. 208.

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from
Printed
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tion
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London
Loan &
Savings Co.,
Huron &
Erie Mtge.
Corp., and
London
Loan
Assets, Ltd.,
with
Certificates,
3rd July,
1929.

—continued.

.....
IN WITNESS WHEREOF the parties hereto have hereunto set their corporate seals.

SIGNED, SEALED AND DELIVERED

in the presence of

(Sgd.) E. P. Fletcher,
As to Execution by
London Loan & Savings Co.

(Sgd.) D. McEachern,
As to Execution by
The Huron & Erie Mortgage
Corporation

(Sgd.) E. P. Fletcher,
As to Execution by
London Loan Assets Limited

THE LONDON LOAN & SAVINGS
CO. OF CANADA

(Sgd.) Wm. G. Coles, President. 10
(Sgd.) John H. Hambly, Manager.
(Corporate Seal)

THE HURON & ERIE MORT-
GAGE CORPORATION

(Sgd.) H. Cronyn, President.
(Sgd.) M. Aylsworth, General Mgr.
(Corporate Seal)

LONDON LOAN ASSETS LIMITED

(Sgd.) Wm. G. Coles, President.
(Sgd.) J. A. E. Braden, Vice-Pres. 20
(Corporate Seal)

(Coat of Arms)

ONTARIO

EXECUTIVE COUNCIL OFFICE

Copy of an Order-in-Council approved by The Honourable Lieutenant-Governor, dated the 29th day of August, A.D. 1929.

Upon consideration of the Indenture of Agreement dated the 3rd day of July, 1929, duly executed by the London Loan and Savings Company and the Huron and Erie Mortgage Corporation, and ratified and confirmed by the shareholders thereof, respecting the sale of the assets of the London Loan and Savings Company to the Huron and Erie Mortgage Corporation, and of the report thereon of the Registrar of Loan Corporations bearing date the 27th day of August, 1929, and upon the recommendation of the Honourable G. H. Ferguson, Acting Attorney-General, Minister in charge of the Department of Insurance, the Committee of Council advise that Your Honour may be pleased to give your assent to the said Agreement pursuant to Section 60 of the Loan and Trust Corporations Act.

Certified :

C. F. BULMER, (Seal)
Clerk, Executive Council.

(Coat of Arms)
ONTARIO*In the
Supreme
Court of
Ontario.*

IN THE MATTER of The Loan and Trust Corporations Act and in the matter of the sale under the said Act of the Assets of the London Loan and Savings Company of Canada to the Huron and Erie Mortgage Corporation.

Exhibits.
Ex. 208.
Extracts
from
Printed
Copy of
Amalgama-
tion
Agreement,
London
Loan &
Savings Co.,
Huron &
Erie Mtge.
Corp., and
London
Loan
Assets, Ltd.,
with
Certificates,
3rd July,
1929.

THE ATTORNEY-GENERAL FOR THE PROVINCE OF ONTARIO, being the Minister under whose direction the Loan and Trust Corporations Act of the said Province is administered, HEREBY CERTIFIES THAT, pursuant to the said Act, an Agreement for the sale of the Assets of the Loan Corporation known as the London Loan and Savings Company of Canada, to the Loan Corporation known as the Huron and Erie Mortgage Corporation, bearing date the Third day of July, 1929, and duly executed by the Directors of the London Loan and Savings Company of Canada, and ratified and confirmed by the shareholders thereof on the Twenty-sixth day of August, A.D. 1929; also duly executed by the Directors of the Huron and Erie Mortgage Corporation and ratified by the shareholders on the Twenty-sixth day of August, A.D. 1929; was by ORDER-IN-COUNCIL approved on the Twenty-ninth day of August, A.D. 1929, by His Honour the Lieutenant-Governor in Council; and that on, from and after the said First day of September, 1929, the said Agreement took effect as the sale, transfer and conveyance to the said the Huron and Erie Mortgage Corporation, to its own use of all the assets, business, rights, property and goodwill of the said the London Loan and Savings Company of Canada, as in the said Agreement more fully set out, and that on, from and after the said First day of September, 1929, all the terms, provisions and conditions of the said Agreement and of the said The Loan and Trust Corporations Act relating thereto went into full force and effect.

—continued.

A copy of the said Agreement is annexed hereto and forms part of this Certificate.

THIS CERTIFICATE is given under Section 61 of the said The Loan and Trust Corporations Act, being Chapter 223 of the Revised Statutes of Ontario, 1927.

GIVEN IN TRIPLICATE under my hand and seal of office this 27th day of September, A.D. 1929.

WILLIAM H. PRICE, (Seal)
Attorney-General.

DATED : 3rd JULY, 1929

THE LONDON LOAN AND
SAVINGS COMPANY
OF CANADA

and

THE HURON & ERIE
MORTGAGE CORPORATION

AGREEMENT

(Coat of Arms)
ONTARIO

10

CERTIFICATE OF REGISTRAR OF LOAN CORPORATIONS.

(Revised Statutes of Ontario, 1927, Chapter 223, Sec. 62.)

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 208.

Extracts
from
Printed
Copy of
Amalgama-
tion
Agreement,
London
Loan &
Savings Co.,
Huron &
Erie Mtge.
Corp., and
London
Loan
Assets, Ltd.,
with
Certificates,
3rd July,
1929.

—continued.

I, undersigned, the Registrar of Loan Corporations, under the Loan and Trust Corporations Act, HEREBY CERTIFY that there has been filed in my office one of the duplicate originals of the Indenture of Agreement for the sale of the assets, business, rights, property and goodwill of the London Loan and Savings Company of Canada, to the Huron and Erie Mortgage Corporation, bearing date the Third day of July, A.D. 1929, duly executed by the Directors of the London Loan and Savings Company of Canada, and ratified and confirmed by the Shareholders thereof on the Twenty-sixth 20 day of August, A.D. 1929; also duly executed by the Directors of the Huron and Erie Mortgage Corporation and ratified by the Shareholders on the Twenty-sixth day of August, A.D. 1929; and that the printed Indenture of Agreement attached to the copy of the Certificate of the Honourable the Attorney-General of the Province hereto annexed, and below referred to, is a true copy of said Agreement; ALSO THAT pursuant to the said Act the assent of His Honour, the Lieutenant-Governor of Ontario in Council was given to the said printed Indenture by Agreement by Order-in-Council approved on the Twenty-ninth day of August, A.D. 1929, AND THAT attached hereto is a true copy of the said Order-in-Council; ALSO THAT there has been 30 filed in my office one of the triplicate originals of the Certificate of the Honourable the Attorney-General of the said Province certifying to the said assent and to the said sale, AND THAT a true copy of the said Certificate is to this Certificate attached.

Given under my hand and seal of office this 28th day of September, 1929.

R. Leighton Foster,
Registrar of Loan Corporations.

Exhibit 208A

(Plaintiffs' Exhibit)

Extracts from Schedules Attached to Exhibit 208

This list of assets is not printed in full, but only those entries which refer to Buckingham Apartments are printed.

REAL ESTATE FOR SALE AS AT SEPT. 1st, 1929.

Loan No.	Name	Property	Date of Original Mortgage	Present Mortgage Due
10 D 42	R. S. Durno.	Toronto—Buckingham Apts.	1925	1930
57.	Morine & Green.	Toronto—Buckingham Apts. See also R.E. D.42.		

(See below for entries which should have been extended to the right of entries above.)

Original Principal	Balance Principal Incl. Chges. Sept. 1/29	Interest Paid to	Rate %	Amount Principal Payable to Huron & Erie
	(D.42)			
20 \$77,000.00	\$100,057.23	Dec./25	7%	"J.A.E.B." "W.G.C." assigned for \$50,000.00.
	(57) \$139,432.52			"J.A.E.B." "W.G.C." assigned for \$50,000.00 (See D.42.)

Exhibit 272

(Plaintiffs' Exhibit)

Printed Circular Letter, Forwarding Amalgamation Agreement

30 Lt.-Col. W. G. Coles,
President.

Jno. H. Hambly,
Manager.

Exhibits.
Ex. 272.
Printed
Circular
Letter,
Forwarding
Amalgama-
tion
Agreement,
30th July,
1929.

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA

Incorporated 1877

*In the
Supreme
Court of
Ontario.*

Our File.....

220 Dundas Street,
LONDON, Can.

Your File.....

July 30th, 1929.

Exhibits.
Ex. 272.
Printed
Circular
Letter,
Forwarding
Amalgama-
tion
Agreement,
30th July,
1929.

To Shareholders :—

At the special general meeting of shareholders to be held at the Head Office of the Company on August 26th, 1929, there will be submitted to you for consideration, an agreement, dated the 3rd day of July, 1929, for the sale of the assets of The London Loan and Savings Company of Canada to the Huron & Erie Mortgage Corporation. A copy of this agreement accompanies 10 this letter and the notice of meeting.

The Directors have entered into this agreement, subject to your approval, in confidence that it represents an advantageous disposal of the assets and affairs of the Company in the interests of the shareholders. This confidence is based upon a careful examination of the affairs of the Company made by your Directors since the last annual meeting and a careful examination of all the alternative courses of action available.

The agreement provides for the assumption by the Huron & Erie Mortgage Corporation of the liabilities of the London Loan and Savings Company of Canada to the public; assets equivalent in value to these liabilities are 20 being purchased outright by the Huron & Erie Mortgage Corporation, including therein the Head Office premises of the Company. By this means, full protection is being secured for the customers of the Company who have entrusted their savings to it on deposit or by purchase of the Company's debentures. The business of the Company will be amalgamated with the business of the Huron & Erie Mortgage Corporation; a new Head Office building for the Huron & Erie Mortgage Corporation will be erected on the site of the present building of the London Loan and Savings Company of Canada, and the business of our customers will be continued and protected under the new 30 auspices.

The surplus of assets of The London Loan and Savings Company over the liabilities to the public, which is the property of the shareholders, will be transferred to a holding company known as London Loan Assets, Limited, for realization to the best possible advantage in the interests of the shareholders. By this means there will be secured to you, through a management responsible directly to you, as shareholders of the New Company, the full value of the assets which represent the investment of shareholders in the Company. This realization will proceed as promptly and efficiently as the character of the investments will permit.

In order to secure to the shareholders of The London Loan and Savings 40 Company an immediate cash repayment of a substantial part of their investment, the Huron & Erie Mortgage Corporation has agreed to pay to the Company, for distribution among its shareholders, a sum representing \$35.00 per share for each share of the London Loan and Savings Company of Canada (Par Value \$50.00). The money advanced for this purpose will be repaid to the Huron & Erie Mortgage Corporation out of the proceeds of realization of the assets of the Loan Company in the manner set out in the agreement.

—continued.

Your special attention is directed to Paragraph 2 in the printed agreement, which sets out the consideration for the sale and to Paragraph 7, which sets forth the manner in which the money and securities received for the sale of the assets are to be distributed to the shareholders.

In the Supreme Court of Ontario.

The Directors of The London Loan and Savings Company of Canada recommend to the shareholders the approval and ratification of the agreement. The law requires approval of the agreement by a vote of shareholders representing not less than two-thirds in value of all outstanding shares of the Company. In order that adequate representation for this purpose should be secured at the special general meeting, it is important that you should fill in and return promptly to the office of the Company, the proxy enclosed herewith, authorizing the recording of your vote in favor of the adoption of the agreement.

Exhibits. Ex. 272. Printed Circular Letter, Forwarding Amalgamation Agreement, 30th July, 1929.

—continued.

Yours faithfully,
WILLIAM G. COLES,
President.

Part Exhibit 221

(Defendants' Exhibit)

B

Surrender of Shares—Mrs. Mabel Andrews

Exhibits. Part Ex. 221. B. Surrender of Shares—Mrs. Mabel Andrews, 14th September, 1929.

20	}	Mrs. Mabel Andrews.	
Written in pencil		6 shs.	
		210.00	A.8
	(307)	S.719	

THE LONDON LOAN & SAVINGS COMPANY OF CANADA

Pursuant to an agreement, dated the 3rd day of July, 1929, and made between the London Loan & Savings Company of Canada, The Huron & Erie Mortgage Corporation, and the London Loan Assets Limited, I hereby surrender to William G. Coles, J. A. E. Braden and Charles R. Hunt, as Trustees, the shares of London Loan & Savings Company of Canada stock now held by me, as evidenced by this certificate.

WITNESS my hand, at West Lorne, this 14 day of Sept., 1929.

D. K. Andrew.

Mrs. Mabel Andrews.

Exhibit 223

(Defendants' Exhibit)

*In the
Supreme
Court of
Ontario.*Exhibits
Ex. 223.Letter,
London
Loan &
Savings Co.
to Mrs.
Mabel
Andrews,
18th Septem-
ber, 1929.**Letter, London Loan and Savings Co. to Mrs. Mabel Andrews**

September 18th, 1929.

Mrs. Mabel Andrews,
West Lorne, Ont.

Dear Madam :

We are in receipt of your letter enclosing transfer of six shares of stock in this Company to the appointed Trustees. Before this transfer can be completed, it will be necessary for you to return the scrip which you hold for same. According to our records, certificate No. 719 was issued to cover this stock. If same has been lost in any way, it will be necessary for you to let us have a letter stating this fact, which we can attach to the transfer. 10

We will be obliged if you will let us have this as soon as possible, as we are anxious to get these transfers completed.

Yours truly,

E. PATRICIA FLETCHER,
Secretary.

F.

SHOWN ON BACK OF LETTER.

20

Dear Sir :

I am enclosing the scrip you asked for. As I also have to my credit in your Company the sum of \$91.12 on Dec. 31 last, would you want my Pass Book? If so, let me know and I will forward it to you at once.

Yours truly,

MRS. MABEL ANDREWS,
West Lorne, Ont.

30

R.R. No. 1.

Exhibit 222

(Defendants' Exhibit)

Auditor's Sheet—re Transfer of Shares to Mrs. Mabel Andrews in London Loan Assets, Ltd.

Name.....Mrs. Mabel Andrews.....

Occupation..... Address..... West Lorne, Ontario.....

Date 1929	Cert. No.	Transfer No.	To or From Whom	Folio	Shares
Sept. 25	1		London L. & S. Co.	A.8	6

*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 222.
Auditor's
Sheet—re
Transfer of
Shares to
Mrs. Mabel
Andrews in
London
Loan
Assets, Ltd.,
25th Septem-
ber, 1929.

10

Exhibit 173

(Plaintiffs' Exhibit)

Copy of Letter, Braden & McAlister to H. A. Morine

Sept. 25th, 1929.

H. A. Morine, Esq.,
803 Sterling Tower,
Bay and Richmond Sts.,
Toronto 2, Ontario.

Exhibits.
Ex. 173.
Copy of
Letter,
Braden &
McAlister to
H. A.
Mordine,
25th Septem-
ber, 1929.

Dear Sir :

Re London Loan and Buckingham Apartments.

20 You asked me to find out what the present monthly income is from this property.

The property is now bringing in a monthly income of \$2,155.00 gross as against an average income for the year before of \$1,928.00.

You said you thought that you had someone who might be interested in purchasing this property. We would like to dispose of the property as soon as possible.

Yours truly,
BRADEN & McALISTER.
Per.....

30 JAEB/MM.

Exhibit 210

(Defendants' Exhibit)

*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 210.
Certified
Copy of
Agreement,
Consolidated
Trusts
Corp. and
Canada
Trust Co.,
6th Novem-
ber, 1929.**Certified Copy of Agreement, Consolidated Trusts Corp. and Canada Trust Company with Certificates Attached****THIS AGREEMENT** made in quadruplicate the sixth day of November, 1929.**BETWEEN :****THE CONSOLIDATED TRUSTS CORPORATION,**
hereinafter called "the Vendor,"**OF THE FIRST PART; 10**

—AND—

THE CANADA TRUST COMPANY, hereinafter
called "the Purchaser,"**OF THE SECOND PART.**

WHEREAS each of the parties hereto is a Trust Company incorporated by a special Act of the Parliament of Canada, has its Head Office in Ontario and is registered under The Loan and Trust Corporations Act :

AND WHEREAS the business, rights, powers and property of the Vendor are such as the Purchaser is authorized to carry on, exercise and hold :

NOW THIS AGREEMENT WITNESSETH that in pursuance of the 20
Trust Companies Act and of The Loan and Trust Corporations Act and subject to the conditions in the said Acts set forth, and in consideration of the reciprocal covenants and stipulations hereinafter contained, the Boards of Directors of the Vendor and of the Purchaser do hereby enter provisionally into this joint Agreement under the corporate seal of each of the said parties for the purposes hereinafter set forth, and the said parties hereby covenant and agree with each other as follows :—

1. The Vendor hereby agrees to sell and sells to the Purchaser, and the Purchaser agrees to purchase and purchases from the Vendor the whole of the assets, business, rights, powers and property of the Vendor (including 30
the goodwill of the Vendor and the exclusive right to use the name of the Vendor in connection with the business so purchased so that the Purchaser may represent itself as carrying on such business in succession to the Vendor) to the end that all trusts of every kind and description, including incomplete or inchoate trusts, and every duty assumed by or binding upon the Vendor shall be vested in and bind and be enforceable against the Purchaser as fully and effectually as if it had been originally named as the fiduciary, and that whenever in any instrument any estate, money or other property, or any interest, possibility or right is intended at the time or times of the publishing, making or signing of the instrument to be thereafter vested in, or administered 40
or managed by, or put in the charge of the Vendor as the fiduciary, the name

of the Purchaser shall be deemed to be substituted for the name of the Vendor, and such instrument shall vest the subject matter therein described in the Purchaser according to the tenor of, and at the time indicated or intended by the instrument, and the Purchaser shall be deemed to stand in the place and stead of the Vendor, and that where the name of the Vendor appears as executor, trustee, guardian or curator in a Will or Codicil such Will or Codicil shall be read, construed and enforced as if the Purchaser were so named therein, and that the Purchaser shall, in respect of such Will or Codicil, have the same status and rights as the Vendor, and that in all probates, 10 administrations, guardianships, curatorships or appointments of administrator or guardian ad litem heretofore issued or made by any Court of Ontario to the Vendor from which at the date of this Agreement takes effect the Vendor has not been finally discharged, the Purchaser shall be substituted therefor.

2. In consideration for the sale of the assets, business rights and property of the Vendor as aforesaid, and upon such sale taking effect after fulfilment of the conditions set forth in the said Acts, the Purchaser will pay to the Vendor or its nominees the sum of \$394,755.30 and the Purchaser will, in addition to such sum, pay on demand all of the reasonable costs, charges and expenses 20 incurred by or on behalf of the Vendor in distributing the said sum among its Shareholders and in procuring it to be finally dissolved.

3. The Purchaser assumes all of the outstanding duties, obligations, and liabilities of the Vendor.

4. The Vendor shall be deemed to have been carrying on its business from and after the First day of January, A.D. 1929, for the benefit of the Purchaser, and the Purchaser shall, upon this Agreement becoming effective according to law, take over the assets, business, rights, powers and property of the Vendor, including all profits accrued and accruing from the date first mentioned.

5. The parties hereto shall procure this Agreement to be submitted for 30 consideration and approval in accordance with the said Acts to meetings of their respective Shareholders duly called for that purpose as soon as possible after the execution of these presents, and upon such approval being given, this Agreement shall be forthwith submitted by the said parties to the Treasury Board for its approval thereof and filed with the Registrar for submission to the Lieutenant-Governor in Council for his assent thereto.

6. From and after the date of such final assent and approval, possession of all the property hereinbefore described shall be given to the Purchaser and contemporaneously therewith the consideration aforesaid shall be paid 40 and the Vendor shall at the same time execute and do and/or cause to be executed and done all such assurances and things as may be necessary for vesting in the Purchaser all of the said assets, business, rights, powers and property including the goodwill aforesaid.

7. The Purchaser shall accept the Vendor's title to the assets hereby transferred and the documents of title to the said assets shall be deemed prima facie to be valid and sufficient.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 210.
Certified
Copy of
Agreement,
Consolidated
Trusts
Corp. and
Canada
Trust Co.,
8th Novem-
ber, 1929.
—continued.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 210.
Certified
Copy of
Agreement,
Consolidated
Trusts
Corp. and
Canada
Trust Co.,
6th Novem-
ber, 1929.

—continued.

8. The Vendor shall, upon this Agreement becoming effective according to law, absolutely cease to carry on business, except so far as it is necessary to give effect to this agreement, and shall forthwith proceed to liquidate its affairs by distributing among its Shareholders, the said sum of \$394,755.30 by paying in respect of each fully paid share, One Hundred and Fifty-three Dollars (\$153.00) and in respect of each partly paid share a sum bearing the same proportion to One Hundred and Fifty-three Dollars (\$153.00) as the amount paid thereon bears to the par value thereof (provided that if any Shareholder is at that time indebted to the Purchaser, by reason of the transfer of assets hereunder or otherwise, the sum payable to such shareholder shall be first applied in payment of such indebtedness) and the Vendor shall thereafter, when required by the Purchaser, procure itself to be finally dissolved. 10

IN WITNESS WHEREOF the parties hereto have hereunto set their corporate seals under the hands of their proper officers in that behalf.

SIGNED, SEALED AND
DELIVERED

In the presence of

(Sgd.) J. P. Collyer.

(Sgd.) G. L. Spry.

THE CONSOLIDATED TRUSTS
CORPORATION

(Sgd.) H. E. Gates, President. 20

(Seal)

(Sgd.) R. M. Winslow, Manager.

THE CANADA TRUST COMPANY

(Sgd.) T. G. Meredith,
Chairman of the Board.

(Seal)

(Sgd.) D. McEachern, Secretary.

Certified a true copy,

(Sgd.) D. McEachern, Secretary.

(Crest)

ONTARIO

EXECUTIVE COUNCIL OFFICE

30

Copy of an Order-in-Council, approved by The Honourable the Lieutenant-Governor, dated the 21st day of January, A.D. 1930.

Upon consideration of the Indenture of Agreement, dated the 6th day of November, 1929, duly executed by the Consolidated Trusts Corporation and the Canada Trust Company and ratified and confirmed by the Shareholders thereof, respecting the sale of the assets of the Consolidated Trusts Corporation to the Canada Trust Company, and upon the report herein of the Registrar of Loan Corporations bearing date the 9th day of January, 1930, and upon the recommendation of the Honourable the Attorney-General, 40

Minister in charge of the Department of Insurance, the Committee of Council advise that Your Honour may be pleased to give assent to the said Agreement pursuant to Section 60 of the Loan and Trust Corporations Act.

*In the
Supreme
Court of
Ontario.*

Certified :
(Sgd.) C. F. Bulmer,
Clerk, Executive Council.

Exhibits.
Ex. 210.
Certified
Copy of
Agreement,
Consolidated
Trusts
Corp. and
Canada
Trust Co.,
6th Novem-
ber, 1929.

(Crest)
ONTARIO
DEPARTMENT OF INSURANCE

10

PROVINCE OF ONTARIO

—continued.

IN THE MATTER of The Loan and Trust Corporations Act and in the matter of the sale under the said Act of the Assets of the Consolidated Trusts Corporation to the Canada Trust Company.

THE ATTORNEY-GENERAL FOR THE PROVINCE OF ONTARIO, being the Minister under whose direction the Loan and Trust Corporations Act of the said Province is administered, HEREBY CERTIFIES THAT, Pursuant to the said Act, an Agreement for the sale of the assets of the Trust Company, known as the Consolidated Trusts Corporation, to the Trust Company known as the Canada Trust Company, bearing date the Sixth
20 day of November, 1929, and duly executed by the Directors of the Consolidated Trusts Corporation, and ratified and confirmed by the shareholders thereof on the Seventeenth day of December, A.D. 1929, also duly executed by the Directors of the Canada Trust Company and ratified by the shareholders on the Seventeenth day of December, A.D. 1929; was by ORDER-IN-COUNCIL approved on the Twenty-first day of January, A.D. 1930, by His Honour the Lieutenant-Governor in Council; and that on, from and after the said First day of January, 1930, the said Agreement took effect as the sale, transfer and conveyance to the said Canada Trust Company, to its own use
30 of all the assets, business, rights, property and goodwill of the said the Consolidated Trusts Corporation, as in the said Agreement more fully set out; and that on, from and after the said First day of January, 1930, all the terms, provisions and conditions of the said Agreement and of the said The Loan and Trust Corporations Act relating thereto went into full force and effect.

A copy of the said Agreement is annexed hereto and forms part of this Certificate.

THIS CERTIFICATE is given under Section 61 of the said The Loan and Trust Corporations Act, being Chapter 223 of the Revised Statutes of Ontario, 1927.

GIVEN IN TRIPLICATE under my hand and seal of office this 29th
40 day of January, A.D. 1930.

SEAL

(Sgd.) William H. Price,
Attorney-General.

(Crest)
ONTARIO
DEPARTMENT OF INSURANCE

CERTIFICATE OF REGISTRAR OF LOAN CORPORATIONS.

(Revised Statutes of Ontario, 1927, Chapter 223, Sec. 62.)

*In the
 Supreme
 Court of
 Ontario.*
 —
 Exhibits.
 Ex. 210.
 Certified
 Copy of
 Agreement,
 Consolidated
 Trusts
 Corp. and
 Canada
 Trust Co.,
 6th Novem-
 ber, 1929.

—continued.

I, undersigned, the Registrar of Loan Corporations under the Loan and Trust Corporations Act, HEREBY CERTIFY that there has been filed in my office one of the duplicate originals of the Indenture of Agreement for the sale of the assets, business, rights, property and goodwill of the Consolidated Trusts Corporation, to the Canada Trust Company, bearing date the Sixth 10 day of November, A.D. 1929, duly executed by the Directors of the Consolidated Trusts Corporation, and ratified and confirmed by the Shareholders thereof on the Seventeenth day of December, A.D. 1929; also duly executed by the Directors of the Canada Trust Company and ratified by the Shareholders on the Seventeenth day of December, A.D. 1929; and that the printed Indenture of Agreement attached to the copy of the Certificate of the Honourable the Attorney General of the Province hereto annexed, and below referred to, is a true copy of said Agreement; ALSO THAT pursuant to the said Act the assent of His Honour, the Lieutenant-Governor of Ontario in Council 20 was given to the said printed Indenture of Agreement by Order-in-Council approved on the Twenty-first day of January, A.D. 1930, AND THAT attached hereto is a true copy of the said Order-in-Council; ALSO THAT there has been filed in my office one of the triplicate originals of the Certificate of the Honourable the Attorney-General of the said Province certifying to the said assent and to the said sale, AND THAT a true copy of the said Certificate is to this Certificate attached.

Given under my hand and seal of office this 31st day of January, 1930.

(Sgd.) R. Leighton Foster, (SEAL)

Registrar of Loan Corporations.

BALANCE SHEET AS AT 31st DECEMBER, 19
ASSETS

	1. (a)	Office premises (less encumbrances \$)		\$ 200,000.00	
	1. (b)	Book value of real estate held for sale (less encumbrances \$ nil) held by the Corporation :—			
		Freehold land (including buildings).....\$	511,048.51		
		Leasehold land (including buildings).....		511,048.51	
		(See Schedule A)			
	2.	Amount secured by mortgages on real estate, including :—			10
		First mortgages.....\$	1,378,411.75		
		Second and subsequent mortgages.....	20,193.56		
		Agreements for sale.....	211,487.47		
		Interest due.....			
		Interest accrued.....			
				1,610,092.78	
		(All other interest due and not charged.....\$)			
		(See Schedule B)			
	3.	Amount of loans secured by stocks, bonds and other collateral :—			20
		(There is included in the collateral \$ nil of the Company's own stock upon which \$..... has been paid.)			
		Principal.....\$	7,285.00		
		Interest due.....			
		Interest accrued.....			
				7,285.00	
		(All other interest due and not charged.....\$)			
		(See Schedule C)			
	4.	Book value of bonds, debentures and debenture stocks :—			30
	(a)	*Government :—			
		Dominion, Provincial and United Kingdom.....\$			
		Interest accrued.....			
	(b)	Bonds guaranteed by the above Governments.....\$			
		Interest accrued.....			40
	(c)	*Canadian municipalities, school districts and rural telephone companies.....\$	241.82		
		Interest due.....			
		Interest accrued.....			
				241.82	

In the Supreme Court of Ontario.
—
Exhibits.
Ex. 262.
Extract from Annual Report, London Loan & Savings Co. to Registrar Loan Corporations for 1929, 23rd January, 1930.
—continued.

	(d) All other bonds.....	\$11,997.20		<i>In the Supreme Court of Ontario.</i>
	Interest due.....			
	Interest accrued.....		11,997.20	
			<hr/>	Exhibits. Ex. 262.
			12,239.02	Extract from
	(See Schedule D)			Annual
5.	Book value of stocks owned.....	\$ 381,429.00		Report, London
	Accrued dividends thereon.....			Loan &
	(See Schedule E)		381,429.00	Savings Co. to Registrar
10 6.	Cash on hand.....		53,520.00	Loan
7.	Cash on deposit with chartered banks in Canada \$.....; elsewhere, \$..... (Details on page 4).....		560,362.80	Corporations for 1929. 23rd Janu- ary, 1930.
8.	Agency funds and investments. (See item 4 in liabilities).....			—continued.
9.	All other assets. (Details on page 4).....		5,768.46	
	Total Assets.....		<hr/>	
			\$3,341,745.57	

Rents due and accrued are to be reported under item 9.

*United Kingdom, Dominion of Canada, Provinces of Canada and Canadian Municipal Bonds include only direct obligations. Government guaranteed bonds are to be entered in classification (b). All other bonds and debentures must be included in proper classification of primary obligor.

Dated 23rd January, 1930

Exhibit 174

(Plaintiffs' Exhibit)

Letter, Braden & McAlister to H. A. Morine

London,
March 19th, 1930.

Exhibits.
Ex. 174.
Letter,
Braden &
McAlister
to H. A.
Morine,
19th March,
1930.

30 H. A. Morine, Esq.,
803 Sterling Tower,
Bay and Richmond Sts.,
Toronto 2, Ontario.

Dear Sir :

Re London Loan and Buckingham Apartments.

We would like to know whether you have been able to make any progress in regard to the disposition of the Buckingham Apartments. London Loan Assets Limited would like to dispose of this property. Some time ago you told the writer that you thought you had a purchaser in view for an amount sufficient to cover the Company's claim.

40

JAEB/MM.

Yours truly,
BRADEN & McALISTER.
Per J. A. E. B.

*In the
Supreme
Court of
Ontario.*

Exhibit 175

(Plaintiffs' Exhibit)

Letter, H. A. Morine to Braden & McAlister.

Toronto 2,
March 21st, 1930.

Exhibits.
Ex. 175.
Letter, H. A.
Morine to
Braden &
McAlister,
21st March,
1930.

Messrs. Braden & McAlister,
Dundas Building,
London, Ont.

Attention—Mr. J. A. E. Braden.

Re London Loan & Buckingham Apartments.

10

Dear Sir :

I will be of any assistance I can in disposing of this property, but I have been in hopes, having heard nothing to the contrary, that you had disposed of same to your Stratford people as per your conversation with me. In the meantime, I will get busy and see if I can do anything to assist in disposal.

Yours very truly,
H. A. MORINE.

HAM/J.

Exhibit 204

(Plaintiffs' Exhibit)

20

Assignment of Mortgage, Huron & Erie Mortgage Corp. to London Loan Assets Ltd. of \$150,000. Mortgage

Exhibits.
Ex. 204.
Assignment
of Mortgage,
Huron &
Erie
Mortgage
Corp. to
London
Loan
Assets, Ltd.,
of \$150,000.
Mortgage,
12th June,
1930.

THIS INDENTURE made (in duplicate) the Twelfth day of June, 1930,

BETWEEN :

THE HURON AND ERIE MORTGAGE CORPORATION,
in which the assets of The London Loan and Savings Company of Canada (including the Mortgage hereinafter referred to) were vested by virtue of a written agreement dated the 3rd day of July, 1929, and made between the said The Huron and Erie Mortgage Corporation and The London Loan and Savings Company of Canada and assented to by the Lieutenant-Governor in Council by Order in Council bearing date the 29th day of August, A.D. 1929, under the provisions of R.S.O. 1927, Chapter 223, copies of which Agreement and Order in Council were registered in the Registry Office for the Registry Division of Toronto

30

on the 24th day of October, A.D. 1929, as Number 43011 G.R.,
hereinafter called the Assignor,

OF THE FIRST PART;

—AND—

LONDON LOAN ASSETS, LIMITED, hereinafter called
the Assignee,

OF THE SECOND PART.

Whereas by a Mortgage dated on the seventh day of February, 1923,
and registered in the Registry Office for the Registry Division of West To-
10 ronto as No. 8317 W.F.

SAMUEL B. GREEN of the City of Toronto in the County of York,
Builder, and HORACE A. MORINE of the said City of Toronto, Financial
Broker, in their individual capacity and as co-partners in the business of
improving the lands hereinafter described,

DID GRANT AND MORTGAGE the land and premises therein and
hereinafter described to THE HURON AND ERIE MORTGAGE COR-
PORATION, its successors and assigns, for securing the payment of One
Hundred and Fifty Thousand Dollars with interest at 7½ per cent per annum :

AND WHEREAS by Assignment of Mortgage dated on the 7th day of
20 February, 1928, and registered in the said Registry Office on the 17th day of
February, 1928, as Number 13475 W.F., the said THE HURON AND ERIE
MORTGAGE CORPORATION did assign the said Mortgage to the said
LONDON LOAN AND SAVINGS COMPANY OF CANADA.

AND WHEREAS the Assignor has agreed to sell and assign the said
Mortgage to the Assignee.

NOW THIS INDENTURE WITNESSETH that in consideration of
One.....

.....Dollars of lawful money of Canada now paid by the said
Assignee to the said Assignor (the receipt whereof is hereby acknowledged),
30 the said Assignor Do Hereby Assign and set over unto the said Assignee, its
successors and assigns, ALL that the said before in part recited Mortgage
and also the amount now owing thereunder, together with all moneys that may
hereafter become due or owing in respect of said Mortgage, and the full benefit
of all powers and of all covenants and provisos contained in said Mortgage.

AND the said Assignor Doth Hereby Grant and Convey unto the said
Assignee, its successors and assigns, (Lands as in Exhibit 2.)

TO HAVE AND TO HOLD the said Mortgage and all moneys arising
in respect of the same and to accrue thereon, and also the said land and pre-
mises thereby granted and mortgaged to the use of the said Assignee, its
40 successors and assigns, absolutely forever, but subject to the terms contained
in such Mortgage.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 204.
Assignment
of Mortgage,
Huron &
Erie
Mortgage
Corp. to
London
Loan
Assets, Ltd.,
of \$150,000.
Mortgage,
12th June,
1930.
—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 204.
Assignment
of Mortgage,
Huron &
Erie
Mortgage
Corp. to
London
Loan
Assets, Ltd.,
of \$150,000.
Mortgage,
12th June,
1930.

WITNESS the Corporate Seal of THE HURON AND ERIE MORTGAGE CORPORATION.

SIGNED, SEALED AND
DELIVERED

In the presence of :

W. W. Rolph.

G. S. Meredith,
Chairman of the Board.

The Huron & Erie Mortgage Corpora-
tion, London, Canada. Founded 1884.

Chas. J. Clarke,
Treasurer.

—continued.

Exhibits.
Ex. 205.
Assignment
of Mortgage,
Huron &
Erie
Mortgage
Corp. to
London
Loan
Assets, Ltd.,
of \$20,000.
Mortgage,
12th June,
1930.

Exhibit 205

(Plaintiffs' Exhibit)

10

**Assignment of Mortgage, Huron & Erie Mortgage Corp. to London
Loan Assets Ltd. of \$20,000. Mortgage**

THIS INDENTURE made (in duplicate) the Twelfth day of June, 1930,

BETWEEN :

THE HURON AND ERIE MORTGAGE CORPORATION
in which the assets of The London Loan and Savings Company of
Canada (including the Mortgage hereinafter referred to) were
vested by virtue of a written agreement dated the 3rd day of
July, 1929, and made between the said The Huron and Erie
Mortgage Corporation and the Lieutenant-Governor in Council
by Order-in-Council bearing date the 29th day of August, A.D.
1929, under the provisions of R.S.O. 1927, Chapter 223, copies
of which Agreement and Order in Council were registered in
the Registry Office for the Registry Division of Toronto on
the 24th day of October, A.D. 1929, as Number 43011 G.R.,
hereinafter called the Assignor,

20

OF THE FIRST PART;

—AND—

LONDON LOAN ASSETS LIMITED, hereinafter called
the Assignee,

30

OF THE SECOND PART.

WHEREAS by a Mortgage dated on the 23rd day of May, 1923, and
registered in the Registry Office for the Registry Division of Toronto, as
No. 8761 W.F.

SAM. B. GREEN, ETHEL B. GREEN (his wife), HORACE A. MOR-
INE and ESTELLE M. MORINE (his wife), individually and as partners
DID GRANT AND MORTGAGE the land and premises therein and herein-

after described to LONDON LOAN AND SAVINGS COMPANY OF CANADA, its successors and assigns, for securing the payment of Twenty Thousand Dollars.

In the Supreme Court of Ontario.

AND WHEREAS the Assignor has agreed to sell and assign the said Mortgage to the Assignee.

Exhibits. Ex. 205. Assignment of Mortgage, Huron & Erie Mortgage Corp. to London Loan Assets, Ltd., of \$20,000. Mortgage, 12th June, 1930.

NOW THIS INDENTURE WITNESSETH that in consideration of One..... Dollars of lawful money of Canada now paid by the said Assignee to the said Assignor (the receipt whereof is hereby acknowledged), the said Assignor DOTH HEREBY ASSIGN and set over unto the said Assignee, its successors and assigns, ALL THAT the said before in part recited Mortgage and also the amount now owing thereunder, together with all moneys that may hereafter become due or owing in respect of said Mortgage, and the full benefit of all powers and of all covenants and provisos contained in said Mortgage.

—continued.

AND the said Assignor DOTH hereby Grant and Convey unto the said Assignee, its successors and assigns, (Lands as in Exhibit 2).

TO HAVE AND TO HOLD the said Mortgage and all moneys arising in respect of the same and to accrue thereon, and also the said land and premises thereby granted and mortgaged to the use of the said Assignee, its successors and assigns absolutely forever, but subject to the terms contained in such Mortgage.

WITNESS the Corporate Seal of THE HURON AND ERIE MORTGAGE CORPORATION.

SIGNED, SEALED AND DELIVERED In the presence of : W. W. Rolph. G. S. Meredith, Chairman of the Board. The Huron & Erie Mortgage Corporation, London, Canada. Founded 1884. Chas. J. Clarke, Treasurer.

30

Exhibit 206

(Plaintiffs' Exhibit)

Assignment of Mortgage, Huron & Erie Mortgage Corp. to London Loan Assets Ltd. of \$77,000. Mortgage

Exhibits. Ex. 206. Assignment of Mortgage, Huron & Erie Mortgage Corp. to London Loan Assets, Ltd., of \$77,000. Mortgage, 12th June, 1930.

THIS INDENTURE made (in duplicate) the Twelfth day of June, 1930,

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 206.
Assignment
of Mortgage,
Huron &
Erie
Mortgage
Corp. to
London
Loan
Assets, Ltd.,
of \$77,000.
Mortgage,
12th June,
1930.
—continued.

BETWEEN :

THE HURON AND ERIE MORTGAGE CORPORATION, in which the assets of The London Loan and Savings Company of Canada (including the Mortgage hereinafter referred to) were vested by virtue of a written agreement dated the 3rd day of July, 1929, and made between the said **THE HURON AND ERIE MORTGAGE CORPORATION** and The London Loan and Savings Company of Canada and assented to by the Lieutenant-Governor in Council by Order in Council bearing date the 29th day of August, A.D. 1929, under the provisions of R.S.O. 1927, Chapter 223, copies of which agreement and Order in Council were registered in the Registry Office for the Registry Division of Toronto on the 24th day of October, A.D. 1929, as Number 43011 G.R., hereinafter called the Assignor,

10

OF THE FIRST PART;

—AND—

LONDON LOAN ASSETS, LIMITED, hereinafter called the Assignee,

OF THE SECOND PART.

WHEREAS by a Mortgage dated on the First day of June, 1925, and registered in the Registry Office for the Registry Division of Toronto as No. 11078 W.F. 20

ROBERT S. DURNO of the City of Toronto in the County of York, Esquire, DID GRANT AND MORTGAGE the land and premises therein and hereinafter described to THE LONDON LOAN AND SAVINGS COMPANY OF CANADA, its successors and assigns, for securing the payment of Seventy-seven Thousand Dollars;

AND WHEREAS the Assignor has agreed to Sell and Assign the said Mortgage to the Assignee;

NOW THIS INDENTURE WITNESSETH that in consideration of 30
One.....

..... Dollars of lawful money of Canada now paid by the said Assignee to the said Assignor (the receipt whereof is hereby acknowledged), the said Assignor DOTH HEREBY ASSIGN and set over unto the said Assignee, its successors and assigns, ALL THAT the said before in part recited Mortgage and also the amount now owing thereunder, together with all moneys that may hereafter become due or owing in respect of said Mortgage, and the full benefit of all powers and of all covenants and provisos contained in said Mortgage.

AND the said Assignor Do hereby Grant and Convey unto the said 40 Assignee, its successors and assigns, (Lands as in Exhibit 2).

TO HAVE AND TO HOLD the said Mortgage and all moneys arising in respect of the same and to accrue thereon, and also the said land and premises thereby granted and mortgaged to the use of the said Assignee, its successors and assigns absolutely forever, but subject to the terms contained in such Mortgage.

WITNESS the Corporate Seal of THE HURON AND ERIE MORTGAGE CORPORATION.

SIGNED, SEALED AND
DELIVERED
In the presence of :

W. W. Rolph.

G. S. Meredith,
Chairman of the Board.

The Huron & Erie Mortgage Corporation,
London, Canada. Founded 1884.

Chas. J. Clarke,
Treasurer.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 206.
Assignment
of Mortgage,
Huron &
Erie
Mortgage
Corp. to
London
Loan
Assets, Ltd.,
of \$77,000.
Mortgage,
12th June,
1930.

—continued.

10

Exhibit 207

(Plaintiffs' Exhibit)

General Assignment, Huron & Erie Mortgage Corp. to London Loan Assets, Ltd., of Rights of Action

Exhibits.
Ex. 207.
General
Assignment,
Huron &
Erie
Mortgage
Corp. to
London
Loan
Assets, Ltd.,
of Rights of
Action,
12th June,
1930.

KNOW ALL MEN BY THESE PRESENTS that THE HURON AND ERIE MORTGAGE CORPORATION, in consideration of the sum of One Dollar and other valuable considerations, hereby assigns, transfers, sets over and vests in LONDON LOAN ASSETS LIMITED all rights of action, claims and demands which it now has or ever did have which were transferred, assigned or become vested in it under and by virtue of a certain Agreement dated the 3rd day of July, 1929, made between the said The Huron and Erie Mortgage Corporation and The London Loan and Savings Company of Canada and assented to by the Lieutenant-Governor in Council by Order in Council bearing date the 29th day of August, A.D. 1929, under the provisions of R.S.O. 1927, Chapter 223, which said rights of action arose or were incidental to or as a result of the following transactions having been entered into,—

1. A certain Mortgage bearing date February 13th, 1923, made by H. A. Morine and S. B. Green in favour of The London Loan and Savings Company of Canada, which said Mortgage was registered against Parts of Lots Nos. 2 and 3 according to Plan filed as No. 512 in the Registry Office for the Registry Division of West Toronto, and part of Lot No. 16 according to Plan filed in said Registry Office as No. 457, and more particularly set forth and described in said mortgage :
2. A certain Mortgage bearing date May 23rd, 1923, made by the said H. A. Morine and S. B. Green in favour of The London Loan and Savings Company of Canada, which said Mortgage was registered against the lands described in paragraph 1 hereof :
3. A certain Mortgage bearing date February 7th, 1923, made by the said H. A. Morine and S. B. Green in favour of the said The Huron and

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*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 207.
General
Assignment,
Huron &
Erie
Mortgage
Corp. to
London
Loan
Assets, Ltd.,
of Rights of
Action,
12th June,
1930.

—continued.

Erie Mortgage Corporation, which said Mortgage was registered against the lands described in paragraph 1 hereof :

4. A Quit Claim Deed dated June 26th, 1925, given by Robert S. Durno to The Consolidated Trusts Corporation, registered against the said lands :
5. A certain Mortgage bearing date June 1st, 1925, made by the said Robert S. Durno in favour of the said The London Loan and Savings Company of Canada, registered against the said lands :
6. A certain Discharge of Mortgage bearing date July 3rd, 1925, purporting to discharge said Mortgage bearing date February 13th, 1923, given by the said The London Loan and Savings Company of Canada to the said H. A. Morine. 10

AND the said The Huron and Erie Mortgage Corporation doth further assign, transfer, set over and vest in London Loan Assets Limited all claims for damages, rights of action, claims and demands of every nature, kind or description which were transferred or intended to be transferred or assigned or which became vested in it The Huron and Erie Mortgage Corporation under the said Agreement of the 3rd day of July, 1929, in connection with the aforesaid transactions or any of them, or any matter or thing incidental to or arising from the said transactions, or connected therewith, which the said The Huron and Erie Mortgage Corporation now has or which The London Loan and Savings Company of Canada might or did have prior to the 3rd day of July, 1929, against any officer, employee, director, agent or solicitor of The London Loan and Savings Company of Canada or any other person whatsoever, their heirs, executors, administrators or assigns : 20

WITNESS the Corporate Seal of THE HURON AND ERIE MORTGAGE CORPORATION this Twelfth day of June, A.D. 1930.

Witness :

W. W. Rolph.

G. S. Meredith,
Chairman of the Board.

Chas. J. Clarke,
Treasurer.

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Seal in this corner of Huron and Erie Mortgage Corporation. Founded 1884.

Exhibits.
Ex. 184.
Letter, H. A.
Morine to
London
Loan
Assets, Ltd.,
18th June,
1930.

Exhibit 184

(Plaintiffs' Exhibit)

Letter, H. A. Morine to London Loan Assets, Ltd.

Toronto 2,
June 18th, 1930.

The London Loan Assets Ltd.,
London, Ont.

Dear Sirs,—

Attention of Lt.-Col. Coles.

I am returning herewith General Accident Renewal Certificates Nos. 6918, 6919, 6920, 6921 and 6922 covering plate glass in stores at Buckingham Apts., which insurance has always been carried through my agency, in accordance with agreement, and in accordance with the particulars as set out before your Board, and I would ask you to kindly instruct your Secretary, Miss Fletcher, to carry out the arrangement in regard to these policies, the same as in the past.

If these policies have been renewed through another Agent, as you know, the same can be cancelled without cost to your Company.

I trust that this will be done for reasons already fully explained to you, and I am quite confident that you will agree with the attitude and the request which I make herewith.

HAM/J.
Encl. 5.

Yours very truly,
H. A. MORINE.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 184.
Letter, H. A.
Moline to
London
Loan
Assets, Ltd.,
18th June,
1930.

—continued.

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Exhibit 185

(Plaintiffs' Exhibit)

Letter, H. A. Morine to London Loan Assets, Ltd.

Toronto 2,
June 18th, 1930.

The London Loan Assets Ltd.,
London, Ont.

Dear Sirs,—

Attention of Lt.-Col. Coles.

Enclosed you will find Royal Insurance Renewal Certificate No. 442818 renewing Policy 357876 in the name of Percy G. Davies, covering 14 Springmount Avenue, which insurance has always been placed through my agency in accordance with agreement and in accordance with the particulars as set out before your Board, and would ask you to kindly instruct your Secretary, Miss Fletcher, to carry out the arrangement in regard to this policy, the same as in the past.

If this insurance has been renewed through another agent, as you are aware, the same can be cancelled without cost to your Company.

I trust that this will be done for reasons already fully explained to you, and I am quite confident that you will agree with the attitude taken by me, and the request I make herein.

HAM/J.
Encl. 1.

Yours very truly,
H. A. MORINE.

Exhibits.
Ex. 185.
Letter, H. A.
Moline to
London
Loan
Assets, Ltd.,
18th June,
1930.

*In the
Supreme
Court of
Ontario.*

Exhibit 186

(Plaintiffs' Exhibit)

Exhibits.
Ex. 186.

Copy of Letter, President, London Loan Assets Ltd. to H. A. Morine

Copy of
Letter,
President,
London
Loan
Assets, Ltd.,
to H. A.
Morine,
19th June,
1930.

June 19th, 1930.

H. A. Morine, Esq.,
803 Sterling Tower,
Toronto, Ontario.

Dear Sir :—

Re Insurance.

We received a number of renewal receipts from you on different properties 10 covered by mortgages formerly held by the London Loan & Savings Company. In your letter of the 18th instant you say, "which insurance has always been placed through my agency in accordance with Agreement and in accordance with particulars as set out before your Board." We might say that we are not aware of any Agreement ever having been entered into with you concerning insurance or any other matter. We consider that we are at liberty to place insurance wherever we see fit.

If there is any written Agreement which you are referring to in the correspondence, we would be glad if you would send us forward a copy of the same as we were advised by Mr. McCormick and Mr. Brickenden that there was 20 no Agreement of any nature or kind between you and the London Loan & Savings Company in regard to insurance and no Agreements of any kind that we are aware of have been made with you since the control of the London Loan & Savings Company changed in February, 1929.

Yours very truly,

President.

C.
Dictated by
J.A.E.B.

Exhibit 187

(Plaintiffs' Exhibit)

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Letter, H. A. Morine to Lieut.-Col. W. G. Coles

Exhibits.
Ex. 187.
Letter, H. A.
Morine to
Lieut.-Col.
W. G. Coles,
20th June,
1930.

Toronto 2,
June 20th, 1930.

Lt.-Col. W. G. Coles,
President, London Loan Assets Limited,
Box 419, London, Can.

My dear Colonel,—

Re Insurance.

In reply to the last paragraph of your letter of the 19th inst., I think if you will consult the minutes of the London Loan & Savings Company of years ago, and consult the Directors of said Company, namely, Mr. Baker, Mr. McCormick, Mr. Robinson and Mr. Hunt, you will find that they will establish the facts as set forth in my letter, as I have seen an extract of the minute and was present when it was authorized and at different times re-authorized, and your late Manager, Mr. Hambly, was instructed by the late Mr. M. J. Kent
 10 that such an agreement was made with me and had to be carried out as it was carried out during his time as Manager of The London Loan. This will at once relieve your mind as to your liability, I am sure. and I think if you will reasonably reflect, you will find reasons why it would be desirable and advisable to carry out the agreement and the liability of the London Loan & Savings Company, its successors and assigns.

I do not wish, as I have already explained to your Board, to take any other grounds at present. I would be very pleased to hear from you later on after your consultation with above persons.

Will you, therefore, kindly take this matter up with those I have named
 20 above, who are all available in London. In so far as Mr. Brickenden is concerned, he, while having knowledge of this agreement, was not a party to the agreement. It was made prior to his connection with the Company but he would certainly have the knowledge that such an agreement existed and was carried out by all parties, and I am quite sure that the Directors named above, together with your late Manager, Mr. Hambly, will confirm the same and have full knowledge of all I am claiming.

Yours very truly,
 H. A. MORINE.

HAM/J.

Exhibit 188

(Plaintiffs' Exhibit)

Copy of Letter, London Loan Assets Ltd. to H. A. Morine

June 25th, 1930.

H. A. Morine, Esq.,
 803 Sterling Tower,
 Toronto, Ontario.

Dear Sir :

Answering your letter of the 20th instant, I have interviewed Mr. Hambly, Mr. Robinson and Mr. Hunt, and they advise me that they have no recollection
 40 of any agreement made with you by the London Loan and Savings Company, and I have also had our office go over the minutes for the last eighteen years, and we find no minutes which would establish your claim.

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Ex. 187.
 Letter, H. A.
 Morine to
 Lieut.-Col.
 W. G. Coles,
 20th June,
 1930.

—continued.

Exhibits.
 Ex. 188.
 Copy of
 Letter,
 London
 Loan
 Assets, Ltd.,
 to H. A.
 Morine,
 25th June,
 1930.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 188.
Copy of
Letter,
London
Loan
Assets, Ltd.,
to H. A.
Moline,
25th June,
1930.

I might advise you that we intend to run the London Loan Assets Limited as we see fit, and as already explained to you when you visited our Board on June 16th, we purposed placing the insurance where we desire it, especially the insurance on real estate on hand. There is one thing sure, Mr. Morine, that the London Loan Assets Limited has no agreement with you with regard to our insurance, or anything else, that I am aware of.

Yours truly,

President.

F.

—continued.

Exhibits.
Ex. 189.
Letter, H. A.
Moline to
Lieut.-Col.
W. G. Coles,
26th June,
1930.

Exhibit 189

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(Plaintiffs' Exhibit)

Letter, H. A. Moline to Lieut.-Col. W. G. Coles

Toronto 2,
June 26th, 1930.

Lt.-Col. W. G. Coles,
President, London Loan Assets Ltd.,
Box 419, London, Can.

My dear Col. :—

In reply to yours of the 25th inst., there is an old adage which reads :
“There are none so blind as those who won't see.” You astound me when you 20
tell me you have interviewed Mr. Hambly, Mr. Robinson and Mr. Hunt and
that they have no recollection of any agreement. However, I note that you
exclude from your interview the two most active business members of the
London Loan & Savings Board during the whole eighteen years, namely,
Mr. Baker and Mr. McCormick. Would it not be well for you to get their
version? Probably they would give you the information which you are avoid-
ing. As a matter of fact, some of those interviewed by you have, within a very
limited time, acknowledged the agreement to me personally. In addition,
the facts which I claim have been established by practice for at least fifteen
or sixteen years. 30

Of course, I am not the custodian of your Minute Book, but I will marshal
the proofs and present them. Your late Manager, Mr. Hambly, was absolutely
instructed in my presence by the Directors at a Board Meeting, and further,
he received instructions from the Manager whom he superseded as to the
existence of such an Agreement, and there has never been any departure in
all those years from the arrangements made. I am satisfied that Mr. Hambly
has informed you of these facts of instructions, practice and services given in
consideration of such arrangements and agreement. However, it is probably
lucky for me that I have sufficient proof to establish my claim.

In regard to the last paragraph of your letter, the tone would appear unbecoming. I also am still a shareholder of the London Loan Assets Limited and probably have some reason why I should keep posted as to the reasons and effects of its business operations.

Yours very truly,

H. A. MORINE.

HAM/J.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 189.
Letter, H. A.
Morine to
Lieut.-Col.
W. G. Coles,
26th June,
1930.

—continued.

Exhibit 190

(Plaintiffs' Exhibit)

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Letter, H. A. Morine to Lieut.-Col. W. G. Coles

Toronto 2,

June 30th, 1930.

Exhibits.
Ex. 190.
Letter, H. A.
Morine to
Lieut.-Col.
W. G. Coles,
30th June,
1930.

Col. W. Coles,

President, The London Loan Assets Ltd.,

London, Ont.

Dear Colonel,—

Enclosed you will find Policy 360445 together with Renewal Certificates renewing the same to June 15th, 1931, which has been returned to me by the North American Life for cancellation, stating that the same has been substituted by another policy by your instructions.

As this policy is one that comes under our Agreement, I would be pleased if you would forward the same to the North American Life for their protection and protect me in regard to the premium.

Kindly advise.

Yours very truly,

H. A. MORINE.

HAM/J.
Encl.

Part Exhibit 209

(Defendants' Exhibit)

B

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 209.
B.
Cheque,
London
Loan
Assets, Ltd.,
to Huron
& Erie
Mortgage
Corp.,
30th June,
1930.

Cheque, London Loan Assets Ltd. to Huron & Erie Mortgage Corp.

No. 965

LONDON LOAN ASSETS LIMITED

(1 Excise Stamp 2c.)

London, Ont., June 30th, 1930.

P A I D

Pay to the Order of The Huron & Erie Mortgage Corporation.....\$15,000.00

Fifteen thousand..... $\frac{00}{100}$ DOLLARS ¹⁰
a/c loan.

{ F. G. Jewell, F.C.A. }
5
London, Ont. }

LONDON LOAN ASSETS LIMITED

Wm. G. Coles

To THE BANK OF TORONTO,
London, Ont.

.....
President.

E. P. Young

.....
Sec.-Treasurer. ²⁰

FOLLOWING SHOWN ON BACK OF CHEQUE

Pay to the Order of any
Bank or Banker
June 30, 1930.
THE HURON & ERIE MORTGAGE CORP.
Main Branch, London, Ont.
1 INTERNAL 1

FOLLOWING SHOWN ON BACK OF CHEQUE

Pay to the order of any
Bank or Banker

S JUL 3, 1930 S

THE HURON & ERIE MORTGAGE CORP.
Main Branch, London, Ont.

Exhibit 191

(Plaintiffs' Exhibit)

Copy of Letter, London Loan Assets Ltd. to H. A. Morine

July 2nd, 1930. 10

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 209.
A.
Cheque,
London
Loan
Assets, Ltd.,
to Huron
& Erie
Mortgage
Corp.,
2nd July,
1930.

—continued.

H. A. Morine, Esq.,
Toronto, Ontario.

Exhibits.
Ex. 191.
Copy of
Letter,
London
Loan
Assets, Ltd.,
to H. A.
Morine,
2nd July,
1930.

Dear Sir :

We are returning herewith policy No. 360445 in the Royal Insurance Company in the name of Wilfred G. Munroe, as this has been placed through another agency.

I also wish to say, as I have repeatedly stated in my correspondence with you, that there is no agreement of which I am aware existing between you and this Company or you and the London Loan and Savings Company.

Yours truly, 20

WGC/Y.

President.

Exhibit 176

(Plaintiffs' Exhibit)

Copy of Letter, Braden & McAlister to H. A. Morine

October 20th, 1930.

Exhibits.
Ex. 176.
Copy of
Letter,
Braden &
McAlister
to H. A.
Morine,
20th Octo-
ber, 1930.

H. A. Morine, Esq.,
803 Sterling Tower,
Bay and Richmond Sts.,
Toronto 2, Ontario.

Dear Sir,—

We have been consulted by London Loan Assets Limited in respect to three mortgages on the Buckingham Apartments, two of which were made by you in favor of London Loan & Savings Company and one of which was made by you in favor of The Huron & Erie Mortgage Corporation, all of which mortgages are now owned by London Loan Assets Limited.

The approximate amount owing on the three mortgages is Two Hundred and Seventy-two Thousand Dollars and we have been instructed to say that

30

if you will pay the full amount owing in respect to these three mortgages, the mortgages will be assigned to you.

On the other hand, our instructions are to proceed with action to enforce payment of these three mortgages. Please give this matter your immediate attention and advise us what you intend to do. In default of hearing from you promptly we intend to proceed with our instructions.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 176.
Copy of
Letter,
Braden &
McAlister
to H. A.
Morine,
20th Octo-
ber, 1930.

JAEB/T.
Registered.

Yours truly,
BRADEN & MCALISTER.
Per.....

—continued.

10

Exhibit 277
(Plaintiffs' Exhibit)

Statement of Amount Owing on First, Second and Third Mortgages

LONDON LOAN ASSETS LIMITED

Continuing Statement of Claim :

Exhibits.
Ex. 277.
Statement of
Amount
Owing on
First,
Second and
Third
Mortgages,
11th Decem-
ber, 1931.

1. Mortgage dated February 13th, 1923 :
 Amount owing as November 6th, 1930.....\$ 68,510.27
 Interest on above amount to Dec. 11/31 at 7½%..... 5,631.02
 \$ 74,141.29

20 2. Mortgage dated May 23rd, 1923 :
 Amount owing as November 6th, 1930.....\$ 29,426.52
 Interest on above amount to Dec. 11/31 at 7½%..... 2,418.59
 \$ 31,845.11

3. Mortgage dated February 7th, 1923 :
 Amount owing as November 6th, 1930.....\$170,705.71
 Interest on above amount to Dec. 11/31 at 7½%..... 14,030.59
 \$184,736.30

30 No. 1.....\$ 74,141.29
 No. 2..... 31,845.11
 No. 3..... 184,736.30
 \$290,722.70
 Less net rents, Nov. 6/30 to Dec. 11/31..... 8,062.98
 Total amount owing as Dec. 11/31.....\$282,659.72

In the
 Supreme
 Court of
 Ontario.
 Exhibits.
 Ex. 144.
 A.
 Ledger
 Sheet,
 London
 Loan &
 Savings
 Co.,
 Account
 R. E. 57,
 \$150,000.00
 Mortgage.
 No date.

Exhibit 144

(Plaintiffs' Exhibit)

A

Ledger Sheet, London Loan and Savings Co. Account R.E. 57—\$150,000.00 Mortgage

THE LONDON LOAN & SAVINGS CO. OF CANADA

NO. 57

Municipality Toronto.	Con. or Street	Name S. B. Green and H. A. Morine.	(195)
Lot Part lots 2 & 3, plan 512, and part lot 16, plan 457.		Address Assumed by	

Principal \$150,000 @ 7½% ½ yearly	Date	Renewal \$	@ %	yearly.	Privilege Nil
Payable 3000 half yearly, 7th Feb. & Aug., balance due Feb. 7/33.		First Mortgage on Buckingham Apts. R. E. D.42, 2nd claim.			

Date	Inspected by	Land	Building	Total	Remarks
					Received from App'n No. Reg. No. 8317 W.F. Mtg. Date Feb. 7/23. Rate 7½% Insurance \$200,000.00 in Royal. Other inv. Nos.

Date	Particulars	Interest	Principal		
			Dr.	Ck.	Cr.
Feb. 7 1928	To Ch. to Huron & Erie Mtge.		139,432.52		
Nov. 18 1929	To Ledger 1, RE.57.				139,432.52

Exhibit 144

(Plaintiffs' Exhibit)

B

Ledger Sheet, London Loan Assets Limited—Account R.E.57—\$150,000.00 Mortgage

THE LONDON LOAN & SAVINGS CO. OF CANADA

APPN. NO.....

Sheet No.....LOAN NO. 57.

Mortgage	Rate	On Arrears	Date of Mtge.	Regn. No.	Approved by
\$150,000.00	7½%—½ yrly.		Feb. 7/23	8317 W.F.	Board
Interest Paid	PCPL. Paid	Interest Paid	PCPL. Paid	Remarks	Name
					S. B. Green & H. A. Morine

Asst. to L. L. A. L. _____
 Address _____

Renewed for Interest Date _____

Insurance See D 42 C

Privileges

Size or Acreage	Municipality	County
	Toronto	York
	Pt. lots 2 & 3, plan 512, & Pt. lot 16, plan 457.	

Street No. Buckingham Apts.

Partial Discharge _____ Accountant _____ Auditor _____ Assessment Taxes See a/c D/42—R.E.

Date 1928	Items	Fol.	Principal		
			Dr.	Cr.	Dr. Bal.
Feby. 7	Balance from Ledger 3.		139,432.52		139,432.52

In the Supreme Court of Ontario.
 Exhibits.
 B. Ex. 144.
 Ledger Sheet, London Loan Assets, Ltd., Account R.E. 57, \$150,000.00 Mortgage. No date.

In the
 Supreme
 Court of
 Ontario.
 Exhibits.
 Ex. 140.
 Ledger
 Sheet.
 London
 Loan &
 Savings Co.,
 re Mortgage
 G. 41,
 \$35,000.00.
 No date.

Exhibit 140
 (Plaintiffs' Exhibit)
Ledger Sheet, London Loan and Savings Co. re Mortgage G.41—\$35,000.00

1st Mtge. to Huron & Erie M. Cor. \$150,000.—@7½%

THE LONDON LOAN & SAVINGS CO. OF CANADA

See M G 46 S.B.L. 301½

NO. 41

<p style="text-align: center;">W 22</p> Municipality Toronto. Pts. Lots 2 & 3, Plan 512, Pt. L 16, Plan 457. No. 1622-1631 Queen St. W.	Con. or Street King & Queen Sts.	Name Saml. B. Green Address 41 Austin Terrace, Toronto and H. A. Morine, Assumed by 603 Kent Bldg., Toronto.
--	----------------------------------	---

Principal \$35,000 @ 7½% ½ Yearly Payable 7—con ½ yrly. payts. \$500.—each 1st due Aug. 13, 1923. Bal. \$31,500.—on February 13, 1927.	Date	Renewal \$	@	%	Yearly.
					Privilege if no default to pay any sum at any time.

Buckingham Apts.
 June 1/25 Deed re PS
 given to Robert S. Durno Esquire
 of Toronto Con \$227,500.—

Date	Inspected by	Land	Building	Total	Received from 2nd M. App'n No. Reg. No. 8318 W.F. Mtge. Date February 13/23 Rate 7½% Insurance in Royal \$125,000 held by Huron & Erie	Remarks H. A. Morine guarantee. 1st Mtge. to Huron & Erie \$150,000 @ 7½%, falls due Feb'y 7/28; payts. \$3000— ½ yrly.
1923				\$300,000		
Feb'y.	H. A. Morine			400,000		
May 31	do.			200,000		
24	M. J. Kent					
Nov. 5	See mtg. G-46.	45,600	225,000	270,600	Other Inv. Nos. in Royal \$50,000 held by London Loan & S. Co.	
24	C. F. Wright		less 1st mtg.	150 S of T		
Dec. 1	W. A. Lonsdale			310,400	G.A.P.B.	

Date	Particulars	Interest Cr.	Principal	
			Dr.	Ck.
23				
Feb. 12	To Cash		15,002.—	
— 22	To do.		10,002.—	
Mar. 9	To do.		4,998.—	
— 23	To do.		4,998.—	
Oct. 14	By S B int. to Aug. 13/23			
25	42068			
May 28	To Wilson costs, etc.			
— —	To Huron & Erie arrs. }			
	Prin. \$3,706.25 int. \$5,833.70			
	& war st \$1—			
July 3	To G.A.P.B. Dis.			4.—
Sept. 18	By Durno M D 42 (as June 1/25)	3,596.37		
— 8	By S.B.K.	1,884.92		
			44,965.63	44,965.63

25	Sept. 8	All papers put in new case D 42	R. S. Durno, Toronto.
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896

Exhibit 141

(Plaintiffs' Exhibit)

Ledger Sheet, London Loan and Savings Co. re Mortgage G.46 - \$20,000.00

See M No. G.41 W.22.

THE LONDON LOAN & SAVINGS CO. OF CANADA

NO. 46.

Municipality Toronto Pts. Lot 2 & 3, Plan 512, & Pt. Lot 16, Plan 457. Buckingham Apts.	Con or Street	Name Saml. B. Green & H. A. Morine Address 603 Kent Bldg., Assumed by Toronto.
---	---------------	--

Principal \$20,000 @ 7½% ½ yearly. Payable on Dec. 22/23.	Date June 1, 1925	Renewal \$	@	%	Yearly.
	Deed N—P.S. given to Robert S. Durno, Esquire, of Toronto. Con \$227,500.—				Privilege None.

Date	Inspected by	Land	Building	Total	Received from 2nd M. App'n No. Reg. No. 8761 W.F. Mtge. Date May 23/23. Rate 7½%. Insurance Other Inv. Nos.	Remarks
May 23	H. A. Morine Less 1st M., H. & E.			\$400,000 150,000		1st Mtge. to Huron & Erie, \$150,000.—and 2nd M. to L.L. & S. Co., No. G.41, \$35,000.
	Less 2nd M. L.L. Co.			250,000 35,000		
				215,000		
		Mr. Morine's later valuation \$325,000		\$20,000.00	M B 25 5/23 C. of T. G.A.P.B.	

23	Oct. 29	S. B. Gorwill M. J. Kent	Particulars	350,000 200,000	Interest
		upwards of			

		Cr.	Dr.
May 22	To Cash Fur. adv.		20,000.—
Dec. 29	To Fur. advance		1,000.—
Sept. 18	By Durno D.42	3,299.72	
	as June 1/25		
Sept. 18	All papers put in new case No. D.42. R. S. Durno, Toronto. re Mtge. G.41		
	Amount of Claim as per Statement to 1 June/25	\$50,252.60	
re Mtge. G.46	Amount of Claim as per Statement to 1 June/25	25,333.60	
	M. W. Wilson, adjustment of Claims	\$75,591.20 4,194.—	
Credit	D.42, R. S. Durno Mtge.	\$79,785.20 77,055.72	
	Short on Claim	\$ 2,729.48	

(See statement in D.42. Bonus was \$2,100.) Written in pencil.

In the
Supreme
Court of
Ontario.
Exhibits.
Ex. 141.
Ledger
Sheet,
London
Loan &
Savings Co.,
re Mortgage
G. 46.
\$20,000.00.
No date.

897

In the
 Supreme
 Court of
 Ontario.
 Exhibits.
 Ex. 142.
 Ledger
 Sheet,
 London
 Loan &
 Savings Co.
 re Durno
 Account
 D. 42,
 \$77,000.00.
 No date.

Exhibit 142
 (Plaintiffs' Exhibit)
Ledger Sheet, London Loan and Savings Co. re Durno Account D.42—\$77,000.00

1st Mtge. to Huron & Erie, \$144,000.— @ 7½% falls due Feb. 7/1928

THE LONDON LOAN & SAVINGS CO. OF CANADA

NO. 42.

Payable \$3,000. a/c Prin. ½ yrly.

Int. pd. to Aug. 7/25.

Municipality Toronto. Parts Lots 2 & 3, Plan 512, Part Lot 16, Plan 457 Nos. 1622-1631 Queen St. W.	Con. or Street King & Queen Sts.	Name R. S. Durno Address 392 Bay St., Toronto. Assumed by
--	----------------------------------	---

195 Principal, \$77,000 @ 7% ½ Yearly. Payable 9 — con. ½ yrly. pays. \$1000.— each 1st due December 1/1925 Balcc. \$68,000.— on June 1, 1930.	Renewal \$ Svgs. Bank L337, Buckingham Apts. M/B 23 June, 1925 2nd Mortgage.	@	%	Yearly.	Privilege None. 26 June/25 Deed R. S. Durno <i>et ux</i> to Con. Trusts Co. in tr.
---	--	---	---	---------	---

Date 25	Inspected by Sold for	Land	Building	Total \$227,500	Received from 2nd mtge. App'n No. Reg. No. Deed 11079 W.F. 11078 W.F.	Remarks H. & E. holds 1st mtge. \$147,000.
June 1					Mtge. Date June 1, 1925. Rate 7%, \$77,000.— Insurance in Royal \$200,000. Other Inv. Nos. Taxes Paid for 1929	B

Date 25	Particulars	Interest	Principal	
			Dr.	Cr.
Sept. 15	To Cash as June 1/25 G.41, G.46 & W.22 per con.	14	\$ 77,055.72	
Dec. 8	By on a/c Int. to 1 Dec./25.	31	\$2,696.96	
" 10	By Bal. Int. to 1 Dec., 1925, & ppl.	31	3.30	\$55.72
1926				
Jany. 4	To Insce. prems. H.A.M.	37	637.50	
1927				
Jany. 12	To Ch. to Huron & Erie M. Co.	114	8,567.55	
April 19	To Ch. to Huron & Erie Mtge.	135	2,457.66	
May 3	To Taxes for 1927	140	2,724.72	
Aug. 8	To Ch. to Huron & Erie M. C.	160	5,331.13	
1928				
May 8	To Ch. to taxes, 1928	218	3,338.67	
" "	To Ledger No. 1, D.42		100,057.23	

898

Exhibit 143

(Plaintiffs' Exhibit)

Ledger Sheet, London Loan and Savings Co. re Durno Account D.42—\$77,000.00—Continued

THE LONDON LOAN & SAVINGS CO. OF CANADA

APPN. NO..... Sheet No..... LOAN NO. D.42.

Mortgage	Rate	On Arrears	Date of Mtge.	Regn. No.	Approved by	195
\$77,000.00	7%—½ yrly.		June 1/25	11078 W.F.	Board	

Interest Paid	PCPL. Paid	Interest Paid	PCPL. Paid	Remarks	Name	R. S. Durno.
19	19			Ass't to L. L. A. L.		
19 Transferred to	19					
19 R.E. Dec. 28/26.	19					

Insurance —
Boiler—General Accident
 No. 25—3589—prem. \$156.00
 Expires Aug. 10/33.
 Royal No. 442391—125,000 Jan. 1/34.
 Niagara No. 5809— 35,000 Jan. 1/34.

\$160,000
 80% co-Insurance
 Agent—above—Pocock.
Plate Glass—Dominion of Canada
 5 policies—expire May 25/32 Commn. \$125,000.—\$ to
 Agent—E. V. Hession. \$27,000. \$ to
 —Pearl—No. 1077708—\$27,000. \$ to

Privileges	Rental Expires January 21/34— Agt. x Pocock	Other Mtgs. No. See also R.E. 57 On this Ppty. No.
Size or Acreage	Municipality	County
Pt. Lots 2 & 3, Plan 512, Pt. Lot 16, Plan 457.	Toronto	York
Date	Val'n by	Land Bldgs. Forced Sale Total
1925	Sold for	227,500.00
Street No. 1622-1631 Queen St. W.		

Partial Discharge

Assessment /30—
\$104,700.00
Taxes pd. for 1929/30.

Date	Items	Fol.	Principal		Revenue		Annual Cash Value
			Dr.	Cr.	Dr. Bal.	Cr.	Cr. Bal.
Nov. 7 (as May 8/28)	Balance from Ledger 3		100,057.23		100,057.23		
Nov. 23	Balance L 337					25,025.18	25,025.18
Dec. 3	Rents to Nov. 30/29					1,312.53	26,337.71

In the
 Supreme
 Court of
 Ontario.
 Exhibits.
 Ex. 143.
 Ledger
 Sheet,
 London
 Loan &
 Savings
 Co.,
 re Durno
 Account
 D. 42.
 \$77,000.00,
 continued.
 No date.

Date 1930	Items	Fol.	Principal			Revenue			Annual Cash Value
			Dr.	Cr.	Dr. Bal.	Dr.	Cr.	Cr. Bal.	
Jan. 3	Rents to Dec. 31/29						1,497.26	\$ 27,834.97	
Mar. 6	“ “ Feb. 28/30	25					668.63	28,503.60	
Apl. 2	Rents to Mar. 31/30	29					780.23	29,283.83	
May 1	“ “ Apl. 30/30						895.49	30,179.32	
3	By rebate Insce. prem.			122.06	99,935.17				
6	To Insce. prem. pd. Hession					34.37		30,144.95	
5	To 1st Inst. Taxes 1930					1,140.28		29,004.67	
June 3	By rents to May 31/30	41					1,553.19	30,557.86	
July 4	“ “ “ June 30/30	45					1,810.29	32,368.15	
2	To Taxes, 2nd Inst.	46				1,116.—		31,252.15	
Aug. 7	By rents to July 31/30	51					1,712.08	32,964.23	
29	To Real Estate	J27				32,964.23			
	By Revenue from R.E.	“							
30	To Revenue	J29	6,823.05	32,964.23	66,970.94				
	By Real Estate				73,793.99				
Sept. 6	By rents	57					6,823.05	6,823.05—Surplus 1929-30	
3	To 3rd Inst. Taxes, 1930	58				1,096.01	1,528.17	8,351.22	
Oct. 3	By rents	61					1,481.94	7,255.21	
21	Pd. Fess Oil Burners	66				157.75		8,737.15	
Nov. 1	By rents	69					970.17	8,579.40	
22	Pd. Braden & McAlister Solis. costs	72				80.—		9,549.57	
Dec. 4	By rents	73					856.40	10,325.97	
31	“ “	79					1,442.79	11,768.76	
Jany. 6	Balance For'd				73,793.99			11,768.76	
Jany. 26	Insce. prem. Biddome & Brown	82				443.01		11,325.75	
Feb. 4	By rents	83					720.12	12,045.87	
3	To Insce., Biddome & Brown	84				75.60		11,970.27	
Mar. 5	By rents	89					1,063.24	13,033.51	
3	Pd. Globe Printing Co.	90				75.—		12,958.51	
31	To Solis. Costs, Braden & Mell	92				526.96		12,431.55	
31	To Surplus 1929-30 taken into revenue					6,823.05		5,608.50	
@ 31 Aug./30									
Apl. 4	By rents	93					705.45	6,313.95	
9	To Insce. Hession	94				34.37		6,279.58	
24	To costs pd. McRuer, Gray & Co.	96				32.85		6,246.73	
May 2	To 1st Inst. Taxes 1931	98				1,225.82		5,020.91	
4	By rents	97					1,344.30	6,365.21	

Exhibit 145

(Plaintiffs' Exhibit)

Ledger Sheet, London Loan and Savings Co. re M. W. Wilson Acct. No. 22

THE LONDON LOAN & SAVINGS CO. OF CANADA

NO. 22.

Re G.41 & G.46.

(195)

NAME M. W. Wilson.

ADDRESS Toronto.

Date	Particulars	Folio	Interest Dr.	Principal	
				Ck.	Cr.
July 25	Re Buckingham Apts.				
July 7	To Wilson re Adjustments	990	4,194.—		
Sept. 18	By Durno D.42	14			4,194.—
	as July 7/25.				

In the
Supreme
Court of
Ontario.
Exhibits.
Ex. 145.
Ledger
Sheet,
London
Loan &
Savings Co.
re M. W.
Wilson,
Acct. No. 22.
No date.

Exhibit 220

(Defendants' Exhibit)

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 220.

Summary of
Buckingham
Rents
Prepared by
London
Loan
Assets, Ltd.
No date.

Summary of Buckingham Rents Prepared by London Loan Assets Ltd.

RE BUCKINGHAM APARTMENTS

1926,	RENTS RECEIVED.....		nil
	12 months' interest due on \$77,000.....	\$ 5,390.00	
	Insurance paid out.....	637.50	
		<hr/>	
	LOSS.....	\$ 6,027.50	
		<hr/>	
1927,	RENTS RECEIVED.....	\$12,808.11	
	Paid out :		10
	Jan. 12 to Huron & Erie.....	\$ 8,567.55	
	Apl. 20 to Huron & Erie.....	5,839.29	
	Aug. 8 to Huron & Erie.....	2,731.39	
	Apl. 19 to Huron & Erie.....	2,457.66	
	Aug. 9 to Huron & Erie.....	5,331.13	
	May 3 to Taxes.....	2,724.72	
	1 year's interest due on \$77,000.....	5,390.00	
		<hr/>	
		\$33,041.74	
	LOSS	<hr/>	
		\$20,233.63	
		<hr/>	
1928,	RENTS RECEIVED.....	\$12,951.83	20
	Paid out :		
	May 8/ to Taxes.....	\$ 3,338.67	
	1 year's interest due on \$77,000.....	5,390.00	
		<hr/>	
		\$ 8,728.67	
	1 year's interest due on 1st mortgage to Huron & Erie, \$139,000., paid off by London L. & S. Co., Feb. 7/28.....	10,425.00	
		<hr/>	
		19,153.67	
	LOSS.....	<hr/>	
		\$ 6,201.84	
		<hr/>	

1929, RENTS RECEIVED.....	\$12,448.21
Paid out :	
Apl. 24, to Taxes.....	\$ 3,299.77
1 year's interest due on \$77,000.....	5,390.00
1 year's interest due on \$139,000.....	10,425.00
	<hr/>
	\$19,114.77
LOSS.....	<hr/>
	\$ 6,666.56

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 220.
Summary of
Buckingham
Rents
Prepared by
London
Loan
Assets, Ltd.
No date.

1930, RENTS RECEIVED.....	\$13,753.85
Paid out :	
10 May 6, to Insurance.....	\$ 34.37
May 5, to Taxes.....	1,140.28
July 2, to Taxes.....	1,116.00
Sept. 3, to Taxes.....	1,096.01
Oct. 21, to o/s account, Fess Oil Burners.....	157.75
Nov. 27, Solicitors' Account.....	80.00
1 year's interest due on \$77,000.....	5,390.00
1 year's interest due on \$139,000.....	10,425.00
	<hr/>
	\$19,439.41
LOSS.....	<hr/>
	\$ 5,685.56

—continued.

20

Exhibit 276

(Plaintiffs' Exhibit)

Ledger Sheet, London Loan Assets Ltd., Showing Application of \$50,000. Paid Huron & Erie Mortgage Corporation

NOT PRINTED BY CONSENT.

Exhibits.
Ex. 276.
Ledger
Sheet,
London
Loan
Assets, Ltd.,
Showing
Application
of \$50,000.
Paid Huron
& Erie
Mortgage
Corporation.
No date.

NOT
PRINTED.

Exhibit 177

(Plaintiffs' Exhibit)

Ledger Sheet of London Loan and Savings Co. re Mortgage Account R. S. Durno, St. Ives Crescent

NOT PRINTED BY CONSENT.

Exhibits.
Ex. 177.
Ledger
Sheet of
London
Loan &
Savings Co.
re Mortgage
Account,
R. S. Durno
—St. Ives
Crescent.
No date.

NOT
PRINTED.

In the
Supreme
Court of
Ontario.

Part Exhibit 263
(Defendants' Exhibit)

A

Exhibits.
Part Ex. 263.
A.
Account
No. 8 of
Mrs. Mabel
Andrews in
Stock
Ledger of
London
Loan &
Savings Co.
No date.

**Account No. 8 of Mrs. Mabel Andrews in Stock Ledger of London
Loan and Savings Company**

NAME Mrs. Mabel Andrews, NO. 8.

ADDRESS West Lorne, Ont. REMARKS

E&B.

Date 1913	Name	Folio	Balance		Dr.	Cr.	Balance	10
			Dr. Shares	Cr. Shares				
Oct. 21 1920	By Balance	307				7	256.—	
Oct. 25 1927	To Treasury Stock	T.20	1			6	256.—	
Mar. 14 1930	By Cash	CB.127				6	44.—	300.—
Sept. 25	To London L.A.L.		6				90.—	210.— 20
Sept. 27	To Cash						210.—	

Exhibits.
Part Ex. 263.
B.
Account
No. 7 of
Mrs. Clara
Aikenhead in
Stock
Ledger of
London
Loan &
Savings Co.
No date.

Part Exhibit 263
(Defendants' Exhibit)

B

**Account, No. 7, of Mrs. Clara Aikenhead, in Stock Ledger of London
Loan and Savings Co.**

NAME Mrs. Clara Aikenhead, NO. 7.

ADDRESS 417 Central Ave.,
City. REMARKS—S. 1380 (1 share)
See order filed in letters Sept.
20/20. 30

Date 1919	Name	Folio	Balance		Dr.	Cr.	Balance
			Dr. Shares	Cr. Shares			
May 21 1928	By Balance	248				26	1300.—
Apr. 12	To George Nelson	N.1	26				1300.—

Exhibit 264

(Defendants' Exhibit)

Stock Register, London Loan and Savings Co.

NOT PRINTED BY CONSENT.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 264.
Stock
Register,
London
Loan &
Savings Co.
No date.

Exhibit 271

(Plaintiffs' Exhibit)

Extracts from Certified Copy By-Laws of London Loan and Savings Co.

Only those Sections relevant to matters in question in this Appeal are printed.

**NOT
PRINTED.**

Exhibits.
Ex. 271.
Extracts
from
Certified
Copy
By-laws of
London
Loan &
Savings Co.
No date.

10

Mode of Obtaining an Advance of Money.

XIII.

Any applicant for a loan from the Company shall give notice, in writing, to the Manager, of the situation, tenure, description and full particulars of the property proposed to be mortgaged by such applicant, to the Company, in such form as the Directors shall prescribe; and shall deposit with the Manager all necessary Title Deeds and Documents relating thereto. Should any such applicant decline to take up the amount awarded him, or fail to complete the necessary securities to the satisfaction of the Directors, within one month, he shall pay the costs incurred, and the money granted to him

20

may be otherwise disposed of by the Directors.

XVIII.

All mortgage deeds and securities to the Company shall be prepared in such form and contain such clauses, provisos and agreements as the Solicitor for the Company, with the approval of the Directors, shall think fit; and in case the mortgagor shall at any time, or times, neglect or refuse to make his repayments, fines, fees or other payments for such time as in said mortgage shall be set forth, then the Directors may, either with or without the concurrence of the mortgagor, appoint a person, or persons, with such salary or commission as they may think proper, to collect the rents and profits of the mortgaged premises, with the same power of enforcing payment as the mortgagor himself may possess; also, power to sell and dispose of such premises by public auction, or private sale, when the Directors shall think proper; and the mortgage deed may contain stipulations that the mortgagor shall become tenant to the Company at a fair rent, to be named in such deed. And the Directors shall have power to make such arrangements for the repairing, or keeping in repair, or for finishing or putting in order any buildings or other improvements, or from time to time inspecting, and for taking care of, and managing generally the mortgaged property, as they shall deem expedient; and in case of default in the payment of any moneys due on a mortgage to

30

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 271.
Extracts
from
Certified
Copy
By-laws of
London
Loan &
Savings Co.
No date.

—continued.

the Company, the Directors may, if they see fit, appoint an officer of the Company, or other person, from time to time, to examine the mortgaged property and report thereon to the Board, at the expense of the mortgagor; and all reasonable costs, charges and expenses incurred under the Rules, or which the Company may be put to in connection with the mortgage debt, shall be immediately payable by the mortgagor, and shall be a charge upon the mortgaged property. And when any sale shall take place of any property mortgaged to the Company, the Directors shall have power to retain and apply so much of the purchase money as will be necessary, to pay the same sum as would be required to redeem the property, pursuant to the provisions 10 contained in these Rules, together with all other payments, moneys and expenses due to the Company, and to pay the surplus thereof to the Mortgagor, or whoever shall appear to be entitled to receive the same.

XXVI.

On the redemption of any security, or when all instalments of principal and interest, and all costs, outlays and other sums chargeable in respect thereof, have been paid on loans or advances pursuant to these Rules, a full discharge of such security shall be executed, and the same shall be delivered to the mortgagor, or his representative, on being applied for, together with all other deeds and documents deposited by him, in connection with such security, 20 and such discharge shall be prepared by the Company's Solicitor, and the seal and necessary signatures obtained, and any matter relating thereto transacted under the direction of the Board at the expense of such mortgagor.

Directors.

XXXV.

The affairs of the Company shall be under the control and management of a Board of five Directors (of whom three shall form a quorum for the transaction of business), who shall each hold not less than twenty-five shares of stock, and who shall choose from among themselves a President and two Vice-Presidents. The Directors shall be elected for the term of one year but 30 shall be eligible for re-election. The Directors elected shall continue in office until the election of their successors, unless in case of disqualification or resignation.

XXXVI.

The Directors shall, at a special meeting to be called for that purpose, or at any other meeting, if all the remaining Directors be present, have power to fill up any vacancy that may arise in their own body in the course of their term of office as Directors, or in any office of the Company, by a vote of not less than two-thirds of the Directors present, provided that the Directors, in case of any vacancy by death, disqualification, or resignation, shall not be 40 bound to elect a Director in the place of any Director or Director dying, becoming disqualified, or resigning, so long as the number of Directors remaining on the Board be not less than five, and the Board shall have power to make any by-laws and regulations for the guidance and conduct of the Company,

its officers, solicitors, agents and shareholders, provided that such regulations are not inconsistent with the Rules or the Acts under which the Company is incorporated, or any other Acts affecting building societies in general. The President shall, if present, preside at all meetings of the shareholders or Directors, and shall, with the Manager, sign all conveyances and the debentures of the Company, and also all assignments or releases of securities. In the absence of the President, or at his request, or at the request of the Directors, one of the Vice-Presidents shall perform any or all of the duties of the President, and in the absence of the President and Vice-Presidents, such duties shall be discharged at the request of the Directors, by the Inspecting Director, or by a Chairman elected by the Board.

In the Supreme Court of Ontario.
Exhibits.
Ex. 271.
Extracts from Certified Copy By-laws of London Loan & Savings Co. No date.

—continued.

XXXIX.

The Directors shall have power, from time to time, to appoint an Inspecting Director of the Company, and by resolution to define his powers and duties, and may grant him such remuneration for his services as they may think proper.

Seal.

XLVII.

The seal of the Company shall be under the charge of the President, Inspecting Director and Treasurer, or some one of the Officers of the Company, as the Board of Directors may from time to time see fit, who shall, in conjunction with the President, Vice-President or Inspecting Director, and under the direction of the Board, affix the same to such instruments as may require it.

Exhibit 217

(Defendants' Exhibit)

Extracts from Agenda of William E. Robinson, Director, London Loan and Savings Co.

Extracts from Agenda of Mr. Robinson, a Director of the London Loan and Savings Company. Portions in brackets are not typewritten, but are evidently in the handwriting of this Director.

Exhibits.
Ex. 217.
Extracts from Agenda of William E. Robinson, Director, London Loan & Savings Co. Various dates.

Tuesday, April 17th, 1928.

4. Taxes for 1928 on Toronto properties *re* Buckingham Apts., D.42, \$3,371.35.

Tuesday, Nov. 29th, 1927.

4. Letter from Huron & Erie Mtge. Corp'n *re* payment off of first mortgage on Buckingham Apartments. ✓ (Read)

Tuesday, May 10th, 1927.

4. Letter from Messrs. Martin, Currie & Co. ✓ (Read)

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 217.
Extracts
from
Agenda of
William E.
Robinson,
Director,
London
Loan &
Savings Co.
Various
dates.

—continued.

Tuesday, May 3rd, 1927.

4. Taxes due on Toronto properties: Buckingham Apts. (Refer to
\$2,751.11. Morine)

Tuesday, April 26th, 1927.

8. Taxes due May 4/27 (Refer to
re Durno, D.42, Buckingham Apts., \$2,751.11. Morine)
re Palmer, P.11, 1,036.12. ✓

Tuesday, April 5th, 1927.

5. Bill from Huron & Erie for payment due on first mortgage (Laid over) 10
re Buckingham Apts. Int., \$5,175.; Principal, \$3,000.;
—\$8,175.00. ✓

Tuesday, February 1st, 1927.

10. *Re* Buckingham Apartments, payment due Huron & Erie (Say when
Mtge. Corp., Feb. 7/27, \$8,175.00. due)

Thursday, January 27th, 1927.

8. Payment due Huron & Erie *re* Buckingham Apts. on (Laid over)
Feb. 7/27, \$8,175.00.

Tuesday, January 18th, 1927.

8. Letter from City of Toronto *re* arrears of taxes on Buck- (Morine) 20
ingham Apartments, \$2,556.06. ✓

Tuesday, November 30th, 1926.

3. Letter from the Huron & Erie to the Consolidated Trusts
Co. *re* arrears on Buckingham Apartments, dated
Nov. 26/26. ✓
4. *Re* D.42, R. S. Durno, payment due June 1/26, interest,
principal and insurance premium in arrears. Will
Company collect?

October 19th, 1926.

8. Notice of payment due Huron & Erie Mtge. Corp'n *re* (Laid over) 30
Durno, D.42, \$8,287.50. ✓

Tuesday, September 28th, 1926.

11. *Re* Durno, Mtge. D.42, will Company place this case in (Laid over)
Solicitors' hands for collection of arrears, and appoint
agent to collect rents? ✓

August 31st, 1926.

3. *Re* R. S. Durno, D.42, payment due to Huron & Erie on (Laid over)
first mortgage, \$8,287.50.

- Tuesday, May 18th, 1926.*
7. *Re Durno, Mtge. D.42, Letter from Huron & Erie re arrears.* ✓ (Send copy to Morine) *In the Supreme Court of Ontario.*
- Tuesday, May 4th, 1926.*
4. Letter from Martin, Currie & Co., dated Apl. 17/26. ✓ (Read) Exhibits. Ex. 217. Extracts from Agenda of William E. Robinson, Director, London Loan & Savings Co. Various dates.
- Tuesday, April 13th, 1926.*
9. *Re Buckingham Apartments. Letter from Kay & Shanahan re fire loss.* ✓ (Sign) —continued.
- January 12th, 1926.*
- 10 1. Letter from Martin, Currie & Co. and draft report. (Read)
- Tuesday, Dec. 29th, 1925.*
3. R. S. Durno, mortgage of \$77,000. at 7%. ✓ (Laid over)
- Tuesday, October 20th, 1925.*
3. *Re Buckingham Apartments. Statement of Revenue for 4 months from June 1/25 to Sept. 1/25.* ✓ (Read)
- Sept. 29th, 1925.*
7. Letter, Martin, Currie Co. ✓ (Read answer)
- 20 *Tuesday, Sept. 22nd, 1925.*
4. Sale Buckingham Apts., G.41 & 46. ✓ (Confirm)
- Tuesday, June 23rd, 1925.*
8. (R. S. Durno offer Company's claims as of June 1st for Buckingham Apt. ✓ accept accept Mortg. for \$77,000.00 as part purchase price subj. to H. & E. Mtg. of \$147,000.00.)
- Tuesday, March 31st, 1925.*
4. Letter, Martin, Currie & Co. ✓ (Manager to write)
- Tuesday, Jan'y 27th, 1925.*
- 30 14. (Buckingham Apts., Letter ✓ —Must have money)
- Tuesday, Jan'y 20th, 1925.*
10. (Buckingham arrears, Sol. to collect.)
-

Exhibit 218

(Defendants' Exhibit)

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 218.

Extracts
from
Agenda of
Charles
Hunt,
Director,
London
Loan &
Savings Co.
Various
dates.

Extracts from Agenda of Charles Hunt, Director, London Loan and Savings Co.

Extracts from Agenda of Mr. Hunt, a Director of London Loan and Savings Company. Portions in brackets are not typewritten, but are evidently in the handwriting of this Director.

Tuesday, October 9th, 1928.

14. (Re Buckingham Apts.) ✓ (Laid over)

Tuesday, April 17th, 1928.

4. Taxes for 1928 on Toronto properties *re* Buckingham Apts., D.42, \$3,371.35. 10

The London Loan and Savings Company of Canada.

Re R. S. Durno, R.E. D.42.

Dec. 15/27, Balance brought forward.....	\$109,353.52
Interest on above to April 30th, 1928.....	2,873.15

\$112,226.67

Re R.E. 57.

Feb. 7/28, Balance paid Huron & Erie Mortgage Corporation.....	139,432.52
Interest on above to April 30/28.....	2,377.97 20

\$254,037.16

Re Rents.

Balance retained by H. A. Morine on Statement of March 22/28..\$	1,257.28
March and April rents, say.....	4,000.00

\$ 5,257.28

Taxes <u>for</u> 1928, \$3,371.35—Proportion 1/3.....	1,123.76
---	----------

\$ 4,133.52

Savings Bank balance :

January 24/28.....	\$5,745.81
Mar. 22/28, credit.....	1,680.63 ✓

30

\$7,426.44;

(1800)

(235,000)

00)

(2500xxx)

Tuesday, Nov. 29th, 1927.

4. Letter from Huron & Erie Mtge. Corp'n re payment off of first mortgage on Buckingham Apartments. ✓ (O.K.)

*In the
Supreme
Court of
Ontario.*

Tuesday, July 12th, 1927.

7. *Re* R. S. Durno, R.E. D.42, notice received from Huron & Erie of payment due on first mortgage on August 7th, for \$5,062.50 interest and \$3,000. principal. ✓ (pay when due)

Exhibits.
Ex. 218.
Extracts
from
Agenda of
Charles
Hunt,
Director,
London
Loan &
Savings Co.
Various
dates.

Tuesday, April 26th, 1927.

- 10 8. Taxes due May 4/27
re Durno, D.42, Buckingham Apts., \$2,751.11. (refer to Morine;
re Palmer, P.11, 1,036.12. ✓ if approved, pay)

—continued.

Tuesday, April 19th, 1927.

4. Payment due Huron & Erie re Buckingham Apartments, \$8,175. overdue since Feb'y 7/27. ✓ (pay)

Tuesday, April 12th, 1927.

6. Letter from Huron & Erie re payment due on mortgage on Buckingham Apts. on February 7th, 1927. ✓ (Lay over)

Tuesday, February 15th, 1927.

5. (*Re* Buckingham Apts.) ✓

Tuesday, November 30th, 1926.

- 20 4. *Re* D.42, R. S. Durno, payment due June 1/26, interest, principal and insurance premium in arrears. Will Company collect? ✓ (no action)

Nov. 9th, 1926.

10. *Re* D.42, R. S. Durno, letter from Huron & Erie re payment in arrears. ✓ (file)

October 19th, 1926.

8. Notice of payment due Huron & Erie Mtge. Corp'n, re Durno, D.42, \$8,287.50. ✓ (lay over)

Tuesday, September 28th, 1926.

- 30 11. *Re* Durno Mtge., D.42. Will Company place this case in Solicitors' hands for collection of arrears and appoint agent to collect rents? ✓ (Lay over)

August 31st, 1926.

3. *Re* R. S. Durno, D.42, payment due to Huron & Erie on first mortgage, \$8,287.50. ✓ (lay over)

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 218.
Extracts
from
Agenda of
Charles
Hunt,
Director,
London
Loan &
Savings Co.
Various
dates.

—continued.

Tuesday, May 18th, 1926.

7. *Re Durno, Mtge. D.42, Letter from Huron & Erie re arrears.* ✓ (send copy to Morine and ask him to take action)

Tuesday, May 4th, 1926.

4. Letter from Martin, Currie & Co., dated Apl. 17/26. ✓ (Read)

Tuesday, April 13th, 1926.

9. *Re Buckingham Apartments.* Letter from Kay & Shanahan *re* fire loss. ✓ (sign)

January 12th, 1926.

1. Letter from Martin, Currie & Co. and draft report. ✓ (File) 10

January 5th, 1926.

5. Letter from Martin, Currie & Co., dated Dec. 17/25. ✓

Tuesday, Dec. 29th, 1925.

3. R. S. Durno, mortgage of \$77,000. at 7%. ✓ (Lay over)

Tuesday, October 20th, 1925.

3. *Re Buckingham Apartments.*
Statement of Revenue for 4 months from June 1/25 to Sept. 1/25. ✓

Tuesday, Oct. 6th, 1925.

6. Letter *re* Durno rents. ✓ (read, lay over)

Sept. 29th, 1925.

7. Letter, Martin, Currie Co. ✓ (read) 20

Tuesday, Sept. 22nd, 1925.

4. Sale Buckingham Apts., G.41 & 46. ✓ (confirm sale)

Tuesday, June 30th, 1925.

5. Letters, Martin, Currie & Co. ✓ (read, refer to manager)

Tuesday, June 23rd, 1925.

8. R. S. Durno *re* Buckingham. (offer to purchase at company's claim ✓ accept mtgage of \$77,000 taken back)

Tuesday, March 31st, 1925.

4. Letter, Martin, Currie & Co. ✓ (Read, manager to reply) 30

Tuesday, Jan'y 27th, 1925.

14. (*Re* Buckingham Apts. Letter from Dyas) ✓ (request declined, ask for payment)

Exhibit 219

(Defendants' Exhibit)

Extracts from Agenda of Thomas Baker, Director, London Loan and Savings Co.

Extracts from Agenda of Mr. Baker, a Director of the London Loan and Savings Company. Portions in brackets are not typewritten, but are evidently in the handwriting of this Director.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 219.
—
Extracts
from
Agenda of
Thomas
Baker,
Director,
London
Loan &
Savings Co.
Various
dates.

Tuesday, April 17th, 1928.

- 10 4. Taxes for 1928 on Toronto properties *re* Buckingham Apts., D.42,
\$3,371.35.

The London Loan and Savings Company of Canada.

Re R. S. Durno, R.E. D.42.

Dec. 15/27, Balance brought forward.....	\$109,353.52
Interest on above to April 30th, 1928.....	2,873.15
	<hr/>
	\$112,226.67

Re R.E. 57.

Feb. 7/28, Balance paid Huron & Erie Mortgage Corporation.....	139,432.52
Interest on above to April 30/28.....	2,377.97
	<hr/>
	\$254,037.16

20 *Re Rents.*

Balance retained by H. A. Morine on Statement of March 22/28.....	\$ 1,257.28
March and April rents, say.....	4,000.00
	<hr/>
	\$ 5,257.28
Taxes for 1928, \$3,371.35—Proportion 1/3.....	1,123.76
	<hr/>
	\$ 4,133.52

Savings Bank balance :

January 24/28.....	\$5,745.81
Mar. 22/28, credit.....	1,680.63
	<hr/>
	\$7,426.44

Tuesday, Nov. 29th, 1927.

- 30 4. Letter from Huron & Erie Mtge. Corp'n *re* payment off of first mortgage
on Buckingham Apartments. (Read)

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 219.

Extracts
from
Agenda of
Thomas
Baker,
Director,
London
Loan &
Savings Co.
Various
dates.

—continued.

Tuesday, July 12th, 1927.

7. *Re R. S. Durno, R.E. D.42*, notice received from Huron & Erie of payment due on first mortgage on August 7th, for \$5,062.50 interest and \$3,000. principal. (Pay)

Tuesday, May 3rd, 1927.

4. Taxes due on Toronto properties : Buckingham Apts., \$2,751.11.

Tuesday, April 19th, 1927.

4. Payment due Huron & Erie *re* Buckingham Apartments, \$8,175. overdue since Feb'y 7/27.

Tuesday, April 5th, 1927.

5. Bill from Huron & Erie for payment due on first mortgage *re* Buckingham Apts. Int., \$5,175; Principal, \$3,000.—\$8,175.00. 10

Tuesday, February 1st, 1927.

10. *Re* Buckingham Apartments, payment due Huron & Erie Mtge. Corp., Feb. 7/27, \$8,175.00. (pay when due)

Tuesday, November 30th, 1926.

4. *Re* D.42, R. S. Durno, payment due June 1/26, interest, principal and insurance premium in arrears. Will Company collect? (Laid over)

Nov. 9th, 1926.

10. *Re* D.42, R. S. Durno, letter from Huron & Erie *re* payment in arrears. (no action) 20

October 19th, 1926.

8. Notice of payment due Huron & Erie Mtge. Corp'n, *re* Durno, D.42, \$8,287.50. (Laid over)

Tuesday, September 28th, 1926.

11. *Re* Durno, Mtge. D.42, will Company place this case in Solicitors' hands for collection of arrears, and appoint agent to collect rents?

August 31st, 1926.

3. *Re* R. S. Durno, D.42, payment due to Huron & Erie on first mortgage, \$8,287.50. 30

Tuesday, May 18th, 1926.

7. *Re* Durno, Mtge. D.42, Letter from Huron & Erie *re* arrears. (send copy to Morine)

Tuesday, April 13th, 1926.

9. *Re* Buckingham Apartments. Letter from Kay & Shanahan *re* fire loss. (Pay) ✓

Tuesday, March 9th, 1926.

6. ✓ Statement of rents and disbursements *re* Buckingham Apts. (Laid over)

*In the
Supreme
Court of
Ontario.*

January 12th, 1926.

1. Letter from Martin, Currie & Co., and draft report. ✓

Exhibits.
Ex. 219.
Extracts
from
Agenda of
Thomas
Baker,
Director,
London
Loan &
Savings Co.
Various
dates.

Tuesday, Dec. 29th, 1925.

3. R. S. Durno, mortgage of \$77,000. at 7%. (Laid over)

Tuesday, October 20th, 1925.

3. *Re* Buckingham Apartments (and Consolidated Trusts Co.). Statement of Revenue for 4 months from June 1/25 to Sept. 1/25.

—continued.

10

Tuesday, Sept. 22nd, 1925.

4. Sale Buckingham Apts., G.41 & 46.

Tuesday, June 30th, 1925.

5. Letters, Martin, Currie & Co. (Refer to manager) ✓

Tuesday, June 23, 1925.

- (✓ R. S. Durno—accept offer 227,500.00 for Buckingham Apts.)

Tuesday, March 31st, 1925.

4. Letter, Martin, Currie & Co.

Tuesday, Jan'y 27th, 1925.

15. (*Re* Dyas)—(Must have money—*re* Buckingham Apartments.)

20

Tuesday, June 12th, 1923.

- ✓ (S. B. Green) (Lend 24,000 for a year @ 10% subject to 52,000)

Monday, Febry. 12th, 1923.

11. S. B. Green, \$31,000. at 7½%. (Lend)

Exhibit 150

(Plaintiffs' Exhibit)

Extracts from Examination for Discovery of H. A. Morine

NOT PRINTED.

Exhibits.
Ex. 150.
Extracts
from
Examination
for
Discovery of
H. A.
Moline.

Extracts printed in Record of Proceedings at pp. 81, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 431, 432, 433, 436, 451, 452, 453, 454, 455, 464.

NOT
PRINTED.
